PRACTICAL GUIDE AND PROCEDURES
FOR THE CONCLUSION OF
INTERNATIONAL AGREEMENTS
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TERMS COMMONLY USED IN RELATION TO AGREEMENTS
The purpose of this practical guide is to assist you in understanding the constitutional processes and procedures that must be followed to conclude international agreements. The intention is also to provide practical guidance in the steps to be taken in complying with these procedures.

Since the inception of the modern state system, international law (the law between states and between states and international organisations) has been one of the mechanisms with which states attempted to establish and keep international peace and order. In the period prior to the First World War, international law operated in a bilateral context within an international community consisting of a limited number of states. After 1919, and even more so after the Second World War, the advent of multilateral diplomacy intensified international interaction. It was especially the need to create new legal regimes on all aspects of state interaction/interrelations that firmly established international law as a cornerstone of modern diplomacy.

Since the end of the Cold War, international security has also been increasingly defined in terms of human security rather than that of the State and its physical integrity. Contemporary international challenges to governments such as population flows and refugee problems (often resulting from gross human rights violations or conflicts and civil wars within the borders of states), fatal diseases, environmental threats and organised crime, can only be addressed by intergovernmental cooperation and regime creation – processes that need to be embedded in international law. These developments necessitate the involvement of the legal adviser trained in international law in the formulation and conduct of a state’s diplomacy.

The State Law Advisers specialising in international law are situated in the Office of the Chief State Law Adviser (IL) (hereafter referred to as “the Office”), located within the Department of International Relations and Cooperation.

The Office is here to render a service to you and to assist where it can. We trust that this practical guide will serve to inform you about the services this Office provides, and which are at your disposal.
OFFICE OF THE CHIEF STATE LAW ADVISER (IL)

Composition of the Office

The Office consists of two components, namely the State Law Advisers (IL), and the South African Treaty Section and are at the disposal of clients.

The mission and vision of the Office

Vision
To be the principal legal advisers of government and the recognised authority on all matters pertaining to international law in support of South Africa’s foreign policy objectives.

Mission
To provide specialised, professional and efficient legal advice to all spheres of government on matters pertaining to international law and to the department on matters pertaining to domestic law.

The Office provides:
• legal advice and inputs to the South African Government as a whole on international law to ensure that international agreements are not in conflict with international law and South Africa’s international obligations
• legal advice and inputs to the Department of International Relations and Cooperation and all Missions abroad to ensure that within the domestic context, in particular in respect of departmental matters, including policy, the Department of International Relations and Cooperation acts in conformity with South African law
• a Treaty and Information Service, the central record-keeping authority and custodian of all international agreements and country reports of South Africa, and an effective information service specialising in domestic and international law.

Clients of the Office
The Office provides legal advice to:
• national and provincial departments
• the Minister and Deputy Ministers of the Department of International Relations and Cooperation, Head Office of the Department of International Relations and Cooperation
• South African Missions abroad.

The Office provides an information service to:
• foreign Missions
• parastatals
• Parliament
• universities
• research institutions
• civil society, etc.

State Law Advisers

Legal advice is provided:
• in respect of all questions relating to international law on request to our clients
• on questions relating to South African law, particularly private law, including law of contract, labour law and administrative law.

Role of the State Law Advisers (IL)
The legal services offered include the following:

• render written legal opinions in respect of international law to the Government as a whole, and other clients and in respect of South African law to the Department of International Relations and Cooperation and all its Missions
• scrutinize international agreements for consistency with international law and with South Africa’s other international obligations
• participate as members of South African delegations, in the capacity of legal advisers, in international conferences, meetings and conventions locally and abroad
• negotiate, draft or make inputs in the negotiations of international agreements, contracts and
related documents

• approve and certify international agreements and supervise over the registration, publication and safekeeping thereof

• provide legal advice to the Department of International Relations and Cooperation pertaining to South African law in general or on specific actions, with regard to specific questions/problems on the basis of applicable legal principles and legislation

• manage litigation and act as an intermediary between the Department of International Relations and Cooperation and the State Attorney or legal representatives in foreign countries, as the case may be, when the department is involved in litigation

• draft or participate in the drafting of South African legislation, including amendments thereof based on international law or South African law.

**South African Treaty Section**

The South African Treaty Section in the Office of the Chief State Law Adviser (IL) is the official central record-keeping authority of national country reports and is the custodian of all international agreements that South Africa is a party to. The Treaty Section also houses the OCSLA Research Centre that holds a valuable law collection used for research purposes in the field of international and domestic law.

The line-function departments have to deposit all original bilateral agreements and certified copies of multilateral agreements as well as any documentation relating to the status and implementation of international agreements with the Treaty Section for custodial purposes, information retrieval and registration at the United Nations (UN) as required by the Charter of the UN.

**Services offered**

- An information service on:
  - all aspects concerning agreements such as the signature, ratification, accession, and entry into force of all agreements that the Republic of South Africa is a party to.
  - international and domestic law.

• Support and assistance with procedures in South African treaty practice.

• Custodianship duties pertaining to agreements.

• Processes, binds and seals all agreements, Instruments of Ratification/Accession, Instruments of
Full Power before signature.

- Online access to the *South African Treaty Register*.
- Monitoring and reporting on international treaty obligations.

**Types of publications and online resources available in the Research Centre**

Types of publications and online resources: South African Constitutional and labour law reports, international law reports, South African statutes, South African gazettes, textbooks, journals on international and domestic law, treaty collections, Hein Online, International Law in Domestic Courts, Sabinet, Legal Brief.

