

REPUBLIC OF SOUTH AFRICA

FOREIGN SERVICE BILL

*(As amended by the Portfolio Committee on International Relations and Cooperation
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION)

[B 35B—2015]

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BILL

To provide for the management, administration, accountability, and functioning of a professional Foreign Service of the Republic of South Africa; to provide for the operational requirements that are suitable and supportive of the operations of the Foreign Service in a global environment; and to provide for matters incidental thereto.

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

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Definitions 20

1. In this Act, unless the context indicates otherwise—
 - “**acquire**” in relation to an immovable asset, means acquisition through construction, purchase, lease, acceptance of a gift outside the Republic or by any other lawful means, for use by the Foreign Service;
 - “**Department**” means the Department of International Relations and Cooperation; 25
 - “**Diplomatic Academy**” means the Diplomatic Academy as contemplated in section 7;
 - “**Director-General**” means the Director-General of the Department;
 - “**disposal**” means to sell, exchange or donate immovable assets in accordance with this Act;” 30
 - “**employee**” means a person appointed to the Department or to any other national department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or any other legislation, and includes members of the Foreign Service;

“foreign representations in the Republic” means a foreign diplomatic mission, consular mission or liaison office as well as offices of international organisations in the Republic, accredited in terms of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);

“Foreign Service” means the Foreign Service of the Republic, as contemplated in section 3; 5

“GIAMA” means the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007)”;.

“Head of Mission” means an Ambassador, High Commissioner, Consul-General, Permanent Representative, and any other person appointed to represent the Republic as such in terms of section 84(2)(i) of the Constitution and as also recognised by the Vienna Convention on Diplomatic Relations, 1961, signed at Vienna on 18 April 1961, the Vienna Convention on Consular Relations, 1963, signed at Vienna on 24 April 1963, the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946, as may be applicable in the Republic in accordance with the reservations made by South Africa upon its accession thereto, as well as the Convention on the Privileges and Immunities of the Specialised Agencies, adopted on 21 November 1947, as may be applicable in the Republic; 10 15

“immovable asset” means land or an immovable structure on land, or rights in such land or immovable structure; 20

“member of the Foreign Service” means a person who serves as a member of the Foreign Service and who is accredited to a foreign state as contemplated in section 3;

“Minister” means the Minister of International Relations and Cooperation; 25

“national department” means a national department and a national government component as referred to in section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes the South African Revenue Service;

“prescribed” means prescribed by regulation in terms of section 14, or by codes or directives made by the Minister in terms of section 11; 30

“South African Mission” means a diplomatic or consular mission of the Republic accredited to the foreign state where it is operating in terms of the Vienna Conventions, and to a liaison office, or to permanent representations of the Republic at international organisations and “mission” shall have a similar meaning; 35

“this Act” includes all its regulations, guidelines, codes and directives.

Application of Act

2. (1) Subject to the provisions of this Act, the conditions of service of members of the Foreign Service must be governed by the law governing that employee’s conditions of service. 40

(2) Where this Act conflicts with the provisions of the Public Service Act, 1994, (Proclamation No. 103 of 1994), or any other legislation, and it is not possible to read the conflicting provisions as complementary to one another, this Act must prevail.

Foreign Service

3. (1) (a) There is a Foreign Service that shall promote and advance the international relations and cooperation of the Republic by representing the Republic in an effective, coherent and comprehensive manner abroad. 45

(b) The Department is responsible for conducting and coordinating the international relations and cooperation of the Republic at bilateral, regional and multilateral levels through the Foreign Service abroad and through interactions with foreign representatives in the Republic, in accordance with the foreign policy of the Republic. 50

(2) The Foreign Service consists of all South African Missions and those persons who serve in a position in the South African Missions, including Heads of Mission, and who are accredited to a foreign state for the period of time that they hold that position, regardless of whether they are ordinarily employed by the Department or by any other national department or appointed on a contractual basis for a fixed period. 55

(3) The Foreign Service is managed and administered by the Department and to this end the Department must—

(a) administer all foreign representations in the Republic;

- (b) lead the coordination and alignment of the Republic's international relations between all spheres of government;
- (c) render protocol services to designated foreign and national dignitaries as prescribed;
- (d) render consular services in line with the Guidelines for the Provision of Consular Services; 5
- (e) act as the custodian of international agreements to which the Republic is a party, as well as of the national reports submitted in accordance with international obligations and render legal advice to government on all matters related to international law; 10
- (f) conduct all diplomatic communications between the Republic and foreign states, international organisations or entities; and
- (g) perform any other functions required for the effective management and administration of the Foreign Service.

