CHAPTER 191

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT

To make provision for certain immunities and privileges of diplomatic and consular representatives, international organizations and representatives thereof and certain other persons and for purposes incidental to or connected with the matters aforesaid.

14th January, 1966

ACT I of 1966, as amended by Acts XIV of 2000 and III of 2004.

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PART I

PRELIMINARY

Title.

1. The title of this Act is Diplomatic Immunities and Privileges Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

"consular officer" means any person appointed as consul-general, consul, vice-consul or consular agent by a foreign State and holding a valid exequatur or other authorization to act in Malta in that capacity;

"consular employee" means any person, other than a consular officer, employed in the administrative or technical service of a consular post;

"consular post" means any consulate-general, consulate, vice-consulate or consular agency;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"members of a consular post" means consular officers, consular employees and persons employed in the domestic service of a consular post;

"the Minister" means the Minister for the time being responsible for external affairs.

(2) References in this Act to "consular officer", "consular employees" and "members of a consular post" shall be construed as including references to persons in the service of any Commonwealth country other than Malta holding such offices or classes of offices as may be specified by the Minister by notice in the Government Gazette being offices or classes of offices appearing to the Minister to involve the performance of duties substantially corresponding to those which, in the case of a foreign State, would be performed by consular officers, consular employees and members of a consular post respectively and references to "consular post" shall be construed accordingly.

(3) The Minister may compile a list of Commonwealth countries for the purposes of this Act and shall cause such list and any amendment of such list or amended list to be published by notice in the Government Gazette.

PART II

DIPLOMATIC IMMUNITIES AND PRIVILEGES

Application of the Vienna Convention on Diplomatic Relations.

3. (1) Subject to the provisions of article 12 of this Act, the Articles set out in the First Schedule to this Act (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) shall have the same force of law in Malta and shall for the purpose be construed in accordance with the following provisions of this article.

(2) In those Articles -

"agents of the receiving State" shall be construed as including any member of the Malta Police Force and any person exercising a power of entry to any premises under any law;

"the receiving State" shall be construed as meaning Malta;

"national of the receiving State" shall be construed as meaning citizen of Malta.

(3) For the purpose of Article 32 a waiver by the head of the mission of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.

(4) Articles 35, 36 and 40 shall be construed as granting any privilege or immunity which they require to be granted.

(5) The references in Articles 37 and 38 to the extent to which any privileges and immunities are admitted by the receiving State and to additional privileges and immunities that may be granted by the receiving State shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by the Minister by order published in the Government Gazette and to any additional privileges and immunities that may be so specified.

Consular privileges and immunities. Cap. 144.

4. Without in any way limiting the privileges and immunities conferred on consular officers and consular employees by the Consular Conventions Act, and subject to the provisions of the present Act, the Minister may by order, to the extent specified therein, exempt members of a consular post and members of their families from taxes, duties, rates, fees or other dues levied by the Government of Malta or a local authority:

Provided that this article -

(*a*) shall not apply to any member of a consular post who is a citizen of Malta or is permanently resident in Malta; and

(*b*) shall not affect any power to grant exemption as aforesaid under any other law.

PART III

INTERNATIONAL ORGANIZATIONS AND PERSONS CONNECTED THEREWITH

Immunities, privileges and capacities of certain international organizations. *Amended by: XIV. 2000.2.*

5. (1) This Part shall apply:

(*a*) to any organization which the Minister may by order declare to be an organization of which Malta or the Government thereof and one or more other States or the government or governments thereof are members;

(*b*) to the European Investment Bank; and

(*c*) to any organization which the House of

Representatives may by Resolution declare to be an organization with which Malta, or the government thereof, will be establishing or has already established a contractual relationship.