**PROCEDURES FOR:**

**Requesting legal advice**

Requests for legal advice must be submitted to the relevant Desk at the Department of International Relations and Cooperation first before forwarding it to this Office. The reason is to ensure that Desks are informed of all developments in its area of responsibility as well as to give it the opportunity to comment on the political implications related to the matter on which advice is required.

Once the relevant Desk has had an opportunity to make its inputs, it will submit a request for legal advice to the Office in the prescribed format. The prescribed form for the request for legal advice is the FA184 form, which is available online on the Intranet of the Department of International Relations and Cooperation.

**Concluding international agreements**

The procedure for concluding international agreements (which includes treaties and conventions) is set out in Chapter 5 of the *2006 Manual on Executive Acts of the President of South Africa*. In short, this procedure involves the following:

- an opinion on the agreement’s consistency with domestic law must be obtained from the State Law Advisers from the Department of Justice and Constitutional Development
- an opinion on the agreement’s consistency with international law and South Africa’s international obligations must be obtained from the State Law Advisers (IL) from the Department of International
Relations and Cooperation

• a President’s Minute must be prepared by the responsible government department for signature by both the responsible line-function Cabinet Minister and the President.
• the President’s Minute, a short explanatory memorandum, the two legal opinions together with a copy of the agreement (documents in twofold) must be forwarded to the Office for certification in accordance with the prescribed procedures in a Z137 coversheet, before it can be presented to The Presidency for approval.

Chapter 5 of the Manual on Executive Acts of the President must be read together with section 231 of the Constitution of the Republic of South Africa, 1996. This practical guide clearly explains what each step involves and examples of the relevant documentation are reflected in the annexes thereof.

Note that the term “agreement” includes convention, treaty, protocol, memorandum of understanding, accord, exchange of notes, etc.

Obtaining a President’s Minute

(Presidential approval to sign an agreement is obtained through a document called a “President’s Minute”, which is signed by the President.)

All international agreements must be submitted for legal advice to the State Law Advisers of the Department of Justice and Constitutional Development and to the State Law Advisers (IL) of this Office to obtain the opinions as indicated above.

All international agreements to be signed must be approved by the National Executive. This is regardless of whether or not the agreement falls within the ambit of section 231(2) or 231(3) of the Constitution. This must be done prior to the signature of any agreement. In practice, this is done by obtaining a President’s Minute, to be signed by the Cabinet Minister responsible for the specific subject matter of the agreement and counter-signed by the President.

It should be noted that in terms of the 2006 Manual on Executive Acts of the President of South Africa, a President’s Minute is only valid for a one-year period.

The text of the President’s Minute may vary in accordance with the requirements of multilateral agreements itself. Please see annexes for examples.
Certification of agreements

In order to obtain a President's Minute, the text of the agreement must be certified by the State Law Advisers (IL) of this Office. The following documents need to be submitted in order to obtain the certification of the agreement:

- text of the President’s Minute
- Explanatory Memorandum, indicating the proposed date of signature
- the final text of the agreement
- certificate of authenticity issued by the Minister of the responsible government department in case of multilateral agreements
- a copy of the legal advice of the State Law Advisers of the Department of Justice and Constitutional Development
- a copy of the legal advice of the State Law Advisers (IL) of this Office.

All documents must be in twofold and contained in Folder Z137.

A checklist must be completed and handed in together with the documents in the Z137 folder. Checklists are provided to departments when forwarding the legal opinions.

State Law Advisers (IL) need at least 24 hours to certify agreements.

After certification has been completed, the following documentation must be submitted to The Presidency in folder Z137:

- Text of the President’s Minute signed by the relevant Minister.
- Explanatory Memorandum, indicating the proposed date of signature.
- One copy of the certified text of the agreement.
- A copy of the legal advice of the State Law Advisers of the Department of Justice and Constitutional Development.
- A copy of the legal advice of the State Law Advisers of the Office of the Chief State Law Adviser (IL).
- A Minister’s Certificate is required in cases of multilateral agreements where the original text of the agreement is not available. The line-function Minister is required to sign a certificate confirming that the version presented to The Presidency is a copy of the true version of the agreement.
The procedure which is followed hereafter will depend on whether the agreement falls within the ambit of section 231(2) or 231(3) of the Constitution. The line-function department together with the State Law Advisers (IL) of the Office is responsible for making the determination.

Technical, administrative or executive agreements requiring National Executive approval in terms of section 231(3) of the Constitution

The guidelines to determine whether an agreement falls within the ambit of section 231(3) of the Constitution are as follows:

- agreements that do not require parliamentary approval for ratification or accession
- agreements that have no extra-budgetary financial implications
- agreements that do not have legislative implications.

National Executive approval means that a President’s Minute must be obtained. After signature, these agreements must be tabled in Parliament within a reasonable time, but for information purposes only. Tabling is the responsibility of the line-function department.

SEE FLOWCHART B FOR CORRECT PROCEDURE

Agreements requiring parliamentary approval for ratification or accession in terms of section 231 (2) of the Constitution

As a President’s Minute must be obtained regardless of whether or not the agreement falls within the ambit of section 231(2) or 231(3) of the Constitution, the procedure for obtaining approval of the National Executive, as set out in Flowchart A must be followed.

