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CHAPTER 143

DIPLOMATIC PRIVILEGES & IMMUNITIES

Act 9 of 1982
Order 32 of 1984
Order 29 of 1990
Order 13 of 2000
Order 54 of 2005

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DIPLOMATIC PRIVILEGES AND IMMUNITIES

To provide for diplomatic privileges and immunities, and to give effect to the Vienna Convention on Diplomatic Relations.

PART 1 – APPLICATION OF VIENNA CONVENTION ON DIPLOMATIC RELATIONS

1. Application of Vienna Convention

(1) Subject to section 2, the Articles set out in Schedule 1 of the Vienna Convention on Diplomatic Relations signed in 1961 shall have the force of law in Vanuatu and shall be construed in accordance with the provisions of this part.

(2) In those Articles –

"agents of the receiving state" includes any member of the police force and any person exercising a power of entry to any premises under any law;

"national of the receiving state" means a citizen of Vanuatu;

"receiving state" means the Republic of Vanuatu.

(3) For the purposes of Article 32, a waiver by the head of mission of any state or by a person for the time being performing the functions of the head of mission, shall be deemed to be 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 shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by the Minister with the concurrence of the Minister responsible for finance by Order and to any additional privileges and immunities that may be so specified.

2. Restriction of privileges and immunities

If it appears to the Minister that the privileges and immunities accorded to a mission of Vanuatu in the territory of any state, or to persons connected with that mission are less than those conferred by this Part on the mission of that state or on persons connected with that mission, the Minister may by Order withdraw such of the privileges and immunities so conferred from the mission of that state or from such persons connected with it as appears to the Minister to be proper.

3. Evidence

If in any proceedings any question arises as to whether or not any person is entitled to any privilege or immunity under this Part a certificate issued by or under the authority of the Minister stating any fact relating to that question shall be conclusive evidence of that fact.

PART 2 – INTERNATIONAL ORGANISATIONS

4. International organisations

This part shall apply to any Organisation of which 2 or more States or the Governments thereof are members.

5. Privileges and immunities of international organisations

The Minister may by Order –

(a) provide that any organisation to which this part applies shall, to such extent as may be specified in the Order, have the privileges and immunities set out in Schedule 2 and shall additionally have the legal capacities of a body corporate;

(b) confer upon –

(i) any persons who are representatives (whether of governments or not) of any organ of the organisation or at any conference convened by the organisation or are members of any committee of the organisation or of any organ thereof;

(ii) such officers or classes of officers of the organisation as are specified in the Order, being the holders of such high offices in the organisation as are specified;

(iii) such persons employed on missions on behalf of the organisation as are specified in the Order,

to such extent as may be specified in the Order, the privileges and immunities set out in Schedule 3;

(c) confer upon such other classes of officers and servants of the organisation as are specified in the Order, to such extent as may be so specified, the privileges and immunities set out in Schedule 4,

and Schedule 5 shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in paragraph (b)(i) of this section and to the members of the families forming part of the household of officers of the organisation any privileges and immunities conferred on the representatives, members, or officers under that paragraph, except insofar as the operation of Schedule 5 is excluded by the Order conferring the privileges and immunities:

Provided that no Order made under the provisions of this section shall confer any privilege or immunity upon any person as the representative of the Government of Vanuatu or as a member of the staff of such a representative.

PART 3 – PERSONS PROVIDED BY STATES OR INTERNATIONAL ORGANISATIONS

6. Privileges and immunities of persons provided by international organisations

(1) Whenever the services of any person are provided for appointment to the public service of Vanuatu pursuant to an agreement between any of the international organisations specified in Schedule 6 and the Government of Vanuatu, it shall be lawful for the Minister by Order to confer upon any such person to such extent as may be specified therein the immunities and privileges set out in Schedule 7.

(2) Every Order made under the provisions of subsection (1) shall state the date from which the immunities and privileges thereby conferred shall take effect.

(3) Whenever any person ceases to be entitled to the immunities and privileges conferred by any Order made under this Act the Minister shall cause an Order to that effect to be published in the Gazette.

(4) The fact that any person is or was entitled or not entitled to any of the immunities or privileges set out in Schedule 7 may be conclusively proved by producing the Gazette containing the relevant Order.

(5) The Minister may at any time by Order add to, vary or delete the whole or any part of Schedule 6 with effect from the date specified in such Order.

7. Persons employed on duties within Vanuatu

(1) Whenever the services of any person or class of persons are provided by a State, an organisation, or by an agency, by whatever name called, sponsored by a State or organisation, for duties within Vanuatu approved by the Minister and such person is, or class of persons are, not entitled to immunities and privileges under the provisions of either section 5 or section 6 the Minister may by Order confer upon any such person or class of persons such of the immunities and privileges set out in Schedule 8 as may be specified in the Order.

(2) Every Order made under the provisions of subsection (1) shall state the date from which the immunities and privileges thereby conferred shall take effect.

(3) Whenever any person ceases to be entitled to the immunities and privileges conferred by any Order made under the provisions of subsection (1), the Minister shall cause an order to that effect to be published in the Gazette.

(4) The fact that any person is or was entitled or not entitled to any of the immunities or privileges set out in Schedule 8 may be conclusively proved by producing the Gazette containing the relevant order.

PART 4 – INTERNATIONAL COURT OF JUSTICE

8. Privileges and immunities relating to International Court of Justice

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 on suitors to that Court and their agents, counsel, and advocates, such privileges, immunities, and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations.

