



**the dfa**

Department  
Foreign Affairs  
REPUBLIC OF SOUTH AFRICA

**PRACTICAL GUIDE  
AND PROCEDURES  
FOR THE BINDING OF AGREEMENTS  
2<sup>nd</sup> edition**

**OFFICE OF THE CHIEF STATE  
LAW ADVISER  
INTERNATIONAL LAW**



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## INTRODUCTION

Traditional forms of negotiations and conclusion of agreements developed through the ages. Individual countries unified these procedures to accommodate their constitutional requirements.

Because of the dissimilarity in the constitutional requirements of countries, absolute uniformity of procedures in the conclusion of agreements is not viable, and no uniform rules and regulations determining procedures for the conclusion and binding of agreements exist. Countries developed their own practice over the years especially with regard to the binding of agreements and, due to the increasing number of agreements concluded, a certain degree of uniformity in procedures for the binding of these documents has developed.

It is accepted state practice that before agreements are signed, they are bound and sealed. By sealing the agreement parties confirm that the text so bound and sealed is the final version of the agreement before them, and binding on them.

If the seal on the agreement is broken, doubt could be cast on the validity of the text.

**It should be noted that all international agreements, regardless of the name thereof, e.g. Memorandum of Understanding, Agreement, Treaty, Convention, Protocol, Accord, Exchange of Notes, etc. are covered by the term “agreement” used in this guide.**

## TREATY PRACTICE IN SOUTH AFRICA SINCE 1994

**The Constitution of South Africa, 1996 makes provision for the conclusion of agreements in section 231 thereof. There are basically two frameworks for the conclusion of agreements:**

- The framework that applies to international agreements that requires ratification or accession in order to be brought into effect (section 231(2)); and
- The framework that applies to international agreements that merely requires the signature of a duly authorised representative of a state party to come into effect (section 231(3)).

The procedure for concluding international agreements is set out in Chapter 5 of the “*2006 Manual on Executive Acts of the Office of the President of South Africa*” and the “*Practical guide and procedures for the conclusion of agreements*” by the Office of the Chief State Law Adviser (IL).

**This procedure shortly involves the following:**

- An opinion on the agreement’s consistency with domestic law must be obtained from the State Law Advisers in the Department of Justice and Constitutional Development;
- An opinion on the agreement’s consistency with international law and South Africa’s international obligations must be obtained from the State Law Advisers referred to as OCSLA (IL), in the Department of Foreign Affairs;
- The responsible government department must prepare a President’s Minute for signature by both the responsible line function Cabinet Minister and the President (**see annex 2 for example**);
- The President’s Minute, and a short Explanatory Memorandum together with two copies of the agreement must be forwarded to the OCSLA (IL) for certification in accordance with the prescribed procedures, in a Z137 coversheet, before the line function department can present it to the Presidency for approval;
- Certification means that the OCSLA (IL) affix the official stamp on the final, agreed text of the agreement indicating that the agreement is acceptable to be submitted for the President’s approval.

## PROCEDURE FOR BINDING OF AGREEMENTS

All agreements must be bound before signature. **The Treaty Section in the OCSLA (IL) of the Department of Foreign Affairs, is responsible for the binding of all international agreements (multilateral or bilateral).**

**Agreements can only be bound after the following steps have been completed:**

- The Parties have agreed on all the provisions and the text has been finalised;
- The Parties have agreed on the procedure to be followed during the actual binding process e.g. whether the host country is responsible for the binding or if each country will do its own binding;
- The text has been scrutinised thoroughly for grammatical, typing or other errors;
- The approval from the President in the form of a President's Minute has been obtained in the prescribed manner, and a copy of the President's Minute is presented to the Treaty Section;
- Texts in foreign languages have been scrutinised by a competent person who has a thorough knowledge of the language, to ascertain that it corresponds with the English text.

**Please note that no changes can be made to the text once the President's Minute has been obtained and no agreement may be signed without a President's Minute.**



## THE CURRENT BINDING PRACTICE IN SOUTH AFRICA AND OTHER COUNTRIES

- The host country where the signature of the agreement takes place usually assists the visiting country with the binding of agreements;
- When an agreement is signed in one language, only two copies are bound. One copy featuring South Africa first on the title page as well as in the text, is printed on South African treaty paper and then bound in the South African treaty cover;
- A second copy, using the “alternat” method where the name of the other Party features first, must be printed on that Party’s paper and bound in that Party’s cover;

**If requested, South African treaty paper and covers may be used for the visiting country’s agreement as well. The “alternat” method is always followed as described above.**

- When agreements are printed in two languages, e.g. English and French, both copies must be printed as stated above and bound, in the case of South Africa, in one cover with the English text first;
- In some cases it can be arranged that South Africa will print and bind two copies in English using the “alternat” method and the other Party will bind two copies in their official language also using the “alternat” method. Copies can then be exchanged at the signing ceremony so that both Parties have texts in both the languages with their country’s name first.

