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GOVERNMENT GAZETTE

STAATSKOERANT

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20 November 1996

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

No. 75 of 1996: International Co-operation in Criminal Matters Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1875.

20 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 75 van 1996: Wet op Internasionale Samewerking in Strafregtelike Aangeleenthede, 1996.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
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- Words underlined with a solid line indicate insertions in existing enactments.
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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— 5
- (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; 15 (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)

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
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- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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WET

Om die voorsiening van getuienis en die uitvoering van vonnisse in straf sake en die inbeslagname en oorplasing van die opbrengs van misdaad tussen die Republiek en vreemde State te vergemaklik; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 6 November 1996.)*

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

HOOFSTUK 1**Woordomskrywing**

- 5 **1.** In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 (i) “buitelandse inbeslagnemingsbevel” 'n bevel uitgereik deur 'n hof of tribunaal in 'n vreemde Staat, wat gemik is op die verhaal van die opbrengs van enige misdaad of die waarde van sodanige opbrengs; (vi)
 (ii) “buitelandse inkortingsbevel” 'n bevel uitgereik deur 'n hof of tribunaal in 'n vreemde Staat ten opsigte van 'n misdryf kragtens die reg van daardie Staat, wat daarop gerig is om 'n persoon te verhinder om met enige eiendom te handel; (vii)
 (iii) “Direkteur-generaal” die Direkteur-generaal: Justisie; (iv)
 (iv) “eiendom” geld of 'n ander roerende, onroerende, liggamaalike of onliggaamlike saak en ook enige belang daarin en alle opbrengs daarvan; (xv)
 (v) “getuienis” ook alle boeke, stukke en voorwerpe deur 'n getuie voorgelê; (v)
 (vi) “hierdie Wet” ook 'n regulasie daarkragtens uitgevaardig; (xxi)
 (vii) “Hooggereghof” met betrekking tot—
 (a) 'n persoon teen wie 'n buitelandse inkortingsbevel afgedwing kan word, die afdeling van die Hooggereghof binne wie se gebied sodanige persoon—
 (i) woon, besigheid dryf of in diensbetrekking is; of
 (ii) roerende of onroerende goed besit;
 (b) 'n regspersoon teen wie 'n buitelandse inkortingsbevel afgedwing kan word, die afdeling van die Hooggereghof binne wie se gebied die geregistreerde kantoor of die vernaamste besigheidsplek van sodanige regspersoon geleë is;

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- (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;
- (xv)
- (xvi) "property" means money or any other movable, immovable, corporeal or incorporeal thing and includes any interest therein and all proceeds thereof; (iv)
- (xvii) "regulation" means any regulation made under this Act; (xiv)
- (xviii) "requested State" means any foreign State to which a request for assistance in respect of any criminal matter in the Republic is directed; (xix)
- (xix) "requesting State" means any foreign State from which a request for assistance in respect of any criminal matter is received; (xviii)
- (xx) "restraint order" means a restraint order made under the Proceeds of Crime Act, 1996; (ix)
- (xxi) "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)

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- (c) 'n vennootskap teen wie 'n buitelandse inkortingsbevel of 'n vreemde vonnis afgedwing kan word, die afdeling van die Hooggereghof binne wie se gebied—
 - (i) 'n besigheidsplek van sodanige vennootskap geleë is;
 - (ii) sodanige vennootskap enige roerende of onroerende goed besit; of
 - (iii) 'n lid daarvan woon;
- 5 (d) 'n buitelandse inkortingsbevel wat betrekking het op bepaalde goed, die afdeling van die Hooggereghof binne wie se gebied sodanige goed is op die datum van die registrasie van sodanige buitelandse inkortingsbevel; (xx)
- 10 (viii) "inbeslagnemingsbevel" 'n inbeslagnemingsbevel verleen kragtens die Wet op die Opbrengs van Misdaad, 1996; (iii)
- (ix) "inkortingsbevel" 'n inkortingsbevel verleen kragtens die Wet op die Opbrengs van Misdaad, 1996; (xix)
- 15 (x) "landdros" ook 'n addisionele landdros en 'n assistent-landdros; (x)
- (xi) "landdroshof" met betrekking tot—
 - (a) 'n persoon teen wie 'n buitelandse inbeslagnemingsbevel of 'n vreemde vonnis afgedwing kan word, die landdroshof van die distrik waarin sodanige persoon—
 - (i) woon, besigheid dryf of in dienstbetrekking is; of
 - (ii) enige roerende of onroerende goed besit;
 - (b) 'n regspersoon teen wie 'n buitelandse inbeslagnemingsbevel of 'n vreemde vonnis afgedwing kan word, die landdroshof van die distrik waarin die geregistreerde kantoor of vernaamste besigheidsplek van sodanige regspersoon geleë is;
- 20 (c) 'n vennootskap teen wie 'n buitelandse inbeslagnemingsbevel of 'n vreemde vonnis afgedwing kan word, die landdroshof van die distrik waarin—
 - (i) 'n besigheidsplek van sodanige vennootskap geleë is;
 - (ii) sodanige vennootskap enige roerende of onroerende goed besit; of
 - (iii) enige lid daarvan woon;
- 25 (d) 'n buitelandse inbeslagnemingsbevel wat betrekking het op bepaalde goed, die landdroshof van die distrik waarin sodanige goed is op die datum van die registrasie van enige sodanige buitelandse inbeslagnemingsbevel; (xi)
- (xii) "Minister" die Minister van Justisie; (xii)
- (xiii) "ooreenkoms" ook 'n multilaterale konvensie waarby die Republiek 'n ondertekenaar is of waartoe dit toegetree het en wat dieselfde uitwerking het as 'n ooreenkoms in artikel 27 bedoel; (i)
- 30 (xiv) "regulasie" 'n regulasie kragtens hierdie Wet uitgevaardig; (xvi)
- (xv) "toepaslike owerheidsliggaam" enige owerheidsliggaam in 'n vreemde Staat wie se werkzaamheid dit is om versoek om bystand in strafregtelike aangeleenthede te doen, te kanaliseer of te ontvang; (ii)
- (xvi) "verrigtinge" strafregtelike verrigtinge en enige ander verrigtinge voor 'n hof of ander tribunaal, ingestel met die doel om vas te stel of 'n handeling of versuim of optrede 'n misdryf aan die kant van 'n persoon uitmaak of insluit; (xiv)
- 35 (xvii) "versoekbrief" 'n brief waarin bystand versoek word van die aard in artikels 2, 13, 19 en 23 beoog; (ix)
- (xviii) "versoekende Staat" 'n vreemde Staat van wie 'n versoek om bystand ten opsigte van 'n strafregtelike aangeleenthed ontvang word; (xviii)
- (xix) "versoekte Staat" 'n vreemde Staat aan wie 'n versoek om bystand ten opsigte van enige strafregtelike aangeleenthed in die Republiek gerig word; (xvii)
- 40 (xx) "voorgeskryf" by regulasie voorgeskryf; (xiii)
- (xxi) "vreemde Staat" 'n Staat buite die Republiek, met inbegrip van enige gebied onder die soewereiniteit of beheer van so 'n Staat. (viii)

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. 5

(2) A judge in chambers or a magistrate may on application made to him or her issue 10 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; 15
- (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 20 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 25 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 30 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 35
- (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 40 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. 45

(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. 50

Record of proceedings at examination

4. (1) The court or presiding officer issuing the letter of request shall request— 55

HOOFSTUK 2*Onderlinge voorsiening van getuienis***Uitreiking van versoekbrief**

2. (1) Indien dit aan 'n hof of aan die voorsittende beampete by verrigtinge blyk dat die ondervraging by sodanige verrigtinge van 'n persoon wat in 'n vreemde Staat is, noodsaklik is in belang van geregtigheid en dat die aanwesigheid van so 'n persoon nie verkry kan word sonder onbehoorlike vertraging, onkoste of ongerief nie, kan die hof of so 'n voorsittende beampete 'n versoekbrief uitrek waarin bystand van daardie vreemde Staat versoek word om die getuienis in die versoekbrief vermeld, te verkry vir gebruik in sodanige verrigtinge.

