



DIRECTIVE FOR THE CONCLUSION OF INTERNATIONAL AGREEMENTS 2019



international relations
& cooperation

Department:
International Relations and Cooperation
REPUBLIC OF SOUTH AFRICA



CONTENTS	PAGE
FOREWORD	4
1. OFFICE OF THE CHIEF STATE LAW ADVISER (IL) (OCSLA (IL))	5
1.1 Composition of OCSLA (IL)	5
1.2 The mission and vision of OCSLA (IL)	5
1.3 Clients of OCSLA (IL)	5
1.4 Services rendered by OCSLA (IL)	6
1.4.1 State Law Advisers (IL)	6
1.4.2 South African Treaty Section	6
1.4.3 OCSLA (IL) Research Centre	7
2. PROCEDURES WHEN CONCLUDING INTERNATIONAL AGREEMENTS	7
2.1 Applicable constitutional provisions	7
2.2 Procedure for concluding international agreements	8
2.3 Requesting legal advice from the Office of the Chief State Law Adviser in the Department of Justice and Constitutional Development (DOJ&CD)	9
2.4 Requesting legal advice from the Office of the Chief State Law Adviser (IL) in the Department of International Relations and Cooperation (DIRCO)	10
2.5 Certification of international agreements	10
2.6 Obtaining a President's Minute	11
2.6.1 President's Minute after the signature of an international agreement	12
2.7 Practice for binding of international agreements in South Africa	12
2.7.1 Prior to the binding of international agreements	14
2.7.2 Preparation of texts of international agreements for binding	14
2.7.3 Binding of international agreements by the Treaty Section	15
2.8 At the signing ceremony	15
2.8.1 Initialing and signing of international agreements	16
2.9 Depositing international agreements with the Treaty Section	16

2.10	Instruments of Ratification/Accession	17
2.10.1	Binding of Instruments of Ratification/Accession	17
2.11	Tabling of international agreements	18
2.12	Registration of international agreements at the United Nations	18
3.	INTERNATIONAL AGREEMENTS AND THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996	18
3.1	Technical, administrative or executive international agreements requiring National Executive approval in terms of Section 231(3) of the Constitution	18
3.2	International agreements requiring parliamentary approval before it can bind the Republic in terms of Section 231(2) of the Constitution	19
3.3	Withdrawal from and termination of international agreements	20
4.	TYPES OF AGREEMENTS	20
4.1	Host agreements	21
4.1.1	Conferring immunities and privileges	21
4.2	International agreements signed during a conference	21
4.2.1	Instruments of Full Power	22
4.3	Exchange of Notes	22
4.4	Non-binding agreements	23
4.5	Twinning arrangements concluded by other spheres of government	24
5.	INTERNATIONAL TREATY OBLIGATIONS	25
5.1	Responsibilities in respect of submitting country reports	25
6.	PUBLISHING OF INTERNATIONAL AGREEMENTS IN THE GOVERNMENT GAZETTE	26

7.	GUIDELINES FOR DRAFTING OF INTERNATIONAL AGREEMENTS	26
8.	CONTACT DETAILS	34
9.	ANNEXES	35
	Annex I Example of Z137 folder	35
	Annex II Explanatory Memorandum	36
	Annex III Title page of international agreement	37
	Annex IV President's Minutes	38
	Annex V Minister's Certificate	41
	Annex VI Checklist	42
	Annex VII Minister's Note	46
	Annex VIII Instrument of Full Power	47
	Annex IX Instrument of Ratification	48
	Annex X Instrument of Accession	49
	Annex XI Exchange of Notes	50
10.	FLOWCHARTS	59
	A Procedure for obtaining a President's Minute for all international agreements once text has been finalised	59
	B Procedure for concluding an international agreement that falls within the ambit of Section 231(3) of the Constitution	60
	C Procedure for obtaining parliamentary approval in terms of Section 231(2) of the Constitution	61
11.	TERMS COMMONLY USED IN RELATION TO INTERNATIONAL AGREEMENTS	62

FOREWORD

The purpose of this directive is to assist you, our client, in understanding the constitutional requirements for the conclusion of international agreements and the processes and procedures that must be followed in order to conclude international agreements. The intention is also to provide practical guidance on 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 the end of the War and the establishment of the League of Nations in 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 international organisations and new legal regimes regulating aspects of inter-state cooperation that firmly established international law as a cornerstone of modern diplomacy.

Since the end of the Cold War, international security has 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 mass migrations, refugee problems, human trafficking (often resulting from gross human rights violations perpetrated during conflicts and civil wars within the borders of states), fatal diseases, environmental threats and organised crime, can only be effectively addressed by means of intergovernmental cooperation and regime creation. These are legal processes that need to be embedded in international law, often based on treaties. This necessitates the involvement of a 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 (International Law) (hereinafter referred to as OCSLA (IL)), located within the Department of International Relations and Cooperation (DIRCO) and is available to render a service to you and assist where it can. This directive will serve to inform you about the services OCSLA (IL) provides, which are at your disposal.

1. OFFICE OF THE CHIEF STATE LAW ADVISER (IL) (OCSLA (IL))

1.1 Composition of OCSLA (IL)

The OCSLA (IL) consists of three closely knit components, namely the State Law Advisers (IL), the South African Treaty Section and the Research Centre and are at the disposal of clients.

1.2 The mission and vision of OCSLA (IL)

Mission

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

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.

1.3 Clients of OCSLA (IL)

The OCSLA (IL) provides legal advice to:

- the Minister and Deputy Ministers of DIRCO
- DIRCO
- South African missions abroad
- national departments
- provincial and local governments.

The OCSLA (IL) provides an information service to:

- foreign missions
- parastatals
- Parliament
- universities
- research institutions
- civil society, etc.

1.4 Services rendered by OCSLA (IL)

1.4.1 State Law Advisers (IL)

The legal services rendered include the following:

- 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.
- scrutinise 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.
- legal advice and inputs to DIRCO and to all missions abroad to ensure that within the domestic context, in particular in respect of departmental matters, including policy, DIRCO acts in conformity with South African law.
- manage litigation and act as an intermediary between DIRCO 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 and/or South African law.
- advise government in the formulation of any policy, or projects that may require consideration of international law.

1.4.2 South African Treaty Section

- the South African Treaty Section (hereinafter referred to as Treaty Section) acts as the central record-keeping authority and custodian of all international agreements that South Africa is a party to.
- the Treaty Section is also the central record-keeping authority for the country reports that the country has to submit in terms of its obligations in certain multilateral agreements.
- on 8 August 2007, Cabinet decided that the Treaty Section in the OCSLA (IL) is the official custodian of all international agreements that South Africa is a party to.

