GUIDELINES AND PROCEDURES FOR CONCLUSION OF INTERNATIONAL ARRANGEMENTS, TWINNING AGREEMENTS AND MEMORANDA OF COOPERATION BY PROVINCIAL AND LOCAL GOVERNMENT

Introduction

Engagements in the international sphere with other provincial and local governments can be an important developmental and strategic instrument for Provincial and Local governments in South Africa and should be aimed at supporting the successful implementation of their strategic priorities. This engagements can be in the form of the conclusion of Arrangements, Twinning Agreements, Memoranda and other documents (collectively referred to as “Arrangements”) to be concluded between them.

These Arrangements must be in support of the priorities that have been identified by Provincial and Local government and with the strategic objectives of South Africa's foreign policy.

The conclusion of Arrangements must be done in collaboration and coordination with the National, and as applicable, the Provincial governments, that should facilitate and co-ordinate the establishment of appropriate relationships between South African provinces and municipalities and their international partners/counterparts. Proper coordination, including with the Department of International Relations and Cooperation would avoid duplication and inefficient use of resources.

Competency to conclude International Agreements

In terms of the Constitution of the Republic of South Africa, 1996, the conclusion of international agreements is a national competency and not a shared competency with the second and third spheres of government. In terms of section 231 of the Constitution, the negotiating and signing of international agreements is the responsibility of the National Executive. Provinces and Local governments do not have the competency to conclude international agreements in their own right. An international agreement, whatever its designation, is any written agreement between South Africa and another state or international organization that is governed by international law.
Provinces and Local governments do conclude international arrangements, but these are not binding in terms of international law.

Provincial and Local governments conclude Arrangements, with their counterparts in other states and not with foreign governments/states themselves.

The Arrangements can only cover those areas that Provinces and Local governments have competency to deal with as stipulated in schedules 4 and 5 of the Constitution.

**Types of Arrangements**

- Arrangements come in various forms, e.g.:
  - Twinning Agreements are informal agreements, indicating mutual intentions and goodwill, concluded between cities;
  - Twinning Agreements are concluded by Local government and follow a standard format;
  - Arrangements on specific matters/issues;
  - Memoranda of Understanding on Cooperation.

- These Arrangements should not be confused with the contracts that Provincial and Local governments conclude with international stakeholders/companies, etc. Such contracts will be governed by the laws of one of the contracting parties and have binding provisions and will be enforceable in terms of the applicable laws. These contracts are not regarded as Arrangements. The prescribed procedures for concluding contracts must be adhered to in this case.

**Procedures to follow for signing of arrangements**

- Provincial and Local governments should adhere to the procedures set out below.

- Approval procedures established in the Provinces and Local governments for the conclusion of Arrangements must be adhered to.

- Provincial and Local governments should approach Branch State Protocol at the Department of International Relations and Cooperation through the Directorate: Intergovernmental and Provincial Protocol.

- Branch State Protocol at the Department of International Relations and Cooperation through the Directorate Intergovernmental and Provincial Protocol, is tasked amongst others, with the responsibility of liaising with and assisting in coordinating international activities of the second and third spheres of government.

- Provide Directorate Intergovernmental and Provincial Protocol in DIRCO with the draft text of the Arrangement
- The Directorate will obtain a legal opinion from the Office of the Chief State Law Adviser (IL);
- OCSLA (IL) will scrutinise and amend as may be required, the draft text of the Arrangement and provide comments under cover of a legal opinion.

- Provincial and Local Government must discuss the suggested amendments with counterparts and prepare for signature.

**DEPOSITING OF SIGNED TEXT OF THE ARRANGEMENTS**

- After the signature of Arrangements, the texts of the signed Arrangements must be deposited with the South African Treaty Section in the Office of the Chief State Law Adviser (IL) in DIRCO who is the custodian of all international agreements concluded by the Government and by the Provincial and Local governments. These Arrangements will be recorded in the control database and stored for safekeeping.