

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATIONS

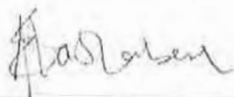
NO. 367

24 MARCH 2016

MINISTER'S MINUTE

In accordance with the powers vested in me by section 5(3)) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), I hereby recognise New Development Bank for the purposes of granting immunities and privileges.

In accordance with section 7(1) of the said Act, the immunities and privileges to be accorded to the New Development Bank is provided for in the Agreement on the New Development Bank, signed on 15 July 2014 and which entered into force on 3 July 2015.



Maite Nkoana-Mashabane

Minister of International Relations and Cooperation

Date: 24 December 2015

**MINISTER
INTERNATIONAL RELATIONS AND COOPERATION
REPUBLIC OF SOUTH AFRICA**

Private Bag X152, PRETORIA, 0001, South Africa • OR Tambo Bldg, 460 Soutpansberg Road, Roseville, PRETORIA • Tel: 012 351 1000 • Fax: 012 329 1000
17th Floor, Room 1703, 120 Plein Street, CAPE TOWN, 8001 • Tel: 021 464 3700 • Fax: 021 465 6548 • www.dlro.gov.za

It is hereby published for general information that the Minister of International Relations and Cooperation has, in terms of section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), recognised the New Development Bank for the purposes of granting the immunities and privileges as set out in the Schedule hereto.

- (b) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of any country in whose territory the securities are to be bought or sold;
- (c) guarantee securities in which it has invested in order to facilitate their sale;
- (d) underwrite, or participate in the underwriting of, securities issued by any entity or enterprise for purposes consistent with the purpose of the Bank;
- (e) invest funds, not needed in its operations, in such obligations as it may determine, and invest funds held by the Bank for pensions or similar purposes in marketable securities. In doing so, the Bank shall give due consideration to invest such funds in the territories of members in obligations of members or nationals thereof;
- (f) exercise such other powers and establish such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 27 – Notice to be placed on Securities

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government, unless it is in fact the obligation of a particular Government, in which case it shall so state.

Chapter VI - Status, Immunities and Privileges

Article 28– Purpose of the Chapter

To enable the Bank effectively to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

Article 29– Status

- a) The Bank shall possess full international personality.
- b) In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity to:
 - (i) contract;
 - (ii) acquire and dispose of immovable and movable property; and
 - (iii) institute legal proceedings

Article 30 – Position of the Bank with Regard to Judicial Process

- a) The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its headquarters or offices, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
- b) Notwithstanding the provisions of paragraph (a) of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in contracts entered into with the Bank.
- c) Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 31 – Freedom and Immunity of Assets and Archives

- a) Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
- b) The archives of the Bank and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.
- c) To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

Article 32 – Privilege for Communications

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Article 33 – Personal Immunities and Privileges

All Governors, Directors, alternates, officers, and employees of the Bank shall have the following privileges and immunities:

- (i) immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity;

(ii) when not local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) the same privileges in respect of traveling facilities as are accorded by members to representatives, officials, and employees of comparable rank of other members.

Article 34 – Exemption from Taxation

- a) The Bank, its property, other assets, income, transfers and the operations and transactions it carries out pursuant to this Agreement, shall be immune from all taxation, from all restrictions and from all customs duties. The Bank shall also be immune from any obligation relating to the payment, withholding or collection of any tax, or duty.
- b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member, notwithstanding Article 48(d), deposits with its instrument of ratification, acceptance, approval or accession a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.
- c) No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
- d) No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

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