(2) The Minister may from time to time by order -

(*a*) provide that any organization to which this article applies (hereinafter referred to as "the organization") shall, to such extent as may be specified in the order, have the immunities and privileges set out in Part I of the Second Schedule to this Act and shall also have the legal capacities of a juridical person;

(*b*) confer upon -

(i) any persons who are representatives (whether of governments or not) on any organ of the organization or are members of any committee of the organization or of any organ thereof;

(ii) such officers or classes of officers of the organization as may be specified in the order, being the holders of such high offices in the organization as may be so specified; and

(iii) such persons employed on missions on behalf of the organization as may be specified in the order,

to such extent as may be specified in the order, the immunities and privileges set out in Part II of the Second Schedule to this Act;

(*c*) confer upon such other classes of officers and servants of the organization as may be specified in the order, to such extent as may be so specified, the immunities and privileges set out in Part III of the Second Schedule to this Act;

and Part IV of the Second Schedule to this Act shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in sub-paragraph (i) of paragraph (*b*) of this sub-article and to the families of officers of the organization, any immunities and privileges conferred on the representatives, members or officers under that paragraph, except in so far as the operation of the said Part IV is excluded by the order conferring the immunities and privileges.

(3) An order made under this article may, notwithstanding any provision of any written law, including this Act, confer on any organization or person any immunities or privileges which are required to be conferred on that organization or person in order to give effect to any international agreement in that behalf but shall not confer any immunities or privileges greater in extent than those so required as aforesaid or confer any immunity or privilege upon any person as the representative of the Government of Malta or as a member of the staff of such a representative.

Power to confer immunities and privileges on certain persons. *Amended by: III. 2004.56.*

6. The Minister may from time to time by order confer on the judges and registrars of the International Court of Justice established by the Charter of the United Nations, and of any other international judicial institution approved by the Minister, and on suitors to that Court or to any such institution and their agents, counsel and advocates, or to witnesses, experts or other persons whatsoever having business before such Court or such institution such immunities, privileges and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations or, in the case of any such institution as aforesaid, as the Minister may deem necessary for the proper discharge of its functions.

Immunities and privileges of representatives attending international conferences.

7. (1) Where a conference is held in Malta and is attended by the representatives of the Government of Malta and the government or governments of one or more other States, the Minister may compile such list of the representatives of the last-mentioned government or governments and of the members of his official staffs as he shall think proper, and shall cause such list and any amendment of such list or amended list to be published by notice in the Government Gazette, and, subject to the provisions of this Act, every representative of the government of such State who is for the time being included in the list shall be entitled to the like immunities as are awarded to a head of mission of a sending State accredited to Malta and to members of the official staff of such a head of mission respectively.

(2) Every list or amendment thereof published under this article shall include a statement of the date from which the list or amendment, as the case may be, takes or took effect.

PART IV

GENERAL

Minister to publish lists.

8. The Minister shall compile a list of the persons appearing to him to be entitled to immunities or privileges by or under the provisions of this Act, except -

(*a*) children under the age of eighteen years of a person so entitled; and

(*b*) any person whose name appears on a list published under article 7 of this Act,

and he shall from time to time amend the list and shall cause the list and any amendment of such list or amended list to be published in the Government Gazette.

Evidence.

9. If in any proceedings any question arises whether or not any person or any organization is entitled to immunities or privileges by or under the provisions of this Act, a certificate issued by or under the authority of the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.

Waiver.

10. (1) A consular officer or any person for the time being

performing the functions of a consular officer may waive any immunity or privilege conferred under the provisions of this Act on him or on another member of the consular post of which for the time being he is in charge and such waiver shall be express and shall be communicated to the Government of Malta in writing.

(2) Any immunity or privilege conferred under the provisions of articles 5, 6 and 7 of this Act may be waived in such manner as may be prescribed by the Minister in the relative order or notice.

Provisions relating to exemptions from taxes, duties, etc.

11. (1) Any article which is imported or taken out of bond without payment of customs duty in pursuance of any immunity or privilege conferred by or under the provisions of this Act shall not be sold or otherwise disposed of to a person who is not entitled to the like immunity or privilege except with the consent of the Comptroller of Customs and upon the payment to him of customs duty thereon at the rate required according to the law relating to the payment of customs duty.

(2) Any exemption from customs duty granted to any person by or under this Act shall not be construed as exempting that person from compliance with the formalities in respect of the importation of goods which are prescribed in any law relating to customs or the importation of goods.

(3) Any exemption from taxes, duties, rates, fees or other dues to which this Act relates shall be subject to compliance with such conditions as the Minister responsible for finance or any public officer delegated by him in that behalf may prescribe for the protection of the revenue.

Restriction of immunities and privileges.