(2) 'n Regter in kamers of 'n landdros kan op aansoek aan hom of haar 'n versoekbrief uitrek waarin bystand van 'n vreemde Staat versoek word om die inligting in die versoekbrief vermeld, te verkry vir gebruik in 'n ondersoek wat verband hou met 'n beweerde misdryf indien hy of sy oortuig is—

- 15 (a) dat daar redelike gronde is om te glo dat 'n misdryf in die Republiek gepleeg is of dat dit noodsaklik is om vas te stel of 'n misdryf gepleeg is;
 (b) dat 'n ondersoek ten opsigte daarvan ingestel word; en
 (c) dat vir doeleindes van die ondersoek dit in die belang van geregtigheid noodsaklik is dat inligting van 'n persoon of instansie in 'n vreemde Staat verkry word.

20 (3) Behoudens subartikel (4), moet 'n versoekbrief aan die Direkteur-generaal gestuur word vir deursending aan—

- (a) die hof of tribunaal wat in die versoekbrief vermeld word; of
 (b) die toepaslike owerheidsliggaam in die versoekte Staat.

25 (4) (a) In 'n geval van dringendheid kan 'n versoekbrief regstreeks gestuur word aan die hof of tribunaal in subartikel (3)(a) bedoel wat jurisdiksie uitoefen in die plek waar die getuienis verkry moet word, of aan die toepaslike owerheidsliggaam in subartikel (3)(b) bedoel.

(b) Die Direkteur-generaal moet so gou moontlik ingelig word dat 'n versoekbrief op 30 die wyse in paragraaf (a) bedoel, versend is en hy of sy moet van 'n afskrif van die versoekbrief voorsien word.

Bywoning van ondervraging

3. (1) Waar 'n versoekbrief ingevolge artikel 2(1) uitgereik is, kan enige party by sodanige verrigtinge, mits dit veroorloof is deur die reg van die versoekte Staat—

- 35 (a) vraagpunte verstrek wat die hof of voorsittende beampete wat die versoekbrief uitrek by die versoekbrief kan aanheg; of
 (b) by die ondervraging verskyn, hetsy deur 'n regsverteenvoordiger of, in die geval van 'n beskuldigde wat nie in bewaring is nie of 'n private vervolger, in persoon, en kan die getuie ondervra, kruisvra en herondervra.

40 (2) Waar 'n versoekbrief ingevolge artikel 2(2) uitgereik is, kan die persoon in bevel van die ondersoek na die beweerde misdryf, mits dit veroorloof is deur die reg van die versoekte Staat—

- (a) vraagpunte voorlê wat die regter of landdros wat die versoekbrief uitrek by die versoekbrief kan aanheg; of
 45 (b) by die ondervraging verskyn en die betrokke persoon ondervra.

(3) (a) Waar verrigtinge ingestel is en die aansoek om 'n versoekbrief deur die Staat gedoen word, kan die hof of voorsittende beampete as 'n voorwaarde van die versoekbrief gelas dat die koste van regsverteenvoording vir die beskuldigde deur die Staat betaal word.

50 (b) Ondanks die feit dat die voorsittende beampete 'n bevel gemaak het soos in paragraaf (a) beoog, kan hy of sy, indien hy of sy van mening is dat 'n weiering van die beskuldigde om die getuienis te erken wat deur middel van die versoekbrief verkry is, onredelik en nie regverdigbaar is nie, by die afsluiting van die verrigtinge dié bevel maak betreffende die koste van die versending van die versoekbrief en alle verrigtinge 55 om daaraan uitvoering te gee, wat hy of sy redelikerwys gepas ag.

Oorkonde van verrigtinge by ondervraging

4. (1) Die hof of voorsittende beampete wat 'n versoekbrief uitrek, moet versoek—

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- (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.

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(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.

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(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

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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—

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- (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,

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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.

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(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.

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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

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7. (1) A request by a court or tribunal exercising jurisdiction in a foreign State or by

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- (a) dat 'n juiste oorkonde van die verrigtinge by die ondervraging van die getuie gehou word ooreenkomsdig die prosedure wat normaalweg in die versoeakte Staat gevvolg word; en
 - (b) dat die persoon wat by die ondervraging voorsit 'n juiste aantekening maak van die getuie se weiering om enige vraag te beantwoord of enige boek, stuk of voorwerp voor te lê, en die redes vir sodanige weiering.
- 5 (2) (a) 'n Hof of voorsittende beampete wat 'n versoekbrief uitreik, kan versoek dat 'n video-opname van die verrigtinge by die ondervraging van 'n getuie gemaak word deur 'n persoon wat vir dié doel aangewys word deur die hof of voorsittende beampete 10 of deur die versoeakte Staat.
- (b) 'n Video-opname in paragraaf (a) beoog, maak deel uit van die oorkonde van die verrigtinge by die ondervraging en mag na verwys word deur die hof of tribunaal voor wie die getuenis wat ingevolge die versoekbrief verkry is, aangebied word, ten einde enige feit betreffende—
- 15 (i) die manier waarop die ondervraging gehou is; of
(ii) die gedrag en optrede van die getuie tydens getuenisaflegging, vas te stel.

Toelaatbaarheid van getuenis verkry ingevolge versoekbrief

5. (1) Getuenis wat deur 'n versoekbrief verkry is, word geag getuenis te wees wat onder eed afgelê is indien dit blyk dat die getuie ingevolge die reg van die versoeakte Staat behoorlik gewaarsku is om die waarheid te praat. Met dien verstande dat iemand wat weens gebrek aan kennis voortspruitend uit jeugdigheid, gebrekkige opvoeding of ander oorsaak, bevind word nie die aard en betekenis van die eed of bevestiging te begryp nie, kan toegelaat word om in die verrigtinge getuenis af te lê sonder om dit onder eed te doen of te bevestig: Met dien verstande voorts dat so iemand, in plaas van die eed of bevestiging deur die landdros gewaarsku moet word om die waarheid, die hele waarheid en net die waarheid te praat
- (2) Getuenis wat deur 'n versoekbrief verkry is voordat verrigtinge ingestel is, word as getuenis by enige daaropvolgende verrigtinge toegelaat en maak deel uit van die oorkonde van sodanige verrigtinge indien—
- (a) elke party teen wie die getuenis aangevoer staan te word, toestem tot die toelating daarvan as bewys by daardie verrigtinge; of
 - (b) die hof, met inagneming van—
 - (i) die aard van die verrigtinge;
 - (ii) die aard van die getuenis;
 - (iii) die doel waarvoor die getuenis aangebied word;
 - (iv) enige benadeling vir enige party wat die toelating van sodanige getuenis mag inhou; en
 - (v) enige ander faktor wat volgens die oordeel van die hof in aanmerking geneem behoort te word,
- 35 van oordeel is dat daardie getuenis in belang van geregtigheid toegelaat behoort te word.
- 40 (3) Die bepalings van subartikel (2) maak geen getuenis toelaatbaar wat ontoelaatbaar sou wees, indien daardie getuenis by latere verrigtinge gegee sou gewees het deur die getuie van wie dit verkry is nie.
- (4) Getuenis wat deur 'n versoekbrief verkry is na die instelling van verrigtinge maak deel uit van die oorkonde van die verrigtinge en word deur die hof of voorsittende beampete wat die versoekbrief uitgereik het as getuenis toegelaat vir sover dit nie ontoelaatbaar by sodanige verrigtinge is nie.