The treaty services rendered include the following:

- an information service on all aspects concerning international agreements that the Republic of South Africa is a party to, such as the signature, ratification, accession, and entry into force.
- support and assistance with procedures in South African treaty practice.
- custodianship duties pertaining to international agreements.
- processes, binds and seal all international 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.

1.4.3 OCSLA (IL) Research Centre

The OCSLA (IL) Research Centre renders a specialised research and information service on international law and/or South African law.

- the Research Centre is open to all users of international law and/or South African law for research purposes, and
- users may personally visit the Research Centre during the following hours:
Mondays to Fridays from 8:00 to 12:45 and 13:30 to 16:30.

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 South African law, treaty collections, Hein Online, International Law in Domestic Courts, Sabinet online and Legal Brief.

2. PROCEDURES WHEN CONCLUDING INTERNATIONAL AGREEMENTS

2.1 Applicable constitutional provisions

The Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution) provides for the signing of international agreements.

Section 231 of the Constitution provides as follows:

- “ (1) the negotiating and signing of all international agreements is the responsibility of the national executive.
- (2) an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an international agreement referred to in subsection (3).
- (3) an international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.
- (4) any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an international agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.
- (5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.”

The signing of international agreements must be approved by the National Executive. This is regardless of whether or not the international 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 international agreement. In practice, this is done by obtaining a President’s Minute, to be counter-signed by the Cabinet Minister responsible for the specific subject matter of the international agreement and signed by the President.

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

2.2 Procedure for concluding international agreements

The procedure for concluding international agreements is set out in Chapter 5 of the 2007 *Manual on Executive Acts of the President of the Republic of South Africa*.

In short, this procedure involves the following:

- an opinion on the international agreement's consistency with domestic law must be obtained from the State Law Advisers of the Department of Justice and Constitutional Development (DOJ&CD).
- an opinion on the international agreement's consistency with international law and South Africa's international obligations must be obtained from the State Law Advisers (IL) of DIRCO.
- a President's Minute must be prepared by the responsible line-function 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 international agreement (documents in twofold) must be hand-delivered to OCSLA (IL) for certification in accordance with the prescribed procedures in a Z137 folder, before it can be presented to The Presidency for approval. Electronic copies of the documents must also be e-mailed to cronjel@dirco.gov.za.
- the President's Minute must only be signed by the responsible Minister after the international agreement has been certified by OCSLA (IL).

Chapter 5 of the 2007 *Manual on Executive Acts of the President of the Republic of South Africa* and the *Constitutional Handbook for Members of the Executive, 1999* must be read together with Section 231 of the Constitution.

These manuals explain what each step involves and examples of the relevant documentation are reflected in the annexes thereof.

2.3 Requesting legal advice from the Office of the Chief State Law Adviser in the Department of Justice and Constitutional Development (DOJ&CD)

Before an international agreement can be concluded legal advice must be obtained from the DOJ&CD. The legal advice will confirm whether the international agreement is consistent with the domestic law of South Africa. It is the first step to follow before legal advice is sought from OCSLA (IL).

2.4 Requesting legal advice from the Office of the Chief State Law Adviser (IL) OCSLA (IL) in the Department of International Relations and Cooperation

Requests for legal advice must be obtained from the State Law Advisers (IL) in DIRCO after legal advice has been obtained from DOJ&CD. This is done by requesting the relevant desk in DIRCO to approach OCSLA (IL) for a legal opinion. The reason is to ensure that the desks are informed of all developments in their area of responsibility as well as to give them the opportunity to comment on the political implications, if any, 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 OCSLA (IL) in the prescribed format. The prescribed form for the request for legal advice is the FA184 form, which is available online on DIRCO's Intranet.

Based on the legal advice provided, it will be necessary to negotiate with the other party the proposed changes made to the text of the international agreement as agreed upon. OCSLA (IL) can be approached for assistance in this regard.

2.5 Certification of international agreements

Certification means that the OCSLA (IL) affixes the official stamp of the Republic of South Africa on the final, agreed text of the international agreement indicating that the international agreement is acceptable to be submitted for the President's approval.

Once the parties have finally agreed on the text of the international agreement, approval of the National Executive must be obtained. This is done by way of a President's Minute. In order to obtain a President's Minute, the text of the international agreement must be certified by OCSLA (IL).

The following documents need to be submitted in order to obtain certification of the international agreement:

- text of the President's Minute (**before** signature by the responsible Minister).
- explanatory memorandum, indicating the proposed date of signature.
- the final text of the international agreement.

- Certificate of Authenticity issued by the Minister of the responsible line-function department in the case of multilateral agreements.
- a copy of the legal advice of the State Law Advisers of DOJ&CD.
- a copy of the legal advice of the State Law Advisers (IL) of DIRCO.

All documents must be in twofold and contained in a Z137 folder. The text on the Z137 folder should be the same as the text in the President’s Minute. Checklists are provided to line-function departments together with the legal opinions. These checklists must be completed and handed in together with the documents in the Z137 folder.

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

2.6 Obtaining a President’s Minute

President’s approval to sign an international agreement is obtained through a document called a “President’s Minute” that is signed by the President.

After certification has been completed by OCSLA (IL), the responsible line-function official must submit all the certified documents to the responsible Minister to counter-sign the President’s Minute. After counter-signature by the Minister the Z137 folder with the following documentation needs to be submitted to The Presidency in twofold:

- text of the President’s Minute signed by the relevant Minister.
- explanatory memorandum, indicating the proposed date of signature.
- the certified text of the international agreement.
- the legal advice of the State Law Advisers of the DOJ&CD.
- the legal advice of the State Law Advisers (IL) of OCSLA (IL).
- a Minister’s Certificate is required in cases of multilateral agreements where the original text of the multilateral agreement is not available. The line-function Minister is required to sign the Certificate confirming that the version presented to The Presidency is a true copy of the original multilateral agreement.

It should be noted that in terms of the 2007 *Manual on Executive Acts of the President of South Africa* a President's Minute is only valid for one year.

The text of the President's Minute may vary in accordance with the requirements of multilateral agreements itself.

Once a Minister has been authorised in a President's Minute to sign an international agreement, only that Minister may sign the international agreement. Another Minister may not sign on his/her behalf. Only Ministers are allowed to sign international agreements.

SEE FLOWCHART A FOR PROCEDURE

2.6.1 President's Minute after the signature of an international agreement

The Constitution requires the finalisation of a President's Minute that authorises the signing of an international agreement before it can be signed by a Minister. Failure to comply results in constitutional non-compliance. Authorisation of a retrospective or *ex post facto* President's Minute is not possible.

