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2018 November 15 08h30 meeting

**REPUBLIC OF SOUTH AFRICA**

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**PROPOSED AMENDMENTS**

**TO**

**FOREIGN SERVICE BILL**

**[B35-2015]**

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*(As proposed by the Portfolio Committee on International Relations and Cooperation  
(National Assembly))*

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**[B35A—2015]**

**PROPOSED AMENDMENTS**

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**FOREIGN SERVICE BILL**

**[B 35—2015]**

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**CLAUSE 1**

1. On page 2, after line 19, to insert the following definition:  
" **'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;"
  
2. On page 2, in line 22, after "means" to omit "the training unit of the Department" and to insert "the Diplomatic Academy as contemplated in section 7".
  
3. On page 2, after line 22, to insert the following definition:  
" **'disposal'** means to sell, exchange or donate immovable assets in accordance with this Act;"
  
4. On page 2, in line 24, after "1994)," to insert "or any other legislation, and includes".

5. On page 2, in line 25, before "members" to omit "including".
6. On page 2, in line 25, after "section" to omit "2" and to substitute "3".<sup>1</sup>
7. On page 2, in line 27, after "section" to omit "2" and to substitute "3".
8. On page 2, after line 31, to insert the following definition:  
" **'GIAMA'** means the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007)".
9. On page 2, in line 34, after "of" to insert "section 84(1)(i) of the Constitution and as also recognised by".
10. On page 3, in line 7, after "Republic" to omit "in accordance with the reservations made by South Africa upon its accession thereto".
11. On page 3, after line 8, to insert the following definition:  
" **'immovable asset'** means land or an immovable structure on land, or rights in such land or immovable structure".
12. On page 3, from line 9 to omit the definition of "locally recruited personnel".
13. On page 3, from line 19, to omit the definition of "prescribed" and to substitute the following definition:

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<sup>1</sup> renumber the reference to section 2 with the new clause number, after the proposed amendments are settled

" **'prescribed'** means prescribed by regulation in terms of clause 13, or by codes or directives made by the Minister in terms of clause 10;"

14. On page 3, in line 26, after "its" to omit "subordinate".
15. On page 3, in line 26, after "regulations," to omit "policies,".

### **NEW CLAUSE**

1. On page 3, after line 26, to insert the following new clause:

#### **"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.

(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."

### **CLAUSE 2**

1. On page 3, in line 35, after "Missions" to omit "of".

2. On page 3, in line 36, after "Missions," to insert " including Heads of Mission".
3. On page 3, in line 45, after "services" to omit " in terms of the Republic's policies".
4. On page 3, in line 46, after "dignitaries" to insert "as prescribed".
5. On page 3, from line 47, after "services", to omit "to South African nationals in the Republic and abroad" and to substitute "in line with the Guidelines for the Provision of Consular Services".
6. On page 3, in line 56, after "the" to omit "foreign service" and to substitute "Foreign Services".

### **CLAUSE 3**

1. On page 3, from line 59, after "Mission", to omit "or in cases where the Minister has granted an exemption based on operational requirements".
2. On page 4, in line 2, after "department" to insert ", or appointed on a contractual basis for a fixed period,".
3. On page 4, from line 4, to omit subclause (2) and to substitute the following:  

"(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—

- (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
- (d) that the approval for the transfer has been granted by the Director-General."

#### **CLAUSE 4**

1. On page 4, after line 13, to add the following subsection:

"(3) All Heads of Mission must—

- (a) be a fit and proper person;
- (b) have knowledge of and experience in international relations;
- (c) have management skills and experience; and
- (d) reflect broadly the diversity of South Africa."

#### **CLAUSE 5**

1. On page 4, in line 15, after "Republic" to insert "by the Director-General".
2. On page 4, in line 19, after "Republic" to insert "by the Director-General".

3. On page 4, in line 22, after "held" to omit " at the Head Office of the Department".
4. On page 4, in line 23, after "concerned" to omit "is stationed" and to insert " was transferred".
5. On page 4, from line 25, to omit subsection (5) and to insert the following subsections:

"(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;
- (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.

(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.”.

**CLAUSE 6**

1. On page 4, after line 31, to insert the following:  
“(a) providing the prescribed mandatory training for members of the Foreign Service as contemplated in section 4(3);”.
2. On page 4, in line 32, to omit “(a)” and to substitute “(b)”.
3. On page 4, in line 32, after “providing” to insert “any”.
4. On page 4, in line 32, after “causing” to insert “such”.
5. On page 4, in line 34, to omit “(b)” and to substitute “(c)”.
6. On page 4, in line 34, after the first “such” to insert “tests and”.
7. On page 4, in line 34, after “examinations” to omit “or tests”.
8. On page 4, in line 34, after the second “such” to insert “tests and”.
9. On page 4, in line 34, after the second “examinations” to omit “or tests”.
10. On page 4, in line 36, to omit “(c)” and to substitute “(d)”.



11. On page 4, in line 40, after “of” to omit “other” and to insert “foreign”.
12. On page 4, in line 41, after the second “the” to insert “foreign”.
13. On page 4, after line 42, to insert the following subsection:

"(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."
14. On page 4, in line 43, to omit "(4)" and to substitute "(5)".

#### **CLAUSE 7**

1. On page 4, after line 50, to insert the following subsection:

"(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 Foreign Service is coordinated."
2. On page 4, in line 51, to omit "(2)" and to substitute "(3)".
3. on page 4, from line 53, after “government” to omit “, subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of

2005).”.