50 Insaai in getuenis deur versoekbrief verkry

6. Waar 'n versoekbrief uitgereik word na die instelling van verrigtinge is die getuenis aldus verkry asook die oorkonde van die ondervraging van die getuie beskikbaar ter insae van die partye by die verrigtinge.

Buitelandse versoekte om bystand ter verkrywing van getuenis

- 55 7. (1) 'n Versoek deur 'n hof of tribunaal wat jurisdiksie in 'n vreemde Staat uitoefen of deur 'n toepaslike owerheidsliggaam in 'n vreemde Staat, om bystand ter verkrywing

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. 5

(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. 15

(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. 20 25 30

(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. 35

(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. 40

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. 45

(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. 50

(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. 55

van getuenis in die Republiek vir gebruik in sodanige vreemde Staat word aan die Direkteur-generaal voorgelê.

(2) By ontvangs van so 'n versoek moet die Direkteur-generaal homself of haarself tevrede stel—

- 5 (a) dat verrigtinge ingestel is in 'n hof of tribunaal wat jurisdiksie in die versoekende Staat uitoefen; of
- (b) dat daar redelike gronde is om te glo dat 'n misdryf in die versoekende Staat gepleeg is of dat dit noodsaaklik is om vas te stel of 'n misdryf aldus gepleeg is en dat 'n ondersoek ten opsigte daarvan in die versoekende Staat 10 onderneem word.

(3) By die toepassing van subartikel (2) kan die Direkteur-generaal steun op 'n sertifikaat wat heet uitgereik te wees deur 'n bevoegde gesag in die betrokke Staat, waarin die feite beoog in paragraaf (a) of (b) van bedoelde subartikel vermeld word.

(4) Indien die Direkteur-generaal homself of haarself tevrede gestel het soos in 15 subartikel (2) beoog, moet hy of sy die versoek om bystand ter verkryging van getuenis aan die Minister vir sy of haar goedkeuring voorlê.

(5) Wanneer hy of sy van die Minister se goedkeuring verwittig word, moet die Direkteur-generaal die versoek in subartikel (1) beoog, voorlê aan die landdros binne wie se regsgebied die getuie woon.

20 Ondervraging van getuies

8. (1) Die landdros aan wie 'n versoek ingevolge artikel 7(5) gestuur is, moet die persoon wie se getuenis vereis word, dagvaar om voor hom of haar te verskyn ten einde getuenis af te lê of enige boek, stuk of voorwerp voor te lê, en by die verskynning van so 'n persoon moet die landdros aan hom of haar 'n eed ople of van hom of haar 25 'n bevestiging afneem en sodanige persoon se getuenis deur middel van vraagpunte of andersins afneem soos versoek, asof bedoelde persoon 'n getuie was in 'n landdroshof in verrigtinge soortgelyk aan dié in verband waarmee sy of haar getuenis vereis word : Met dien verstande dat iemand wat weens gebrek aan kennis voortspruitend uit jeugdigheid, gebrekkige opvoeding of ander oorsaak, bevind word nie die aard en 30 betekenis van die eed of bevestiging te begryp nie, toegelaat kan word om in die verrigtinge getuenis af te lê sonder om dit onder eed te doen of te bevestig: Met dien verstande voorts dat so iemand, in plaas van die eed of bevestiging, deur die landdros gewaarsku moet word om die waarheid, die hele waarheid en net die waarheid te praat.

(2) 'n Persoon in subartikel (1) bedoel, word op dieselfde wyse gedagvaar as wat 35 iemand gedagvaar word om as 'n getuie in verrigtinge voor 'n landdroshof te verskyn.

(3) By voltooiing van die ondervraging van die getuie moet die landdros wat die getuenis afgeneem het die oorkonde van die getuenis, deur hom of haar as korrek gesertifiseer, saam met 'n sertifikaat wat die uitgawes en koste aandui wat in verband met die ondervraging van die getuie aangegaan is aan die Direkteur-generaal stuur.

40 (4) Indien die dienste van 'n tolk by die ondervraging van die getuie gebruik is, moet die tolk sertifiseer dat hy of sy huis en na sy of haar beste vermoë getolk het en sodanige sertifikaat moet die stukke wat deur die landdros aan die Direkteur-generaal gestuur word, vergesel.

Regte en privileges van getuies

45 9. (1) Ten opsigte van die aflê van getuenis of die voorlegging van 'n boek, stuk of voorwerp by 'n ondervraging ingevolge artikel 8, is die reg betreffende privilege soos van toepassing op 'n getuie wat getuenis aflê of gedagvaar is om 'n boek, stuk of voorwerp voor te lê in 'n landdroshof in soortgelyke verrigtinge, van toepassing.

(2) Waar 'n getuie by so 'n ondervraging aanspraak maak op privilege op grond 50 daarvan dat hy of sy nie verplig sou kon word om die besondere getuenis af te lê in strafregtelike verrigtinge in die versoekende Staat nie, moet die landdros die getuie se beswaar notuleer en kan hy of sy die verrigtinge uitstel ten einde 'n aanduiding van 'n bevoegde gesag in die versoekende Staat te verkry aangaande die vraag of die getuie in strafregtelike verrigtinge in die versoekende Staat verplig sou kon word om die 55 getuenis af te lê al dan nie.

(3) Waar 'n getuie se beroep op privilege nie deur 'n bevoegde gesag in die versoekende Staat erken word nie, moet die landdros sy of haar beswaar afwys en voortgaan om die getuenis af te neem.

(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

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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.

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(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.

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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.

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(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.

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(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.

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(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.

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

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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.

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(4) Iemand van wie vereis word om getuienis by 'n ondervraging ingevolge artikel 8 af te lê, is geregtig op die betaling van die uitgawes en gelde wat betaalbaar is aan getuies in 'n landdroshof in verrigtinge soortgelyk aan dié in verband waarmee sy of haar getuienis verlang word.

5 Misdrywe deur getuies

- 10.** (1) Iemand wat gedagvaar is om te verskyn om getuienis af te lê of 'n boek, stuk of voorwerp voor te lê aan 'n landdros wat 'n ondervraging waarnem en wat sonder voldoende rede versuim om op die aangewese tyd en plek te verskyn of aanwesig te bly tot die afhandeling van die ondervraging of totdat hy of sy van verdere bywoning verskoon is deur die landdros wat die ondervraging waarnem, of wat weier om as getuie ingesweer te word of om 'n bevestiging te doen, of nadat hy of sy ingesweer is of 'n bevestiging gedaan het, versuim om bevredigend te antwoord op enige vraag wat aan hom of haar gestel word, of versuim om 'n boek, stuk of voorwerp voor te lê wat in sy of haar besit of bewaring of onder sy of haar beheer is, wat hy of sy gedagvaar was om voor te lê, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.
- (2) Iemand wat, nadat hy of sy ingesweer is of 'n bevestiging gedaan het of gewaarsku is soos in artikel 8(1) beoog, valse getuienis aflê voor die persoon wat die ondervraging hou, wetende dat sodanige getuienis vals is of sonder om te weet of te glo dat dit waar is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met die straf wat vir meineed opgelê kan word.