PART 5 – INTERNATIONAL CONFERENCES

9. Privileges and immunities relating to international conferences

Where –

(a) a conference is held in Vanuatu and is attended by representatives of the Government of Vanuatu and the government or governments of 1 or more States or of any of the territories for whose international relations any of those governments is responsible; and

(b) it appears to the Minister that doubts may arise as to the extent to which the representatives of those governments (other than the Government of Vanuatu) and members of their official staffs are entitled to privileges and immunities,

the Minister may by Order provide that every representative of any such government (other than the Government of Vanuatu) shall be accorded such of the privileges and immunities conferred by or by virtue of Part 1 on a diplomatic agent as the Minister specifies, and that such of the members of his official staff as the Minister may provide shall be accorded such of the privileges and immunities conferred by or by virtue of such Part on members of the diplomatic staff or the administrative and technical staff of a diplomatic mission as the Minister specifies.

PART 6 – GENERAL

10. Saving for bilateral arrangements

Where any special agreement or arrangement between the government of any state and the Government of Vanuatu in force at the commencement of this Act provides for extending –

(a) such immunity from jurisdiction and from arrest or detention, and such inviolability of residence, as are conferred by this Act on a diplomatic agent, or on a person whose services are provided by a state or an international organisation for duties within Vanuatu;

(b) such exemption from custom duties, taxes and related charges as is conferred by this Act in respect of articles for the personal use of a diplomatic agent, or on a person whose services are provided by a state or an international organisation for duties within Vanuatu,

that immunity and inviolability or exemption shall so extend, so long as that agreement or arrangement continues in force.

11. Regulations

The Minister may by Order make such rules and regulations as are necessary for giving full effect to this Act and for its administration.

SCHEDULE 1

(Section 1)

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

Article 1

For the purposes 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 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

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 of 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

1. 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 the 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 package 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 of 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 like-wise 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 legates 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. 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 courses 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 duties 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 insofar 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

1. 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 the case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a 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.

SCHEDULE 2

(section 5)

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS

1. Immunity from suit and legal process.
2. The like inviolability of official premises and archives as is accorded in respect of the official premises and archives of a diplomatic mission.
3. Immunity in relation to its property and assets, wherever located and by whomsoever held, from search, requisition, confiscation, expropriation, or any other form of interference.
4. The like exemption from taxes and rates, other than taxes on the importation of goods, as is accorded to the Government of any foreign State.
5. Exemption from taxes on the importation of goods directly imported by the organisation for its official use in Vanuatu or for exportation, or on the importation of any publications of the organisation directly imported by it, subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.
6. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organisation for its official use and in the case of any publications of the organisation directly imported or exported by it, subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the public health, the prevention of diseases in plants and animals, and otherwise in the public interest.
7. 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 address to or despatched from places outside Vanuatu) of any reduced rates applicable for the corresponding service in the case of press telegrams.

SCHEDULE 3

(section 5)

PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES, MEMBERS OF COMMITTEES, HIGH OFFICERS, AND PERSONS ON MISSIONS

1. The like immunity from suit and legal process as is accorded to a diplomatic agent.
2. The like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent.
3. The like exemption from taxes and rates as is accorded to a diplomatic agent.

SCHEDULE 4

(section 5)

PRIVILEGES AND IMMUNITIES 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 taxes in respect of emoluments received as an officer or servant of the organisation.
3. Exemption from taxes on the importation of furniture and effects imported at the time of first taking up post in Vanuatu, that exemption to be subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.

SCHEDULE 5

(section 5)

PRIVILEGES AND IMMUNITIES OF OFFICIAL STAFFS AND OF HIGH OFFICERS' FAMILIES

1. Where any person is accorded any such immunities and privileges as are mentioned in Schedule 3 as the representative on any organ of the organisation or a member of any committee of the organisation, a member of his official staff accompanying him as such a representative or member shall also be accorded those immunities and privileges to the same extent as the members of the staff of a mission are accorded the immunities and privileges accorded to a diplomatic agent.

2. Where any person is accorded any such privileges and immunities as are mentioned in Schedule 3 as an officer of the organisation, the members of family of that person who form part of his household shall also be accorded those privileges and immunities to the same extent as the members of the family of a diplomatic agent who form part of his household are accorded the privileges and immunities accorded to that diplomatic agent.

SCHEDULE 6

(section 6)

INTERNATIONAL ORGANISATIONS

United Nations
The Commonwealth Secretariat
Asian Development Bank
International Monetary Fund
International Finance Corporation
South Pacific Commission
South Pacific Bureau for Economic Co-operation
United Nations Food and Agricultural Organisation (F.A.O.)
European Community
Association des Universités Entièrement ou Partiellement de Langues Française et l'Université des Réseaux d'Expression Française
Pacific Aviation Safety Office (PASO)

SCHEDULE 7

(section 6)

IMMUNITIES AND PRIVILEGES

1. Immunity from suit and legal process in respect of words spoken or written and all acts performed in his official capacity.

2. Exemption from taxation on all stipends, emoluments and allowances paid to him by the international organization.

SCHEDULE 8

(section 7)

PRIVILEGES AND IMMUNITIES OF A PERSON REFERRED TO IN SECTION 7 AND HIS FAMILY

1. Exemption from taxation on all stipends, emoluments and allowances paid to such person in connection with his duties in Vanuatu.

2. Exemption from taxes on the importation of professional and technical equipment used by such person in connection with his duties in Vanuatu and on the importation of furniture and effects, including one motor vehicle, of such person and his family imported within 6 months from the time of first taking up post in Vanuatu, that exemption to be subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.

Table of Amendments (since the Revised Edition 1988)

Schedule 6 *Amended by Orders 29 of 1990, 13 of 2000, 54 of 2005*