For agreements falling within the ambit of section 231(2) of the Constitution, an additional procedure must be followed i.e. parliamentary approval for ratification/accession of the agreement must be obtained. Agreements requiring parliamentary approval in terms of section 231 (2) of the Constitution are agreements that:

- require ratification or accession (usually multilateral agreements)
- have financial implications that require an additional budgetary allocation from Parliament
- have legislative or domestic implications (e.g. require new legislation or legislative amendments).
• approval for ratification is required in cases where South Africa has signed the agreement and it provides for such an instrument.

• approval for accession is required when South Africa has not signed an agreement but can become a party thereto through accession.

**Signing of international agreements during a conference**

Ministers are sometimes required to sign international agreements that are negotiated, drafted and adopted during conferences. The usual procedure where a State Law Adviser (IL) certifies the agreement before obtaining a President’s Minute cannot thus apply. In such cases, an Instrument of Full Power and a President’s Minute will be required, even though the final document could not be certified by the State Law Advisers (IL). The President’s Minute and Instrument of Full Power will authorise the Minister to sign an agreement. However, the agreement must still undergo the ratification process.

**Signing of host agreements**

Host agreements usually provide for immunities and privileges. Immunities and privileges can only be conferred by the Minister of International Relations and Cooperation. This is done by publishing a Minister’s Minute signed by the Minister in the *Government Gazette* together with the text of the Agreement or the Schedule providing for immunities and privileges. The Minister’s Minute can only be published after the agreement and the Minister’s Minute have been signed by the Minister. It is the responsibility of the line-function department to publish the Minister’s Minute.

**Instrument of Full Power**

The Vienna Convention on the Law of Treaties, 1969 defines “Full Power” as a document emanating from the competent authority of a state (i.e. Head of State, Head of Government or the Minister of International Relations and Cooperation) designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing consent to be bound by a treaty, or for accomplishing any other act with respect to a treaty.
It is sometimes required of Ministers to sign an agreement that is drafted and adopted at conferences. For this procedure, an Instrument of Full Power (see Annex V) as well as a President’s Minute are required.

An Instrument of Full Power is not a President’s Minute. A President’s Minute must still be obtained.

The President’s Minute contains the approval to sign the agreement in terms of South African constitutional procedures. A “Full Power” is an internationally accepted and required document that conveys that the person to sign the agreement, has indeed been authorised to bind South Africa internationally.

**SEE FLOWCHART C FOR CORRECT PROCEDURE**

**Binding practice in South Africa**

The process of the negotiation and conclusion of agreements and its traditional format developed through the ages. Individual countries customised these procedures to accommodate their constitutional requirements.

Because of the dissimilarity in the constitutional requirements of countries, absolute uniformity of procedures in the conclusion of agreements is not viable, and no uniform rules and regulations determining procedures for the conclusion and binding of agreements exist. Countries developed their own practice over the years, especially with regard to the binding of agreements and, due to the increasing number of agreements concluded, a certain degree of uniformity in procedures for the binding of these documents has developed.

It is accepted state practice that before agreements are signed, they are bound and sealed. By sealing the agreement, parties confirm that the text so bound and sealed is the final version of the agreement before them, and binding on them.

If the seal on the agreement is broken, doubt could be cast on the validity of the text.

On 8 August 2007, Cabinet confirmed the South African Treaty Section in the Office of the Chief State Law Adviser (IL), as the official custodian of all agreements that South Africa is a party to.
The Treaty Section is the depositary of all agreements and has to fulfil all depositary functions. All signed original agreements or any other documentation with regard to the status of agreements have to be deposited with the Treaty Section by line-function departments.

The South African Treaty Section in the Office binds and seals all international agreements on behalf of government.

- The host country where the signature of the agreement takes place usually assists the visiting country with the binding of agreements.
- When an agreement is signed in one language i.e. English, only two copies are bound. One copy with South Africa’s name first on the title page as well as in the text, is printed on South African treaty paper and then bound in the South African treaty cover; the second copy with the other Party’s name first, is printed on South African treaty paper and then bound in the South African treaty cover.
- If the other party so prefers, it may use its own treaty paper and treaty cover.

When agreements are printed in both languages, e.g. English and French, two copies are bound, containing both languages. One copy will feature South Africa’s name first, with the English language followed by the French language. The other copy will feature France’s name first, with the French language first, followed by the English language.

In some cases, it can be arranged that South Africa will print and bind two copies in English using the “alternat” method and the other Party will bind two copies in its official language also using the “alternat” method. Copies can then be exchanged at the signing ceremony so that both Parties have original texts in both the languages with their country’s name first.

**The DIRCO desk and line-function department should clear the preferred binding method with the other Party before the agreement is bound.**

**Prior to binding of agreements**

Once the final text of the agreement has been negotiated by the responsible line-function department:

- an opinion on the agreement’s consistency with domestic law must be obtained from the State Law Advisers of the Department of Justice and Constitutional Development
- an opinion on the agreement’s consistency with international law and South Africa’s international
obligations must be obtained from the State Law Advisers in OCSLA (IL) via the relevant desk

- the responsible line-function department must prepare a President’s Minute for signature by both the responsible line-function Minister and the President (see Annex I)
- the text of the unsigned President’s Minute, a short explanatory memorandum, the two legal opinions and a copy of the agreement (documents in twofold) and contained in a Z137 folder, must be hand-delivered to the OCSLA (IL) for certification in accordance with the prescribed procedures.

