

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Subject	**POLICY ON THE MANAGEMENT OF DIPLOMATIC IMMUNITIES AND PRIVILEGES IN THE REPUBLIC OF SOUTH AFRICA**	
Compiled by	Branch: State Protocol	
Domain	State Protocol	

POLICY ON THE MANAGEMENT OF DIPLOMATIC IMMUNITIES AND PRIVILEGES IN THE REPUBLIC OF SOUTH AFRICA



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Table of Contents

PART 1: DIPLOMATIC IMMUNITIES AND PRIVILEGES IN THE REPUBLIC OF SOUTH AFRICA 5

1. Introduction 5
   Obligations 5
   Scope of Application 6
   Glossary of Terms 9
2. Diplomatic List 10
3. Appointments and Accreditation 10
4. Diplomatic Properties/Premises 17
5. Duty Free Importation and Purchases 19
6. Diplomatic Vehicles 21
   Quotas 21
   Pro-rata taxes 21
   Pre-owned 23
   Direct Imports 23
   Left Hand Drive Vehicles 24
   Diplomatic Vehicle Registration Numbers 24
   Vehicles belonging to Honorary Consular Posts 25
   Foreign Driver's Licences 25
7. Refund of Excise duty and fuel levy on petrol/ diesel purchases for motor vehicles 27
8. Refund of Value Added Tax 27
9. Refunds of TV licences 30
10. Police Protection and Traffic Arrangements 30
    Emergencies 30
    Ad hoc Requests for additional security 31
11. Firearms 32
12. Traffic Offences 32
    Domestic Law 32
    Road Traffic Regulations 34
    Pedestrians 37
    Seat Belts 37

Accidents 37
Theft 39

PART 2: ESTABLISHMENT AND ACCREDITATION OF INTERNATIONAL ORGANISATIONS IN THE RSA 42
1. Introduction 42
Obligations 42
Scope of Application 43
Policy Objectives Part 2 43
Mandates and Authorisation 44
Glossary of Terms 44
2. Requirements for the establishment and accreditation of an international office and its transferred representatives 45
Standard Host Country Agreement 45
3. Procedures for accreditation of transferred personnel of International Organisations 46
3.1 Announcement of Head of Office 46
3.2 Presentation of letter of assignment by Head of Office 47
3.3 Immunities and Privileges of International Organisations 48
3.3.1 Privileges of Offices of International Organisations 49
3.3.2 Accreditation of International Organisation personnel 50

PART 3: DIPLOMATIC SPOUSAL EMPLOYMENT IN THE RSA 54
1. Introduction 54
Obligations 54
Scope of Application 55
Policy Objectives Part 3 55
Mandates and Authorisation 55
Glossary of Terms 56
2.1. Spousal employment arrangements 57
Model A: Spousal Arrangement for States 59
Model B: Spousal Arrangement for International Organisations 65

PART 4: IMMUNITY DISPUTES IN THE RSA 71
1. Introduction 71

Obligations 71
Scope of Application Part 4 72
Objectives 72
Mandates and Authorisation 73
Glossary of Terms 73
1. Disputes Process: Civil cases 74
2. Diplomatic incidents: Criminal cases 78
Annexure A 81
Certificate issued in terms of Section 9(3) of the Diplomatic Immunities and Privileges Act 81
Certificate issued in terms of Section 12(3) of the Diplomatic Immunities and Privileges Act 83

PART 5: DISPUTES BY LOCALLY RECRUITED PERSONNEL EMPLOYED AT MISSIONS IN THE RSA 86
1. Introduction 86
Obligations 86
Scope of Application 87
Objectives 87
Mandates and Authorisation Part 5 87
Glossary of Terms 88
2. Process for serving a referral form and Provisional Award 89
3. The CCMA resolves the dispute by way of conciliation and / or arbitration 91
4. The CCMA issues an award after having determined the Dispute 92
5. Default awards 93
6. Enforcement of arbitration awards 94

PART 6: POLICY REVIEW 94



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

PART 1: DIPLOMATIC IMMUNITIES AND PRIVILEGES CONFERRED IN THE REPUBLIC OF SOUTH AFRICA

1.1 Introduction

Obligations

1.1.1 According to international law and practice, persons to whom immunity from jurisdiction of the host country's courts is extended are nevertheless obliged, according to the Vienna Conventions and the United Nations Conventions, to respect those laws. The Convention provides furthermore that all official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State, unless an official arrangement is otherwise in place.

1.1.2 As is recognised internationally, diplomatic immunity and inviolability is based on the principle that duly accredited members of diplomatic and international communities must be able to pursue their official duties free from harassment and possible intimidation and without impediment to the performance of those duties. Immunity and inviolability therefore, is not a licence for misconduct of any kind but is, in fact, intended to benefit the functioning of the diplomatic mission or an international organisation, and not for the personal

benefit of individual members. Consequently, the Department of International Relations and Cooperation looks to heads of diplomatic missions and accredited international organisations to advise members of their staff, as well as family members who enjoy immunity and inviolability, on their duty to respect the laws and regulations of the Republic of South Africa.

1.1.3 Whilst a foreign representative with proper identification may not be arrested or detained, the authorities have a duty to ensure the safety and welfare of the general public, including other foreign representatives, and to take reasonable steps to ensure this. It is incumbent on persons conferred with immunity and privileges to produce valid identity documents issued by the Department of International Relations and Cooperation at all times, to verify their residency status in the Republic of South Africa.

Scope of Application

1.1.4 States apply the provisions of the Vienna Convention on Diplomatic Relations of 1961 in two broad categories according to Article 47; namely the equal treatment of States in terms of Article 47(1) and the reciprocal treatment of States pursuant to Article 47(2). The Convention is incorporated into South African domestic law as Schedule I to the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) and regulates a diplomat's entitlement to immunities,

inviolability, privileges and exemptions. Therefore the Convention has the force of law in the Republic of South Africa pursuant to section 2(1) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001).

South African nationals and South African citizens with dual citizenship as well as persons with Permanent Resident status in the Republic employed by International Organisations as officials qualify only for functional immunity from words spoken and acts performed on behalf of the relevant International Organisation, and no privileges or exemptions.

1.1.5 Reciprocity ensures that a mission and mission personnel of a particular sending State and receiving State are accorded similar treatment in the conferral of diplomatic privileges. Immunity and inviolability on the other hand are non-negotiable and laid down by the Vienna and UN Conventions for different levels of accreditation.

1.1.6 This policy is applicable to the three spheres of Government responsible for the management of diplomatic privileges, immunity and inviolability in the Republic of South Africa in terms of applicable legislation and approved funding. Therefore this policy excludes arbitrary decisions by the Department when regulating the

diplomatic community. It therefore implies that the relevant Government institutions will have to approve any amendment to this policy affecting their area of responsibility.

1.1.7 The provisions contained in this policy is therefore the only basis on which the Department is authorised to apply reciprocity to ensure that South African diplomats abroad are receiving the same treatment provided for in this policy regulating foreign diplomats in the Republic.

1.1.8 This policy is applicable to accredited diplomatic missions, consular posts, international organisation offices and their representatives accredited to the Republic of South Africa. It is not applicable to South African diplomats stationed abroad when sojourning in the Republic, or returning home after a term of duty abroad.

Mandates and Authorisation

Part 1 of the policy is informed by:

- Constitution of the Republic of South Africa, 1996
- The Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended
- Vienna Convention on Diplomatic Relations, 1961
- Convention on the Immunities and Privileges of the United Nations and its Specialised Agencies of 1947

- Any other relevant legal provisions

Glossary of Terms The table below contains the glossary of terms utilised in Part 1 of the policy

Act	Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended, read with the Constitution of the Republic of South Africa, 1996
Department	The Department of International Relations and Cooperation
IO ID	International Organisation Certificate of Identity
Mission	Accredited diplomatic mission, consular post or international organisation in South Africa
Protocol	The Branch: State Protocol
Vienna Convention/ VCDR	Vienna Convention on Diplomatic Relations, 1961
United Nations Convention	Convention on the Immunities and Privileges of the United Nations and its Specialised Agencies, 1947
Constitution	Constitution of the Republic of South Africa, 1996

1.1 Diplomatic List

Section 9 of the Act

The Department maintains a complete and current list of persons conferred with privileges and immunities in terms of section 9(1) of the Act consisting of diplomatic, consular and international organisation Offices, representatives and members of family officially recognised by the sending State and accepted as such by the Republic of South Africa as the receiving State. This list is managed and made publicly available as prescribed by Sections 9(2) and (3) the Act.

1.3 Appointments and Accreditation

Appointment of a Head of a Diplomatic Mission

1.3.1 The Branch: State Protocol is processing the request for agrément for the President to approve the appointment of a foreign Head of a Diplomatic Mission as specified in Section 84(2)(h) of the Constitution. The Head of Mission does not enter the Republic prior to the granting of agrément.

Arrival of a newly appointed Head of a Diplomatic Mission

1.3.2 On first arrival in the Republic of South Africa, a newly appointed Head of a Diplomatic Mission will be met at the Oliver Tambo International Airport by the Chief of State Protocol or, in his

absence, by his / her representative.

Credential Ceremony

1.3.3 As soon as possible after arrival the Head of a Diplomatic Mission hands to the Chief of State Protocol a copy of his/her Credentials consisting of the Letter of Credence (Ambassadors) or the Letter of Commission (High Commissioners) and the Letter of Recall of his/her predecessor. State Protocol thereupon approaches the Presidency to arrange for a ceremony for the presentation of the credentials to the President. The designated Head of a Diplomatic Mission may not undertake official duties prior to handing over his/her Credentials issued by the Head of the sending State to the President.

