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GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 238

CAPE TOWN, 12 APRIL 1985

KAAPSTAD, 12 APRIL 1985

No. 9690

STATE PRESIDENT'S OFFICE

No. 781. 12 April 1985

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 39 of 1985: Diplomatic Privileges Amendment Act, 1985.

KANTOOR VAN DIE STAATSPRESIDENT

No. 781. 12 April 1985

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 39 van 1985: Wysigingswet op Diplomatieke Voorregte, 1985.

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GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

________ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Diplomatic Privileges Act, 1951, so as to provide for the granting of immunities, rights and privileges to certain representatives of other States and certain other persons; and to further regulate the acquisition or occupation of immovable property by such representatives and persons and certain entities; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 26 March 1985.)

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

Amendment of section 1 of Act 71 of 1951, as amended by section 61 of Act 69 of 1962 and section 1 of Act 61 of 1978.

1. Section 1 of the Diplomatic Privileges Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—

(*a*) by the substitution for the definition of "family" of the following definition:

"'family' means the wife or husband, as the case may be, the minor children, and any other relative approved by the Minister for the purposes of this Act, of any person mentioned in subsection (1) of section 2 or in subsection (1) of section 2A or in section 2B or of a member of the staff of any such person;"; and

(*b*) by the substitution for the definition of "staff" of the following definition:

"'staff' means counsellors, secretaries, attachés, advisers, chancellors, archivists, stenographers, typists and other persons approved by the Minister who take part in the diplomatic work of a diplomatic mission, the consular work of a consular mission or the work of the office of a representative of another State or person contemplated in section 2B, provided the aforementioned persons are employed exclusively for the purposes of the mission or office;".

Substitution of section 2A of Act 71 of 1951, as inserted by section 3 of Act 61 of 1978

2. The following section is hereby substituted for section 2A of the principal Act:

"Immunities, rights and privileges of career-consular officers, representatives of other States and certain other persons.

2A. (1) Career-consular officers **[trade representatives and any other persons attached to or employed by any consular mission or any such officer or representative]**, representatives of another State (other than diplomatic agents) and members of the suite of such officers or representatives shall enjoy such immunities, rights and privileges as they enjoy in accordance with the provisions of any law or an agreement in terms of subsection (2) or the recognized principles of international law.

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ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

______ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Diplomatieke Voorregte, 1951, ten einde voorsiening te maak vir die verlening van immuniteite, regte en voorregte aan sekere verteenwoordigers van ander State en sekere ander persone; en die verkryging of okkupasie van onroerende goed deur sodanige verteenwoordigers en persone en sekere entiteite verder te reël; en om vir bykomstige aangeleenthede voorsiening te maak.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 26 Maart 1985.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 71 van 1951, soos gewysig deur artikel 61 van Wet 69 van 1962 en artikel 1 van Wet 61 van 1978.

1. Artikel 1 van die Wet op Diplomatieke Voorregte, 1951 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur die omskrywing van "familie" deur die volgende omskrywing te vervang:

"'familie' die eggenote of eggenoot, na gelang van die geval, die minderjarige kinders, en enige ander verwant deur die Minister vir die doeleindes van hierdie Wet goedgekeur, van 'n in subartikel (1) van artikel 2 of 'n in subartikel (1) van artikel 2A of 'n in artikel 2B vermelde persoon of van 'n lid van die staf van só 'n persoon;"; en

(b) deur die omskrywing van "staf" deur die volgende omskrywing te vervang:

"'staf' rade, sekretarisse, attachés, adviseurs, kanseliers, argivarisse, snelskrywers, tikkers en ander persone deur die Minister goedgekeur wat deelneem aan die diplomatieke werk van 'n diplomatieke sending, die konsulêre werk van 'n konsulêre sending of die werk van die kantoor van 'n verteenwoordiger van 'n ander Staat of 'n persoon in artikel 2B bedoel, mits die voormelde persone uitsluitlik vir die oogmerke van die sending of kantoor geëmplojeer word.".

Vervanging van artikel 2A van Wet 71 van 1951, soos ingevoeg deur artikel 3 van Wet 61 van 1978.

2. Artikel 2A van die Hoofwet word hierby deur die volgende artikel vervang:

"Immuniteite, regte en voorregte van beroeps-konsulêre beamptes, verteenwoordigers van ander State en sekere ander persone.