Requirements for members of Foreign Service 15

4. (1) Except for the appointment of locally recruited personnel to serve at a South African Mission, only citizens of the Republic, employed by the Department or by another national department, or appointed on a contractual basis for a fixed period, who meet the prescribed requirements, are eligible to become a member of the Foreign Service. 20

(2) The head of a national department must, in writing, notify the Director-General of an employee who has approval from that national department to be transferred to a South African Mission.

(3) A member of the Foreign Service may not take up a position at a South African Mission until such time— 25

- (a) as he or she has successfully completed the prescribed mandatory training requirements;
- (b) as he or she has met the prescribed requirements for such transfer;
- (c) as he or she has obtained a security clearance as issued by a competent authority; and 30
- (d) that the approval for the transfer has been granted by the Director-General.

Head of Mission

5. (1) The Head of Mission is responsible for the management and administration of the Mission and all members of the Foreign Service located at the Mission, including the locally recruited personnel in the Mission. 35

(2) The Head of Mission must act on the instructions and under the authority of the Director-General.

(3) All Heads of Mission—

- (a) must be fit and proper persons;
- (b) may have relevant knowledge, skills and experience; and 40
- (c) must reflect broadly the diversity of South Africa.

Recall of member of Foreign Service

6. (1) A member of the Foreign Service may be recalled to the Republic by the Director-General if, after an inquiry in the prescribed manner, such a member is found guilty of misconduct in terms of the disciplinary code applicable to that member. 45

(2) A member of the Foreign Service under investigation for misconduct in terms of subsection (1) may be recalled to the Republic by the Director-General pending the finalisation of such inquiry.

(3) An act constituting misconduct and which is committed outside the Republic by a member of the Foreign Service must be deemed to have been committed in the Republic. 50

(4) The inquiry contemplated in subsection (1) may be held in the Republic or where the member of the Foreign Service concerned was transferred.

(5) (a) A member of the Foreign Service must be recalled to the Republic by the Director-General—

- (i) when the Republic ceases to have diplomatic or consular representation in the foreign State where the member was transferred; 55

- (ii) if the member is declared *persona non grata* by the State where that member was transferred; or
- (iii) at the request of the State where that member was transferred.

(b) A member of the Foreign Service may be recalled to the Republic, where such circumstances arise that would warrant the recall of that member, in the interest of the Republic. 5

(6) A member of the Foreign Service may be recalled to the Republic at the request of that member.

(7) With the exception of subsection (5), the Director-General may only recall a member of the Foreign Service that is employed by a national department other than the Department on written request from the head of the national department where that member is employed. 10

Diplomatic Academy

7. (1) The Diplomatic Academy, under the control and management of the Department, is responsible for— 15

- (a) providing the prescribed mandatory training for members of the Foreign Service as contemplated in section 4(3);
- (b) providing any training, or causing such training to be provided to employees and to members of the Foreign Service;
- (c) conducting such tests and examinations, or causing such tests and examinations to be conducted, as the Minister may prescribe; and 20
- (d) issuing of diplomas or certificates or cause diplomas or certificates to be issued to persons who have passed such examinations.

(2) The Diplomatic Academy may cooperate with any institution of higher learning and other experts in the Republic or elsewhere to achieve its objectives. 25

(3) The Diplomatic Academy may assist with training requirements of foreign states as may be agreed to by the Department and the foreign state involved in accordance with its international programmes.

(4) The Diplomatic Academy may provide training or cause training to be provided, to any other person, on the written request by a head of an organ of state. 30

(5) The accreditation and recognition of the Diplomatic Academy's qualifications must be done in accordance with the provisions of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and the Skills Development Act, 1998 (Act No. 97 of 1998), or any other applicable legislation intended to enhance skills and qualifications in the public service. 35

Establishment of coordination and other mechanisms

8. (1) The Minister may establish such consultative, coordination and other mechanisms as may be necessary for the effective execution of this Act.

(2) The Consultative Forum for International Relations is the national intergovernmental forum, as contemplated in section 9(1) of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), through which international relations for the Republic is coordinated. 40

(3) The Minister may, by notice in the *Gazette*, issue guidelines regarding the coordination and alignment of activities relating to international relations between all spheres of government. 45

Immovable assets

9. (1) Notwithstanding the provisions of section 4(1)(a) of GIAMA, the Minister is the custodian of all immovable assets outside the Republic which was acquired for use by the Foreign Service.

(2) The Minister must act as caretaker of the immovable assets under his or her custodianship and must acquire and manage such immovable assets as contemplated in section 13(1) and (2) of GIAMA, in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other applicable law. 50

(3) Notwithstanding the provisions of sections 4(2)(b)(i) and 13(3)(b) of GIAMA, the Minister may dispose of immovable assets under his or her custodianship in accordance with this Act and any other applicable law, after consultation with the Minister of Public Works and the Minister of Finance. 55