

L.N. 412 of 2011

**DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT
(CAP. 191)**

Application of Part III of the Diplomatic Immunities and Privileges Act (International Criminal Court) Order, 2011

IN exercise of the powers conferred by articles 5 and 6 of the Diplomatic Immunities and Privileges Act, the Deputy Prime Minister and Minister of Foreign Affairs has made the following Order:-

1. The title of this Order is the Application of Part III of the Diplomatic Immunities and Privileges Act (International Criminal Court) Order, 2011. Citation.

2. The International Criminal Court shall enjoy the immunities and privileges set out in Part I of the Second Schedule to the Diplomatic Immunities and Privileges Act, and shall have the legal capacities of a juridical person. Immunities and privileges of the International Criminal Court.

3. (1) The Articles set out in the Schedule to this Order (being Articles of the Agreement on the Privileges and Immunities of The International Criminal Court adopted in 2002) shall have the same force of law in Malta and shall for the purpose be construed in accordance with the following provisions of this article. Agreement on the Privileges and Immunities of The International Criminal Court.

(2) The Articles referred to in subarticle (1) appear in the Schedule in the English language only and are being published with the English text of this Order.

(3) In those Articles -

"any State Party", "each State Party", "the State Party", "the State Party concerned" shall be construed as meaning Malta;

"States Parties" shall be construed as including Malta;

"the State Party of which he or she is a national" shall be construed as meaning a Maltese national;

"a national" shall be construed as meaning a citizen of Malta;

"permanent resident" shall be construed as meaning a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the Immigration Act; Cap. 217.

"locally" shall be construed as meaning Malta;

"appropriate authorities of States Parties" shall be construed as including the Malta Police and the Armed Forces of Malta.

(4) The references in Articles 10, 11, 13, 15, 16 and 18 to 23, both inclusive, to the extent to which any privileges and immunities are accorded or granted, shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by the Minister by order published in the Government Gazette.

Schedule

(Article 3)

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE
INTERNATIONAL CRIMINAL COURT

Article 1

Use of terms

For the purposes of the present Agreement:

- (a) "The Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;
- (b) "The Court" means the International Criminal Court established by the Statute;
- (c) "States Parties" means States Parties to the present Agreement;
- (d) "Representatives of States Parties" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;
- (e) "Assembly" means the Assembly of States Parties to the Statute;
- (f) "Judges" means the judges of the Court;
- (g) "The Presidency" means the organ composed of the President and the First and Second Vice-Presidents of the Court;
- (h) "Prosecutor" means the Prosecutor elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;
- (i) "Deputy Prosecutors" means the Deputy Prosecutors elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;
- (j) "Registrar" means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;
- (k) "Deputy Registrar" means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;
- (l) "Counsel" means defence counsel and the legal representatives of victims;
- (m) "Secretary-General" means the Secretary-General of the United Nations;

(n) "Representatives of intergovernmental organizations" means the executive heads of intergovernmental organizations, including any official acting on his or her behalf;

(o) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961;

(p) "Rules of Procedure and Evidence" means the Rules of Procedure and Evidence adopted in accordance with article 51 of the Statute.

Article 6

Immunity of the Court, its property, funds and assets

1. The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, funds and assets of the Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Court, the property, funds and assets of the Court, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, controls or moratoria of any nature.

Article 7

Inviolability of archives and documents

The archives of the Court, and all papers and documents in whatever form, and materials being sent to or from the Court, held by the Court or belonging to it, wherever located and by whomsoever held, shall be inviolable. The termination or absence of such inviolability shall not affect protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.

Article 10

Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoriums of any kind, while carrying out its activities:

(a) The Court may hold funds, currency of any kind or gold and

operate accounts in any currency;

(b) The Court shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) The Court may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities;

(d) The Court shall enjoy treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

2. In exercising its rights under paragraph 1, the Court shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Court.

Article 11

Facilities in respect of communications

1. The Court shall enjoy in the territory of each State Party for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. No censorship shall be applied to the official communications and correspondence of the Court.

3. The Court may use all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Court shall be inviolable.

4. The Court shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

5. The Court shall have the right to operate radio and other telecommunication equipment on any frequencies allocated to it by the States Parties in accordance with their national procedures. The States Parties shall endeavour to allocate to the Court, to the extent possible, frequencies for which it has applied.