Verskynning van getuies in sekere State

- 11.** (1) Wanneer 'n getuiedagvaarding wat uitgereik heet te wees deur 'n bevoegde beampte van 'n bevoegde gereghof in 'n Staat vermeld in Bylae I vir die verskynning van 'n persoon in enige verrigtinge voor daardie hof, vanaf so 'n beampte ontvang word deur 'n landdros binne wie se regsgebied so 'n persoon woon of is, moet daardie landdros, indien hy of sy tevrede is dat die getuiedagvaarding regmatig uitgereik is, dit endosseer vir betekening op bedoelde persoon, waarop dit beteken mag word asof dit 'n getuiedagvaarding is wat deur die hof van bedoelde landdros uitgereik is in verrigtinge soortgelyk aan dié in verband waarmee dit uitgereik is.
- (2) By die betekening van die getuiedagvaarding op die getuie moet 'n bedrag wat voldoende is om die getuie se redelike uitgawes in verband met sy of haar bywoning van die verrigtinge te dek, aan hom of haar aangebied word.
- (3) Iemand wat ingevolge hierdie artikel gedagvaar is wat sonder voldoende rede versuim om teenwoordig te wees op die aangewese tyd en plek in die dagvaarding vermeld, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.
- (4) 'n Landdroshof in wie se regsgebied die getuiedagvaarding beteken is of waar die gedagvaarde persoon woon, het regsvoegdheid om iemand te verhoor weens 'n oortreding van subartikel (3).
- (5) By die toepassing van subartikel (3) is 'n relaas wat aantoon dat die getuiedagvaarding behoorlik op die betrokke persoon beteken is, tesame met 'n sertifikaat van die voorsittende beampte van die hof waarin bedoelde persoon moes verskyn dat die persoon versuim het om op die tyd en plek in die getuiedagvaarding vermeld, te verskyn, *prima facie*-bewys dat bedoelde persoon versuim het om te verskyn soos in daardie subartikel beoog.

Getuies uit vreemde State wat hof in Republiek bywoon, mag nie in Republiek gearresteerd word nie

- 12.** Geen getuie wat in 'n vreemde Staat woonagtig is en wat 'n hof of tribunaal in die Republiek bywoon, word, terwyl hy of sy 'n hof of tribunaal aldus bywoon, in die Republiek gearresteerd nie op 'n siviele lasbrief vir skuld of op 'n kriminele aanklag weens 'n misdryf wat voor die datum van sy of haar aankoms in die Republiek vir die doel van sy of haar bywoning van sodanige hof of tribunaal in die Republiek aangegaan is of na bewering gepleeg is.

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. 5

(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. 10

(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— 15

- (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. 20

Registration of foreign sentence 25

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— 30

- (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 35
- (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. 40

(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. 45

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 50

HOOFSTUK 3*Onderlinge uitvoering van vonnis en vergoedende bevele***Versoek aan vreemde Staat om bystand vir verhaal van boete of vergoeding**

13. (1) Indien dit vir 'n hof wat 'n persoon tot die betaling van 'n boete gevonnis het, of 'n bevel teen hom of haar vir die betaling van vergoeding aan iemand anders verleen het, blyk dat daardie persoon nie voldoende eiendom in die Republiek het waarop die boete of vergoeding verhaal kan word nie, maar dat hy of sy eiendom in 'n vreemde Staat het, kan die hof 'n versoekbrief uitrek om bystand van die betrokke vreemde Staat te versoek.

10 (2) Die versoekbrief kan 'n versoek insluit vir die verhaal van alle koste en uitgawes aangegaan in verband met die verhaal van die boete of vergoeding en dat daardie koste en uitgawes gehef word teen die eiendom van die veroordeelde persoon op wie die boete of vergoeding verhaal word.

(3) 'n Versoekbrief deur 'n hof uitgereik ingevolge subartikel (1) word aan die **15** Direkteur-generaal gestuur wat dit—

(a) aan 'n hof of tribunaal in die versoek vermeld, wat jurisdiksie uitoefen op die plek waar die boete of vergoeding verhaal moet word; of

(b) aan die toepaslike owerheidsliggaam in die versoekte Staat, moet deurstuur.

20 Voldoening aan boete of vergoeding

14. 'n Bedrag wat ingevolge 'n versoek om bystand kragtens artikel 13 verhaal word, minus die koste van die verhaal daarvan, word eerste aangewend ter delging of vermindering van die uitstaande bedrag van die boete en daarna word die restant aangewend ter delging of indien die restant nie voldoende is nie, ter vermindering van **25** die uitstaande bedrag van die vergoedende bevel.

Registrasie van buitelandse vonnis

15. (1) Wanneer die Direkteur-generaal 'n versoek ontvang van 'n vreemde Staat om bystand in die Republiek vir die verhaal van 'n boete waartoe iemand in strafregtelike verrigtinge in die versoekende Staat gevonnis is, of die afdwing van 'n bevel vir die **30** betaling van vergoeding van skade aan enige persoon wat in sodanige verrigtinge verleen is, en hy of sy tevrede is—

(a) dat die vonnis of bevel finaal is en nie aan hersiening of appèl onderworpe is nie;

(b) dat die hof wat die vonnis of bevel opgelê of verleen het jurisdiksie gehad **35** het;

(c) dat die persoon aan wie die vonnis opgelê of teen wie die bevel verleen is die geleentheid gehad het om homself of haarself te verdedig;

(d) dat daar nie ten volle aan die vonnis of bevel voldoen kan word in die land waar dit opgelê is nie; en

40 (e) dat die betrokke persoon eiendom in die Republiek besit, moet hy of sy die versoek aan die Minister vir goedkeuring voorlê.

(2) By ontvangs van die Minister se goedkeuring dat die vonnis of vergoedende bevel in die Republiek uitgevoer kan word, dien die Direkteur-generaal by die klerk van 'n landdroshof 'n gesertifiseerde kopie in van die stuk wat bewys van die vreemde **45** vonnis of bevel uitmaak en daardie klerk van die hof moet daarop die vonnis of bevel en die bedrag betaalbaar daarkragtens, soos uit bedoelde stuk blyk, registreer.

(3) Die klerk van die hof moet onverwyld skriftelik van die registrasie van die vonnis of bevel kennis gee aan die persoon aan wie dit opgelê of teen wie dit verleen is of wat effektiewe beheer oor die betrokke eiendom in die Republiek het en moet sodanige **50** persoon in kennis stel dat hy of sy binne die voorgeskrewe tydperk en op die voorgeskrewe wyse aansoek kan doen om die registrasie daarvan tersyde te stel.

Minister kan diskresie uitoefen

16. Sonder om die Minister se diskresie op enige wyse te beperk, kan hy of sy 'n versoek om die uitvoering van 'n buitelandse geldvonnis of vergoedende bevel wat

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

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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.

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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—

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- (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.

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(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.

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CHAPTER 4

Confiscation and transfer of proceeds of crime

Request to foreign State for assistance in enforcing confiscation order

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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.

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(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—

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- (a) to the court or tribunal specified in the request; or
- (b) to the appropriate government body in the requested State.

kragtens artikel 15(1) aan hom of haar voorgelê is, weier indien hy of sy tevrede is dat die uitlewering van die persoon aan wie die vonnis opgelê of teen wie die bevel verleen is nie onder enige wet van die Republiek betreffende uitlewering beveel sou gewees het nie, indien 'n versoek om die uitlewering van sodanige persoon ontvang was.

5 Uitwerking van registrasie van vonnis of vergoedende bevel

- 17.** (1) Wanneer 'n buitelandse vonnis of vergoedende bevel ingevolge artikel 15 geregistreer is, het daardie vonnis of bevel die uitwerking van 'n siviele vonnis van die hof waar dit geregistreer is, ten bedrae van die bedrag daarin weerspieël, ten gunste van die Republiek soos deur die Minister verteenwoordig.
- 10 (2) 'n Vonnis of bevel wat ingevolge artikel 15 geregistreer is, word nie ten uitvoer gelê nie voor die verstryking van die tydperk waarbinne 'n aansoek ingevolge artikel 15(3) om die tersydestelling van die registrasie daarvan gedoen kan word, of indien so 'n aansoek gedoen is, voordat die aansoek finaal beslis is.
- 15 (3) Die Direkteur-generaal moet, behoudens enige ooreenkoms of reëling tussen die versoekende Staat en die Republiek, 'n bedrag wat ingevolge 'n geregistreerde vonnis of bevel verhaal is aan die versoekende Staat oorbetaal, minus alle uitgawes wat in verband met die tenuitvoerlegging van sodanige vonnis of bevel aangegaan is.