2.7 Practice for binding of international agreements in South Africa

The process of the negotiation and conclusion of international 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 international agreements is not possible, and no uniform international rules and regulations determining procedures for the conclusion and binding of international agreements exist. Countries developed their own practice over the years, especially with regard to the binding of international agreements and, due to the increasing number of international agreements that are concluded, a certain degree of uniformity in procedures for the binding of these documents has developed.

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

the international agreement before them, and regarded as binding on them. If the seal on the international agreement is broken, doubt could be cast on the validity of the text.

The Treaty Section is the depositary of all international agreements and has to fulfil all depositary functions. All signed original international agreements or any other documentation with regard to the status of international agreements have to be deposited with the Treaty Section, by the responsible line-function departments. The Treaty Section binds and seals all international agreements on behalf of government before it is signed. International agreements that are to be signed by South Africa are bound in South Africa, even if the signing ceremony takes place in another country.

South Africa makes use of special treaty paper, a treaty cover specifically designed for this purpose, special ribbon and a wet seal with the South African crest.

The host country where the signature of the international agreement takes place usually assists the visiting country with the binding of international agreements. If requested to assist a visiting country with the binding of international agreements the following is done:

- when an international 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. This is called the "alternat" method.

If the other party so prefers, it may use its own treaty paper and treaty cover.

- when international agreements are printed in two 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 first 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 are 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 requesting the Treaty Section to bind the international agreement.

2.7.1 Prior to the binding of international agreements

A request to the Treaty Section for binding can only be made once all the constitutional procedures have been followed, and a President's Minute has been obtained as set out in paragraph 2.6 of this directive.

Please note that no changes can be made to the text of the international agreement once the President's Minute has been signed.

No international agreement may be bound or signed without submitting the President's Minute.

2.7.2 Preparation of texts of international agreements for binding

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

In order for the Treaty Section to bind the international agreement the line-function department or the relevant desk in DIRCO has to provide the Treaty Section with the following:

- a copy of the President's Minute.
- the electronic text of the final and approved international agreement.
- the text must be in the following format:

Title page:

- only the title of the international agreement appears on the first page of the agreement.
- font must be Times New Roman, size 18, bold.

- the left margin is 4,7 cm.
- the right margin is 2 cm.

Text of international 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.

2.7.3 Binding of international agreements by the Treaty Section

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

Electronic copies can be e-mailed to:

vanderwaltr@dirco.gov.za

zondos@dirco.gov.za

mantyin@dirco.gov.za

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 0872/1501/0726 during office hours.

Once the international agreement has been sealed, the seal cannot be broken under any circumstance as it will cast doubt on the validity of the text.

2.8 At the signing ceremony

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

During the signing ceremony, the international agreement with South Africa's name first is placed in front of the South African representative (the Minister), and the other party's copy with its name first, placed in front of its representative. Each representative signs the text in the space provided for this purpose.

The copies of the said international agreement are then exchanged and counter-signed by each representative. After the two representatives have signed both the international agreements, it is exchanged again.

Each party should now have the international agreement with its own name appearing first.

2.8.1 Initialing and signing international agreements

International agreements are usually initialed by the Minister and representative of the other party as the means by which a text is adopted or authenticated. When initialing for the purpose of adoption or authentication of the text, it is important that the initials are not placed in the signature block, but rather in the lower corners of each page. Consent to be bound are not expressed by initialing, but by signature after authorisation of the National Executive. A mixture of initialing and signature can create confusion as to the status of the international agreement.

2.9 Depositing international agreements with the Treaty Section

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.

The original copy of every international agreement must, after signature, be deposited with the Treaty Section immediately. 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 international agreement must be reported and the relevant documentation deposited with the Treaty Section.

Examples of changes in status:

- ratification or accession.
- any notifications by parties.
- amendments.
- termination.
- withdrawal.

This information is also needed for the registration of the agreements with the UN.

2.10 Instruments of Ratification/Accession

After approval from both Houses of Parliament have been obtained in cases of Section 231(2) international agreements that require ratification or accession, the line-function department must formally request the political desk in DIRCO or OCSLA (IL) to deposit the Instrument of Ratification or Accession as soon as possible. The line-function department must submit the following documentation:

- draft Instrument of Ratification or Accession to be approved by OCSLA (IL).
- text of declaration or reservation, if required, to be included in the draft Instrument of Ratification or Accession.
- approval of both Houses of Parliament as reflected in the *Minutes of Proceedings*.
- legal opinions from DOJ&CD and OCSLA (IL).

The Instrument of Ratification or Accession may only be signed by the Minister of International Relations and Cooperation or the President after which the relevant desk in DIRCO or OCSLA (IL) will deposit it with the depositary of the international agreement.

If South Africa makes a declaration or reservation to an international agreement, this must form part of the approval process in Parliament and must be noted in the Instrument of Ratification or Accession.

2.10.1 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.

2.11 Tabling of international agreements

It is a constitutional requirement that all international agreements have to be tabled in Parliament. International agreements falling within the ambit of Section 231(2) of the Constitution require tabling and the approval of the National Assembly (NA) and National Council of Provinces (NCOP). International agreements falling within the ambit of Section 231(3) must be tabled in the NA and NCOP within a reasonable time frame. Tabling is the responsibility of the line-function department.

Guidelines for the tabling of international agreements are available on the website of Parliament.
(See <http://www.parliament.gov.za/content/TABLINGGUIDE.pdf>)

2.12 Registration of international agreements at the United Nations

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

3. INTERNATIONAL AGREEMENTS AND THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

Section 231 of the Constitution provides for the negotiating and signing of international agreements. There are basically two categories of international agreements. The State Law Advisers (IL) determine what category a particular agreement falls under.

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

Section 231(3) international agreements are international agreements of a technical, administrative or executive nature, or they are agreements that do not require either ratification or accession. These international agreements pertain to the everyday activities of government. In order to determine whether an international agreement falls within the ambit of Section 231(3) of the Constitution the following are considered:

- the content is departmentally specific.
- there is no major political or other significance.

- no parliamentary approval for ratification or accession is required.
- there are no extra-budgetary financial implications.
- there are no legislative implications and domestic law is not affected.

Section 231(3) international agreements do not require parliamentary approval to bind the Republic, but they do require tabling in Parliament after signature. It is South African practice for such international agreements to enter into force only after an Exchange of Notes via the diplomatic channel confirms compliance with domestic legal requirements for the entry into force thereof.