Appointment of a Chargé d'Affaires *en titre*

1.3.4 In the case of a Chargé d'Affaires **en titre**, he/she requests for appointments to call on the Deputy Minister and the Minister of International Relations and Cooperation. An appointment will be made for a Chargé d'Affaires **en titre** to hand his/her original letter of appointment to the Minister of International Relations and Cooperation.

Appointment of a Head of a Consular Post

1.3.5 The Branch: State Protocol is processing the request for recognition for the President to approve the appointment of a foreign Head of a Consular Post as specified in Section 84(2)(h) of the Constitution.

Subsequently, the Department accredits a Head of a Consular Post in terms of Article 12(3) of the Vienna Convention on Consular Relations, 1963, incorporated into South African domestic law as Schedule II to the Act, stating:

"the head of a Consular Post shall not enter upon his duties until he has received an exequatur".

Exequatur prior to arrival

1.3.6 Article 13 of the Convention stating that provisional admission may be granted pending the delivery of an exequatur, is not applied by the Republic of South Africa as a receiving State. Therefore, designated Heads of Consular Posts should not proceed to take up duties in the Republic of South Africa prior to the President issuing an exequatur. Accreditation with the Department is similarly subject to an exequatur.

Appointment of the Head of an Honorary Consular Post

1.3.7 The Branch: State Protocol is processing the request for recognition for the President to approve the appointment a Head of an Honorary Consular Post as specified in Section 84(2)(h) of the Constitution. The candidate shall be a South African citizen, a citizen of the sending State or a citizen of another country with

permanent residence in the Republic. Upon confirmation of the appointment (e.g. Commission of Appointment) by the sending State, an exequatur is issued by the President.

Size of the mission

1.3.8 The size of a mission is regulated by Article 11 of the Vienna Convention on Diplomatic Relations, 1961 which provides the receiving State with the prerogative to determine the size of diplomatic Missions in its territory. Diplomats entering the Republic without the Department having agreed to the expansion in the size of the mission beforehand are not accredited. They return to their country of origin until consensus is reached on the size of the mission and the required posts are created to accommodate the additional members of the staff of the mission.

Enlargement of staff establishment

Diplomatic Identity Document

1.3.9 Certificates of identity are issued by the Department to persons representing foreign Governments and International Organisations conferred with immunity who are officially recognised by the sending State / International Organisation and legally accredited with the Department. The certificate of identity is a means of identification to the private and public sector, including law enforcement agencies. The certificate of identity remains the property of the Department, and must be returned to the Department upon request and/or departure. The Department will not accredit an

incoming representative without the return to the Department for cancellation of all the certificates of identity of the predecessor, his/her members of the diplomatic household and diplomatic vehicle number plates.

Term of duty

1.3.10 For wrapping up of affairs at the end of term of duty of a transferred representative, the Department will allow for a period of two weeks by having the validity of the Substitution of the Temporary Residence Permit extended in the passport for this period.

Diplomatic accreditation

1.3.11 The following persons qualify for registration with the Department in terms of the Act:

(a) the foreign representative;

(b) the spouse;

(c) any dependent child under the age of 18 years;

(d) any other dependent family member officially recognised as such by the sending State, Head Office of the United Nations, a specialised agency or an international organisation and accepted as such by the Department;

(e) the life partner officially recognised as such by the sending State, Head of Office of the United Nations, a specialised agency or an international organisation and accepted as such by the Department.

Member of family

1.3.12 **Official recognition means**:

(a) the dependent / life partner is issued with a diplomatic or an official/service passport; or in the absence thereof;

(b) the Department is presented under cover of a Note Verbale, with an original letter signed by the head in charge of personnel matters at the Foreign Ministry or Head Office of an International Organisation, verifying that:

(i) the person is officially accepted and registered with the Foreign Ministry or Head Office of an International Organisation as the dependent of the foreign representative for the purposes of the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 respectively, or a Treaty entered into with the South African Government and citing the applicable Article in the Treaty regulating dependents;

(ii) the dependent child is officially recognised by the Foreign Ministry as a member of the diplomatic household for the duration of the term of duty of the transferred representative in the Republic of South Africa;

(iii) any other dependent family member who is financially dependent on and residing full time in the Republic of South Africa at the same premises of the foreign representative during the latter's term of duty in the Republic.

Private Servants

1.3.13 The Department regularises employment of foreign private servants according to the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 respectively, subject to employment with one employer; reciprocity confirmation and placing on record with the Department two non-transferable repatriation guarantees officially entered into between the representative and the employer; and between the representative and the Department. The repatriation guarantee provides that the private servant shall not change employers and leave the RSA upon severance of employment or on completion of the representative's term of duty in the Republic. The Department of Home Affairs is informed accordingly.

1.3.14 Upon reciprocity confirmation, the number of private servants regulated by the Department in terms of the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 respectively are as follows:

(a) Heads of diplomatic missions: two persons with functional immunity;

(b) Heads of consular posts: one person without immunity;

(c) Transferred representatives at diplomatic missions and consular posts: one person without immunity;

(d) Heads of Offices of International Organisations conferred with diplomatic status specified in the Treaty entered into with the South African Government: one person without immunity.

1.3.15 Private servants shall apply for courtesy visas at South African missions abroad subject to presenting to the mission certified copies of the two prescribed repatriation guarantees referred to above.

1.4 Diplomatic Properties/Premises

Construction; relocation; renovation; replacing; extending; leasing

1.4.1 In terms of Section 12 (1) of the Act, all foreign missions or consular posts, the United Nations, its specialised agencies and international organisations must submit a written request to the Director General of International Relations and Cooperation for acquiring, constructing, relocating, renovating, replacing, extending

or leasing immovable property.

1.4.2 In terms of Section 12 (4) of the Act diplomatic missions must be located in Pretoria or, during sessions of Parliament, in Cape Town.

1.4.3 Despite subsection 12 (4) of the Act, the Minister of International Relations and Cooperation may approve that a section of the diplomatic mission be located elsewhere, subject to the following pre-requisites:

(a) Only the economic section of a diplomatic mission headed by a career diplomat can be located outside the capital;

(b) The economic section can only be located in Johannesburg;

(c) Permission will only be granted if the country concerned does not have a consular post in Johannesburg;

(d) Where a diplomatic mission has been established in Pretoria and a consular post in Johannesburg, the relocated economic section shall be incorporated as part of the consulate in Johannesburg;

(e) A post structure with a staff establishment and functions shall

accompany the request for the relocation of the economic section of a mission;

(f) Office address, contact details as well as a narrative and graphic description of the property to house the economic section in compliance with Section 12(2) of the Act shall also be provided to the Department.

1.4.4 A mission/ international organisation may present a formal request for exemption of transfer duties and municipal rates in respect of the purchase of property for offices and residences for heads of mission, subject to reciprocity confirmation.

1.4.5 Missions and international organisations are obliged in terms of section 13 of the Act to provide proof of public liability insurance on diplomatic premises.

1.5 Duty Free Importation and Purchases

1.5.1 Diplomatic missions, consular posts, international organisations and transferred representatives of the above offices who are accredited

with the Department and conferred with full diplomatic privileges are exempt from customs duties and VAT on imported goods and articles, including motor vehicles dealt with in paragraph 1.6. Full diplomatic privileges encompass diplomatic staff and career consular officers.

1.5.2 Transferred officials accredited with the Department and conferred with functional immunity except career consular officers but including consular employees, may import goods and personal effects within the first six months from date of arrival, including the import or local purchase of motor vehicles. The first entry restriction is prescribed by legislation. The Department has no mandate to intervene for relief in this regard.

1.5.3 The Head of Mission and the Head of Office of an International Organisation shall authorise purchases from duty free shops in reasonable quantities for official purposes as determined by SARS.

1.5.4 Diplomatic, consular staff and officials of International Organisations conferred with full diplomatic status may use their diplomatic certificates of identity to purchase from duty free shops in reasonable quantities for personal use as determined by SARS.

1.6 Diplomatic Vehicles

Quotas

1.6.1 Diplomatic missions, consular posts and international organisations may import or purchase locally, motor vehicles with exemption from customs duty and taxes.

1.6.2 Missions and offices will be allowed a reasonable number of official vehicles in relation to the size of the office, for the performance of official functions, on condition that approval of the purchase of new vehicles will be subject to the de-registration of the vehicle to be replaced.

1.6.3 Diplomatic and consular representatives may import or purchase locally, motor vehicles with exemption from customs duty and taxes as follows:

(a) Family: two vehicles

(b) Single : one vehicle

1.6.4 Transferred officials accredited with the Department and conferred with functional immunity will be allowed the same number of vehicles that are applicable to diplomats, within the first six months of arrival only. The restrictive six months period is prescribed by legislation. The Department has no mandate to intervene for relief in this regard.

Pro-rata duties and

1.6.5 Transferred officials accredited with the Department and conferred with full

taxes

diplomatic privileges who acquired vehicles by duty free imports and tax-free local purchases may dispose of such vehicles without payment of duties and taxes after a two year ownership period. Pro-rata customs duty and taxes are payable prior to two years' ownership.

1.6.6 Official vehicles belonging to diplomatic missions, consular posts and international organisations as well as private vehicles belonging to diplomatic and consular representatives may be replaced after the two year ownership period, or earlier upon proof of payment of pro-rata customs duty and taxes as well as de-registration of the vehicle to be replaced.

1.6.7 Vehicles acquired duty and tax-free may be disposed of without payment of duties and taxes before the two-year ownership period, only when sold to another transferred representative who is entitled to such a privilege. Registration in the name of the new owner is subject to the de-registration of the vehicle from the name of the previous owner. The Department will not register any new official vehicles of a mission or any private vehicle of a newly arrived diplomat unless all vehicles of all former diplomats are de-registered with the Department.

1.6.8 Transferred representatives may export their privileged vehicles at the end of their term of duty or upon recall, before the two year ownership period has lapsed without payment of pro-rata duties and taxes.