Tersydestelling van registrasie van buitelandse vonnis

- 18.** (1) Die registrasie van 'n buitelandse vonnis of vergoedende bevel ingevolge artikel 15, word op aansoek van die persoon aan wie die vonnis opgelê of teen wie die bevel verleen is ter syde gestel indien die hof waar dit geregistreer is tevrede is—
- 20 (a) dat die vonnis of bevel strydig met 'n bepaling van hierdie Wet geregistreer is;
- 25 (b) dat die hof van die versoekende Staat nie jurisdiksie gehad het in die aangeleentheid nie;
- (c) dat die vonnis of bevel aan hersiening of appèl onderworpe is;
- 30 (d) dat die persoon aan wie die vonnis opgelê of teen wie die bevel verleen is, nie by die betrokke verrigtinge verskyn het nie, of nie kennis gekry het van die verrigtinge soos voorgeskryf deur die reg van die versoekende Staat nie of, as geen sodanige kennisgewing voorgeskryf is nie, dat hy of sy nie redelike kennis van daardie verrigtinge gekry het ten einde hom of haar in staat te stel om hom of haar by die verrigtinge te verdedig nie;
- 35 (e) dat die afdwinging van die vonnis of bevel strydig met die belang van geregtigheid sal wees; of
- (f) dat daar reeds aan die vonnis of bevel voldoen is, met inbegrip van die uitdiening van gevangenisstraf by wanbetaling.
- (2) Die hof wat 'n aansoek ingevolge subartikel (1) verhoor, kan die verhoor te eniger tyd uitstel na 'n datum wat die hof bepaal.

HOOFTUK 4

40 Inbeslagname en oordrag van opbrengs van misdaad

Versoek aan vreemde Staat om bystand vir afdwinging van inbeslagnamebevel

- 19.** (1) Wanneer 'n hof in die Republiek 'n inbeslagnamebevel verleen, kan die hof op aansoek 'n versoekbrief uitrek waarin bystand ter afdwinging van die bevel in 'n vreemde Staat versoek word, indien dit vir die hof blyk dat 'n voldoende bedrag om 45 aan die bevel te voldoen nie binne die Republiek gerealiseer kan word nie en dat die persoon teen wie die bevel verleen is eiendom in die vreemde Staat besit.
- (2) Die bedrag wat ingevolge so 'n versoek aangevra kan word, moet genoeg wees om, bykomend by die bedrag van die inbeslagnamebevel, alle koste en uitgawes aangegaan in verband met die uitreiking en uitvoering van die versoek te dek.
- 50 (3) 'n Versoekbrief in subartikel (1) beoog, word aan die Direkteur-generaal gestuur vir deursending—
- (a) aan die hof of tribunaal in die versoek vermeld; of
 - (b) aan die toepaslike owerheidsliggaam in die versoekte Staat.

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

Registrasie van buitelandse inbesagnemingsbevel

20. (1) Wanneer die Direkteur-generaal 'n versoek ontvang om bystand by die uitvoering van 'n buitelandse inbesagnemingsbevel in die Republiek en hy of sy tevrede is—

- 5 (a) dat die bevel finaal is en nie aan hersiening of appèl onderworpe is nie;
 - (b) dat die hof wat die bevel verleen het jurisdiksie gehad het;
 - (c) dat die persoon teen wie die bevel verleen is die geleentheid gehad het om homself of haarsel te verdedig;
 - (d) dat daar nie ten volle aan die bevel voldoen kan word in die land waarin dit opgelê is nie;
 - 10 (e) dat die bevel in die versoeke Staat afdwingbaar is; en
 - (f) dat die betrokke persoon eiendom in die Republiek besit, moet hy of sy die versoek aan die Minister vir goedkeuring voorlê.
- (2) By ontvangs van die Minister se goedkeuring van die versoek in subartikel (1)
- 15 beoog, dien die Direkteur-generaal 'n gesertifiseerde kopie van sodanige buitelandse inbesagnemingsbevel by die kerk van 'n landdroshof in die Republiek in.
- (3) Wanneer 'n gesertifiseerde kopie van 'n buitelandse inbesagnemingsbevel by 'n kerk van 'n landdroshof in die Republiek ingedien word, moet daardie kerk van die hof die buitelandse inbesagnemingsbevel regstreer—
- 20 (a) waar die bevel verleen is vir die betaling van 'n som geld, ten opsigte van die balans betaalbaar daarkragtens; of
 - (b) waar die bevel verleen is vir die verhaal van bepaalde eiendom, ten opsigte van die eiendom daarin vermeld.
- (4) Die kerk van die hof wat 'n buitelandse inbesagnemingsbevel regstreer, moet
- 25 onverwyld skriftelik kennis gee aan die persoon teen wie die bevel verleen is—
- (a) dat die bevel by die betrokke hof geregistreer is; en
 - (b) dat die betrokke persoon binne die voorgeskrewe tydperk en op die voorgeskrewe wyse by daardie hof aansoek kan doen om die tersydestelling van die registrasie van die bevel.
- 30 (5) (a) Waar die persoon teen wie die buitelandse inbesagnemingsbevel verleen is in die Republiek teenwoordig is, word die kennisgewing in subartikel (4) beoog op die voorgeskrewe wyse aan bedoelde persoon beteken.
- (b) Waar genoemde persoon nie in die Republiek teenwoordig is nie, word hy of sy op die voorgeskrewe wyse van die registrasie van die buitelandse inbesagnemings-
- 35 bevel in kennis gestel.

Uitwerking van registrasie van buitelandse inbesagnemingsbevel

21. (1) Wanneer 'n buitelandse inbesagnemingsbevel ingevolge artikel 20 geregistreer is, het daardie bevel die uitwerking van 'n siviele vonnis van die hof waar dit geregistreer is, ten gunste van die Republiek soos deur die Minister verteenwoordig.

- 40 (2) 'n Buitelandse inbesagnemingsbevel wat ingevolge artikel 20 geregistreer is, word nie ten uitvoer gelê nie voor die verstryking van die tydperk waarbinne 'n aansoek ingevolge artikel 20(4)(b) om die tersydestelling van die registrasie gedoen kan word, of indien so 'n aansoek gedoen is, voordat die aansoek finaal beslis is.
- (3) Die Direkteur-generaal moet, behoudens enige ooreenkoms of reëling tussen die
- 45 versoeke Staat en die Republiek, 'n bedrag wat ingevolge 'n buitelandse inbesagnemingsbevel verhaal is aan die versoeke Staat oorbetaal, minus alle uitgawes wat in verband met die tenuitvoerlegging van sodanige bevel aangegaan is.