SEE FLOWCHART B FOR CORRECT PROCEDURE

3.2 International agreements requiring parliamentary approval before it can bind the Republic in terms of Section 231(2) of the Constitution

For international agreements falling within the ambit of Section 231(2) of the Constitution an additional procedure must be followed i.e. parliamentary approval of the international agreement must be obtained before it can bind the Republic. International agreements requiring parliamentary approval in terms of Section 231(2) of the Constitution are international agreements that:

- have financial implications that require an additional budgetary allocation from Parliament.
- have legislative or domestic legal implications (e.g. require new legislation or legislative amendments).
- that requires ratification in terms of the international agreement itself.
- that requires accession in terms of the international agreement itself.
- are not departmentally specific but straddle the functions of more than one line-function department.
- have major political or other significance.

Section 231(2) international agreements require the approval from both Houses of Parliament where after it can enter into force through the depositing of an Instrument of Ratification or Accession or through the Exchange of Notes via diplomatic channels.

“Ratification” is required when South Africa has signed the international agreement.

“Accession” is required when South Africa has not signed the international agreement but wish to become a party thereto.

SEE FLOWCHART C FOR CORRECT PROCEDURE

3.3 Withdrawal from and termination of international agreements

Under international law, a state may withdraw from both multilateral and bilateral international agreements. Most modern international agreements contain provisions allowing and specifying the conditions of withdrawal or termination, and many require a period of advance notice before it becomes effective.

Even when an international agreement does not contain an express withdrawal or termination clause, it may still be possible under international law under certain circumstances.

In terms of South African constitutional requirements and constitutional court judgments, the authority that had the power to agree that South Africa should be bound to an international agreement, i.e. the National Executive or Parliament, is also the authority that should authorise the withdrawal or termination from an international agreement.

Withdrawal or termination is reflected in an instrument of withdrawal or a letter of termination that has to be deposited with the depositary of the international agreement via the diplomatic channel.

SEE FLOWCHARTS B AND C FOR CORRECT PROCEDURES

Line function departments should obtain legal advice from OCSLA(IL) on the requirements and correct procedures for withdrawal or termination from international agreements.

4. TYPES OF AGREEMENTS

There are a number of different types of international agreements.

4.1 Host agreements

Host agreements are concluded when a country hosts an international event such as a conference or international meeting or when an international office is to be established in a country.

The host agreements usually provide immunities and privileges to delegates attending such a conference or to the officials employed by the international office. The immunities and privileges provided for in a host agreement can only be conferred by the Minister of International Relations and Cooperation.

4.1.1 Conferring immunities and privileges

The Diplomatic Immunities and Privileges Act, 2001 (Act 37 of 2001) states that immunities and privileges can only be conferred by the Minister of International Relations and Cooperation.

This is done by publishing a Minister's Minute and Notice signed by the Minister of International Relations and Cooperation in the *Government Gazette* together with the text of the international agreement or the schedule providing for immunities and privileges.

The host agreement has to be signed by both parties first, then tabled in Parliament, where after the Minister of International Relations and Cooperation can sign the Minute. Only then can it be published in the *Government Gazette*. It is the responsibility of the Treaty Section to publish the Minister's Minute.

4.2 International agreements signed during a conference

Ministers are sometimes required to sign international agreements that are negotiated, drafted and adopted at the end of a specific conference. The usual procedure where a State Law Adviser (IL) certifies the international agreement before obtaining a President's Minute cannot thus apply as the final text will only be available on the day of the signing thereof. 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 international agreement. However, the agreement must still undergo the ratification process.

4.2.1 Instruments of Full Power

The VCLT, 1969 defines “full powers” as “a document emanating from the competent authority of a state designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.”

For this procedure an Instrument of Full Power as well as a President’s Minute are required. An Instrument of Full Power is usually required in the case of multilateral agreements but can also be required when a bilateral agreement is signed.

An Instrument of Full Power is not a President’s Minute.

The President’s Minute contains the approval for a Minister to sign an international 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 international agreement, has indeed been authorised to bind South Africa internationally.

4.3 Exchange of Notes

An Exchange of Notes is a mechanism through which a bilateral agreement can be concluded between two parties. The basic characteristic of this type of international agreement is that the signature of the parties appear on two separate Notes. The international agreements therefore lie in the Exchange of Notes, each of the parties retaining one Note signed by the representative of the other party. In practice, the second Note (the Note in response) will reproduce the text of the first. The format of an Exchange of Notes is very specific. The same procedures for the conclusion of an international agreement through an Exchange of Notes must be followed as in the case of other international agreements.

SEE FLOWCHART B FOR CORRECT PROCEDURE

4.4 Non-binding agreements

A treaty is defined in the VCLT, 1969 as:

“An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

Three important aspects emanate from this definition and require some explanation:

- **Concluded between states**

International agreements are concluded between states, therefore an international agreement will be between the Government of the Republic of South Africa and a foreign government.

Where an agreement is between a line-function department (e.g. Department of Trade and Industry) and its foreign counterpart, it does not constitute an international agreement unless these departments act on behalf of their governments.

- **Governed by international law**

An agreement which is not intended to be governed by international law, will not be regarded as an international agreement. In this regard, it is important to ascertain what the intentions of the parties are.

In some instances, the parties insert a provision, expressly stating that the agreement does not create binding international obligations or that it is not an international agreement. In such instances, it is clear that the intention is to conclude an arrangement other than an international agreement.

Where the intention is not express, the nature of the agreement can be determined from the language used. In general, terms used to denote a non-binding arrangement include, among others: the use of “Participants” rather than “Parties”; “will” rather than “shall”; “Paragraphs” rather than “Articles”; and “accept” or “decide” rather than “agree”.

- Whatever its particular designation
The designation of an agreement does not determine whether it is an international agreement or not. However, generally the designation of “Memorandum of Understanding” is used for arrangements that are not international agreements.

Where an agreement does not meet the requirements contained in the above VCLT definition, it does not constitute an international agreement. It will therefore not bind South Africa and will not create rights and obligations on the international front. As a result, such an arrangement will not fall within the ambit of Section 231 of the Constitution.

In such a case, there is no need to obtain a President's Minute and the arrangement can be signed by any appropriate person. It is advised, however, that the State Law Advisers (IL) peruse the wording of the arrangement to ensure that it is non-binding on South Africa.

4.5 Twinning arrangements concluded by other spheres of government

Provincial and local governments have no international relations competencies in terms of the Constitution. They do, however, conclude arrangements with foreign counterparts such as twinning arrangements, which are informal agreements, indicating mutual intentions, goodwill and general 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, 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.

The basic purpose of a twinning arrangement should be to provide an opportunity for contact on as wide a scale as possible with the local communities of other countries. Contact should therefore include all levels of a community, and should not only be limited to a few functionaries.

The term ‘twinning arrangement’ is usually used where an arrangement is concluded between two cities or two provinces.

Since twinning arrangements do not legally bind the Republic of South Africa, provinces and local governments have the competence to enter into such arrangements in accordance with their internal processes.

It is very important that the text of the arrangement does not purport to bind the Republic in any way.