Pre-owned

1.6.9 Vehicles pre-owned abroad may not be imported if:

(a) The vehicle does not comply with regulations and specifications for vehicle standards laid down in the Road Traffic Act, 1996 (Act No. 93 of 1996), or equivalent specification standards prescribed by the United Nations and European Union; and

(b) The vehicle is not registered in the name of a mission or representative for a period of six months prior to the importation thereof to South Africa.

Warehouses for export

1.6.10 Diplomatic privileges are not applicable to the purchase of second hand vehicles from customs bonded warehouses in South Africa, registered for export purpose only.

Direct Imports

1.6.11 When importing a vehicle directly, missions and their transferred representatives are required to obtain a Letter of Authority (LOA) from the South African Bureau of Standards prior to:

(a) The shipping of a vehicle to South Africa;

(b) The transfer of a vehicle from a neighbouring country to South Africa.

Left Hand Drive Vehicles

1.6.12 No left-hand drive vehicles shall be imported to the Republic of South Africa

Diplomatic Vehicle Registration Numbers

1.6.13 The following vehicle registration numbers are allocated to the accredited diplomatic and international communities in the Republic and issued by the Department of International Relations and Cooperation:

(a) Official diplomatic and international organisation vehicles = D------D
Official consular vehicles = C------D

(b) Representatives issued with D/ certificates of identity = D ----- D

(c) Representatives issued with C/ certificates of identity = C-------D

(d) Representatives issued with IO/ certificates of identity = X------D

(e) Representatives issued with G/08 certificates of identity = S------D

Full inviolability

D = Diplomatic

Functional inviolability

C = Consular

X = International Organisation

S = Administrative/technical

Vehicles

1.6.14 The private vehicles of heads of honorary consular posts do not qualify for consular registration.

belonging to Honorary Consular Posts

1.6.15 Official vehicles for use by an honorary consular post paid for by the respective foreign Governments qualify for consular registration, upon proof of payment submitted by the foreign Government.

De-registration of privately owned diplomatic vehicles

1.6.16 The Department will not register any new official vehicles of a mission or any private vehicle of a newly arrived diplomat unless all vehicles of all former diplomats are de-registered with the Department.

1.6.17 Refer to paragraphs 1.12.17-24

Accidents and Thefts

Driver's Licenses

1.6.18 Representatives may use their foreign drivers licence subject to the following conditions laid down by the RSA's licensing authorities:

(a) such licence is valid and issued in an official language of the RSA; or

(b) a certificate of authenticity or validity relating to the licence issued in English by a competent authority, or a translation of the licence in such official language, is attached to it; and

(c) such licence contains a photograph and the signature of the licence holder.

1.6.19 A South African driver's licence is issued by the local government to a foreign representative on the following conditions:

(a) the foreign representative is in possession of a valid driver's licence of the foreign State;

(b) a valid certificate of identity issued by the Department, certified copies of passport containing the identification pages and copies of a valid Substitution of the Temporary Residence Permit issued by the Department; and

(c) confirmation letter issued to the local authority by the Ambassador/High Commissioner or the Head of the International Organisation accredited to South Africa.

The validity of the South African licence will correspond to that of the foreign State's. When the latter is invalid, the representative shall comply with all South African legal prescripts to obtain a South African driver's licence.

1.7 Refund of Excise Duty and Fuel Levy on petrol/ diesel

purchases for motor vehicles

Reciprocity

1.7.1 Diplomatic missions, consular posts and international organisations as well as all transferred representatives are entitled to claim a refund of excise duty and fuel levy on petrol/diesel purchases, based on reciprocity for representatives of sending States.

Claims

1.7.2 The fuel levy refund scheme will be applicable only to claims not older than six months from date of fuel purchase to the date of receipt at SARS and only on two duty and tax free vehicles per family, and one duty and tax free vehicle per single representative, as well as all official vehicles belonging to diplomatic missions, consular posts and international organisations.

1.8 Refund of Value Added Tax

1.8.1 The refund of Value Added Tax is regulated by the South African Revenue Service (SARS) in terms of a Memorandum of Understanding with the Department of International Relations and Cooperation. The provisions of the MOU are executed by SARS according to the Value Added Tax Guide to Foreign Missions in the

RSA. A copy of the guide is obtainable from the Department or directly from SARS.

1.8.2 All diplomatic missions, consular posts and international organisations may claim a refund of VAT on tax invoices exceeding the amount of R200 on all official purchases and services rendered at offices and official residences.

1.8.3 Diplomatic and consular representatives may reclaim VAT on locally purchased vehicles subject to prescripts applicable to the acquisition, ownership period and disposal thereof.

1.8.4 Transferred officials conferred with first entry privileges will be allowed the same privileges as diplomatic and consular representatives, within the first six months of arrival only. The first entry restriction is prescribed by legislation. The Department has no mandate to intervene for relief in this regard.

1.8.5 When representatives leave the country:

(a) VAT refunds on personal purchases by foreign representatives are effected in cases where an accredited representative departs from the Republic permanently upon completion of his/her term of duty and

who is exporting the movable goods in accordance with the provisions of the VAT Export Incentive Scheme of the South African Revenue Services. The representative must be in possession of a letter from the relevant mission stating that he/she is departing from South Africa permanently.

(b) Refunds are processed at departure points by the VAT Refund Administrator.

(c) Refunds will only be considered in respect of goods purchased within a period of three months prior to the diplomat's date of departure from South Africa.

(d) Items that are to be sent by air or sea as unaccompanied baggage before the departure of a diplomat from South Africa upon completion of a term of duty will not qualify for a refund unless the goods are verified by Customs and Excise and the applicable tax invoices are endorsed by them. The Department of Customs and Excise must be contacted directly to make the necessary arrangements two days in advance at a cost per hour or part of an hour

1.9 Refunds of TV licenses

Payment of television licenses is non-refundable.

1.10 Police Protection and Traffic Arrangements

Emergencies

1.10.1 The Diplomatic Policing Unit of the South African Police Service (DPU) is tasked to provide protection to the accredited diplomatic and international communities in the Republic. Members of these communities must contact the DPU 24 hour emergency number at the Control Room at **012 400 6590 / 91** in case of emergency.

1.10.2 In addition, the South African Police Service 24 hour national emergency line at **10 111** could also be contacted with a clear instruction that a member of the diplomatic community is in an emergency situation where the DPU reaction is immediately required.

Official functions: Requests for security assistance and traffic control

1.10.3 The DPU will provide additional protection during the hosting of all official functions, including the celebration of National Days. This includes visible policing and patrolling of the venue and immediate surroundings and, where and when required, inspection of the

premises by the bomb squad unit. Local traffic authorities will be notified to ensure a smooth flow of traffic for the duration of the function.

Ad hoc Requests for additional security

1.10.4 Requests for safeguarding official functions should be submitted via Note Verbale to the Department fourteen days prior to the event.

1.10.5 In the event of circumstances that may give rise to a demonstration or an increased threat of violence against any mission or mission personnel, ad hoc requests for additional security are to be conveyed through the Department's line function and State Protocol Business Units to the DPU.

1.10.6 The Diplomatic Policing Unit regularly patrols the environs of the missions/international organisations and residences of heads of missions/international organisations. Patrol duties can, however, be intensified upon request and motivation by missions/ international organisations to the SAPS Diplomatic Policing Unit.

1.10.7 Requests for Police service in other Provinces should also be directed to the Department under cover of a Note Verbale and the DPU will in turn communicate with the relevant SAPS offices to provide support and assistance to the diplomatic community.

1.10.8 Missions/international organisations that require static / 24-hour protection are advised to apply through the Department's line function and State Protocol Business Units to the DPU for a threat analysis. When the official report does not provide for 24-hour protection, the mission could consider enlisting the services of a private security company accredited with SAPS for protection at the mission's cost.

1.11 Firearms

The South African Police Service is responsible for the licensing of diplomatic firearms.

Applications for processing of import and export permits and the licensing of firearms should be delivered to the Commanding Officer of the Firearms Unit at the South African Police Service.

1.12 Traffic Offences

Domestic Law

1.12.1 All representatives accredited to diplomatic missions, consular posts and international organisations in the Republic of South Africa and members of family, are required to respect South

African traffic laws and regulations and should familiarise themselves with the provisions of the South African Road Code, as contained in the Road Traffic Act, 1996 (Act No. 93 of 1996) and the Road Traffic Regulations. Therefore the Department requires that the accredited diplomatic and international communities pay all traffic fines issued by South African law enforcement agencies. Consequently the Department will under no circumstances intervene with law enforcement in this regard.

1.12.2 Locally recruited personnel including chauffeurs and drivers of diplomatic vehicles do **not** enjoy immunity from the jurisdiction of the South African courts.

1.12.3 Members of diplomatic missions, consular posts and international organisation offices are required to keep their diplomatic identity document issued by the Department of International Relations and Cooperation (formerly the Department of Foreign Affairs), with them at all times and to present it upon request to law enforcement agents and financial institutions. The document verifies the legal status of foreign representatives and transferred officials.

1.12.4 In relation to traffic violations, the Department holds the view that as far as consular officers are concerned, driving a motor vehicle

per se does not regularly fall within the definition of consular functions covered by functional immunity, as defined in Article 43 of the Vienna Convention on Consular Relations, 1963. This is also applicable to heads of consular posts.

Road Traffic Regulations

1.12.5 Members of diplomatic missions, consular posts and international organisation offices transgressing the South African Road Traffic Act, 1996 (Act No. 93 of 1996) and Road Traffic Regulations, or any subsequent amended Road Traffic Act, shall be prevented from driving by law enforcement agents if he/she is a danger to other road users or to him or herself.

1.12.6 The local law enforcement authorities are dealing harshly with traffic offenders in order to reduce the high level of accidents on South African roads. All personnel attached to diplomatic missions, including those who enjoy diplomatic immunity, are therefore expected not to abuse such immunity when driving. The Department views transgressions of the South African Road Code and Traffic Regulations in an extremely serious light, especially where alcohol is a contributing factor.