Certification means that the OCSLA (IL) affixes the official stamp on the final, agreed text of the agreement, indicating that the agreement is acceptable to be submitted for the President’s approval. After certification, the line-function department takes the Z137 folder containing the certified Agreement, the legal opinions of both departments, the Explanatory Memorandum, and the text of the President’s Minute signed by the responsible Minister, and submits it to The Presidency for necessary approval. In the case of a multilateral agreement, a Minister’s certificate is required as indication that the agreement is a true copy (see Annex III).

Please note that no changes can be made to the text of the agreement once the President’s Minute has been signed and no agreement may be bound or signed without this approval.
Preparation of texts of agreements for binding

All agreements must be bound before signature. The South African Treaty Section is responsible for the binding of all international agreements and Instruments of Ratification/Accession. The Treaty Section also assists departments with the binding of non-binding agreements, such as Declarations of Intent.

The line-function department or the relevant political desk in the Department of International Relations and Cooperation has to provide the Treaty Section with the final electronic text of the agreement for printing and binding.

The text must be in the following format:

**Title page:**
- Only the title of the agreement appears on the first page of the agreement (see Annex VI)
- Font must be Times New Roman, size 18, bold
- The left margin is 4,7 cm
- The right margin is 2 cm

**Text of agreement:**
- Font must be Times New Roman, size 12 and regular
- The left margin is 4,7 cm
- The right margin is 2 cm
- Spacing of articles must be uniform and the numbering of articles must be numerical e.g. Article 1.
**Binding of agreements by Treaty Section**

The Treaty Section will commence with the printing, binding and sealing of the agreement once it has received the final text in electronic format and a copy of the signed President’s Minute.

Electronic copies can be e-mailed to:

favierl@dirco.gov.za
mantyin@dirco.gov.za
meyiwa@dirco.gov.za
vanderwaltr@dirco.gov.za

**AGREEMENTS CAN NOT BE BOUND WITHOUT THE PRESIDENT’S MINUTE**

The Treaty Section will inform the line-function department when the bound agreement is ready for collection.

Line-function departments can also make an appointment with the Treaty Section for binding in cases of urgency. The Treaty Section can be contacted at tel. 012 351 0872/0851/0837/0726 during office hours.

**Once the agreement has been sealed, the seal should not be broken as it can cast doubt on the validity of the text.**

**At the signing ceremony**

On the day of the signing of the agreement, the date and place of signature are written by hand on the text of the agreement, in the space provided for this purpose. This is done neatly in black ink.

During the signing ceremony, the South African agreement is placed in front of the South African representative (the Minister), and the other party’s agreement placed in front of its representative. Each representative signs the text in the space provided for this purpose.

The copies are then exchanged and countersigned.
After the two representatives have signed both the agreements, it is exchanged again. Each country should then have the agreement with its own name appearing first.

**Depositing documents with the South African Treaty Section**

The original copy of every international agreement must, after signature, be deposited with the Treaty Section. In the case of a multilateral agreement where the original copy is not available, a certified copy is required.

Every action that causes a change in the status of an agreement must be reported and the relevant documentation sent to the Treaty Section.

Examples of documentation:

- copies of Instruments of Ratification/ Accession
- Parliament’s approval to ratify or accede to an agreement
- depositary notifications
- entry into force notifications
- amendments
- termination or any other relevant information.

This information is also needed for the registration of the agreements with the United Nations (UN).
Registration of agreements at the United Nations

Article 102 of the Charter of the UN stipulates that every member state has to register its agreements with the Secretariat of the UN after the entry into force thereof. This is the responsibility of the South African Treaty Section.

Tabling of agreements

All international agreements have to be tabled in Parliament. Agreements falling within the ambit of section 231(2) of the Constitution require tabling and approval of the National Assembly and National Council of Provinces. Agreements falling within the ambit of section 231(3) require tabling for information purposes only. Tabling is the responsibility of the line-function department. Guidelines to tabling are available on the Parliamentary website. (See http://www.parliament.gov.za/content/TABLINGGUIDE.pdf)

Instrument of Ratification/Accession

After approval from both Houses of Parliament have been obtained in cases of section 231(2) agreements for ratification or accession, the line-function department compiles an Instrument of Ratification/Accession that is approved by the OCSLA (IL). This Instrument must be signed by the Minister of International Relations and Cooperation after which the relevant desk in DIRCO will deposit the Instrument with the depositary of the agreement.

Binding of Instruments of Ratification/Accession

All Instruments of Ratification or Accession must be properly bound and sealed before signature. The Treaty Section will process, bind and seal it in the prescribed manner. The responsible department must provide the Treaty Section with the electronic version of the Instrument.

Publishing agreements in the Government Gazette

It is recommended, but not constitutionally prescribed, that the texts of agreements, after its ratification and the extent of its incorporation in South African law, are published in the Government Gazette.

Agreements addressing the immunities and privileges of states or international organisations require publishing in the Government Gazette. The full text of the agreement, or relevant sections addressing immunities and privileges, are published together with a note from the Minister of International Relations and Cooperation in terms of the Diplomatic Immunities and Privileges Act, 2001 (Act 37 of 2001), through which the immunities and privileges in terms of the agreement are accorded.
GUIDELINES FOR DRAFTING OF AGREEMENTS

Introduction

The following guidelines are intended to provide general guidance in so far as the most basic aspects of drafting of international agreements are concerned. It also aims at enhancing the uniformity in drafting styles applied in the drafting of international agreements. As all elements of international agreements need to be agreed on by the respective parties, the drafting style will also depend on the agreement between the parties. The guidelines given here are therefore how South Africa would prefer the international agreement to be drafted, although this is not necessarily always attainable due to the fact, as already indicated, that the drafting style may depend on the agreement reached between the parties.