Tersydestelling van registrasie van buitelandse inbesagnemingsbevel

- 22.** (1) Die registrasie van 'n buitelandse inbesagnemingsbevel ingevolge artikel 20 word op aansoek van die persoon teen wie die bevel verleen is tersyde gestel indien die hof waar dit geregistreer is tevrede is—
- (a) dat die bevel strydig met 'n bepaling van hierdie Wet geregistreer is;
 - (b) dat die hof van die versoeke Staat geen jurisdiksie in die aangeleentheid gehad het nie;
 - 55 (c) dat die bevel aan hersiening of appèl onderworpe is;
 - (d) dat die persoon teen wie die bevel verleen is nie by die betrokke verrigtinge verskyn het nie, of nie kennis gekry het van genoemde verrigtinge soos voorgeskryf deur die reg van die versoeke Staat nie of, indien geen

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. 5

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. 10

(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. 15

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. 20

(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— 25

- (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. 30

(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. 35

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

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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; 45

- (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. 50

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sodanige kennisgewing voorgeskryf is nie, dat hy of sy nie redelike kennis van daardie verrigtinge gekry het ten einde hom of haar in staat te stel om hom of haar by die verrigtinge te verdedig nie;

- 5 (e) dat die afdwinging van die bevel strydig met die belang van geregtigheid sal wees; of

(f) dat daar reeds aan die bevel voldoen is.

(2) Die hof wat 'n aansoek in subartikel (1) bedoel, verhoor, kan die verhoor van die aansoek te eniger tyd uitstel na 'n datum wat die hof bepaal.

Versoek aan vreemde Staat om bystand vir afdwinging van inkortingsbevel

10 **23.** (1) Wanneer 'n hof of regter in die Republiek 'n inkortingsbevel verleen, kan so 'n hof of regter 'n versoekbrief uitrek waarin bystand versoeke word by die afdwinging van sodanige bevel in 'n vreemde Staat indien dit aan so 'n hof of regter blyk dat die persoon teen wie die bevel verleen is eiendom in die betrokke vreemde Staat besit.

(2) 'n Versoekbrief in subartikel (1) beoog, word aan die Direkteur-generaal gestuur 15 vir deursending aan—

- (a) die hof of tribunaal in die versoek vermeld; of
(b) die toepaslike owerheidsliggaam in die versoekte Staat.

Registrasie van buitelandse inkortingsbevel

20 **24.** (1) Wanneer die Direkteur-generaal 'n versoek om bystand by die afdwinging van 'n buitelandse inkortingsbevel in die Republiek ontvang, kan hy of sy 'n gesertifiseerde kopie van sodanige bevel by die griffier van 'n afdeling van die Hooggereghof indien, mits hy of sy tevrede is dat die bevel nie aan hersiening of appèl onderworpe is nie.

(2) Die griffier by wie 'n gesertifiseerde kopie van 'n buitelandse inkortingsbevel 25 ingevolge subartikel (1) ingedien is, moet die bevel registreer ten opsigte van die eiendom daarin vermeld.

(3) Die griffier wat 'n buitelandse inkortingsbevel registreer, moet onverwyld skriftelik kennis gee aan die persoon teen wie die bevel verleen is—

- 30 (a) dat die bevel by die betrokke afdeling van die Hooggereghof geregistreer is;
en
(b) dat genoemde persoon binne die voorgeskrewe tydperk en ingevolge die reëls van die hof by daardie hof aansoek kan doen om die tersydestelling van die registrasie van die bevel.

(4) (a) Waar die persoon teen wie die buitelandse inkortingsbevel verleen is in die 35 Republiek teenwoordig is, word die kennisgewing in subartikel (3) beoog op die voorgeskrewe wyse aan bedoelde persoon beteken.

(b) Waar genoemde persoon nie in die Republiek teenwoordig is, word hy of sy op die voorgeskrewe wyse van die registrasie van die buitelandse inkortingsbevel in kennis gestel.

Uitwerking van registrasie van buitelandse inkortingsbevel

25. Wanneer 'n buitelandse inkortingsbevel ingevolge artikel 24 geregistreer is, het daardie bevel die uitwerking van 'n inkortingsbevel gemaak deur die afdeling van die Hooggereghof waar dit geregistreer is.

Tersydestelling van registrasie van buitelandse inkortingsbevel

45 **26.** (1) Die registrasie van 'n buitelandse inkortingsbevel ingevolge artikel 24 word op aansoek van die persoon teen wie die bevel verleen is, tersyde gestel indien die hof waar dit geregistreer is, tevrede is—

- 50 (a) dat die bevel strydig met 'n bepaling van hierdie Wet geregistreer is;
(b) dat die hof van die versoekende Staat geen jurisdiksie in die aangeleentheid gehad het nie;
(c) dat die bevel aan hersiening of appèl onderworpe is;
(d) dat die afdwinging van die bevel strydig met die belang van geregtigheid sal wees; of
(e) dat daar ten volle aan die vonnis of bevel ter ondersteuning waarvan die inkortingsbevel verleen is, voldoen is.

(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

5

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*. 10

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. 15

(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

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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 25 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 30 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. 35

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

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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,

(2) Die hof wat 'n aansoek ingevolge subartikel (1), verhoor, kan die aansoek te eniger tyd uitstel na 'n datum wat die hof bepaal.

HOOFSTUK 5

Algemeen

5 President kan ooreenkoms sluit

27. (1) Die President kan op die voorwaardes wat hy of sy goedvind 'n ooreenkoms met 'n vreemde Staat sluit vir die verskaffing van onderlinge bystand in strafregtelike aangeleenthede en kan instem tot 'n wysiging van sodanige ooreenkoms.

(2) Die Minister moet so gou moontlik nadat die Parlement toegestem het tot die bekragtiging van, toetrede tot of wysiging of herroeping van 'n ooreenkoms in subartikel (1) bedoel, kennis daarvan in die *Staatskoerant* gee.

Delegering deur Minister

28. (1) Die Minister kan enige werksaamheid by hierdie Wet aan hom of haar verleen, behalwe 'n werksaamheid in artikel 33 bedoel, aan 'n beampie van die Departement van Justisie deleger.

(2) 'n Werksaamheid aldus gedelegeer, word, wanneer dit deur die gedelegeerde verrig word, geag deur die Minister verrig te gewees het.

(3) Die delegering van 'n werksaamheid kragtens hierdie artikel verhinder nie die verrigting van daardie werksaamheid deur die Minister self nie.

20 Delegering deur Direkteur-generaal

29. (1) Die Direkteur-generaal kan enige werksaamheid by of kragtens hierdie Wet aan hom of haar verleen, aan 'n beampie van die Departement van Justisie deleger.

(2) 'n Werksaamheid aldus gedelegeer, word, wanneer dit deur die gedelegeerde verrig word, geag deur die Direkteur-generaal verrig te gewees het.

(3) Die delegering van 'n werksaamheid kragtens hierdie artikel verhinder nie die verrigting van daardie werksaamheid deur die Direkteur-generaal self nie.

Toelaatbaarheid van vreemde stukke

30. Enige verklaring, beëdigde verklaring, rekord van 'n skuldigbevinding of enige stuk ter bewys van 'n hofbevel, uitgereik in 'n vreemde Staat, of 'n afskrif of beëdigde vertaling daarvan, is toelaatbaar as bewys in enige verrigtinge ingevolge 'n bepaling van hierdie Wet indien dit—

(a) gewaarmerk is op die wyse waarop vreemde stukke gewaarmerk word ten einde hulle in 'n hof in die Republiek aan te bied; of

(b) gewaarmerk is op die wyse waarvoor in 'n ooreenkoms met die betrokke vreemde Staat voorsiening gemaak is.

Wet beperk nie verlening van ander samewerking

31. Niks in hierdie Wet vervat, word uitgelê as sou dit enige reëling of praktyk vir die voorsiening of die verkryging van internasionale samewerking in strafregtelike aangeleenthede op 'n ander wyse as waarvoor in hierdie Wet voorsiening gemaak word, verhinder of afskaf of daaraan afbreuk doen nie.