The non-binding nature of the arrangements can be indicated in various ways, for example by referring to “the Participants” rather than to “the Parties” or to use the term “will” rather than “shall”. The State Law Advisers of OCSLA (IL) are available to assist in this regard.

5. INTERNATIONAL TREATY REPORTING OBLIGATIONS

In terms of various multilateral agreements, countries are obliged to submit reports to the treaty bodies of the UN and other organisations in a specified manner and within a set time frame. These country reports reflect the progress made in terms of implementing the obligations under the agreements, by each party.

The Treaty Section keeps record of the country reports South Africa submits to treaty bodies, as well as monitor the progress made by line-function departments during the drafting process of the reports.

Two reports are presented to Cabinet biannually: one on multilateral treaties, agreements and conventions in respect of which South Africa still has to finalise its constitutional procedures for the agreements to come into force, and one that deals with the status of South Africa’s international obligations to submit its country reports to the treaty bodies.

5.1 Responsibilities in respect of submitting country reports

- Line-function departments are responsible to prepare the country reports in terms of certain multilateral agreements, ensure that all stakeholders are consulted and that the final country report is approved by the relevant Clusters and Cabinet before submitting the reports to the treaty bodies.
- Line-function departments must ensure that all processes needed for the country reports to be submitted are completed timely in order for reports to be submitted within the set due dates.

6. PUBLISHING INTERNATIONAL AGREEMENTS IN THE GOVERNMENT GAZETTE

It is recommended, but not constitutionally required, that the text of international agreements, after its ratification or accession and the extent of its incorporation in South African law, is published in the *Government Gazette*.

Certain domestic legislation prescribes the publishing of international agreements in the *Government Gazette* e.g. international agreements dealing with extradition and double taxation. Line-function departments are required to take the responsibility to publish these international agreements in the *Government Gazette*.

International agreements addressing the immunities and privileges of states or international organisations also require publishing in the *Government Gazette*. The full text of the international agreement or relevant sections addressing immunities and privileges are published together with a Note signed by the Minister of International Relations and Cooperation in terms of the Diplomatic Immunities and Privileges Act, 2001, through which the immunities and privileges in terms of the international agreement are accorded. The Treaty Section in DIRCO is responsible for the publishing of international agreements dealing with immunities and privileges.

7. GUIDELINES FOR DRAFTING OF INTERNATIONAL AGREEMENTS

Introduction

The following section is intended to provide general guidance in so far as the most basic aspects of the drafting of international agreements are concerned. It also aims at enhancing the uniformity in drafting styles applied internationally when drafting 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 practice in drafting between the parties. The guidelines given here therefore reflect South Africa's practice in drafting international agreements, 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

International agreements are concluded between governments and not line-function departments. Line-function departments can be designated as the authority for implementing international agreements. South Africa 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 binding obligations that is governed by international law.

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

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

It should be noted that it is not the name of the document that makes it a binding or non-binding agreement, but the contents thereof.

Therefore, a document named a Declaration of Intent, in which the parties only express their intentions, without creating any obligations, would not be regarded as an international agreement as contemplated in Section 231 of the Constitution.

Structure

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

Sequencing of articles

If an article on definitions is required, this should be placed at the very beginning of the international 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 these clauses. Standard articles such as settlement of disputes, amendment, entry into force, duration and termination follow. The text of the international agreement is concluded by standard end and signature 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 international agreement and is used as an aid to the interpretation of the international 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 co-operation 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.

Example:

"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 co-operation between the Parties."

Standard articles

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

Settlement of disputes

Example:

"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

Example:

“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, stipulates 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:

It was previously South African practice to provide that a Section 231(3) international agreement shall enter into force on the date of signature thereof by the parties.

This formulation is no longer recommended as the judgment in the matter of *Earthlife Africa and another v Minister of Energy and others* (Western Cape High Court case no. 19529/2015) in 2017 held that the power conferred on the National Executive in Section 231(3) of the Constitution of the Republic of South Africa, 1996 to bind South Africa to an international agreement of a technical, administrative or executive nature is not properly exercised unless the international agreement is tabled before Parliament within a reasonable time.

Therefore, South African practice has been adjusted to comply with the Court decision. A provision must be included that indicates that the international agreement will enter into force only after notification of compliance with the parties' respective domestic law or internal (for international organisations) processes.

The entry into force clause in international agreements falling within Section 231(3) should read as follow:

“This Agreement shall enter into force on the date on which the parties have notified each other in writing through the diplomatic channel of their compliance with the domestic law requirements necessary for the entry into force of this Agreement. The date of entry into force shall be the date of the last notification.”

Where the international agreement falls within the ambit of Section 231(2) of the Constitution:

The above-mentioned clause is also applicable in this case.

“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 notification.”

The line-function department should note that this clause would require an additional administrative step to complete the domestic process, namely that a diplomatic note must be sent. In this case, the responsible line-function department should request that the relevant desk 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

Example:

“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 last notification 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

Example:

“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 20....

FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF
THE

In South African treaty practice, the name of the authorised person that will sign the international agreement is not reflected in the end and signature clause.

8. 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

Fax: 012 329 1653

E-mail: vanderwaltr@dirco.gov.za
mantyin@dirco.gov.za

OCSLA (IL) Research Centre

Tel: 012 351 0134/1051

Fax: 012 329 1653

E-mail: bopapej@dirco.gov.za
khumalok@dirco.gov.za

9. ANNEXES

ANNEX I

Example of a Z137 folder



REPUBLIC OF SOUTH AFRICA

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.

No.	Subject

.....

Director-General

Date.....

Enquiries.....

Tel.....

A3 size

Office use			

ANNEX II

Example of an explanatory memorandum

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; DATED 14 DECEMBER 2004

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 III

Example of the title page of an agreement



AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

ON AIR SERVICES

ANNEX IV

Example of a President's Minute



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

PRESIDENT

MINISTER OF THE CABINET

A4 size

ANNEX IV

Example of a President's Minute where President signs the agreement himself



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

PRESIDENT

MINISTER OF THE CABINET

ANNEX IV

Example of a President's Minute



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 Agreements that will be adopted during a conference) be signed, subject to ratification, and I hereby authorise the Minister of to sign the aforesaid Agreements 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

PRESIDENT

MINISTER OF THE CABINET

A4 size

ANNEX V

Example of a Minister's Certificate

(Ministerial Letterhead)

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(year).

Minister: _____

Date: _____

A4 size

ANNEX VI

**CHECKLIST
FOR THE CERTIFICATION AND APPROVAL OF AGREEMENTS¹**

TITLE OF AGREEMENT: _____

RESPONSIBLE DEPARTMENT: _____

THE TEXT

1. Have all the recommendations and changes from the State Law Advisers at DOJ&CD been effected?

Yes	No
-----	----

2. If not, provide an explanation.

3. Have all the recommendations and 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 OCSLA (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?