1.12.7 In such cases the Department may request the withdrawal of the offender even though it may be a first offence, especially where

transgressions are associated with reckless driving, violent behavior, alcohol and/or drug abuse and where this leads to injury or death to third parties. In the event of non-compliance to withdraw an offender within a specified timeframe, the Department will no longer recognize the offender as a diplomatic agent and de-register the person from the Departmental records. Law enforcement will accordingly be informed.

1.12.8 For a second, serious traffic offence, the Department will automatically request the withdrawal of the offender, or de-register the person. The Department may also, where extremely grave transgressions have occurred, resort to declare the offender *persona non grata* and/or request that the offender's immunity be withdrawn to be brought before a court to stand trial.

Driving under the influence

1.12.9 Drivers should therefore familiarise themselves with the stipulations of the relevant traffic regulations before venturing on South African roads. A brief synopsis of the most important elements of the regulations are as follows:

(a) Driving under the influence of drugs or alcohol is considered a very serious offence in South Africa. Mission personnel should acquaint

themselves with the legal alcohol limit allowed when driving a motor vehicle.

(b) Should Mission personnel refuse to be subjected to a blood or breath alcohol test, the Department of International Relations and Cooperation may view such a refusal as a possible transgression of the Republic's drinking and driving laws and reserves the right to take further action.

Speed Limits

1.12.10 Prescribed speed limits must be observed at all times and sufficient time must be allowed when planning appointments to avoid speeding.

1.12.11 Mission staff should at all times cooperate with law enforcement agents when caught speeding and are required to give their full cooperation to local law enforcement agents and present their certificates of identity issued by the Department, for verification purposes.

Distances between motor vehicles

1.12.12 Guidelines for following distances between vehicles must be adhered to.

Overtaking of vehicles

1.12.13 Overtaking of vehicles where it is not permitted, i.e. a solid single white line or double white lines between lanes of traffic travelling in the opposite direction, or approaching any spot where the view is restricted to such an extent that overtaking could be hazardous to traffic approaching from the opposite direction.

Traffic Lights and other road signals

1.12.14 Traffic lights, stop signs and other road signals should be respected and obeyed at all times. Numerous serious traffic accidents are caused annually as a result of drivers who ignore red traffic lights and stop signs at intersections.

Pedestrians

1.12.15 Care should be taken to observe pedestrians on roads in general (some 45% of all fatal accidents on South African roads involve pedestrians). Utmost caution is therefore called for by drivers to assist pedestrians to safely use and cross roads in the urban areas, the countryside and on highways.

Seat Belts

1.12.16 Seat belts should be worn when the vehicle is in motion, including at the rear of the vehicle where this is provided.

Accidents

1.12.17 **Procedures following an accident involving a vehicle**

(a) Accidents must first be reported to the South African Police Service and then to the Branch: State Protocol of the Department. Notification should be by means of a Note Verbale together with a copy of the police report or the case number.

(b) Where a vehicle is declared a write-off or damaged beyond economical repair, a detailed report from the insurance company in which it is clearly stated that the vehicle is a write-off or damaged beyond repair must be submitted as well as a copy of the Bill of Entry.

(c) Where motor vehicles are involved in accidents and to be sold or otherwise disposed of, pro-rata import duties and value-added tax are payable on the salvage value. A copy of the receipt of the duty paid must be furnished to enable the Department to de-register the vehicle from the Department's records. The cancellation certificate should be obtained from the City of Tshwane licensing department.

(d) Alternatively a representative may elect to store the wreck of his/her vehicle and not dispose of it until the end of the prescribed two year ownership period, when no customs duty or VAT will be payable upon presentation of a storage certificate issued by the Mission.

(e) A replacement vehicle may not be purchased or imported duty or tax free during the storage period of the wreck, depending on the vehicle quota already utilized by the representative.

Theft

1.12.18 In cases of irretrievable loss through theft or damaged beyond repair through accident, a replacement motor vehicle may be purchased duty and tax free, subject to payment of pro-rata duties or taxes.

1.12.19 The South African Police Vehicle Theft Unit applies advance technology for the investigation of stolen and/or missing vehicles, which is also available to the diplomatic community.

1.12.20 In cases of theft/hijacking, the theft must be reported to the DPU and a case number obtained. The following information must be submitted on the Mission's official letterhead addressed to the Commander of the SA Police Vehicle Theft Unit, Crime Investigation Service

1.12.21 Stolen vehicle: Particulars required

(a) Registration number;
(b) Type of vehicle (sedan, LDV, station wagon etc.);
(c) Make;
(d) Model;
(e) Main colour;
(f) Engine number;
(g) Chassis number;
(h) Year in which the vehicle was registered with the Department of International Relations and Cooperation;
(i) Value of vehicle (if purchased outside the RSA, indicate value in US dollars);
(j) (VIN) Vehicle identification number (if applicable);
(k) Radio (make) and serial number;
(l) Automatic or manual gear box;
(m) With or without sunroof;
(n) Left-hand or right-hand drive;
(o) Distinctive marks of / on vehicle (stickers, scratches);
(p) Kilometer reading before theft.

1.12.22 Stolen Vehicle: General information required

(i) Title, initials and surname of complainant (person in charge of the vehicle at the time of theft);
(ii) Mission and home telephone numbers and area code;

(iii) Full postal address;

(iv) Date, time and place of theft;

(v) Name of insurance company and country where vehicle is insured against theft;

(vi) Name of police station and country, as well as case number (where theft was reported);

(vii) If the vehicle is not the property of the complainant, the following particulars must be provided: title, initials and surname, home and office telephone numbers and area code, and full postal address of the registered owner.

1.12.23 It is imperative to inform the S.A. Police Vehicle Theft Unit in writing through the DPU, if a vehicle which has been reported stolen or missing was subsequently found, irrespective of who found it or in which country. Failure to do so would have serious implications for all parties concerned.

1.12.24 In the event of the theft of a motor vehicle or the theft of a vehicle registration number plate allocated by State Protocol, a notification by means of a Note Verbale is required as well as a copy of the police report and the case number. A new registration number will be allocated.

PART 2: ESTABLISHMENT AND ACCREDITATION OF INTERNATIONAL ORGANISATIONS IN THE RSA

Introduction

Obligations

The Act intended to harmonise all diplomatic privileges and immunities conferred on offices of International Organisations and its transferred officials stationed in the Republic of South Africa.

The Office of the Chief State Law Adviser (International Law) is the custodian of a Standardised Host Country Agreement to equalise the regularisation of International Organisations in the Republic.

Scope of Application

Part 2 of the policy is applicable to the offices and transferred officials employed by International Organisations accredited to the Republic of South Africa.

South African nationals and South African citizens with dual citizenship as well as persons with Permanent Resident status in the Republic employed by International Organisations as officials qualify only for functional immunity from words spoken and acts performed on behalf of the relevant International Organisation, and no privileges or exemptions.

Objectives

2.1.5 To institute a framework for a reliable, predictable and transparent management system to establish and accredit offices of international organisations and their representatives in the Republic of South Africa.

Mandates and Authorisation

2.1.6 Part 2 of the policy is informed by:

2.1.6.1 Constitution of the Republic of South Africa, 1996

2.1.6.2 The Diplomatic Immunities and Privileges Act, 2001 (Act 37 of 2001) as amended

2.1.6.3 The Convention on the Immunities and Privileges of the United Nations and its Specialised Agencies, 1947

2.1.6.4 Ministerial Minute on Multilateral Accreditation in South Africa

2.1.6.5 Any other relevant legal provisions

Glossary of Terms

The table below contains the glossary of terms utilised in the Part 2 of the policy

The Act	The Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended
Constitution	Constitution of the Republic of South Africa, 1996
Department	The Department of International Relations and Cooperation
Mission	Accredited diplomatic mission, consular post or international organization in South Africa
Protocol	The Branch: State Protocol of the Department of International Relations and Cooperation
IO	International Organisation
OCSLA (IL)	Office of the Chief State Legal Adviser (International Law) of the Department of International Relations and Cooperation

Requirements for the establishment and accreditation of an international office and its transferred representatives

Ministerial approval

2.2.1 Ministerial approval must be obtained in accordance with the provisions of the Act for an international organisation to establish an office in South Africa. The International Organisation interacts directly with the relevant Business Unit at the Department to conclude an international agreement for the establishment of the Organisation's presence in the Republic of South Africa.

Standard Host Country Agreement

2.2.2 The immunities and privileges to be granted to international organisations are harmonised through a Standard Host Country Agreement in terms of the Act. A model Host Country Agreement containing standard text adopted by the Department shall be the basis for all Host Agreements concluded with international organisations. The relevant Business Unit will consult OCSLA (IL) to prepare the draft Host Country Agreement based on this model and standard text, which is applicable to the particular international organisation. It is important to note that the Government cannot grant more immunities and privileges than the Act provides for. It is also important to note that the conclusion of each Host Country Agreement must comply with the Government's Constitutional procedures for the conclusion of

international agreements, before implementation by the Department.

Consultation process

This includes:

(a) Consultation with all stakeholders (including the South African Revenue Service and the Branch: State Protocol);

(b) An opinion from the Department of Justice and Constitutional Development on the Agreement's consistency with domestic law;

(c) An opinion from the OCSLA (IL) on the Agreement's consistency with international law; and

(d) Presidential approval to conclude the Agreement.

2.2.3 The relevant Business Unit in the Department manages the above processes.

2.3 Procedures for accreditation of transferred personnel of International Organisations

2.3.1. Announcement of Head of Office

Letter of assignment

(a) The organisation, agency or accredited office in the Republic announce, by Note Verbale to the Department, Branch: State

Protocol, the appointment of its head of office in South Africa. The Note shall be accompanied by the confirmatory letter of assignment issued by the Head of the Organisation at the Head Quarters.