Article 13

Representatives of States participating in the Assembly and its subsidiary organs
and representatives of intergovernmental organizations

1. Representatives of States Parties to the Statute attending meetings of the Assembly and its subsidiary organs, representatives of other States that may be attending meetings of the Assembly and its subsidiary organs as observers in accordance with article 112, paragraph 1, of the Statute, and representatives of States and of intergovernmental organizations invited to meetings of the Assembly and its subsidiary organs shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention;

(b) Immunity from legal process of every kind in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue to be accorded notwithstanding that the persons concerned may have ceased to exercise their functions as representatives;

(c) Inviolability of all papers and documents in whatever form;

(d) The right to use codes or cipher, to receive papers and documents or correspondence by courier or in sealed bags and to receive and send electronic communications;

(e) Exemption from immigration restrictions, alien registration requirements and national service obligations in the State Party they are visiting or through which they are passing in the exercise of their functions;

(f) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys under the Vienna Convention;

(h) The same protection and repatriation facilities as are accorded to diplomatic agents in time of international crisis under the Vienna Convention;

(i) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives described in paragraph 1 attending the meetings of the Assembly and its subsidiary organs are present in a State Party for the discharge of their duties shall not be considered as periods of residence.

3. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the State Party of which he or she is a national or of the State Party or intergovernmental organization of which he or she is or has been a representative.

Article 14

Representatives of States participating in the proceedings of the Court

Representatives of States participating in the proceedings of the Court shall, while exercising their official functions, and during their journey to and from the place of the proceedings, enjoy the privileges and immunities referred to in article 13.

Article 15

Judges, Prosecutor, Deputy Prosecutors and Registrar

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Court is sitting. On journeys in connection with the exercise of their functions, the judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall in all States Parties through which they may have to pass enjoy all the privileges, immunities and facilities granted by States Parties to diplomatic agents in similar circumstances under the Vienna Convention.

3. If a judge, the Prosecutor, a Deputy Prosecutor or the Registrar, for the purpose of holding himself or herself at the disposal of the Court, resides in any State Party other than that of which he or she is a national or permanent resident, he or she shall, together with family members forming part of his or her household, be accorded diplomatic privileges, immunities and facilities during the period of residence.

4. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded

the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

5. Paragraphs 1 to 4 of this article shall apply to judges of the Court even after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10, of the Statute.

6. The salaries, emoluments and allowances paid to the judges, the Prosecutor, the Deputy Prosecutors and the Registrar by the Court shall be exempt from taxation. Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutors and the Registrar are present in a State Party for the discharge of their functions shall not be considered as periods of residence for purposes of taxation. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources.

7. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors and Registrars and their dependants.

Article 16

Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry

1. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of their employment with the Court;

(c) Inviolability for all official papers and documents in whatever form and materials;

(d) Exemption from taxation on the salaries, emoluments and allowances paid to them by the Court. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources;

(e) Exemption from national service obligations;

(f) Together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(g) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(h) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the State Party concerned;

(i) Together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(j) The right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up post in the State Party in question and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.

2. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of the staff of the Office of the Prosecutor, members of the staff of the Registry and their dependants.

Article 17

Personnel recruited locally and not otherwise covered by the present Agreement

Personnel recruited by the Court locally and not otherwise covered by the present Agreement shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Court. Such immunity shall continue to be accorded after termination of employment with the Court for activities carried out on behalf of the Court. During their employment, they shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Court.

Article 18

Counsel and persons assisting defence counsel

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of his or her functions, including the time spent on journeys, in connection with the performance of his or her functions and subject to production of the certificate referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of his or her personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by him or her in official capacity, which immunity shall continue to be accorded even after he or she has ceased to exercise his or her functions;

(c) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions;

(d) For the purposes of communications in pursuance of his or her functions as counsel, the right to receive and send papers and documents in whatever form;

(e) Exemption from immigration restrictions or alien registration;

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the counsel concerned;

(g) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court, counsel shall be provided with a certificate under the signature of the Registrar for the period required for the exercise of his or her functions. Such certificate shall be withdrawn if the power or mandate is terminated before the expiry of the certificate.

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel is present in a State Party for the discharge of his or her functions shall not be considered as periods of residence.

4. The provisions of this article shall apply *mutatis mutandis* to persons assisting defence counsel in accordance with rule 22 of the Rules of Procedure and Evidence.

Article 19

Witnesses

1. Witnesses shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court for purposes of giving evidence, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention;

(b) Without prejudice to subparagraph (d) below, immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned;

(c) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court;

(d) Inviolability of papers and documents in whatever form and materials relating to their testimony;

(e) For purposes of their communications with the Court and counsel in connection with their testimony, the right to receive and send papers and documents in whatever form;

(f) Exemption from immigration restrictions or alien registration when they travel for purposes of their testimony;

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Witnesses who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their appearance is required by the Court and specifying a time period during which such appearance is necessary.

