




DPSA INPUTS INTO THE FOREIGN SERVICE BILL

PORTFOLIO COMMITTEE ON INTERNATIONAL RELATIONS
MEETING OF 25 NOVEMBER 2016

 **the dpsa**
Department
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

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OVERVIEW

- The definition of “the Foreign Service” as envisaged in the Foreign Service Bill vs “Employee” in the Public Service Act
- Appointment Requirements to the Foreign Service vs in terms of the Public Service Act
- The concurrent powers between the Minister for the Public Service and Administration (MPSA) and the Minister for International Relations and Cooperation (MIRCO) to make determinations on specific employment matters
- Labour Relations and Collective Bargaining.

The Foreign Service vs an Employee

- The Public Service Act, 1994 defines an “employee” as a person appointed either permanently or temporarily, part time or full time, in a post on the establishment of a department or additional to the establishment of a department.
- Departments are listed in the Schedules to the Public Service Act and includes DIRCO.
- The Foreign Service according to section 2 of the Bill comprises of “...all South African Missions and of those persons who serve in a position in the South African Missions and who are accredited to a foreign state for the period of time that they hold that position, **regardless of whether they are ordinarily employed by the Department or by any other national department or appointed on a contractual basis for a fixed period.**”
- ✓ Therefore the Foreign Service includes employees appointed in terms of the Public Service Act.
- ✓ Such employees in the Foreign Service are therefore bound by the Provisions of the Bill and the Public Service Act.



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Challenges

Due to the application of both the Public Service Act and the Bill on certain employees within the Foreign Service the following challenges arise-

- (1) Requirements for appointment
 - (a) section 3(1) of the Foreign Service Bill provides that only citizens of the Republic, employed by the Department of International Relations or by any other department who meet the prescribed requirements, are eligible to become a member of the Foreign Services.
 - (b) Section 10 of the Public Service Act provides that persons who are citizens or permanent residents may be appointed the public service. The provisions of the Bill is therefore inconsistent with the Public Service Act.
 - (c) Section 9 of the Public Service Act provides that the Minister for the Public Service and Administration prescribes the manner and conditions under which persons are appointed in the public service. This therefore means that the employees appointed in the Foreign Service will have two pieces of legislation to comply with. Secondly it would appear that both the MIRC and the MPSA exercise similar powers which have the potential to conflict.



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Challenges cont...

(2) Powers of MPSA v MIRCO

Powers of MIRCO:

- (a) Section 9 of the Foreign Service Bill provides that subject to any collective agreement applicable to the Foreign Service, the Minister (being the MIRCO) may make any policy, code or prescribe any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper administration and management of the Foreign Service and its members which is consistent with this Act: Provided that a determination involving expenditure from revenue shall be made in consultation with the Minister of Finance. The Minister may further issue directives which are consistent with this Act, to elucidate or supplement any regulation. The Minister or Director-General, as the case may be, may make all decisions relevant to the management and administration of the Foreign Service, after consultation with any other relevant national department.”
- (b) Section 12 of the Foreign Service Bill further provides that MIRCO may make regulations regarding, amongst others, the transfer of a member of the Foreign Service, conditions of service applicable to the members of the Foreign Service, disciplinary matters, adjustment of allowances of members of the Foreign Service transferred to South African Missions and the secondment of an employee to the service of a foreign state.



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Challenges cont...

(2) Powers of MPSA V MIRCO (cont)

Powers of MPSA:

- (a) Section 2(2A) of the Public Service Act provides that subject to the Labour Relations Act and any collective agreement, the determination of any conditions of service for employees in general or a particular category in terms of this Act shall be made with the concurrence of a committee of Ministers. “conditions of service” for the purposes of section 2(2A) means annual salary adjustments, salary scales or levels, performance bonuses, pay incentives or pension benefits.
- (b) Section 3(3) of the Public Service Act allows the MPSA, through regulations or determinations and directives, to determine norms and standards on, amongst others, conditions of service; employment practices and labour relations.
- (c) Section 3(5) of the Public Service Act provides that subject to the Labour Relations Act and any collective agreement, the MPSA may make determinations regarding any conditions of service of employees generally or categories of employees, including determinations regarding a salary scale for all employees or salary scales for particular categories of employees and allowances for particular categories of employees.



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Challenges cont...

(2) Powers of MPSA V MIRCO (cont)

Analysis:

- (a) Currently the conditions of service and the allowances payable to employees in the public service, including employees who make up part of the envisaged "foreign service" are subject to collective bargaining processes and determined by the Minister for the Public Service and Administration in terms of the Public Service Act.
- (b) Sections 9 and 12 of the Foreign Service Bill appropriate similar powers to the MIRCO as those currently vesting with the MPSA. This could therefore result in two conflicting determinations arising in regard to a similar matter, each taking effect under different legislation.
- (c) Section 7 of the Foreign Services Bill seeks to provide for the establishment of consultative, coordination and other mechanisms and is cognisant of the Intergovernmental Relations Framework Act, 2005 to deal with conflicts that may arise. There is no indication as to whether the provisions of the PSA or the Bill will ultimately take precedence. It is our view that legislation should not create concurrent powers that require to be dealt with through the dispute mechanisms under the Intergovernmental Relations Framework Act. It is proposed that the Bill itself provides clarity.



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Challenges cont...

(3) LABOUR MATTERS AND COLLECTIVE BARGAINING

- (a) Currently the Foreign Service Dispensation is pursuant to the collective bargaining process issued as a determination under the Public Service Act by the MPSA. As the Bill does not repeal these powers, the challenge in its implementation is envisaged.
- (b) It would appear that the Foreign Service Bill creates a separate sector within the public service comprising of the Foreign Service with no indication of how collective bargaining will take place or what dispute resolutions mechanisms are to be used by the Foreign Service.



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Dankie / Thank you / Ngiyathokoza

Enkosi / Ngiyabonga / Ke a leboga

Ke a leboha / Ndi a livhuwa

Ndza khensa



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