## CLAUSE 8

1. On page 5, in line 1, to omit the heading and to substitute the following heading:

**"Immovable assets".**

2. On page 5, from line 2, to omit clause 8 and to substitute the following clause:

**"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 1990), and any other applicable law.

(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.

(4) A decision to dispose of any immovable asset must—  
(a) be in the interest of the effective management of the Foreign Service;

(b) be to the benefit of the Republic in order to achieve the best functional, financial, economic and social return or benefit from the disposal of the immovable asset; and

(c) take into account the value of the immovable asset."

### **NEW CLAUSES**

1. On page 5, after line 12, to insert the following new clauses:

#### **"Collection of fee**

**10. (1)** Subject to the Public Finance Management Act, 1999 (Act No.1 of 1999), and any other applicable law, the Department is responsible for the collection of fees related to the applications for civics and immigration services rendered abroad by the Foreign Service.

(2) Any amount collected by the Department in terms of subsection (1) must be deposited into the National Revenue Fund of the Republic and accounted for by the Department.

#### **Locally recruited personnel**

**11.** Any person, including South African citizens, who are authorised to work in terms of the laws of a foreign state may be employed as locally recruited personnel at a South African Mission in that foreign state.

#### **Inspection and monitoring of South African Missions**

12. (1) The Department must periodically inspect and monitor the administration and operations of each South African Mission in order to proactively identify and address the areas of risk for the functioning of the South African Mission.

(2) The inspection may include the assessment of—

(a) the performance and compliance of the South African Mission with the applicable laws, policies, codes and prescripts; and

(b) financial and asset management, personnel matters, conflict management, non-performance, protection of whistle-blowers and the general wellbeing of the South African Mission.

(3) The Department must take necessary steps to mitigate and to address the matters which have been identified in subsections (1) and (2).”.

## CLAUSE 9

1. On page 5, in line 13, to omit “Policies, codes or directives” and to insert “Codes and directives”.
2. On page 5, in line 15, after “any” to omit “policy,”.
3. On page 5, in line 16, after “administrative”, to insert “, management”.
4. On page 5, in line 18, after “Act”, to insert “after consultation with any other relevant national department”.
5. On page 5, in line 22, after “a” to omit “policy,”.
6. On page 5, in line 25, after “the” to omit “policies,”.
7. On page 5, from line 27, to omit subsection (5).

**CLAUSE 10**

1. On page 5, in line 33, after “in” to omit “sections 9 and” and to insert “section”.<sup>2</sup>

**CLAUSE 11**

1. On page 5, after line 53, to add the following subsections:

“(2) Any person who, under the false pretense of being a member of the Foreign Service, engages in any activity that a member of the Foreign Service would engage in their ordinary course of duty on behalf of the Republic is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any person who by means of a false certificate or any false representation purports to comply with the requirements of section 4<sup>3</sup> of this Act and is transferred to a South African Mission is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(4) A member of the Foreign Service who, by virtue of being a member of the Foreign Service, uses resources of the Republic for their own financial benefit, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five

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<sup>2</sup> When all proposed amendments are settled, renumber the reference to section 12 with the new clause number.

<sup>3</sup> When all proposed amendments are settled, renumber the reference to section 4 with the new clause number.

years.

(5) Any member of the Foreign Service whose verbal or physical conduct brings the Republic into disrepute is guilty of an offence and liable on conviction of a fine or imprisonment not exceeding two years.”.

2. On page 6, from line 1, to omit subsection (2).

## CLAUSE 12

1. On page 6, after line 10, to insert the following paragraph:

“(b) the prescribed mandatory training for members of the Foreign Service as contemplated in section 4(3);”.

2. On page 6, in line 11, to renumber the existing paragraph (b) as paragraph (c).
3. On page 6, in line 12, to renumber the existing paragraph (c) as paragraph (d).
4. On page 6, in line 14, to renumber the existing paragraph (d) as paragraph (e).
5. On page 6, in line 16, to renumber the existing paragraph (e) as paragraph (f).
6. On page 6, in line 18, to renumber the existing paragraph (f) as paragraph (g).
7. On page 6, in line 19, to omit the second “or”.
8. On page 6, after line 19, to insert the following paragraph:

“(h) the coordination of international relations across the three spheres of

government; or”.

9. On page 6, in line 20, to renumber the existing paragraph (g) as paragraph (i).
10. On page 6, in line 24, after “Service” to omit “need not” and to insert “must”.
11. On page 6, in line 24, after “Gazette,” to omit “but” and to insert “except regulations relating to security matters which”.
12. On page 6, after line 29, to insert the following subsection:  
“(4) Any regulation made under subsection (1)(h) may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding two years.”.

### CLAUSE 13

1. On page 6, in line 31, after “This” to omit “Bill” and to substitute “Act.” .
2. On page 6, in line 31, after “Service” to omit “Bill” and to substitute “Act.”.
3. On page 6, in line 31, to after “Bill,” to omit “2015” and to insert “2018”.

### LONG TITLE

1. On page 2, to omit the long title and to substitute the following long title:  
**"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."**

### **ARRANGEMENT OF SECTIONS**

1. On page 2, after line 5, to insert "2. Application of Act".
2. On page 2, in line 12, to omit "Assets" and to substitute "Immovable assets".
3. On page 2, after line 12, to insert the following:
  - "10. Collection of fees
  11. Locally recruited personnel
  12. Inspection and monitoring of South African Missions
  13. Codes and directives".