The Parties

Agreements are concluded between governments and not departments. Departments can be designated as the authority for implementing agreements. The South African side to the agreement is always to be cited as “the Government of the Republic of South Africa”.

Terminology

An international agreement refers to an agreement between states or between states and international organisations that creates or intends to create a relationship between them operating under international law.

Various titles are used to define an international agreement. For example:

- **Treaty:** Normally used for more formal agreements dealing with matters of gravity.
- **Convention:** Usually used for multilateral agreements.
- **Agreement:** Less formal agreements with limited scope and fewer parties.
- **Protocol:** Usually an ancillary agreement to the original agreement.
- **Memorandum of Understanding:** A less formal agreement, usually of an administrative or technical nature.
- **Exchange of Notes:** A less formal agreement. Concluded through two or more diplomatic notes between the Parties.

It should be noted that it is not the name of the instrument that makes it a binding or non-binding international agreement, but the contents thereof.
Therefore, an instrument such as a Declaration of Intent, in which the parties only express their intentions, without creating any obligations, would not be an international agreement as contemplated in section 231 of the Constitution.

Structure
Agreements are usually structured in such a way that it includes a preamble, substantive clauses, standard end clauses and signature clauses.

Sequencing of articles
If an article on definitions is required, this should be placed at the very beginning of the agreement just after the Preamble. Definitions should be listed in alphabetical order. If an article on the objective or purpose is included, it should be included after the article on definitions. Substantive clauses follow the definitions where after certain standard articles on Settlement of Disputes, Amendment, Entry into Force and Duration and Termination follow and the text of the agreement is concluded by standard end clauses.

Preamble
An international agreement usually has a preamble that is not intended to constitute substantive provisions or create legal obligations. It sets out the background and context of the agreement and is used as an aid to the interpretation of the agreement.

Two styles of drafting are commonly used. By using the present participle of the verb to begin each clause, e.g. “Recalling” or by using the word “Whereas” to start each preambular paragraph.

Example:
“The Government of the Republic of South Africa, the Government of the People’s Republic of Mozambique and the Government of the Republic of Portugal (hereinafter referred to in the singular as “a Party” and in the plural as “the Parties”);

RECALLING that an Agreement was entered into on 19 September 1969 between the Government of the Republic of South Africa and the Government of the Republic of Portugal concerning the establishment and operation of a hydroelectric scheme, known as the Cahora Bassa Project, for the generation and supply of electricity for use within the territories of South Africa and Mozambique and possibly other countries;
RECOGNISING that conditions have changed considerably since the conclusion of the said Agreement, which consequently no longer reflects the realities of the situation in the region of Southern Africa;

DESIRING THEREFORE to enter into a tripartite Agreement which will take account of the changed conditions prevailing in the region;

HEREBY AGREE AS FOLLOWS:

Example:

“WHEREAS the Government of the Republic of South Africa and the Government of the Netherlands (hereinafter jointly referred to as “the Parties” and in the singular “Party”) are desirous to consolidate and strengthen their friendly ties and reciprocal understanding; and

WHEREAS the Parties are conscious of the desirability of promoting to the greatest possible extent the mutual knowledge, experience and understanding of their respective human and developmental needs in the Social Welfare field, by means of friendly cooperation between them;

NOW THEREFORE the Parties undertake as follows: …”

Headings and numbering

It is always helpful if headings/subtitles are provided for each article.

As far as the numbering is concerned, substantive provisions are divided into articles, sub-articles, paragraphs and sub-paragraphs. Articles are numbered either in Arabic or capital Roman numbers. Sub-articles are numbered in Arabic numbers, paragraphs in alphabetic letters and sub-paragraphs in small Roman numbers. Capital letters are used and the article and subtitle are centered.
ARTICLE 4
or
ARTICLE IV

COMPOSITION OF THE COMMISSION

Each Party shall appoint five representatives to serve on the Commission.

The Commission shall:

a. Consider all allegations of infringements of the provisions of this Agreement;
b. Advise the parties of its conclusions;
c. Make recommendations to the Parties regarding:
   i. settlement of disputes;
   ii. effective means of enhancing the application of this Agreement; and
   iii. the possibilities of extended cooperation between the Parties."

Standard articles

Standard wording can be used for standard articles such as settlement of disputes, amendments, entry into force, etc.:

Examples:

• SETTLEMENT OF DISPUTES

“Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiation between the Parties to the dispute.”

• AMENDMENT

“This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.”
It is a common error to provide for the entry into force of amendments. The Exchange of Notes through which the amendment will be effected, stipulate the date of entry into force (usually on the date of the last notification). An entry into force provision in this clause therefore is not only unnecessary but may also lead to confusion.

**• ENTRY INTO FORCE**

Where the agreement falls within the ambit of section 231(3) of the Constitution of the Republic of South Africa, 1996:

“This Agreement shall enter into force on the date of signature thereof by the Parties.”

Where the agreement falls within the ambit of section 231(2) of the Constitution of the Republic of South Africa, 1996:

“The Parties shall notify each other in writing when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the date of the last written notification.”