(b) The Branch: State Protocol obtains clearance for the appointment from the relevant Business Unit in the Department and communicates the approval by Note Verbale to the organisation, the agency or the accredited office in South Africa. The country office arranges with the relevant Business Unit in the Department for State Protocol facilitation at Oliver Tambo International Airport upon first arrival and final departure of the Resident Coordinator (Head of the UNDP).

2.3.2 Presentation of letter of assignment by Head of Office

Resident Coordinator

(a) United Nations Resident Coordinator: The relevant United Nations country office registers the Resident Coordinator with Branch: State Protocol. The relevant Business Unit arranges for a meeting with the Minister of International Relations and Cooperation as well as the Chief of State Protocol to present the letter of assignment to the Minister and a copy thereof to the Chief of State Protocol.

Other Heads of Offices

(b) The relevant International Organisation office in the Republic registers its Head of Office with the Branch: State Protocol. The Business Unit arranges for a courtesy call on the Minister of the relevant line function department as well as the Chief of State Protocol to present the letter of assignment to the Minister and a copy thereof to the Chief of State Protocol.

2.3.3 Immunities and Privileges of International Organisations

Diplomatic Act

(a) The immunities and privileges granted to the UN Offices, Specialised Agencies and other international organisations and their officials are specified in the Host Agreement which is concluded in accordance with the Act as may be applicable and appropriate for a particular Office or Agency.

Harmonising International Organisations

(b) In this regard the Act was specifically adopted to harmonise the regularisation of all international organisations in the Republic of South Africa, and applied as follows:

2.3.4 Privileges of Offices of International Organisations

Official recognition

(a) Organisations recognised by the Minister of International Relations and Cooperation and authorised to establish an office in South Africa shall be accorded the following privileges:

(i) Diplomatic listing;

(ii) VAT refunds: official purchases/services to offices above R200;

(iv) Official vehicles: D-D number plates;

(v) Fuel levy rebates;

(vi) Project vehicles: Declare to the Department; VAT refund, and local registration.

2.3.5 Accreditation of International Organisations personnel

Head of Office

(a) The Department requires a copy of the confirmatory Letter of Assignment as Head of Office issued by the Head of the Organisation, presented to the relevant Cabinet Minister as well as an accreditation application, under cover of a Diplomatic Note.

(b) The Head of Office is accredited as follows, subject to the Treaty:

(i) D-series identity cards endorsed with full diplomatic status;
(ii) Diplomatic listing;
(iii) D-D number plates for privately owned vehicles;
(iv) VAT refunds on privately owned vehicles: two year ownership;
(v) Fuel levy rebates.

The Head of Office of an International Organisation is allowed one foreign private servant regulated by the Department subject to two repatriation guarantees as prescribed in Part 1 of this Policy. The private servant shall apply for courtesy visas at South African missions abroad subject to presenting to the mission certified copies of the two prescribed repatriation guarantees.

Senior Transferred Officials D1 and P5

(c) Senior officials of the United Nations Organisation and its Agencies with the rank of P5 and D1 designated to offices in the Republic for a term of duty, are conferred with diplomatic status. International Organisations are required to provide to the Department under cover of a Diplomatic Note the accreditation applications for D1 and P5 officials substantiated by a confirmatory letter of assignment issued by the head of the office responsible for personnel matters at the head quarters of the organisation stating:

- Full name of applicant;
- Title of Host Agreement entered into with the RSA;
- Article of Host Agreement regulating the privileges and immunities of the applicant;
- Categorisation of applicant according to the Host Agreement (e.g. official; project worker; consultant);
- Organisation grade / rank;
- Effective date of assignment in the RSA;
- Duration of assignment in the RSA.

P1 and D5 UN officials are accredited as follows:

(i) D-series identity cards endorsed with full diplomatic status;

(ii) Diplomatic listing;

(iii) D-D number plates for privately owned vehicles;

(iv) VAT refunds on privately owned vehicles: two year ownership;

(v) Fuel levy rebates.

Other transferred officials

(c) Other transferred officials of International Organisations are conferred with functional immunity and regulated according to the applicable Treaty. The Department shall be provided with the accreditation applications for transferred officials under cover of a Note Verbale and substantiated by a confirmatory letter of assignment issued by the head of the office responsible for personnel matters at the head quarters of the organisation stating:

- Full name of applicant;
- Title of Host Agreement entered into with the RSA;
- Article of Host Agreement regulating the privileges and immunities of the applicant;
- Categorisation of applicant according to the Host Agreement (e.g. official; project worker; consultant);
- Organization grade / rank;
- Effective date of assignment in the RSA;
- Duration of assignment in the RSA.

Other transferred officials are accredited as follows:

(i) First entry privileges within the first six months after arrival;

(ii) IO series identity cards endorsed with functional immunities and inviolability;

(iii) Spouse and members of family: Substitution of the Temporary Residence Permit in the passport to be exempted from immigration restrictions; no immunity no inviolability.

Vehicle quota all IO staff

(d) Vehicle quota for all IO personnel listed in paragraph 2.3.5 (a); (b); (c)

Family: Two privately owned vehicles with VAT refund and/or duty free import; one vehicle with functional inviolability X-series number plate and fuel levy rebate. Second vehicle with VAT refund and/or duty free import and local GP registration without inviolability but declared to the Department for tax refund purposes.

Single: one vehicle with VAT refund/duty free import, inviolability and X-series number plate.

Experts on mission

Period of duty maximum six months with functional immunities

PART 3: DIPLOMATIC SPOUSAL EMPLOYMENT IN THE RSA

3.1 Introduction

Obligations

3.1.1 The Department introduced standardised models through an exchange of Diplomatic Notes to maintain equal terms and conditions for employment of spouses of foreign representatives at missions and representatives of international organisations conferred with diplomatic status by authorising a particular spouse for a specific work and to link it to reciprocal treatment for South Africa in a bilateral situation. This constitutes an administrative arrangement with the Department authorising spouses to take up employment.

3.1.2 For both States and International Organisations the spouse's diplomatic identity document is withdrawn, re-issued and endorsed to indicate that a spouse who engages in professional services for remuneration outside the mission will in terms of Article 31.1(c) of the Vienna Convention on Diplomatic Relations of 1961 not enjoy immunity from the civil and administrative jurisdiction of the receiving State.

Scope of Application

3.1.3 Part 3 of the policy is applicable to spouses of members of the staff of a diplomatic mission and a consular post. It is also applicable to the spouse of the Head of Office and senior officials with the rank of P5 and D1 of the United Nations Organisation and its Agencies accredited with diplomatic status in the Republic.

Objectives

3.1.4 To institute a framework for a reliable, predictable and transparent management system to regulate spousal employment in the RSA.

Mandates and Authorisation

3.1.5 Part 3 of the policy is informed by:

- Constitution of the Republic of South Africa, 1996
- The Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended
- Vienna Convention on Diplomatic Relations and Consular Relations of 1961 and 1963 respectively
- Convention on the Immunities and Privileges of the United Nations and its Specialised Agencies of 1947
- Any other relevant legal provisions



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Glossary of Terms

The table below contains the glossary of terms utilised in Part 3 of the policy

Department	The Department of International Relations and Cooperation
Mission	Accredited diplomatic mission, consular post or international organisation in South Africa
Protocol	The Branch: State Protocol
OCSLA (IL)	Office of the Chief State Legal Adviser (International Law) of the International Relations and Cooperation
Diplomatic Convention	Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 respectively
Spousal Arrangements	An administrative arrangement between two Foreign Ministries or the Department and the Head Office of an International Organisation regulating the employment and commercial activity of spouses
UN Conventions	Convention on the Immunities and Privileges of the United Nations and its Specialised Agencies of 1947

3.2 Spousal employment arrangements

Policy framework for spousal employment arrangements

3.2.1 The following policies and principles inform the conclusion of spousal employment arrangements:

(a) The principle of reciprocity confirmed through the exchange of Diplomatic Notes;

(b) The Department's policy regarding employment of South African spouses abroad;

(c) The principle that the Vienna Convention on Diplomatic Relations does not preclude commercial activity by spouses;

(d) A model Diplomatic Note to be used as a basis when concluding spousal arrangements

Spousal employment arrangements by Exchange of Notes

3.2.2 To give effect to the policy framework, two standarised model Diplomatic Notes were introduced:

(a) Spousal Arrangement for States (Model A)

(b) Spousal Arrangement for International Organisations (Model B)

The Branch: State Protocol and the relevant line function Branch are involved to conclude the arrangement and registration with the Office of the Chief State Law Adviser (International Law).

Arrangement: Characteristics

3.2.3 The spousal employment arrangement through an Exchange of Diplomatic Notes has the following characteristics:

Reciprocity

(a) The principle of reciprocity

The principle of reciprocity applies to States. The Department will only agree to facilitate the employment of spouses within a specified policy framework if a Foreign Ministry will agree to do the same for South African diplomatic spouses abroad. The spousal arrangement regulates employment by all qualifying spouses from a particular country. The principle of reciprocity is confirmed by an exchange of Diplomatic Notes that will constitute a spousal arrangement with South Africa. The Department keeps a database of spousal employment arrangements in South Africa for record purposes.

SA diplomatic spouses abroad

(b) The Department's policy regarding employment of South African spouses abroad

South African spouses are in principle authorised to continue their careers abroad and render services to the community and the principle informs the implementation of spousal agreements for foreign spouses when determining whether a spousal arrangement will be concluded with a particular country.

Model diplomatic note

(c) Model Diplomatic Note as a basis when concluding spousal arrangements

The spousal arrangement is regulated through an exchange of Diplomatic Notes. It constitutes an administrative arrangement between two Ministries/the Department and the Head Office of an International Organisation.

