



**FOREIGN SERVICE BILL [B 35-2015]:
INVITATION BY THE PORTFOLIO COMMITTEE ON INTERNATIONAL
RELATIONS AND COOPERATION: ASPECTS PERTAINING TO THE
DEPARTMENT OF PUBLIC WORKS**

1. The Portfolio Committee on International Relations and Cooperation is deliberating on the **Foreign Service Bill [B 35-2015]** and has directed an invitation to the Minister of Public Works –

“As one of the departments that are directly affected by the Bill, I wish to request your department to make an input to the Bill at a committee meeting scheduled for Friday, 25 November 2016”.

2. BACKGROUND:

- 2.1 In April 1999, the Minister for the Public Service and Administration (Dr Zola Skweyiya) acting in terms of Section 3(3)(a) of the Public Service Act, 1994 and on the recommendation of the Public Service Commission, in a letter to the then Minister of Public Works (Mr Jeff Radebe) informed –

“that the function to manage and procure properties and accommodation abroad, including all aspects regarding leasing, purchasing, disposal, alterations, maintenance, refurbishment, furniture and facilities be allocated to the Department of Foreign Affairs with effect from 01 May 1999.”

“The Public Service Commission and I have noted –

- (a) that allocating the function to the Department of Foreign Affairs implies full financial and operational accountability and final decision-making authority for the function;*
- (b) that the Departments of Public Works and Foreign Affairs arrange, if necessary, among themselves for the possible transfer of posts and personnel to the latter Department; and*
- (c) the intention of the Department of Foreign Affairs not to duplicate professional, technical and essential services such as architects and valuers but to continue to source services from the Department of Public Works as far as possible.”*

[Annexure A]

- 2.2 The **Government Immovable Asset Management Act, 2007 (GIAMA)** was enacted –

“To provide for a uniform framework for the management of an immovable asset that is held or used by a national or provincial department; to ensure the coordination of the use of an immovable asset with the service delivery objectives of a national or provincial department; to provide for issuing of guidelines and minimum standards in respect of immovable asset management by a national or provincial department; ...”

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- 3.5 The Chief Registrar of Deeds subsequently issued directives that state land may only be registered in the name of the *National Government of the Republic of South Africa* or the relevant Provincial Government. The “vesting” of state immovable assets therefore became synonymous with formal ownership.
- 3.6 GIAMA uses “custodian” to denote a government department responsible for the life-cycle management of immovable assets assigned to it by law, and “custodianship” to denote the responsibilities of such a department in acquiring, managing, maintaining and disposing of such assets.
- 3.7 Therefore, in my opinion, the wording of Clause 8(1) of the Bill –

“... all immovable property utilised by the Foreign Service outside the Republic, any right in respect of such property and the management and accountability thereof must vest in the Minister (of International Relations and Cooperation)”

could lead to misinterpretation and it is recommended that the terminology of GIAMA (i.e. “custodian” and “custodianship”) be used instead.

- 3.8 With reference to **Clause 8(2) of the Foreign Service Bill**, again it is not clear why the drafters deem it necessary or appropriate to state –

“Notwithstanding any other law, the Minister may on such terms and conditions as he or she may deem fit –

(a) acquire and dispose of; ...”

(b) lease, rent, maintain or construct structures or installations on or refurbish any immovable property belonging to the Department for the use of the South African Missions or for any other purpose he or she may deem necessary for the efficient functioning of the Foreign Service.”

As mentioned in respect of Clause 8(1), the wording of Clause 8(2) creates the impression that DIRCO’s control of the foreign property portfolio falls outside the ambit of GIAMA and that the principles of immovable asset management contained in the Act and the standards and best practice guidelines issued in terms thereof would therefore not apply to the management of such properties.

- 3.9 Of even greater concern is **Paragraph 3.8 of the Memorandum on the Objects of the Foreign Service Bill, 2015** –

“Clause 8 provides the Minister with the powers to dispose, lease, or rent the immovable assets of the Department (of International Relations and Cooperation) within or outside the Republic.”

Although, at best, this may be an error by the drafters, it highlights the very real potential for misinterpretation contained in the current wording of Clause 8 of the Bill.