2A. (1) Beroeps- konsulêre beamptes **[handelsverteenwoordigers en ander persone verbonde aan of in diens van 'n konsulêre sending of so 'n beampte of verteenwoordiger]**, verteenwoordigers van 'n ander Staat (uitgesonderd diplomatieke agente) en lede van die gevolg van sulke beamptes of verteenwoordigers besit die immuniteite, regte en voorregte wat hulle ooreenkomstig die bepalings van die een of ander wet of 'n ooreenkoms ingevolge subartikel (2) of die erkende beginsels van die volkereg besit.

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(2) The State President may on a basis of reciprocity, and on such conditions as he may deem fit, enter into an agreement with any other State by which immunities, rights and privileges are conferred upon any person concerned contemplated in subsection (1), **[as well as]** and any incidental matters are regulated.

(3) Such agreement and any amendment thereof shall be published by the State President by proclamation in the *Gazette*, shall come into force on the date of **[such publication]** signature of the agreement or amendment or on the later date stipulated in the agreement or amendment, and shall have the force of law, and the provisions thereof shall prevail in the case of conflict between such provisions and the provisions of any law (other than this Act) or the recognized principles of international law.".

Insertion of section 2B in Act 71 of 1951.

3. The following section is hereby inserted in the principal Act after section 2A:

"Conferment of immunities, rights and privileges by proclamation or other instrument.

2B. Notwithstanding anything to the contrary in section 2A or in any law contained, the State President may, if he is satisfied that in a particular case it is not possible or desirable to enter into an agreement contemplated in section 2A and that the conferment of immunities, rights and privileges will be in the interest of the Republic—

(a) by proclamation in the *Gazette*; or

(b) in such manner as he thinks fit in any case in which he deems it expedient,

subject to such conditions as he may determine, at the request of another government and where possible on a basis of reciprocity, confer upon any person, irrespective of whether such person is a person referred to in section 2A, such immunities, rights and privileges as may be specified in the proclamation or other instrument in question.".

Substitution of section 4 of Act 71 of 1951.

4. The following section is hereby substituted for section 4 of the principal Act:

"Register of persons entitled to immunity.

4. (1) *(a)* The Minister shall cause a register to be kept in which there shall be registered the names of all persons **[entitled to immunity]** who shall be immune under section 2 or the recognized principles of international law or an agreement contemplated in section 2A or a proclamation contemplated in section 2B from the civil or criminal jurisdiction of the court of the Republic, and every such registration shall be cancelled upon the person concerned ceasing to be so **[entitled]** immune.

(b) In the case of immunity granted under the recognized principles of international law or an agreement contemplated in section 2A or a proclamation contemplated in section 2B, the extent of such immunity shall be registered in the register.

(2) The Minister shall cause every registration or cancellation made under subsection (1) to be published in the *Gazette*.

(3) At least once in each calendar year, the Minister shall cause to be published in the *Gazette* a complete list of all persons on the register.

(4) A notice published in terms of this section or a certificate under the hand of the **[Secretary for Foreign Affairs]** Director-General: Foreign Affairs stat-

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(2) Die Staatspresident kan op 'n grondslag van wederkerigheid en op die voorwaardes wat hy goed ag, met 'n ander Staat 'n ooreenkoms aangaan waarby immuniteite, regte en voorregte aan 'n betrokke persoon bedoel in subartikel (1) verleen word, **[asook]** en bykomstige aangeleenthede gereël word.

(3) So 'n ooreenkoms en enige wysiging daarvan moet deur die Staatspresident by proklamasie in die *Staatskoerant* afgekondig word, tree in werking op die datum van **[bedoelde afkondiging]** ondertekening van die ooreenkoms of wysiging of op die latere datum in die ooreenkoms of wysiging bepaal, en het regskrag, en die bepalings daarvan geld in die geval van botsing tussen dié bepalings en die bepalings van 'n wet (uitgesonderd hierdie Wet) of die erkende beginsels van die volkereg.".

Invoeging van artikel 2B in Wet 71 van 1951.

3. Die volgende artikel word hierby in die Hoofwet na artikel 2A ingevoeg:

"Verlening van immuniteite, regte en voorregte by proklamasie of ander stuk.