Omrekening van geldeenhede

32. Indien 'n bedrag—

(a) wat ingevolge artikel 13 of 19 in 'n versoekte Staat verhaal word; of

(b) wat betaalbaar is ingevolge 'n bevel wat kragtens artikel 15 of 20 geregistreer is,

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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 5 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 10
- (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 I

34. The Minister may by notice in the *Gazette* amend Schedule I by adding or deleting 15 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 II are hereby amended or repealed to the extent 25 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*.

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uitgedruk is in 'n ander geldeenheid as dié van die Republiek word die bedrag omgerekken in die geldeenheid van die Republiek op die grondslag van die wisselkoers—

- 5 (i) wat, in 'n geval in paragraaf (a) beoog, heers op die datum waarop betaling in die versoekte Staat geskied; of
(ii) wat, in 'n geval in paragraaf (b) beoog, geheers het op die datum waarop die betrokke bevel geregistreer is.

Regulasies

33. (1) Die Minister kan regulasies uitvaardig—
10 (a) met betrekking tot die bewys van enige aangeleentheid vir doeleindes van hierdie Wet;
(b) waarby enige aangeleentheid voorgeskryf word wat kragtens hierdie Wet voorgeskryf moet of kan word; en
(c) om voorsiening te maak vir enige aangeleentheid wat hy of sy nodig of dienstig ag met die oog op die bereiking van die oogmerke van hierdie Wet.
15 (2) Verskillende regulasies kan ten opsigte van verskillende vreemde State uitvaardig word.

Wysiging van Bylae I

34. Die Minister kan Bylae I by kennisgewing in die *Staatskoerant* wysig deur die naam van enige vreemde Staat daarby te voeg of daaruit te verwijder.
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Reëls

35. (1) 'n Bevoegdheid om reëls kragtens die Wet op die Hooggereghof, 1959 (Wet No. 59 van 1959), uit te vaardig, word geag die bevoegdheid in te sluit om reëls uit te vaardig ten einde aan artikels 24 en 26 van hierdie Wet uitvoering te gee.
25 (2) 'n Bevoegdheid om reëls kragtens die Wet op Landdroshewe, 1944 (Wet No. 32 van 1944), uit te vaardig, word geag die bevoegdheid in te sluit om reëls uit te vaardig ten einde aan die bepalings van artikels 8, 15, 18, 20 en 22 van hierdie Wet uitvoering te gee.

Wysiging en herroeping van wette

- 30 36. Die wette vermeld in Bylae II word hierby gewysig of herroep in die mate in die derde kolom van die Bylae aangedui.

Kort titel en inwerkingtreding

37. Hierdie Wet heet die Wet op Internasionale Samewerking in Strafregtelike Aangeleenthede, 1996, en tree in werking op 'n datum wat die President by 35 proklamasie in die *Staatskoerant* bepaal.

SCHEDULE I**(Section 11)**

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 of law	Short title	Extent of amendment or repeal
Act No. 58 of 1959	Inquests Act, 1959	<p>The amendment of section 15 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 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 <i>mutatis mutandis</i> apply.”.</p>
Act No. 59 of 1959	Supreme Court Act, 1959	<p>The amendment of section 33 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 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.”.</p>
Act No. 80 of 1962	Foreign Courts Evidence Act, 1962	<p>1. The substitution for section 2 of the following section:</p> <p>“Supreme Court may order examination of witness in Republic in connection with civil proceedings pending in foreign court”</p> <p>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].</p>

BYLAE I**(Artikel 11)**

Die Koninkryk van Lesotho
 Die Koninkryk van Swaziland
 Die Republiek van Botswana
 Die Republiek van Malawi
 Die Republiek van Namibië
 Die Republiek van Zimbabwe

BYLAE II**(Artikel 36)**

No. en jaar van wet	Kort titel	Mate van wysiging of herroeping
Wet No. 58 van 1959	Wet op Geregtelike Doodsondersoek, 1959	Die wysiging van artikel 15 deur subartikel (1) deur die volgende subartikel te vervang: “(1) Wanneer dit gedurende 'n geregtelike doodsondersoek na die mening van die regterlike beampete wat die ondersoek waarneem, blyk dat die ondervraging van 'n getuie noodsaaklik is en dat die aanwesigheid van daardie getuie nie verkry kan word sonder sodanige vertraging, onkoste of ongerief as wat in die omstandighede onredelik sou wees nie, kan die regterlike beampete van sodanige aanwesigheid afsien en iemand as kommissaris aanstel om die getuenis van daardie getuie [hetsey] in die Republiek [of elders] af te neem met betrekking tot die aangeleenthede of feite wat die regterlike beampete aandui, en daarop is die bepalings van artikel 171 van die Strafproseswet, 1977 (Wet No. 51 van 1977), <i>mutatis mutandis</i> van toepassing.”.
Wet No. 59 van 1959	Wet op die Hooggeregshof, 1959	Die wysiging van artikel 33 deur subartikel (1) deur die volgende subartikel te vervang: “(1) Wanneer 'n rogatore kommissie of versoekbrief <u>in verband met enige siviele verrigtinge</u> wat van 'n Staat of gebied of hof buite die Republiek ontvang is, deur die Directeur-generaal: Justisie aan die griffrer van 'n provinsiale of plaaslike afdeling gestuur word, tesame met 'n vertaling in Afrikaans of Engels, indien die oorspronklike in 'n ander taal is, en 'n mededeling dat die Minister dit wenslik ag dat daaraan gevold gegee word sonder om te vereis dat 'n aansoek deur die agente (as daar is) van die partye by die geding of saak by daardie afdeling gedoen word, lê die griffrer bedoelde rogatore kommissie of versoekbrief voor aan 'n regter in kamers om daaraan gevold te gee.”.
Wet No. 80 van 1962	Wet op Getuenis vir Buitelandse Howe, 1962	1. Die vervanging van artikel 2 deur die volgende artikel: “Hooggeregshof kan ondervraging beveel van getuie in Republiek in verband met siviele verrigtinge by 'n buitenlandse hof aanhangig 2. (1) Indien by 'n aansoek in 'n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika dit die hof of 'n regter blyk dat 'n gereghof metregsbevoegdheid buite die Republiek, waarby 'n siviele <u>geding [of strafgeding]</u> aanhangig gemaak is, begerig is om die getuenis met betrekking tot so 'n geding te verkry van 'n getuie binne dieregsgebied van bedoelde afdeling, kan die hof of regter wat die aansoek aanhoor 'n bevel toestaan vir die ondervraging van daardie getuie voor 'n in die bevel genoemde persoon [wat, in die geval van 'n strafgeding 'n landdros moet wees].

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		<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 General Law Amendment Act, 1974] 1 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].".</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 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.</p> <p>4. The repeal of section 12.</p>
Act No. 51 of 1977	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 <u>who is resident in the Republic</u> 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[—</p> <p>(i) to any magistrate [where such witness is resident within the Republic; or</p> <p>(ii) to any competent person where such witness is resident outside the Republic].";</p> <p>(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs, respectively:</p> <p>"(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 <u>or her</u>, and take down the evidence in the manner set out in paragraph (b).</p> <p>(b) The witness shall give his <u>or her</u> evidence upon oath or affirmation, and such evidence shall be recorded and read over to the witness, and if he <u>or she</u> adheres thereto be subscribed by him <u>or her</u> and the magistrate [or other person] concerned."; and</p> <p>(c) by the deletion of paragraph (c) in subsection (2).</p>