12. (1) If it appears to the Minister that the immunities and privileges accorded to a mission or consular post of Malta in the territory of any State, or to persons connected with that mission or consular post, are less than those conferred by or under the provisions of this Act on the mission or consular post of that State or on persons connected with that mission or consular post, the Minister may by order withdraw such of the immunities and privileges so conferred from the mission or consular post of that State or from such persons connected therewith as appears to the Minister to be proper.

(2) Nothing in this Act shall be construed as precluding the Minister from declining to accord immunities or privileges to, or withdrawing immunities or privileges from, nationals or representatives of any State on the ground that the State is failing to accord corresponding immunities or privileges to citizens or representatives of Malta.

PART V

MISCELLANEOUS PROVISIONS

Cases of conflict or inconsistency.

13. Where there is any conflict or inconsistency between any provision of this Act or of any order or notice made or issued thereunder and any provision of any other written law other than the Consular Conventions Act, then the provision of this Act or of the order or notice made or issued thereunder shall prevail, and the provision of that written law shall, to the extent of the conflict or inconsistency, have no effect.

Cap. 144.

SCHEDULES

FIRST SCHEDULE

[ARTICLE 3]

ARTICLES OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS HAVING THE FORCE OF LAW IN MALTA

ARTICLE 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(*a*) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(*b*) the "members of the mission" are the head of the mission and the members of the staff of the mission;

(*c*) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(*d*) the "members of the diplomatic staff " are the members of the staff of the mission having diplomatic rank;

(*e*) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;

(*f*) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;

(*g*) the "members of the service staff " are the members of the staff of the mission in the domestic service of the mission;

(*h*) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(*i*) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

ARTICLE 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

ARTICLE 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

ARTICLE 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

ARTICLE 27

l. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

ARTICLE 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

ARTICLE 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(*a*) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(*b*) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(*c*) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

ARTICLE 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. The waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

(*a*) that they are not nationals of or permanently resident in the receiving State; and

(*b*) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

ARTICLE 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(*a*) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(*b*) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(*c*) estate, succession or inheritance duties levied by the receiving State,

subject to the provisions of paragraph 4 of Article 39;

(*d*) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(*e*) charges levied for specific services rendered;

(*f*) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

ARTICLE 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(*a*) articles for the official use of the mission;

(*b*) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

ARTICLE 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 38

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 39

l. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

ARTICLE 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

SECOND SCHEDULE

[Article 5]

INTERNATIONAL ORGANIZATION AND PERSONS CONNECTED THEREWITH

PART I

IMMUNITIES AND PRIVILEGES OF THE ORGANIZATION

1. Immunity from suit and legal process.

2. The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of a head of mission of a sending State.

3. The like exemption or relief from taxes, duties, rates and fees other than duties on the importation of goods, as is accorded to a sending State.

4. Exemption from duties on the importation of goods directly imported by the organization for its official use in Malta or for exportation, or on the importation of any publications of the organization directly imported by it, such exemption to be subject to compliance with such conditions as the Minister responsible for finance or any public officer delegated by him in that behalf may prescribe for the protection of the revenue.

5. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.

6. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Malta), of any reduced rates applicable for the corresponding service in the case of press telegrams.

PART II

Immunities And Privileges Of High Officers, Representatives, Members Of Committees And Persons On Missions

1. The like immunity from suit and legal process as is accorded to a head of mission of a sending State.

2. The like inviolability of residence as is accorded to such a head of mission.

3. The like exemption or relief from taxes, duties, rates and fees as is accorded to such a head of mission.

PART III

Immunities And Privileges Of Other Officers And Servants

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

2. Exemption from income tax in respect of emoluments received as an officer or servant of the organization.

PART IV

Immunities And Privileges Of Official Staff And Of High Officer's Family

1. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as a representative on any organ of the organization or a member of any committee of the organization or of an organ thereof, his official staff accompanying him as such a representative or member shall also be entitled to those immunities and privileges to the same extent as the retinue of a head of mission of a sending State is entitled to the immunities and privileges accorded to the head of mission.

2. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as an officer of the organization, that person's wife or husband and children under the age of twenty-one years shall also be entitled to those immunities and privileges to the same extent as the wife or husband and children of a head of mission of a sending State are entitled to the immunities and privileges accorded to the head of mission.