2B. Ondanks andersluidende bepalings van artikel 2A of van enige ander wet, kan die Staatspresident, indien hy tevrede is dat dit in 'n bepaalde geval nie moontlik of wenslik is om 'n ooreenkoms bedoel in artikel 2A aan te gaan nie en dat die verlening van immuniteite, regte en voorregte in belang van die Republiek sal wees—

(*a*) by proklamasie in die *Staatskoerant*; of

(*b*) op die wyse wat hy goed dink in 'n geval waarin hy dit dienstig ag,

behoudens die voorwaardes wat hy bepaal, op versoek van 'n ander Regering, en waar moontlik op 'n grondslag van wederkerighheid, aan enige persoon, ongeag of so 'n persoon iemand is soos bedoel in artikel 2A, dié immuniteite, regte en voorregte verleen wat in die betrokke proklamasie of ander stuk uiteengesit word."

Vervanging van artikel 4 van Wet 71 van 1951.

4. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:

"Register van persone met immuniteit.

4. (1) (*a*) Die Minister laat 'n register aanlê waarin die name van alle persone wat kragtens artikel 2 **[op immuniteit geregtig is]** of die erkende beginsels van die volkereg of 'n ooreenkoms bedoel in artikel 2A of 'n proklamasie in artikel 2B bedoel vrygestel is van die siviele en kriminele jurisdiksie van die howe van die Republiek, aangeteken word, en elke sodanige aantekening word gerojeer wanneer die betrokke persoon nie langer aldus **[geregtig]** vrygestel is nie.

(*b*) In die geval van vrystelling verleen kragtens die erkende beginsels van die volkereg of 'n ooreenkoms bedoel in artikel 2A of 'n proklamasie in artikel 2B bedoel moet die omvang van die vrystelling in die register aangeteken word.

(2) Die Minister laat elke aantekening of rojering kragtens subartikel (1) in die *Staatskoerant* publiseer.

(3) Ten minste een keer in elke kalenderjaar laat die Minister 'n volledige lys van alle persone op die register in die *Staatskoerant* publiseer.

(4) 'n Ingevolge hierdie artikel gepubliseerde kennisgewing of 'n sertifikaat onderteken deur die **[Sekretaris van Buitelandse Sake]** Direkteur-generaal:

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ing that any person mentioned in such certificate is covered by the provisions of any particular paragraph of subsection (1) of section 2 specified in such certificate or of section 2A or 2B and accordingly recognized by the Government of the **[Union]** Republic to be entitled to **[diplomatic]** the immunity concerned, or stating that the immunity previously attaching to any such person as aforesaid no longer subsists, or has been cancelled or withdrawn from any particular date, shall be conclusive proof of the facts or conclusions stated therein in any court of law.".

Substitution of section 9 of Act 71 of 1951.

5. The following section is hereby substituted for section 9 of the principal Act:

"Exemption from special restrictions on acquisition or occupation of immovable property.

9. No law or condition in a title deed which prohibits the acquisition or occupation of immovable property by persons belonging to any particular racial group shall be construed to prohibit—

(a) the acquisition **[in the name of his Government]** of any immovable property by any **[diplomatic agent or political, career consular or trade representative]** person contemplated in section 2, 2A or 2B for the performance of his functions as such person; **[or]**

(b) the acquisition of any immovable property by any entity seated in another State, the activities of which in the opinion of the Minister are in the interest of the Republic, and which is recognized by the Minister for the purpose of this paragraph; or

[*(b)*] *(c)* the occupation of immovable property by any person referred to in section 2, 2A or 2B **[or by the political, career consular or trade representative of another Government]** or by any person who represents or is in the employ of any entity contemplated in paragraph *(b)* and whose occupation is approved by the Minister, and the family, staff and alien servants of such **[representative]** person:

Provided that such immovable property is acquired or occupied exclusively for the purposes of the chancery, office or residence of the person or entity concerned.".

Substitution of section 11 of Act 71 of 1951.

6. The following section is hereby substituted for section 11 of the principal Act:

"Offences and penalties.

11. (1) Any person who wilfully or without the exercise of reasonable care sues out, obtains or executes any legal process against a person who is entitled to immunity under section 2 or 2A or paragraph *(a)* of section 2B and whose name has been published in terms of subsection (2) of section 4, whether as party, as attorney or as an officer concerned in issuing or executing such process, shall be guilty of an offence.