3.3 Spousal employment arrangements

Model A: Spousal Arrangement for States

PROT/5/ D1

The Department of International Relations and Cooperation of the Republic of South Africa presents its compliments to the Embassy / High Commission of ……. and has the honour to propose that the employment of spouses of transferred officials of the Embassy / High Commission be regulated on the basis of reciprocity in accordance with the provisions of this arrangement.

1. <u>Conditions</u>

1.1 Authorisation to engage in employment will be granted, on a reciprocal basis, to spouses who wish to continue a professional career or who wish to provide services to the community.

1.2 For these purposes

(a) "employees of the sending State" means the members of the staff of the sending State assigned to official duty in the receiving State (who are not nationals or permanent residents of the receiving State) and who are accredited as diplomatic agents, consular officers, administrative or technical staff of the diplomatic mission or consular post;

(b) "a spouse" means a person who the receiving State has recognised as such, accompanying an employee of the sending State;

(c) "Diplomatic Convention" means the Vienna Convention on Diplomatic Relations of 1961;

(d) “Consular Convention” means the Vienna Convention on Consular Relations of 1963;

1.3 Upon application, a spouse can be authorised to engage in employment from the time of arrival of the employee of the sending State in the receiving State to take up his or her post, until the time of departure of the latter upon termination of his or her duties.

1.4 Authorisation for a spouse to engage in employment will lapse on the date

(a) that the employee of the sending State’s employment terminates; or

(b) the spouse ceases to have the status of a member of the family.

1.5 Authorisation for a spouse to engage in employment will not imply exemption from any requirements which may ordinarily apply to any employment, whether relating to personal characteristics, professional or trade qualifications or otherwise.

2. Immunity from Civil and Administrative Jurisdiction

2.1 In the case of a spouse enjoying immunity from the civil and administrative jurisdiction of the receiving State in accordance with the Diplomatic Convention, the Consular Convention or any other agreement which may apply between the Governments, such a spouse who engages in professional services for remuneration outside the mission will by virtue of Article 31.1(c) of the Diplomatic Convention automatically not enjoy immunity from the civil and administrative jurisdiction of the receiving State.

2.2 In such a case, the sending State will be requested to consider waiving the immunity from execution of judgment against such a spouse.

3. Immunity from Criminal Jurisdiction

In the case of a spouse enjoying immunity from the criminal jurisdiction of the receiving State in accordance with the Diplomatic Convention, the Consular Convention or any other agreement which may apply between the Governments:

(a) The sending State will be requested to consider waiving the immunity of the spouse from the criminal jurisdiction of the receiving State in respect of any act or omission arising from the employment; and

(b) A waiver of immunity from criminal jurisdiction will not be construed as extending to immunity from execution of the sentence, for which a separate waiver will be required.

4. Taxation and Social Security Regimes

A spouse will be subject to the taxation and social security regimes applicable in the receiving State for all matters connected with the employment in the receiving State.

5. Repatriation of Funds

Spouses authorised to enter into employment will be allowed to repatriate their remuneration for such employment out of the territory of the receiving State in accordance with the conditions laid down for foreign workers in the regulations of the receiving State and subject to the taxation and social security regimes applicable in the receiving State.

6. Procedures to be applied in the Republic of South Africa, as the receiving State

6.1. A request for authorisation to take up employment in the Republic of South Africa must be submitted via Diplomatic Note to the Branch: State Protocol at the Department of International Relations and Cooperation together with the following details:

(i) Place of Employment;

(ii) Job Title and Job Functions;

(iii) Copy of Certificate of Identity issued by the Department;

(iv) Passport Particulars.

6.2. A spouse authorised to take up employment:

(a) must return the identity document originally issued to her/him by the Department, for cancellation. The certificate of identity will be re-issued to reflect that the spouse who engages in professional services for remuneration outside the mission will by virtue of Article 31.1(c) of the Diplomatic Convention automatically not enjoy immunity from the civil and administrative jurisdiction of the receiving State;

(b) may not, without prior authorisation from the Department of International Relations and Cooperation, accept any other employment;

(c) in the event of taking up new employment in the receiving State, must return the existing employment certificate for cancellation and submit applications for further employment in accordance with the procedures set out herein;

(d) must, prior to his/her final departure from the Republic of South Africa, return the certificate of employment authorisation to the Department for cancellation;

(e) must, without expenses to the Government of the Republic of South Africa, depart from the Republic of South Africa on or before the date of expiry of the employee of the Sending

State's tour of duty as a foreign representative or alternatively apply for the relevant residence permit in accordance with the relevant domestic law.

If the arrangements set out above are acceptable to the Embassy / High Commission of …….. it is requested that this be confirmed via Diplomatic Note, which also sets the procedures to be followed in the ……(State) as receiving State. It is proposed that this Note and the Embassy's/ High Commission's reply to that effect will place on record the understanding between the Department of International Relations and Cooperation of the Republic of South Africa and the Foreign Ministry of …….. which will be effective on the date of the Note in reply.

The Department of International Relations and Cooperation of the Republic of South Africa avails itself of this opportunity to renew to the Embassy/High Commission of ……the assurances of its highest consideration

PRETORIA

Date

Embassy / High Commission of ……

Pretoria



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

3.4 Spousal employment arrangements

Model B: Spousal Arrangement for International Organisations

PROT/5/D1

The Department of International Relations and Cooperation of the Republic of South Africa presents its compliments to the (name of International Organisation) …….. and has the honour to propose that the employment of spouses of senior officials conferred with diplomatic status of (International Organisation) be regulated in accordance with the provisions of this Arrangement.

1. <u>Conditions</u>

1.1 Authorisation to engage in employment will be granted to spouses as specified in this Note who wish to continue a professional career or who wish to provide services to the community.

1.2 For these purposes

a) "the Act" means the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001)
b) "International Organisation" means [name of Organisation]
c) "official of the International Organisation" means a senior official conferred with diplomatic status of the International Organisation registered with the Department of

International Relations and Cooperation who is granted immunity in accordance with the Act or in terms of any agreement concluded between the organisation and the Government of the Republic of South Africa

d) "a spouse" means a person who the Department of International Relations and Cooperation has recognised as such, accompanying a senior official conferred with diplomatic status of the International Organisation

1.3 Upon application, a spouse can be authorized to engage in employment from the time of arrival of the official of (International Organisation) in South Africa to take up his or her post, until the time of departure of the latter upon termination of his or her duties.

1.4 Authorisation for a spouse to engage in employment will lapse on the date

a) that the official of the International Organisation's employment terminates; or
b) the spouse ceases to have the status of a member of the family.

1.5 Authorisation for a spouse to engage in gainful employment will not imply exemption from any requirements which may ordinarily apply to any employment, whether relating to personal characteristics, professional or trade qualifications or otherwise.

2. Immunity from Civil and Administrative Jurisdiction

2.1 In the case of a spouse enjoying immunity from the civil and administrative jurisdiction of the Republic of South Africa by virtue of immunities conferred in terms of the Act, or any other

agreement or arrangement which may apply between the Government of the Republic of South Africa and the International Organisation, the International Organisation will be requested to waive this immunity in respect of all matters arising out of the employment and falling within the civil or administrative law of the Republic of South Africa.

2.2 In such a case, the International Organisation will also be requested to consider waiving the immunity from execution of judgment against such a spouse.

3. Immunity from Criminal Jurisdiction

In the case of a spouse enjoying immunity from the criminal jurisdiction of the Republic of South Africa, in accordance with the Act or any other agreement or arrangement which may apply between the Government of the Republic of South Africa and the International Organisation:

(a) the International Organisation will be requested to consider waiving the immunity of the spouse from the criminal jurisdiction of the Republic of South Africa in respect of any act or omission arising from the employment, except in special instances when the International Organisation considers that such a waiver would be contrary to its own interests; and

(b) a waiver of immunity from criminal jurisdiction will not be construed as extending to immunity from execution of the sentence, for which a separate waiver will be required

provided that the International Organisation will give serious consideration to waiving the latter immunity in such a case.

4. Taxation and Social Security Regimes

A spouse will be subject to the taxation and social security regimes applicable in the Republic of South Africa for all matters connected with the employment in South Africa.

5. Repatriation of Funds

Spouses authorised to enter into employment will be allowed to repatriate their remuneration for such employment out of the territory of the Republic of South Africa in accordance with the conditions laid down for foreign workers in the regulations of the Republic of South Africa and subject to the taxation and social security regimes applicable in the Republic of South Africa.

6. Procedures

6.1 A request for authorisation to take up employment in the Republic of South Africa must be submitted through the diplomatic channel to the Department of International Relations and Cooperation together with the following details:

(i) Place of Employment;

(ii) Job Title and Job Functions;

(iii) Copy of Certificate of Identity issued by the Department;

(iv) Passport Particulars.

6.2 A spouse authorised to take up employment:

(a) must return the identity document originally issued to her/him by the Department, for cancellation. The certificate of identity will be re-issued to reflect the limited immunity whilst employed in the Republic of South Africa;

(b) may not, without prior authorisation from the receiving State, accept any other employment;

(c) in the event of taking up new employment, shall return the existing employment certificate for cancellation and submit applications for further employment in accordance with the Department's procedural system;

(d) must, prior to his/her final departure from the Republic of South Africa return the certificate of employment authorisation to the Department, for cancellation;

(e) must, without expense to the Government of the Republic of South Africa, depart from the Republic of South Africa, on or before the date of expiry of the official of the International Organisation's tour of duty as a foreign representative / transferred official or alternatively

apply for the relevant residence permit in accordance with the relevant domestic law.

If the arrangements set out above are acceptable to the (International Organisation) it is suggested that this Note and the reply to that effect will place on record the understanding between the Department of International Relations and Cooperation of the Republic of South Africa and the (International Origination's) reply, which will come into effect on the date of the Note in reply.

