

**AMENDMENT OF THE INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT 2016.**

**EXPLANATORY NOTES FOR THE PROPOSED AMENDMENTS**

1. Instrumentalities of crime” means Instrumentality of the offence as defined in section 1 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004)

The definition of “instrumentalities of crime” is inserted by Act 29 of 2004. But for correct alphabetical order it should appear above the definition of “letter of request”.

In order to amend section 19 and have a new section which speak of request of forfeiture or confiscation of instrumentalities of crime from states there is a need to have a definition of the word instrumentalities of crime as it was not used or defined in this principal legislation.

This amendment is necessitated by recommendation 38 criteria 38.4 of the ESAAMLG Mutual Evaluation Report for Namibia which stated that there was no specific provision for confiscation of instrumentalities intended for use.

2. **Amend Section 7A (1) of the Act, by the additions after paragraph (d) of the following paragraphs.**

(e) the request relates to a political offence or an offence of a political character;

(f) the request relates to an offence under military law which would not be an offence under ordinary criminal law

To make a provision of ground for refusal for mutual legal assistance to include request relating to a political offence and offence under military law.

3. **Request for forfeiture or confiscation of instrumentalities of crime from foreign states**

**Amend section 19 of the Act, by inserting 19A**

- a) The Requested State shall upon request initiate proceedings for forfeiture or confiscation of any instrumentalities of crime.
- b) Requests shall be executed in accordance with the laws of the Requested State.

It was found that ICCMA does not have a provision for confiscation of instrumentalities intended for use. In order for a requesting country to be able to confiscate or forfeit any instrumentalities of crime, two provisions were inserted, the first provision is to enable the requested state to initiate the proceedings and the second provision, if for the requested country to rely on its domestic law on the forfeiture or confiscation of instrumentalities of crime

4. **Short title and commencement**

This act shall be called the International Co-operation in Criminal Matters Amendment Act, 2023, and shall come into operation on a date fixed by the president by proclamation in the Gazette