(2) Any person who contravenes subsection (1) or any person who wilfully or without the exercise of reasonable care, commits any other offence which has the effect of infringing the inviolability of a per-

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Buitelandse Sake wat verklaar dat 'n persoon vermeld in sodanige sertifikaat gedek is deur die bepalings van 'n bepaalde paragraaf van subartikel (1) van artikel 2 wat in sodanige sertifikaat vermeld word of van artikel 2A of 2B en gevolglik deur die Regering van die **[Unie]** Republiek as geregtig op **[diplomatieke]** die betrokke immuniteit erken word, of wat verklaar dat die immuniteit wat voorheen gegeld het vir so 'n voormelde persoon nie meer bestaan nie, of vanaf 'n bepaalde datum gekanselleer of ingetrek is, is in enige geregshof afdoende bewys van die feite of gevolgtrekkings daarin vermeld.".

Vervanging van artikel 9 van Wet 71 van 1951.

5. Artikel 9 van die Hoofwet word hierby deur die volgende artikel vervang:

"Vrystelling van spesiale beperkings op verkryging of okkupasie van onroerende goed.

9. Geen wet of voorwaarde in 'n titelbewys wat die verkryging of okkupasie van onroerende goed deur persone wat tot 'n besondere rassegroep behoort, verbied, word so vertolk nie dat dit—

(a) die verkryging **[in naam van sy Regering]** van onroerende goed deur 'n **[diplomatieke agent of politieke, beroepskonsulêre of handelsverteenwoordiger]** persoon in artikel 2, 2A of 2B bedoel vir die verrigting van sy werksaamhede as sodanige persoon, verbied; **[of]**

(b) die verkryging van onroerende goed deur 'n entiteit gesetel in 'n ander Staat, die bedrywighede waarvan na die mening van die Minister in die belang van die Republiek is, en wat deur die Minister vir die doeleindes van hierdie paragraaf erken is, verbied; of

[*(b)*] *(c)* die okkupasie van onroerende goed deur 'n in artikel 2, 2A of 2B bedoelde persoon **[of deur die politieke, beroepskonsulêre of handelsverteenwoordiger van 'n ander Regering]** of deur 'n persoon wat 'n entiteit bedoel in paragraaf *(b)* verteenwoordig of in diens daarvan is en wie se okkupasie deur die Minister goedgekeur is en die familie, staf en **[uitlander]** vreemde bediendes van so 'n **[verteenwoordiger]** persoon, verbied:

Met dien verstande dat sodanige grond verkry of geokkupeer word uitsluitlik vir die doeleindes van die kanselary, kantoor of woning van die betrokke persoon of entiteit.".

Vervanging van artikel 11 van Wet 71 van 1951.

6. Artikel 11 van die Hoofwet word hierby deur die volgende artikel vervang:

"Oortredings en strafbepalings.

11. (1) Iedereen wat opsetlik of sonder om redelike versigtigheid te beoefen 'n geregtelike prosesstuk uitreik, verkry of ten uitvoer lê teen iemand wat kragtens artikel 2 of 2A of paragraaf *(a)* van artikel 2B op immuniteit geregtig is, en wie se naam ingevolge subartikel (2) van artikel 4 gepubliseer is, hetsy as party, as prokureur of as amptenaar betrokke by die uitreiking of tenuitvoerlegging van sodanige prosesstuk, is aan 'n misdryf skuldig.

(2) Iedereen wat subartikel (1) oortree of wat opsetlik of sonder om redelike versigtigheid te beoefen 'n ander misdryf pleeg wat tot gevolg het dat inbreuk gemaak word op die onskendbaarheid van 'n per-

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son entitled to immunity under section 2 or 2A or paragraph *(a)* of section 2B or of his property or the premises occupied by him shall be liable on conviction to a fine not exceeding **[five hundred pounds]** R5 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.".

Short title.

7. This Act shall be called the Diplomatic Privileges Amendment Act, 1985.

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soon wat kragtens artikel 2 of 2A of paragraaf *(a)* van artikel 2B op immuniteit geregtig is of van sy eiendom of die persele deur hom geokkupeer, is by skuldigbevinding strafbaar met 'n boete van hoogstens **[vyfhonderd pond]** R5 000 of met gevangenisstraf vir 'n tydperk van hoogstens drie jaar of met beide sodanige boete en sodanige gevangenisstraf.".

7. Hierdie Wet heet die Wysigingswet op Diplomatieke Voorregte, 1985. Kort titel.