**The preferred procedure should be cleared with the other Party before the agreement is bound.**

## PREPARATION OF TEXT OF AGREEMENTS FOR BINDING

The line function Department or Desk in the Department of Foreign Affairs is responsible for the preparation of the text of the agreement and has to comply with the following prescripts:

### **Title page:**

- Only the title of the agreement appears on the first page of the agreement and is printed on Conqueror cream, 80 gram bond, A4 size paper with the full colour crest of the Republic of South Africa on the top of the page;
- Times New Roman font, size 18, bold is applied;
- The left margin is 4,7 cm;
- The right margin is 2 cm;
- **See annex 3 for example.**

### **Text:**

- The text of the agreement is typed and printed on plain Conqueror cream, 80 gram bond, A4 size paper;
- Times New Roman font, size 12, regular is applied;
- The left margin is 4,7 cm;
- The right margin is 2 cm;
- Spacing of articles must be uniform and the numbering of the articles must be numerical e.g. Article 1, Article 2, etc.

## BINDING OF AGREEMENTS BY THE TREATY SECTION

The binding of agreements can only take place after **all** the above-mentioned procedures have been followed.

**The line function Department or Desk can now make an appointment with the Treaty Section, Tel: 012 351 0892/0742 for the binding of the agreement.**

The line function Department or Desk must provide the Treaty Section with:

- An electronic copy of the final prepared text of the agreement, or, if preferred, a printed copy on the prescribed paper (**see annex 1**);
- A copy of the signed President's Minute. Agreements cannot be bound if the signed President's Minute (**see annex 2**) is not submitted with the prepared text;
- The Treaty Section will print and bind the agreement in the prescribed manner with ribbon and a wax seal.

**The seal on the agreement is not to be broken under any circumstances**

Instruments of Accession or Ratification are also bound by the Treaty Section.

## AT THE SIGNING CEREMONY

- On the day of the signing of the agreement, the date and place of signature are filled in on the text of the agreement, in the space provided for this purpose. This is done neatly in black ink;
- During the signing ceremony the South African agreement is placed in front of the South African representative (usually the Minister), and the other Party's agreement placed in front of its representative. Each representative signs the text in the space provided for this purpose;
- The copies are then exchanged and countersigned;
- After the two representatives have signed both the agreements, it is exchanged again.

**Each country should now have the agreement with its own name appearing first.**

## PROCEDURE AFTER SIGNATURE

The South African Treaty Register is the only official record of all bilateral and multilateral agreements that the Republic of South Africa is a party to. Therefore it is of the utmost importance that:

- The original copy of every international agreement along with the President's Minute, after signature, must be deposited with the Treaty Section for record keeping and registration at the United Nations;
- In the case of multilateral agreements where the original copy is not available, a certified copy must be deposited with the Treaty Section, as well as a signed copy of the Instrument of Accession or Ratification, and the proof of Parliament's approval.

## FOLLOW UP

**Every action that causes a change in the status of an agreement must be reported and the relevant documents send to the Treaty Section without delay.**

These documents include:

- Parliament's approval (both Houses) to ratify or accede to an agreement;
- Copies of Instruments of Ratification or Accession;
- Depository notifications;
- Entry into force dates;
- Amendments;
- Termination or any other relevant information.

**The above mentioned information is also needed for the registration procedure of agreements with the United Nations.**

## ANNEX I

Materials prescribed for the binding of agreements:

- **PAPER** Conqueror (cream)  
Title page with the full colour crest at the top  
**(Supplied by Treaty Section)**
- **COVERS FOR BINDING** Green leather covers  
Cream paper covers  
**(Supplied by Treaty Section)**
- **RIBBON** Colours of the National Flag  
**(Supplied by Treaty Section)**

## ANNEX 2

### Example of A President's Minute



81/172488  
(Z19E)

PRESIDENT'S MINUTE NO.

In terms of Section 231 of the Constitution of the Republic of South Africa, 1996 I hereby approve that the attached agreement on.....between the Republic of South Africa and ..... (country) be entered into, and I hereby authorise the Minister of ..... to sign the agreement.

Given under my Hand and the Seal of the Republic of South Africa  
at ..... (place) on this ..... day of ..... (month)  
200.....(year)

PRESIDENT

MINISTER OF THE CABINET

A4 Size

**ANNEX 3**

Example of the title page of an agreement



**AGREEMENT  
BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

**AND**

**THE GOVERNMENT OF THE KINGDOM OF  
BELGIUM**

**ON AIR SERVICES**

A4 Size

A large, light beige rectangular area with horizontal ruling lines, intended for taking notes. The area is mostly empty, with a few faint lines visible near the bottom edge.











**OFFICE OF THE CHIEF STATE LAW ADVISER (IL)  
DEPARTMENT OF FOREIGN AFFAIRS  
PRIVATE BAG X152  
PRETORIA  
0001**