7. Have you submitted the final text electronically to cronjel@dirco.gov.za for purposes of certification?

Yes	No
-----	----

CERTIFICATION DOCUMENTS

8. Does the Z137 folder reflect the title of the Agreement exactly as it appears on the text?

Yes	No
-----	----

9. Does the President's Minute reflect the title of the Agreement exactly as it appears on the text?

Yes	No
-----	----

10. 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

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

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

Yes	No
-----	----

13. 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
-----	----

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

Yes	No
-----	----

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

16. What arrangements are being made to deposit the Agreement to the South African Treaty Section at DIRCO after signature?

17. Contact details of person responsible for processing Agreement:

Name: _____

Title: _____

Telephone number: _____ Cell phone: _____

Fax: _____

E-mail address: _____

18. Contact details of Chief Director of the division in the Department responsible for processing the Agreement:

Name: _____

Title: _____

Telephone number: _____ Cell phone: _____

Fax: _____

E-mail address: _____

For the Line-function Department For the Office of the Chief State Law Adviser (IL)

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

PLEASE DO NOT STAPLE DOCUMENTATION TOGETHER. JUST PLACE THE LOOSE PAGES IN THE Z137 FOLDER.

THANK YOU.

ANNEX VII

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.

Lindiwe Nonceba Sisulu

Minister of International Relations and Cooperation

Date: _____

A4 size

ANNEX VIII

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, MATAMELA CYRIL RAMAPHOSA, 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 on this
.....day of.....Two Thousand and

MATAMELA CYRIL RAMAPHOSA

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

ANNEX IX
Example of an Instrument of Ratification



INSTRUMENT OF RATIFICATION

WHEREAS the Parties to the United Nations Framework Convention on Climate Change have adopted the Paris Agreement (“the Agreement”) at its 21st Conference of the Parties in Paris, France on 12 December 2015;

AND WHEREAS the Government of the Republic of South Africa has signed the Agreement on 22 April 2016;

AND WHEREAS Article 20 of the Agreement provides for the ratification, acceptance or approval thereof;

AND WHEREAS the South African Parliament in accordance with the requirements of South African law has approved the Agreement;

NOW THEREFORE the Government of the Republic of South Africa, having considered the Agreement, hereby ratify the Agreement and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I, LINDIWE NONCEBA SISULU, Minister of International Relations and Cooperation of the Republic of South Africa, have signed this Instrument of Ratification aton this the day of Two Thousand and

LINDIWE NONCEBA SISULU

MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION

ANNEX X
Example of an Instrument of Accession



INSTRUMENT OF ACCESSION

WHEREAS the Convention on Registration of Objects Launched into Outer Space (the Registration Convention) was adopted by the United Nations General Assembly in its resolution 3235 (XXIX), opened for signature on 14 January 1975, entered into force on 15 September 1976;

AND WHEREAS Article VIII of the Registration Convention makes provision for accession;

AND WHEREAS the Government of the Republic of South Africa is desirous of acceding to the Registration Convention and the Parliament of the Republic of South Africa has approved the said Convention in accordance with the requirements of South African law;

NOW THEREFORE I LINDIWE NONCEBA SISULU, MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION OF THE REPUBLIC OF SOUTH AFRICA, declare that the Government of the Republic of South Africa, having considered the said Convention on Registration of Objects Launched into Outer Space hereby accedes to the same and undertakes faithfully to perform and carry out all the stipulations contained therein.

IN WITNESS WHEREOF I have signed this Instrument of Accession at on this the day of in the year Two Thousand and

LINDIWE NONCEBA SISULU

MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION

ANNEX XI
Exchange of Notes to conclude an agreement



Pretoria, September 2013

Excellency,

I have the honour to refer to discussions between representatives of the Government of the Republic of South Africa and the Government of the Russian Federation on the establishment of the Trade Representation of the Russian Federation as part of the Embassy of the Russian Federation in the Republic of South Africa, to be situated in Johannesburg, South Africa.

I have the honour therefore to propose that the following conclusions reached in the aforesaid discussions will constitute an Agreement between the Republic of South Africa and the Government of the Russian Federation

1. South Africa expresses its consent for the establishment of the Trade Representation of the Russian Federation as a part of the Embassy of the Russian Federation, to be situated in Johannesburg, South Africa, as provided for in Article 12 of the Vienna Convention on Diplomatic Relations, 1961.
2. The provisions of the Vienna Convention on Diplomatic Relations shall apply to the Trade Representation in Johannesburg as part of the Embassy of the Russian Federation in the Republic of South Africa, including with respect to the immunities and privileges to be accorded to the staff of the Trade Representation.

This Agreement is concluded for an unlimited period of time, but may be terminated by any of the Parties thereto by giving six months written notice of its intention to terminate it through the diplomatic channel.

This Note and Your Excellency's Reply Note confirming the above proposal of the Government of the Republic of South Africa shall constitute an Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation, the Agreement to enter into force on the date of your Reply Note.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

LINDIWE NONCEBA SISULU

Minister of International Relations and Cooperation of the Republic of South Africa

SERGEY VIKTOROVICH LAVROV

Minister of Foreign Affairs of the Russian Federation

ANNEX XI
Exchange of Notes in reply to conclude an agreement

Saint Petersburg, September 2013

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note No.....of (date) which reads as follows:

"Excellency,

I have the honour to refer to discussions between representatives of the Government of the Russian Federation and the Government of the Republic of South Africa on the establishment of the Trade Representation of the Russian Federation as part of the Embassy of the Russian Federation in the Republic of South Africa, to be situated in Johannesburg, South Africa

I have the honour therefore to propose that the following conclusions reached in the aforesaid discussions will constitute an Agreement between the Russian Federation and the Republic of South Africa.

1. South Africa expresses its consent for the establishment of the Trade Representation of the Russian Federation as a part of the Embassy of the Russian Federation, to be situated in Johannesburg, South Africa, as provided for in Article 12 of the Vienna Convention on Diplomatic Relations, 1961.
2. The provisions of the Vienna Convention on Diplomatic Relations shall apply to the Trade Representation in Johannesburg as part of the Embassy of the Russian Federation in the Republic of South Africa, including with respect to the immunities and privileges to be accorded to the staff of the Trade Representation.

This Agreement is concluded for an unlimited period of time, but may be terminated by any of the Parties thereto by giving six months written notice of its intention to terminate it through the diplomatic channel.