It should be noted that it frequently happens that the other party will require an entry into force clause that requires notification of the completion of the constitutional procedures. This can happen even if South Africa considers the agreement to be an agreement within the ambit of section 231(3) of the Constitution. This is acceptable. However, the line-function department should note that the election of this wording would require an additional administrative step, namely that a Diplomatic Note must be sent. In these cases, the responsible line-function department should request that the relevant desk or the Treaty Section in DIRCO send such a Note. A copy of the Note must be submitted to the Treaty Section.

Where ratification or accession is to be expressively provided for, the correct format must be used in consultation with a State Law Adviser (IL).

**• DURATION AND TERMINATION**

“This Agreement shall remain in force for a period of three years, after which it shall be renewed automatically unless terminated by either Party giving six months written notice in advance through the diplomatic channel of its intention to terminate this Agreement.
A Party terminating this Agreement shall remain bound to contractual relationships to which it is a party and to its obligations there under, until they are fulfilled.”

OR

“This Agreement shall enter into force on the date of signature and remain in force for an indefinite period unless terminated by either Party giving six months written notice in advance through the diplomatic channel of its intention to terminate the Agreement.

Termination of this Agreement shall not affect any programmes undertaken prior to the termination of this Agreement, unless otherwise agreed upon by the Parties.”

OR

“The termination of this Agreement shall not affect the completion of any unfulfilled obligation at the moment of its termination, unless otherwise agreed by the Parties.”

• END AND SIGNATURE CLAUSES

“IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in duplicate in the English and Hindi languages, both texts being equally authentic. In case of diversion of interpretation, the English text shall prevail.

DONE AT…………………………………ON…………………DAY OF……………..IN THE YEAR 201….

FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT
OF ……………………….”
USEFUL INFORMATION

Contact details

Office of the Chief State Law Adviser (IL)

Tel: 012 351 0857
Fax: 012 329 1721
E-mail: cronjel@dirco.gov.za

South African Treaty Section

Tel: 012 351 0872/0726/0851/0837
Fax: 012 329 1653
E-mail: vanderwaltr@dirco.gov.za
ANNEX I

Example of a Z137 Folder

Department.................................................................
Delivery address........................................................

The Director-General
Office of the President

In accordance with the provisions of section 84 of the Constitution of the Republic of South Africa, 1996, the undermentioned Executive Act is enclosed for submission to the President for consideration and signature.

<table>
<thead>
<tr>
<th>No.</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Director-General

Date......................................................
Enquiries...........................................
Tel....................................................

Office use

A3 size
PRESIDENT’S MINUTE NO.

In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that the attached agreement on………………between the Republic of South Africa and ……………. (country) be entered into, and I hereby authorise the Minister of …………… to sign the agreement.

Given under my Hand and the Seal of the Republic of South Africa at .................. (place) on this............. day of ................. (month) Two Thousand and Thirteen.

PRESIDENT

MINISTER OF THE CABINET
PRESIDENT’S MINUTE NO.

In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that the attached agreement on………………between the Republic of South Africa and……………. (country) be entered into, and I hereby undertake to sign this (full text of agreement) on behalf of the Republic of South Africa.

Given under my Hand and the Seal of the Republic of South Africa at ................. (place) on this................ day of ................ (month) Two Thousand and Thirteen.

PRESIDENT

MINISTER OF THE CABINET
PRESIDENT'S MINUTE NO.

In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that (title or reference to Agreement that will be adopted during a conference) be signed, subject to ratification, and I hereby authorise the Minister of ............... to sign the aforesaid Agreement subject to ratification.

Given under my Hand and the Seal of the Republic of South Africa at .................. (place) on this ............... day of .................. (month) Two Thousand and Thirteen.

PRESIDENT

MINISTER OF THE CABINET
CERTIFICATE BY THE MINISTER OF ..............................................................................................................

I, ............................................................................, in my capacity as Minister of ..............................................
.................................................................................................................... of the Republic of South Africa, hereby certify that
the attached document is a true version of the Agreement between the Government of the
Republic of South Africa and the ....................................................................................................................
......... and forms part of President’s Minute No ............... of ............................... 

Minister:

Date:___________________________
ANNEX IV
Example of a Minister’s Note

(Ministerial Letterhead)

In accordance with the powers vested in me by section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act 37 of 2001), I hereby recognise the United Nations Office for Project Services for the purposes of granting the immunities and privileges as provided for in the Agreement between the United Nations Office for Project Services (UNOPS) and the Government of the Republic of South Africa as set out in the Notice.

____________________________

Maite Nkoana-Mashabane
Minister of International Relations and Cooperation
Date:___________________________
ANNEX V
Example of an Instrument of Full Power

INSTRUMENT OF FULL POWER

WHEREAS the Republic of South Africa and the Federal Republic of Germany have negotiated the Agreement for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital Between South Africa and Germany (“the Agreement”);

AND WHEREAS the Parties to the Agreement intend to sign the said Agreement;

AND WHEREAS it is expedient that a fit and proper person be invested with Full Powers to sign, subject to ratification, the Agreement on behalf of the Government of the Republic of South Africa;

NOW THEREFORE I, JACOB GEDLEYIHLEKISA ZUMA, President of the Republic of South Africa, do hereby declare that I have authorised and appointed, and do by this Instrument authorise and appoint, the Minister of ………… with Full Powers to sign, subject to ratification, the Agreement on behalf of the Government of the Republic of South Africa.