The Department of International Relations and Cooperation of the Republic of South Africa avails itself of this opportunity to renew to the (International Organisation) the assurances of its high consideration.

PRETORIA
Date

(International Organisation)
Pretoria

PART 4: IMMUNITY DISPUTES IN THE RSA

4.1 Introduction

Obligations

4.1.1 Confirmation of immunity status to an affected party in dispute with the diplomatic and international communities accredited with the Department, shall be affected upon request, through a legal certificate according to section 9(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001) as amended issued by the Chief of State Protocol on behalf of the Director-General of International Relations and Cooperation.

4.1.2 It is important that disputes involving the diplomatic community are dealt with professionally at all levels in the Department. It would therefore require that the bilateral or multilateral business unit facilitate an environment where an amicable settlement could be considered between the affected parties, prior to the Branch: State Protocol applying remedies according to international diplomatic practice, or escalating it to the highest political office and the legal domain, to apply international law remedies.

4.1.3 Immunity disputes often continue ad infinitum where no milestones

are introduced to manage the process and communicate the outcomes to complainants. A set of procedures with timelines is therefore necessary to ensure predictability and reliability in the management of such disputes

Scope of Application Part 4

4.1.4 Part 4 of the policy will be applied to all immunity disputes involving foreign representation in South Africa, with the exception of **disputes concerning locally recruited personnel (LRP)** employed by foreign missions in South Africa, which is dealt with in Part 5 of the policy.

4.1.5 Part 4 of the policy deals firstly with processes for disputes in civil cases and secondly with processes for criminal incidents committed against and by persons conferred with immunity.

Objectives

4.1.6 To institute a framework for a reliable, predictable and transparent management system to address disputes involving the accredited diplomatic and international communities in South Africa.

Mandates and Authorisation

4.1.7 Part 4 of the policy is mandated by:

4.1.7.1 Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended, read with the Constitution of the Republic of South Africa, 1996

4.1.7.2 Foreign States Immunities Act, 1981 (Act 87 of 1981)

4.1.7.3 Uniform Rules of Court regarding service of process abroad

4.1.7.4 Vienna Convention on Diplomatic Relations, 1961

4.1.7.5 Vienna Convention on Consular Relations, 1963

4.1.7.6 Any other relevant legal provisions

Glossary of Terms

The table below contains the glossary of terms utilised in Part 4 of the policy

Department	The Department of International Relations and Cooperation
Mission	Accredited diplomatic mission/ consular post or international organization in South Africa
Protocol	The Branch: State Protocol
Business Unit	Chief Directorate
OCSLA (IL)	Office of the Chief State Law Adviser (International Law) of the Department of International Relations and Cooperation

Dispute	Immunity dispute where an accredited mission, international organisation or a person is conferred with immunity from the jurisdiction of a South African Court of Law

4.2 Disputes Process: Civil cases

Disputes in Civil Cases

4.2.1 The nature of the dispute and the complainant's endeavours to resolve the dispute must be forwarded in writing to the Directorate: Diplomatic Immunities and Privileges of the Branch: State Protocol. The Directorate: Diplomatic Immunities and Privileges acknowledges receipt of the complaint/dispute.

Sheriff of the Court

4.2.2 A summons delivered by the Sheriff of the Court is handled at the Chief Directorate: Consular and Agency Services to be processed in terms of the Foreign States Immunities Act, 1981, since such documents are not received at the Directorate: Diplomatic Immunities and Privileges.

Diplomatic channel

4.2.3 The Directorate: Diplomatic Immunities and Privileges will obtain a legal opinion, if necessary, and deals with the dispute in consultation with the bilateral or multilateral business unit, the relevant mission or international organisation and the complainant to resolve the dispute

through the diplomatic channel within a set timeframe, requesting compliance with legal obligations.

4.2.4 All parties affected are kept informed of developments throughout the dispute process.

Non-compliance

4.2.5 Should a foreign mission or organisation fail to comply with its legal obligations, a meeting will be scheduled at Directors' level between State Protocol, the bilateral / multilateral business unit, and the Second-in-Command at the mission / international organisation to hand over a Note Verbale officially requesting compliance with its legal obligations, within a set timeframe.

Escalation to Chief of State Protocol

4.2.6 Should non-compliance prevail subsequent to the deadline for a response after handing over of the first Note Verbale, a submission to the Chief of State Protocol will follow with bilateral / multilateral recommendations, a legal opinion, if necessary, and a final Note Verbale to be signed by the Chief of State Protocol.

4.2.7 The Chief of State Protocol will then call in the relevant Head of Mission or Head of International Organisation Office to personally hand over a Note Verbale requesting compliance in terms of the Vienna Conventions on Diplomatic Relations or the Conventions on

the Immunities and Privileges of the United Nations and its Specialised Agencies. The Chief of State Protocol will inform the Head of Mission / International Organisation Office that non-compliance within a set timeframe will result in remedial steps taken through the highest political office.

4.2.8 The Note Verbale will be handed over by the Chief of State Protocol in the presence of senior management of the relevant bilateral/multilateral/ Protocol business units.

Escalation to Minister of International Relations and Cooperation

4.2.9 Continued non-compliance Step 1: Protocol prepares a Ministerial minute to address the matter through Ministerial level within a set timeframe;

Escalation to legal domain: Foreign States Immunities Act

4.2.10 Continued non-compliance Step 2: Protocol in conjunction with OCSLA (IL) informs the complainant to consider instituting legal proceedings using private counsel against a diplomatic mission according to the procedures set out in section 13(1) of the Foreign States Immunities Act, 1981 in the case of a diplomatic mission (not applicable to diplomats and international organisations).

Legal certificate

4.2.11 Court proceedings and verification requests:
As and when required: Protocol in consultation with OCSLA (IL),

provides an executive certificate stating the Department's accreditation records, in terms of section 9(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended (see Annex A).

Waiver of immunity

4.2.12 Court proceedings against an individual who enjoys immunity: Protocol in conjunction with OCSLA (IL) requests the sending State or the international organisation to consider waiving the individual's immunity to enable him/her to appear in court.

Remedies: refusal to waive immunity

4.2.13 Refusal to waive immunity and continued non-compliance to legal obligations by the sending State or international organisation involving a transferred representative in dispute will result in an official request to immediately recall the offending representative or his/her member of family, with the provision that the Department would no longer recognise the diplomat in the event of non-compliance within a set timeframe. This will result in an immediate de-registration of the person from the Department's records, when stakeholders and law enforcement will be accordingly informed.

Default judgment

4.2.14 Non-compliance to waiver of immunity for a mission representative to appear in court on behalf of a mission in dispute could result in a default judgment. Non-compliance on default judgment: the Branch:

State Protocol shall prepare a Ministerial Minute to request compliance by the sending State.

4.3 Diplomatic incidents: Criminal cases

Process: criminal incidents

4.3.1 The SAPS Diplomatic Policing Unit will immediately inform the Branch: State Protocol of a criminal case involving a member of the accredited diplomatic and international communities. The Directorate: Diplomatic Immunities and Privileges will accordingly inform

- Chief of State Protocol / Acting Chief of State Protocol
- Office of Chief State Law Adviser (International Law)
- Relevant bilateral / multilateral business unit

4.3.2 In instances where a foreign representative and/or a member of family have been traumatised, the Chief of State Protocol will contact the Head of Mission / International Organisation telephonically to express regret and sympathy. On the first working day following the incident, representatives of the Branch: State Protocol will pay a personal visit to the affected transferred representative to demonstrate empathy.

Diplomatic channel

4.3.3 The Branch: State Protocol will obtain a SAPS report and, if necessary, a legal opinion, monitor SAPS investigations and keep

affected parties officially informed.

Criminal acts by persons conferred with immunity

4.3.4 In instances where a person conferred with immunity commits an offence, the relevant international law remedies are applied and the Department may consider requesting the waiver of such person's immunity to allow him/her to appear in court; or such person's immediate recall; or the de-registration of the representative / representative's dependent from the records of the Department; or declaring the alleged offender *persona non grata*.

Waiver of immunity

4.3.5 The Branch: State Protocol, in consultation with OCSLA (IL), requests the sending State or the international organisation to consider waiving the immunity of the person conferred with immunity who commits an offence, to allow him/her to appear in court to stand trial.

Remedies: refusal to waive immunity

4.3.6 Refusal to waive immunity of an offender conferred with immunity, and continued non-compliance to legal obligations where the person committed an offence could result in an official request to the sending State or international organisation to immediately recall the alleged offender, with the provision that the Department would no longer recognise the diplomat in the event of non-compliance within a set

timeframe. This will result in an immediate de-registration of the person from the Department's records, when stakeholders and law enforcement will be accordingly informed.

Persona non-grata

4.3.7 The process to declare an offender conferred with immunity *persona non grata*, is handled at Ministerial level in conjunction with the relevant bilateral / multilateral business unit and OCSLA (IL).



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Annexure A

Department of International Relations and Cooperation Accreditation Record:
Certificates issued in terms of Section 9(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001) as amended

1. IMMUNITIES CONFERRED UPON A MEMBER OF THE ACCREDITED DIPLOMATIC AND INTERNATIONAL COMMUNITIES ISSUED TO …….. (NAME/ORGANISATION)

In the District Court, Pretoria. Case number

In the matter of

the State versus,

Note: Section 9(3) of the Act states that a Certificate shall be issued in response to enquiries as to whether or not any person enjoys any immunity or privilege under the Act or the



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Conventions. The text above is used for the Courts and the text below is used for the Courts as well as individual enquiries.

Certificate in terms of section 9(3) of the Diplomatic Immunities and Privileges Act, No 37 of 2001, as amended.