This Note and Your Excellency's Reply Note confirming the above proposal on behalf of the Government of the Republic of South Africa shall constitute an Agreement between the Government of the Russian Federation and the Government of the Republic of South Africa, the Agreement to enter into force on the date of Your Reply Note.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.”

In reply, I have the honour to accept, on behalf of the Government of the Russian Federation, the proposals of the Government of the Republic of South Africa embodied in Your Excellency's Note as quoted above and confirm that the said Note and this Reply Note shall constitute an Agreement between our two Governments, the date of this Reply Note being the date of entry into force.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

SERGEY VIKTOROVICH LAVROV

Minister of Foreign Affairs of the Russian Federation

LINDIWE NONCEBA SISULU

Minister of International Relations and Cooperation of the Republic of South Africa

ANNEX XI
Exchange of Notes to amend an agreement

Pretoria, 1 April 2016

Excellency,

I have the honour to refer to the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Cuba on Economic Assistance, signed on 30 November 2015 (hereinafter referred to as “the Agreement”) and wish to propose that the Agreement be amended in accordance with Article 9(1) thereof as follows:

Replacement of the present Article 11.2 with the following wording:

“The availability period shall be for a period of 48 (forty eight) months from the date of entry into force of the Agreement.”

If the foregoing proposal is acceptable to the Government of the Republic of Cuba, this Note and Your Excellency's Reply Note confirming the above proposal to amend the Agreement, shall constitute an Agreement between the Parties, and shall enter into force on the date of Your Excellency's Reply Note.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Dr. R H Davies

Minister of Trade and Industry of the Republic of South Africa

C F de Cossio

Ambassador of the Republic of Cuba

ANNEX XI
Exchange of Notes in reply to amend an agreement

Cuba, 20 April 2016

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note No... of (date) which reads as follows:

“Your Excellency, I have the honour to refer to the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Cuba on Economic Assistance, signed on 30 November 2015 (hereinafter referred to as “the Agreement”) and wish to propose that the Agreement be amended in accordance with Article 9(1) thereof as follows:

Replacement of the present Article 11.2 with the following wording:

“The availability period shall be for a period of 48 (forty eight) moths from the date of entry into force of the Agreement.”

If the foregoing proposal is acceptable to the Government of the Republic of Cuba, this Note and Your Excellency's Note in reply confirming the above proposal to amend the Agreement, shall constitute an Agreement between the Parties, and shall enter into force on the date of Your Excellency's Note of reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.”

In accordance with the above I have the honour to inform you that the Government of the Republic of South Africa accepts the wording of the proposed Amendment and hereby confirm that Your Excellency’s Note and this Reply Note shall constitute an Agreement between our two Governments, the date of this Note being the date of entry into force of the Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

C F de Cossio

Ambassador of the Republic of Cuba

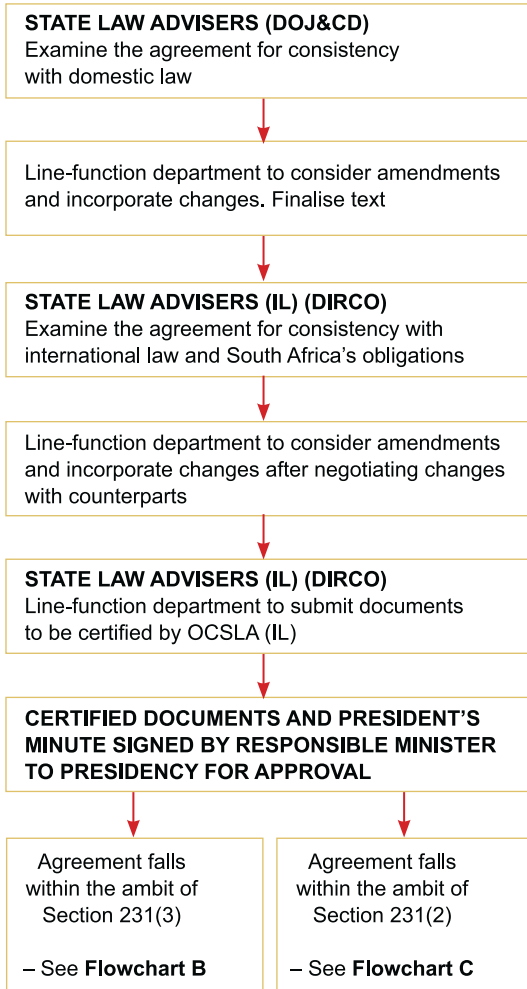
Dr. R H Davies

Minister of Trade and Industry of the Republic of South Africa

10. FLOWCHARTS

FLOWCHART A

Procedure for obtaining a President's Minute for all international agreements once text has been finalised



Line-function department to obtain legal opinion from DOJ&CD

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

- Approach the relevant desk in DIRCO
- Legal opinion from DOJ&CD must be included in request
- Political desk to complete a request for legal advice form (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 for certification (prepared by line-function department)

- Z137 folder
- Two copies of explanatory memorandum (+- 1 page)
- Two copies of finally agreed agreement
- Two copies of President's Minute
- Two copies of legal opinions from DOJ&CD and two copies from OCSLA (IL)
- Two copies of Certificate of Authenticity issued by the responsible Minister in case of multilateral agreement

Certified documents to be submitted by line-function department to Presidency

- Z137 folder
- Two copies of explanatory memorandum (+- 1 page)
- Two copies of agreement certified by State Law Advisers (IL)
- Two copies of President's Minute signed by relevant Cabinet Minister
- Two copies of legal opinions from DOJ&CD and OCSLA (IL)
- Two copies of Certificate of Authenticity issued by the relevant Minister in case of multilateral agreement

FLOWCHART B

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

OBTAIN A PRESIDENT'S MINUTE (SEE FLOWCHART A)

SA TREATY SECTION PREPARES AGREEMENT FOR BINDING AND SIGNATURE

Procedure for line-function department to follow

- Send electronic copy of agreement to Treaty Section together with a copy of the signed President's Minute
- Treaty Section: 012 351 0872/0726
vanderwaltr@dirco.gov.za or
mantyin@dirco.gov.za.
- Treaty Section will bind agreement after which line-function department can collect for signing

AFTER SIGNATURE OF AGREEMENT

LINE-FUNCTION DEPARTMENT DEPOSITS 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

LINE-FUNCTION DEPARTMENT TABLES AGREEMENT IN PARLIAMENT IN TERMS OF SECTION 231(3) OF THE CONSTITUTION WITHIN REASONABLE TIME

Line-function department to request its parliamentary officer to assist with tabling of agreement and informs the Treaty Section