IN WITNESS WHEREOF I have signed this Instrument at Pretoria on this …………
…………………………day of……………………………………Two Thousand and Thirteen.

____________________________________
JACOB GEDLEYIHLEKISA ZUMA
PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA
AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM
ON AIR SERVICES
ANNEX VII
Example of an explanatory memorandum


The Government of the Republic of South Africa, through its National Department of Health, and the Government of the Islamic Republic of Iran, through its Ministry of Health, Treatment and Medical Training, have agreed to sign the attached Exchange of Notes amending the Protocol to the Agreement between the Government of the Republic of South Africa and the Government of the Islamic Republic of Iran on cooperation in the field of health regarding employment of Iranian health professionals in South Africa. The purpose of the Exchange of Notes is to provide a legal framework for the recruitment of Iranian medical professionals in order to address the shortage of health professionals in the public health sector in South Africa.

The Exchange of Notes is envisaged to be signed during October 2009 by the Minister of Health of South Africa.
ANNEX VIII
Example of a checklist

CHECKLIST
FOR THE CERTIFICATION AND APPROVAL OF AGREEMENTS¹

TITLE OF AGREEMENT: ____________________________________

RESPONSIBLE DEPARTMENT: ______________________________

THE TEXT

1. Have all the changes from the State Law Advisers at DOJ&CD been effected?
   Yes No

2. If not, provide an explanation.
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

3. Have all the changes from the State Law Advisers (IL) at DIRCO been effected?
   Yes No

4. If not, provide an explanation.
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

¹ This checklist must be completed by the responsible line-function department and returned to OCLSA (IL) with the documents required for certification.
5. Has the other Party been informed of the changes and agreed thereto?  
   [ ] Yes  [ ] No

6. Is this the finally agreed text?  
   [ ] Yes  [ ] No

CERTIFICATION DOCUMENTS

7. Does the Z137 coversheet reflect the title of the Agreement exactly as it appears on the text?  
   [ ] Yes  [ ] No

8. Does the President’s Minute reflect the title of the Agreement exactly as it appears on the text?  
   [ ] Yes  [ ] No

9. Has the Agreement been proof-read and all typographical and spacing issues finalised i.e. text must be justified, title page with size 16 Times New Roman Font, Agreement with size 12 Times New Roman Font, two spaces between Articles, one space between sub-Articles.  
   [ ] Yes  [ ] No

SIGNATURE AND BINDING

10. What is the intended date and venue for signature of the Agreement?

   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
11. Has it been confirmed with the Minister authorised to sign the Agreement that he/she will be present at the signing ceremony?

   Yes  No

12. If the Agreement is to be signed also in another language, the English and other language text will be bound together in one cover for South Africa. Has this been confirmed with the other Party?

   Yes  No

13. Will the other Party be providing their own bound text in English and in the other language?

   Yes  No

14. If no, what alternative arrangements are being made?

   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

15. What arrangements are being made to return the Agreement to the Treaty Section at DIRCO after signature?

   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

16. Contact details of person responsible for processing Agreement:
   Name: _________________________________________________________
   Title: _________________________________________________________
   Telephone number: ________________  Cell phone: ________________
   Fax: __________________________
17. Contact details of Chief Director of the division in the department responsible for processing the Agreement:
Name: ______________________________________________________
Title: ______________________________________________________
Telephone number: ___________________ Cell phone: _____________
Fax: _____________________________

For the line-function department       For the Office of the Chief State Law Adviser (IL)

Signed: ___________________________  Signed: ___________________________
Name: _____________________________  Name: _____________________________
Date: _______________________________  Date: _______________________________
FLOWCHART A

Procedure for obtaining President’s Approval (a President’s Minute) for all international agreements

STATE LAW ADVISERS
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT (DOJ&CD)

Examine the Agreement for consistency with domestic law

STATE LAW ADVISERS (INTERNATIONAL LAW)
DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION (DIRCO)

Examine the Agreement for consistency with international law and South Africa’s international obligations

PRESIDENT’S MINUTE PREPARED FOR SIGNATURE, FIRST BY THE RELEVANT CABINET MINISTER AND THEN BY THE PRESIDENT

Agreement falls within the ambit of section 231(3)
See Flowchart B

Agreement falls within the ambit of section 231(2)
See Flowchart C

Procedure for obtaining legal advice from the State Law Advisers (International Law)

- Approach the relevant political Desk at the Department of International Relations and Cooperation (DIRCO)
- Legal opinion from the DOJ&CD must be included in request
- Political Desk to complete a request for legal advice form (Found on Intranet, Legal Office, “Request Legal Advice”)

NB The State Law Advisers (IL) will only work through the relevant political desks at DIRCO

Documents required (prepared by line-function department)

- Z137 Coversheet
- 2 copies of Explanatory Memorandum (+- 10 lines)
- 2 copies of Agreement certified by State Law Advisers (International Law)
- 2 copies of President’s Minute (signed by relevant Cabinet Minister and counter-signed by President)
- Certificate of authenticity issued by the Minister in case of multilateral agreements
FLOWCHART B

Procedure for concluding an agreement that falls within the ambit of section 231(3) of the Constitution

**FLOWCHART B**

**Preparation for Signature and Binding**

**Obtain a President’s Minute (See Flowchart A)**

Procedures for the line-function department to follow:

- Send electronic copy of agreement to Treaty Section in DIRCO together with a copy of the signed President’s Minute
- DIRCO Treaty Section: 012 351 0872 vanderwaltr@dirco.gov.za

**Agreement Signed**

- Agreement enters into force if it provides that it will enter into force upon signature thereof
- If agreement requires a notification of completion of constitutional procedures, prepare a Diplomatic Note stating that South African constitutional procedures have been complied with

**Deposit Agreement with the Treaty Section**

- Documentation deposited
  - Original signed agreement, or in the case of a multilateral treaty, a certified copy thereof
  - All documentation affecting status of agreement.