Article 20

Victims

1. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the

Court, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention;

(b) Immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned;

(c) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance before the Court, which immunity shall continue to be accorded even after their appearance before the Court;

(d) Exemption from immigration restrictions or alien registration when they travel to and from the Court for purposes of their appearance.

2. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying their participation in the proceedings of the Court and specifying a time period for that participation.

Article 21

Experts

1. Experts performing functions for the Court shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent exercise of their functions, including the time spent on journeys in connection with their functions, subject to production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their functions for the Court, which immunity shall continue to be accorded even after the termination of their functions;

(c) Inviolability of papers and documents in whatever form and materials relating to their functions for the Court;

(d) For the purposes of their communications with the Court, the right to receive and send papers and documents in whatever form and

materials relating to their functions for the Court by courier or in sealed bags;

(e) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(f) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(h) Exemption from immigration restrictions or alien registration in relation to their functions as specified in the document referred to in paragraph 2 of this article.

2. Experts who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that they are performing functions for the Court and specifying a time period for which their functions will last.

Article 22

Other persons required to be present at the seat of the Court

1. Other persons required to be present at the seat of the Court shall, to the extent necessary for their presence at the seat of the Court, including the time spent on journeys in connection with their presence, be accorded the privileges, immunities and facilities provided for in article 20, paragraph 1, subparagraphs (a) to (d), of the present Agreement, subject to production of the document referred to in paragraph 2 of this article.

2. Other persons required to be present at the seat of the Court shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 23

Nationals and permanent residents

At the time of signature, ratification, acceptance, approval or accession, any State may declare that:

(a) Without prejudice to paragraph 6 of article 15 and paragraph 1 (d)

of article 16, a person referred to in articles 15, 16, 18, 19 and 21 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for the independent performance of his or her functions or his or her appearance or testimony before the Court:

(i) Immunity from personal arrest and detention;

(ii) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by that person in the performance of his or her functions for the Court or in the course of his or her appearance or testimony, which immunity shall continue to be accorded even after the person has ceased to exercise his or her functions for the Court or his or her appearance or testimony before it;

(iii) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions for the Court or his or her appearance or testimony before it;

(iv) For the purposes of their communications with the Court and for a person referred to in article 19, with his or her counsel in connection with his or her testimony, the right to receive and send papers in whatever form.

(b) A person referred to in articles 20 and 22 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for his or her appearance before the Court:

(i) Immunity from personal arrest and detention;

(ii) Immunity from legal process in respect of words spoken or written and all acts performed by that person in the course of his or her appearance before the Court, which immunity shall continue to be accorded even after his or her appearance before the Court.

Article 25

Waiver of privileges and immunities provided for in articles 13 and 14

Privileges and immunities provided for in articles 13 and 14 of the present Agreement are accorded to the representatives of States and intergovernmental organizations not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the work of the Assembly, its subsidiary organs and the Court. Consequently, States Parties not only have the right but are under a duty to waive the privileges and immunities of their representatives in any case where, in the opinion of those States, they would impede the course of justice and can be waived without

prejudice to the purpose for which the privileges and immunities are accorded. States not party to the present Agreement and intergovernmental organizations are granted the privileges and immunities provided for in articles 13 and 14 of the present Agreement on the understanding that they undertake the same duty regarding waiver.

Article 26

Waiver of privileges and immunities provided for in articles 15 to 22

1. The privileges and immunities provided for in articles 15 to 22 of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

2. The privileges and immunities may be waived:

(a) In the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) In the case of the Registrar, by the Presidency;

(c) In the case of the Deputy Prosecutors and the staff of the Office of the Prosecutor, by the Prosecutor;

(d) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar;

(e) In the case of personnel referred to in article 17, by the head of the organ of the Court employing such personnel;

(f) In the case of counsel and persons assisting defence counsel, by the Presidency;

(g) In the case of witnesses and victims, by the Presidency;

(h) In the case of experts, by the head of the organ of the Court appointing the expert;

(i) In the case of other persons required to be present at the seat of the Court, by the Presidency.

Article 27

Social security

From the date on which the Court establishes a social security scheme, the persons referred to in articles 15, 16 and 17 shall, with respect to services rendered for the Court, be exempt from all compulsory contributions to national social security schemes.