I, the undersigned (the Chief of State Protocol) …… (rank) ……..in the Department of International Relations and Cooperation and as such duly authorized by the Director-General of the Department of International Relations and Cooperation to issue this certificate, hereby state the following facts relating to the status of …… who is the holder of passport number:

Mr/Ms ……enjoys no immunities or privileges under the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), as amended, or the Conventions, barring his / her prosecution in the Magistrates` Court, Pretoria, under case number ……..

The only immunities and privileges he / she did enjoy were as …… conferred on him / her in terms of an agreement between the …… and the Republic of South Africa. These were waived, expressly and in writing, in a document dated ……., issued by the ……, as provided for under the Agreement referred to and as further provided for in section 9(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), as amended.



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Mr/Ms …….. does not qualify for any other immunities and privileges under the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), as amended, or the Conventions and the mere fact that he / she holds a diplomatic passport does not itself confer upon him / her any such immunities or privileges.

Mr/Ms …….. is not registered in any capacity other than …… with the Department of International Relations and Cooperation and does not qualify for immunities and privileges under the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), as amended, or the Conventions, due to any other status or capacity he / she allegedly might hold.

Issued at Pretoria on this the …….. day of …….… 20 ….

2. IMMUNITIES CONFERRED UPON A DIPLOMATIC MISSION, CONSULAR POST OR AN ACCREDITED INTERNATIONAL ORGANISATION

TO WHOM IT MAY CONCERN

This is to certify that the properties listed herein after are registered with the Ministry of the Department of International Relations and Cooperation in terms of Section 12(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), as amended.

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

1. Erf XX, Constantia Park, Pretoria
2. Erf XX, Muckleneuk, Pretoria
3. Erf XX Faerie Glen Ext X Pretoria
4. Erf XX Faerie Glen, Pretoria
5. Erf XX Waterkloof Ridge, Pretoria

The above mentioned properties enjoy inviolability as contemplated by Articles 22 and 30 of the Vienna Convention on Diplomatic Relations 1961, incorporated as Schedule I of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), as amended. These properties are therefore inviolable and immune from search, requisition, attachment or execution.

The Department further wishes to certify that property held in the name of a mission or a diplomatic agent accredited to South Africa, including bank accounts, held in any currency in the Republic of South Africa, by a registered Financial Institution, is inviolable and thus immune from attachment or execution.

Thanking you in advance for anticipated expedition of this matter I remain,

Yours truly,

(sgd)
Chief of State Protocol
File:



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

Enq : Director: Diplomatic Immunities and Privileges

Tel :

PART 5: DISPUTES BY LOCALLY RECRUITED PERSONNEL EMPLOYED AT MISSIONS IN THE RSA

5.1 Introduction

Obligations

5.1.1 Diplomatic missions, consular posts, international organisations and persons conferred with immunity have to respect the laws and regulations of the RSA as host State provided for in the Vienna and United Nations Conventions regulating privileges and immunities.

5.1.2 Personnel employed locally by missions, consular posts, international organisations as well as persons conferred with immunity, who are involved in disputes in terms of the Labour Relations Act, 1995 (Act 66 of 1995) with the accredited diplomatic and international communities in South Africa could make use of the Department's assistance through the CCMA, to pursue such labour disputes. In order to apply a predictable process to manage such disputes lodged by locally recruited personnel (LRP) against foreign states and/or accredited international organisations represented in the RSA, the Branch: State Protocol, together with the OCSLA (IL) and the CCMA have established guidelines for addressing such disputes.

Scope of Application

5.1.3 To comply with prescribed legal provisions in the event of a labour law related dispute arising between a locally recruited employee (hereinafter referred to as "the complainant") and a diplomatic and/or consular mission and/or an accredited international organisation's office in the RSA (hereinafter referred to as "the mission")

OR

5.1.4 between the complainant and a diplomatic or consular representative and where the mission or the representative is the complainant's employer as provided for in the Labour Relations Act, 1995 (Act No. 66 of 1995).

Objectives

5.1.5 To provide a professional, transparent and manageable framework in which to handle disputes between the complainant and the accredited diplomatic and international communities in South Africa

Mandates and Authorisation Part 5

5.1.6 The authorisation in Part 5 of the policy is issued in accordance with:

- Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001) read with the Constitution of the Republic of South Africa, 1996
- Foreign States Immunities Act, 1981(Act No. 87 of 1981)
- Labour Relations Act, 1995 (Act No. 66 of 1995)

- Uniform Rules of Court
- Vienna Convention on Diplomatic Relations, 1961
- Vienna Convention on Consular Relations, 1963
- Any other relevant legal provisions

Glossary of Terms

The table below contains the glossary of terms utilised in Part 5 of the policy

Department	The Department of International Relations and Cooperation
Mission	Accredited diplomatic mission, consular post or international organisation in South Africa
Protocol	The Branch: State Protocol
CCMA	Commission for Conciliation, Mediation and Arbitration
LRP	Locally Recruited Employee employed by a foreign mission in South Africa.
Consular Section	Chief Directorate: Consular and Agency Services of the Department of International Relations and Cooperation
OCSLA (IL)	Office of the Chief State Law Advisor (International Law) of the Department of International Relations and Cooperation

5.2 Process for serving a Referral Form and Provisional Award of the CCMA on Missions and persons conferred with immunity

Application of process

The following processes should be applied to Missions as well as persons conferred with full diplomatic immunity when serving the referral document ("the referral form") in terms of which the dispute is referred to the CCMA:

(a) Step 1: Referral of the dispute to the CCMA

The complainant should refer the dispute directly to the CCMA using the prescribed form customised by the CCMA for persons employed by Missions in the RSA, indicating the nature of the dispute as envisaged by the applicable labour legislation without, at this stage, having to submit proof that the referral form has been served on the Mission.

(b) Step 2: Statement on the Dispute

CCMA shall take down a statement from the complainant and submit it to the Department with the referral form in the prescribed formatting to be presented to the Mission.

(c) Step 3: Serving of the referral form on the Mission

The Department through its Directorate: Immunities and Privileges will ensure that the referral form with the statement is properly served on the Mission, subsequent to discussions with the relevant bilateral/multilateral business unit, within a set timeframe to institute proceedings.

(d) Step 4: Protocol puts diplomatic pressure on the Mission

Upon receipt of the referral form from the CCMA, the Director: Immunities and Privileges in consultation with the relevant bilateral/multilateral counterpart of the Department shall call in the Deputy Head of the relevant Mission for consultations and present a Diplomatic Note containing the referral form and the statement of the complainant.

In the Diplomatic Note, Protocol shall formally bring the dispute to the attention of the Mission with a request to do everything reasonably possible to resolve the dispute in compliance with the law, and set a timeframe for resolving the matter. The CCMA and the relevant bilateral/multilateral business units will be kept informed.

In the event of non-compliance by the Mission, the matter will be escalated to the Chief of State Protocol when a second and final Note Verbale is handed over personally to the Head of the Mission.

(e) Step 5: Protocol informs CCMA that the referral form had been served

Protocol shall provide the CCMA with a written confirmation that the referral note had been properly delivered to the Head of the relevant Mission.

(f) Step 6: Advisory Arbitration Award

Advisory Arbitration Award

Upon receipt of the response from the mission, the Department forwards the response to the CCMA who would evaluate statements of both parties and, should the CCMA determine that the LRP's claim has merit, an advisory arbitration award will be issued and the CCMA will approach the Department to request the Mission to take note of the award or alternatively to attend a conciliation/arbitration hearing.

5.3 The CCMA resolves the dispute by way of conciliation and / or arbitration

CCMA

The CCMA will schedule the dispute for a hearing, as the case may

schedules a hearing

be. The service of all documents, including the necessary notifications, relating to the dispute shall thereafter be served on the Mission by way of registered post, facsimile transmission or electronic mail.

5.4 The CCMA issues an award after having determined the Dispute

Application of processes

5.4.1 The following processes are followed subsequent to the CCMA having evaluated the evidence and arguments and issuing an award:

(a) Step 1: the CCMA issues an award

Once the CCMA has conciliated or arbitrated the dispute, depending on the nature of the dispute, as the case may be, the presiding commissioner will issue an award.

(b) Step 2: the CCMA forwards a copy of the award to Protocol

If the commissioner has issued an award in favour of the complainant in

terms of which the Mission is required to comply therewith and perform a positive act (e.g. reinstatement, payment of compensation, severance, etc.) then the CCMA shall forward a copy of the award to Protocol.

(c) Step 3: Protocol forwards the award to the Mission

Protocol shall forward a copy of the award under a Diplomatic Note to the Mission with a request that the Mission should comply with the award, pursuant to Article 41(1) of the Vienna Convention on Diplomatic Relations of 1961 and Article 55(1) of the Vienna Convention on Consular Relations of 1963.

5.5 Default arbitration awards

In the event that the CCMA has issued a default award against a Mission where the Mission has failed to make an appearance at the arbitration hearing, notwithstanding the fact that the prescribed procedure, as provided for in this Policy, has been complied with, the provisions of section 13(5) of the Foreign States Immunities Act, 1981 (Act No. 87 of 1981) shall be applied which states:

> "*A copy of any default judgment against a foreign state shall be transmitted through the Department of Foreign Affairs and Information of the Republic to the ministry of foreign affairs of the foreign state, and any time prescribed by rules of court or otherwise*

for applying to have the judgment set aside shall begin to run two months after *the date on which the copy of the judgment is received at that ministry.*"

5.6 Enforcement of arbitration awards

The procedure contained in Part 4 (see paragraphs 4.2.3 to 4.2.9) of this Policy shall be applied to ensure compliance with any arbitration award issued by the CCMA.

6. Policy Review

This policy will be reviewed at least every five years or when legislative or policy change requirements dictate otherwise.



DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

	Responsibility	Signature	Date
Compiled	Chief Directorate: State Events and Diplomatic Accreditation		
Approved	Director-General		