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		<p>(2) So 'n bevel word nie toegestaan nie indien dit die hof of regter blyk dat die getuenis wat verlang word die verstrekking van inligting in stryd met die bepalings van [artikel 2 van die Tweede Algemene Regswysigingswet, 1974] <u>artikel 1 van die Wet op die Beskerming van Ondernemings, 1978</u> (Wet No. 19 van 1978), is [of met 'n strafgeding van 'n politieke aard in verband staan of dat die getuie 'n beskuldigde in die betrokke geding is]."</p> <p>2. Die wysiging van artikel 4 deur subartikel (3) te skrap.</p> <p>3. Die wysiging van artikel 7 deur subartikel (1) deur die volgende subartikel te vervang:</p> <p>"(1) Wanneer 'n getuiedagvaarding wat deur die bevoegde amptenaar van 'n bevoegde gereghof in 'n in die Tweede Bylae vermelde gebied uitgereik heet te wees vir die verskyning van iemand in 'n siviele geding [of strafgeding] voor daardie hof, van daardie amptenaar ontvang word deur 'n landdros binne wie se regsgebied so iemand woon of hom of haar bevind, endosseer daardie landdros die getuiedagvaarding vir bestelling aan so iemand, indien hy <u>of sy</u> oortuig is dat dit wettiglik uitgereik is, en daarna word dit bestel asof dit 'n getuiedagvaarding is wat in die hof van daardie landdros uitgereik is in 'n geding soortgelyk aan dié in verband waarmee dit uitgereik is.".</p> <p>4. Die herroeping van artikel 12.</p>
Wet No. 51 van 1977	Strafproseswet, 1977	<p>1. Die wysiging van artikel 171—</p> <p>(a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:</p> <p>"(a) Wanneer strafregtelike verrigtinge voor 'n hof hangende is en dit vir daardie hof, op aansoek aan hom gerig, blyk dat die ondervraging van 'n getuie <u>wat in die Republiek woonagtig is</u> in belang van die regspleging nodig is en dat die aanwesigheid van daardie getuie nie sonder onbehoorlike vertraging, onkoste of ongerief verkry kan word nie <u>[of, in die geval van 'n getuie wat buite die Republiek woonagtig is, dat die aanwesigheid van daardie getuie nie verkry kan word nie]</u> kan die hof van sodanige aanwesigheid afsien en 'n kommissie <u>[opdra—</u></p> <p>(i) aan 'n landdros <u>[waar bedoelde getuie binne die Republiek woonagtig is; of</u></p> <p>(ii) aan 'n bevoegde persoon waar bedoelde getuie <u>buite die Republiek woonagtig is]</u> <u>opdra.</u>";</p> <p>(b) deur paragrafe (a) en (b) van subartikel (2) deur onderskeidelik die volgende paragrafe te vervang:</p> <p>"(a) Die landdros <u>[of ander persoon]</u> aan wie die kommissie opgedra is, moet na die plek gaan waar die getuie is of moet die getuie na hom <u>of haar</u> ontbied, en die getuenis op die in paragraaf (b) bedoelde wyse afneem.</p> <p>(b) Die getuie lê sy <u>of haar</u> getuenis onder eed of bevestiging af, en bedoelde getuenis word aangeteken en aan die getuie oorgelees, en as hy <u>of sy</u> dit bevestig, word dit deur hom <u>of haar</u> en die betrokke landdros <u>[of ander persoon]</u> onderteken."; en</p> <p>(c) deur paragraaf (c) van subartikel (2) te skrap.</p>

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		<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> <ul style="list-style-type: none"> (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.”. <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 [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].”.</p>
Act No. 99 of 1978	Protection of Business Act, 1978	<p>The amendment of section 1 by substituting for subsection (1) the following subsection:</p> <p>“(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—</p> <ul style="list-style-type: none"> (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 <u>in connection with any civil proceedings</u> 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 <u>in connection with any civil proceedings</u>, 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	<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 [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;”.</p>
Act No. 140 of 1992	Drugs and Drug Trafficking Act, 1992	<p>1. The repeal of Chapter VI.</p> <p>2. The repeal of section 65.</p>

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		<p>2. Die vervanging van artikel 172 deur die volgende artikel:</p> <p>“Partye kan getuie ondervra</p> <p>172. 'n Party by verrigtinge waarin 'n kommissie ingevolge artikel 171 opgedra word, kan—</p> <ul style="list-style-type: none"> (a) skriftelike vraagpunte deurstuur wat na die oordeel van die hof wat die kommissie opdra, by die geskilpunte relevant is, en die landdros [of ander persoon] aan wie die kommissie opgedra word, moet die getuie oor daardie vraagpunte ondervra; of (b) voor bedoelde landdros [of ander persoon] verskyn, hetsy deur middel van 'n regsveteenwoordiger of in die geval van 'n beskuldigde wat nie in bewaring is nie of in die geval van 'n private aanklaer, persoonlik en die getuie ondervra.”. <p>3. Die vervanging van artikel 173 deur die volgende artikel:</p> <p>“Getuenis by kommissie deel van hofoorkonde</p> <p>173. Die landdros [of ander persoon, na gelang van die geval] moet die betrokke getuenis aan die hof terugbesorg wat die kommissie opgedra het, en daardie getuenis is beskikbaar vir insae deur die partye by die verrigtinge en, vir sover dit by sulke verrigtinge as getuenis toelaatbaar is, vorm dit deel van die oorkonde van bedoelde hof [en word dit as getuenis ontvang in 'n latere stadium van die saak by blote voorlegging daarvan voor 'n ander hof].”</p>
Wet No. 99 van 1978	Wet op die Beskerming van Ondernemings, 1978	<p>Die wysiging van artikel 1 deur subartikel (1) deur die volgende subartikel te vervang:</p> <p>“(1) Ondanks 'n andersluidende bepaling van 'n wet of ander regsreël, en behalwe met die toestemming van die Minister van Ekonomiese Sake—</p> <ul style="list-style-type: none"> (a) word geen vonnis, bevel, opdrag, arbitrasietoekenning, vraagpunte, rogatore kommissie, versoekbrief of enige ander versoek wat buite die Republiek gelewer, gegee of uitgereik is of wat van buite die Republiek afkomstig is, in verband met enige siviele verrigtinge, en wat voortspruit uit 'n handeling of transaksie in subartikel (3) bedoel, in die Republiek afgedwing nie; (b) mag niemand ingevolge of in antwoord op enige bevel, opdrag, vraagpunte, rogatore kommissie, versoekbrief of enige ander versoek in verband met enige siviele verrigtinge, wat buite die Republiek uitgereik of van buite die Republiek afkomstig is, enige inligting verstrek nie betreffende enige onderneming, hetsy dit in of buite die Republiek gedryf word.”.
Wet No. 32 van 1988	Wet op die Af-dwinging van Buite-landse Siviele Vonnisse, 1988	<p>Die wysiging van artikel 1 deur die omskrywing van "vonnis" deur die volgende omskrywing te vervang:</p> <p>“'vonnis' 'n finale vonnis of bevel vir die betaling van geld, gevel of gemaak voor of na die inwerkingtreding van hierdie Wet deur 'n hof in siviele verrigtinge [of ten opsigte van vergoeding of skadevergoeding aan 'n benadeelde party in strafregtelike verrigtinge en] wat afdwingbaar is by eksekusie in die land waarin dit gevel of gemaak is, maar nie ook 'n vonnis of bevel gevel of gemaak deur 'n hof op appèl van 'n vonnis of bevel van 'n ander hof as 'n hof soos in hierdie Wet omskryf, of vir die betaling van 'n belasting of heffing van soortgelyke aard of van 'n boete of ander straf, of vir die periodieke betaling van somme geld vir die onderhoud van enige persoon nie;”.</p>
Wet No. 140 van 1992	Wet op Dwelmmiddels en Dwelmsmokkelary, 1992	<p>1. Die herroeping van Hoofstuk VI.</p> <p>2. Die herroeping van artikel 65.</p>