DIRCO SENDS NOTE TO OTHER PARTY FOR AGREEMENT TO ENTER INTO FORCE

Procedure after tabling and before entry into force

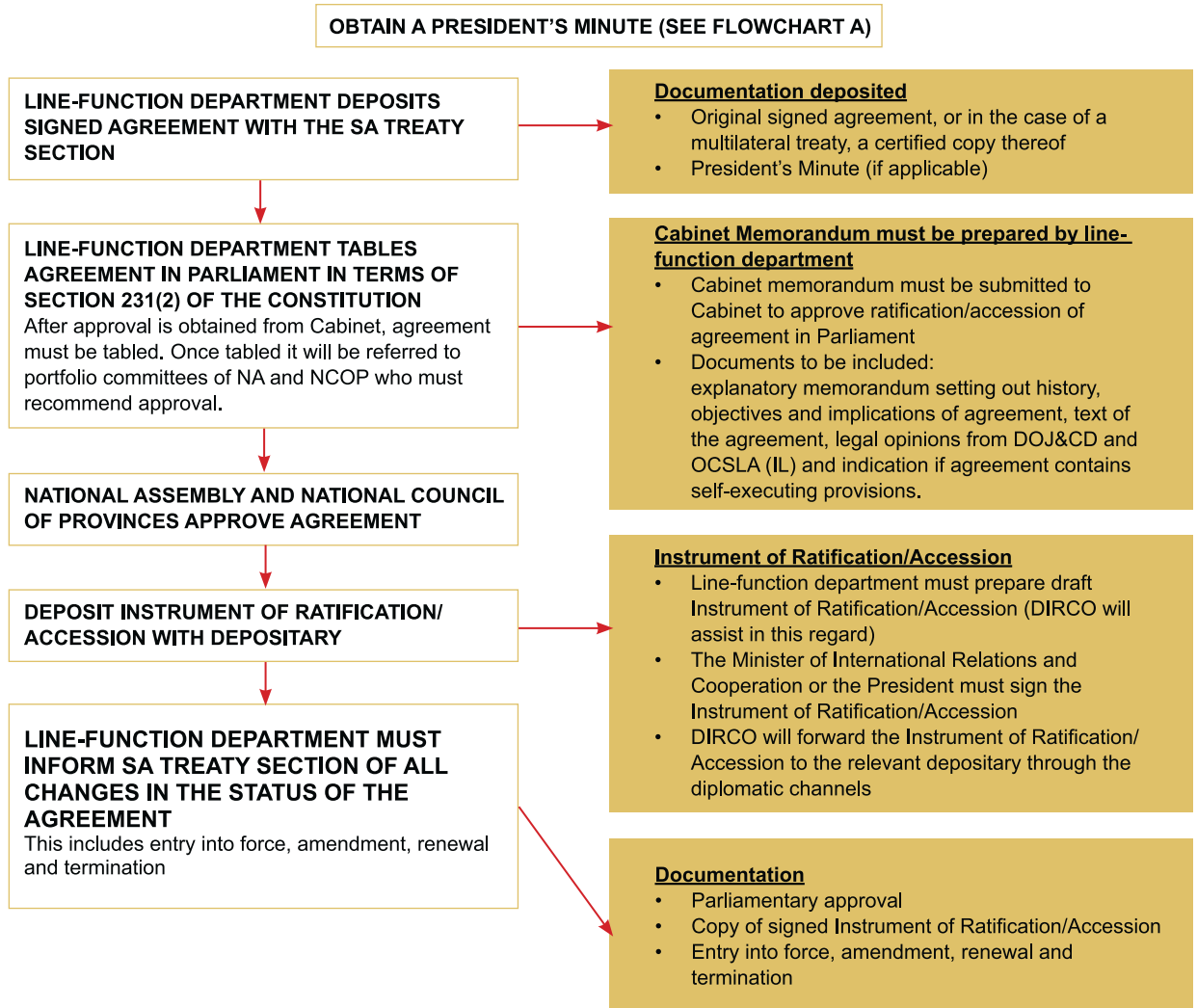
The line-function department must request DIRCO to prepare a diplomatic note stating that South African constitutional procedures have been complied with

LINE-FUNCTION DEPARTMENT MUST INFORM TREATY SECTION OF ALL CHANGES IN THE STATUS OF AGREEMENT

This includes entry into force, amendment, renewal and termination

FLOWCHART C

Procedure for obtaining parliamentary approval in terms of Section 231(2) of the Constitution



11. TERMS COMMONLY USED IN RELATION TO INTERNATIONAL AGREEMENTS

Acceptance/Approval	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.
Accession	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.
Adoption	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.
Amendment	The formal alteration of the provisions of a treaty by its parties. Such alterations must be effected with the same formalities that attended the original formation of the treaty.
Consent to be bound	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.
Credentials	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.
Declaration	See interpretative declaration. See mandatory declaration. See optional declaration.
Depositary	The depositary of a treaty is the custodian of the treaty and is entrusted with the functions specified in Article 77 of the VCLT, 1969.

Depositary notification	A formal notice that the depositary sends to all member states providing information on a treaty and the actions undertaken.
Entry into force	The moment in time when a treaty becomes legally binding on the parties to a treaty.
Exchange of Notes	May embody a bilateral treaty commitment. The signatures 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.
Full Power	A solemn instrument issued by the Head of State, Head of Government or Minister of Foreign Affairs, empowering a named representative to undertake treaty actions.
Interpretative declaration	A declaration by a state as to its understanding of some matter covered by a treaty or its interpretation of a particular provision.
Mandatory declaration	A declaration specifically required by the treaty itself. It is binding on the state making it.
Optional declaration	A declaration that a treaty specifically provides for, but does not require. Binding on the state making it. Unlike an interpretative declaration, an optional declaration is binding on the state making it.
Provisional application	Occurs when a state undertakes to give legal effect to the obligations under a treaty on a provisional and voluntary basis. The state would intend to ratify or accede to the treaty once its constitutional requirements have been met. The state may terminate this application at any time.

Provisional entry into force	May occur when a number of parties to a treaty that has not yet entered into force decide to apply the treaty as if it is in force. It creates obligations for the parties that agreed in that manner.
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.
Registration	It is the obligation by member states of the UN to submit their treaties and international agreements to the Secretariat of the UN in accordance with Article 102 of the Charter of the UN.
Reservation	A statement made by a state by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state. The reservation must be confirmed upon ratification, acceptance or approval and signed by the Head of State, Head of Government or Minister of Foreign Affairs.
Signing (Signature)	The act undertaken on the international plane, whereby a state expresses its consent to be bound by a treaty if the treaty so provides, or the intention of the state signing is such, or where the form and content of the treaty is agreed to prior to the decision to be bound by such a treaty.

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

© The Department of International Relations and Cooperation (DIRCO)
Prepared by Branch: Public Diplomacy. Published by DIRCO.