**Agreement Tabled in Parliament within a Reasonable Time in Terms of Section 231(3) of the Constitution**

- Parliamentary officer of the relevant line-function department’s responsibility. Most parliamentary officers require a short explanatory memorandum on the agreement.

**Inform Treaty Section in DIRCO of All Changes in the Status of Agreement**

- This includes entry into force, amendment and termination.
FLOWCHART C

Procedure for obtaining Parliamentary approval in terms of section 231(2) of the Constitution

OBTAIN A PRESIDENT’S MINUTE TO SIGN THE AGREEMENT
(SEE FLOWCHART A)

RELEVANT CABINET PORTFOLIO COMMITTEE

PARLIAMENT: NATIONAL ASSEMBLY AND NATIONAL COUNCIL OF PROVINCES

DEPOSIT INSTRUMENT OF RATIFICATION/ACCESSION WITH DEPOSITARY

DEPOSIT AGREEMENT WITH THE TREATY SECTION AT DIRCO

INFORM TREATY SECTION AT DIRCO OF ALL CHANGES IN THE STATUS OF THE AGREEMENT
This includes entry into force, amendment and termination.

Cabinet Memorandum must be prepared by line-function department
The various Cabinet Committees may have their own requirements for the format of Cabinet Memoranda. The usual headings required are: Subject; Purpose; Summary; Discussion; Organisational and Personnel Implications; Financial Implications; Communication Implications; Constitutional Implications; Other Departments/Bodies Consulted; Recommendations.

Explanatory Memorandum must be prepared by line-function department
• Set out history, objectives and implications of agreement;
• Include legal opinions from the State Law Advisers of both the departments (DOJ&CD and DIRCO);
• State whether the agreement contains any self-executing provisions in terms of section 231(4);
• Projected financial and other costs of the agreement;
• Must contain all other information needed to take an informed decision.

Line-function department must prepare the Instrument of Ratification/Accession (DIRCO will assist in this regard);
• The Minister of International Relations and Cooperation must sign the Instrument of Ratification/Accession;
• DIRCO will forward the Instrument of Ratification/Accession to the relevant depositary through the diplomatic channels.

Documentation deposited
• Original signed agreement, or in the case of a multilateral agreement, a certified copy thereof;
• President’s Minute (if applicable) and Parliamentary authorisation;
• Copy of signed Instrument of Ratification/Accession.
### TERMS COMMONLY USED IN RELATION TO AGREEMENTS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance/Approval</td>
<td>The act whereby a State indicates its consent to become a party to a treaty. Acceptance/Approval is specifically provided for in a treaty and can take the form of a letter or a standard format prescribed by the treaty itself.</td>
</tr>
<tr>
<td>Accession</td>
<td>The act whereby a State that has not signed a treaty expresses its consent to become a party by depositing an Instrument of Accession. Accession has the same legal effect as ratification.</td>
</tr>
<tr>
<td>Adoption</td>
<td>The formal act by which negotiating parties establish the form and content of a treaty. The treaty is adopted through a specific act expressing the will of the States by voting on the text, initialling, signing, etc.</td>
</tr>
<tr>
<td>Consent to be bound</td>
<td>A State expresses its consent to be bound by a treaty under international law by some formal act, i.e. definitive signature, ratification, acceptance, approval or accession.</td>
</tr>
<tr>
<td>Credentials</td>
<td>Credentials is a document issued by a State authorising a delegate or delegation of that State to attend a conference, including where necessary, for the purposes of negotiating and adopting the text of a treaty.</td>
</tr>
<tr>
<td>Depositary</td>
<td>The depositary of a treaty is the custodian of the treaty and is entrusted with the functions specified in article 77 of the Vienna Convention 1969.</td>
</tr>
<tr>
<td>Entry into force</td>
<td>The moment in time when a treaty becomes legally binding on the parties to a treaty.</td>
</tr>
</tbody>
</table>
Exchange of Notes

May embody a bilateral treaty commitment. The signature of both parties appear on two separate Notes. The agreement lies in the exchange of these Notes, each of the parties retaining one Note signed by the representative of the other party. In a bilateral treaty, the parties may also exchange Notes to indicate that they have completed all domestic procedures necessary to implement the treaty.

Ratification

The act undertaken on the international plane, whereby a State that has signed a treaty confirms its consent to be bound by the treaty. This is done by depositing an Instrument of Ratification with the depositary of the treaty. This should not be confused with the act of ratification at a national level which a State may be required to undertake, in accordance with its own constitutional provisions.
PRACTICAL GUIDE AND PROCEDURES FOR THE CONCLUSION OF INTERNATIONAL AGREEMENTS

Private Bag X152, PRETORIA, 0001, Republic of South Africa
460 Soutpansberg Road, Rietondale, Pretoria, 0084, Republic of South Africa
Tel: +27 12 351 1000, www.dirco.gov.za

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