



REGULATION NO. 2000/31

**ON THE ESTABLISHMENT OF REPRESENTATIVE OFFICES
OF FOREIGN GOVERNMENTS IN EAST TIMOR**

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

After consultation in the National Consultative Council,

For the purpose of providing for the establishment of Representative Offices of foreign governments in East Timor and specifying the privileges, immunities and exemptions applicable to such Offices and their staff, until the establishment of an independent East Timor,

Promulgates the following:

I. Definitions

Section 1
Definitions

Wherever used in the present Regulation, the following terms shall have the following meanings:

- (a) “*local staff*” means persons who:
 - (i) have the status of nationals or permanent residents of East Timor as determined by a separate UNTAET regulation; and

(ii) are employed by a foreign government to serve in connection with its *Representative Office*.

(b) “*official correspondence*” means all correspondence relating to a *Representative Office* and its functions.

(c) “*premises of a Representative Office*” are the buildings or parts of buildings and the land ancillary to those buildings or parts of buildings used for the purposes of the *Representative Office*, including the private residence of the Head of a *Representative Office*.

(d) “*private servant*” is a person who is:

(i) in the domestic service of a member of the *representative staff*;

(ii) not employed by a foreign government to serve in connection with a *Representative Office*; and

(iii) not a national of, or permanently resident in, East Timor.

(e) “*Representative Office*” means an office of a foreign government to East Timor as established pursuant to and in accordance with the present Regulation.

(f) “*representative staff*” means persons employed by a foreign government to serve with its *Representative Office*, including the Head of that Office, but excluding *local staff* and *service staff*.

(g) “*service staff*” means persons who are employed by a foreign government to provide domestic services to a *Representative Office*.

(h) “*staff of a Representative Office*” means persons employed by a foreign government to serve with its *Representative Office*, including the Head of that *Representative Office*, *local staff* and *service staff*, but excluding any contractors.

II. Representative Offices

Section 2 Establishment

The establishment of a *Representative Office* shall require the mutual consent of the foreign government to be represented in East Timor and the Transitional Administration.

Section 3 Functions

3.1 The functions of a *Representative Office* consist, inter alia, of:

(a) representing and conducting the relations of a foreign government to the Transitional Administration;

- (b) protecting in East Timor the interests of a foreign government and its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (c) negotiating with the Transitional Administration;
- (d) ascertaining, by all lawful means, conditions and developments in East Timor, and reporting thereon to a foreign government;
- (e) promoting friendly relations between a foreign government and East Timor, including in the fields of economic, cultural and scientific endeavor; and
- (f) performing any other functions entrusted to a *Representative Office* by a foreign government which are not prohibited by applicable law in East Timor and to which no objection is taken by the Transitional Administration.

3.2 Nothing in the present Regulation shall be construed as preventing the performance of consular functions by a *Representative Office*.

Section 4 Appointment of the Head of Office

4.1 A foreign government shall notify the Transitional Administration, in writing, of the person it proposes to appoint as the Head of its *Representative Office*.

4.2 Heads of *Representative Offices* shall be considered to have commenced their appointment in East Timor when they have notified the Transitional Administration of their arrival and a true copy of their credentials has been presented to the Transitional Administration.

4.3 Two or more foreign governments may accredit the same person as the Head of their *Representative Offices*.

Section 5 Appointment of staff

5.1 Subject to Sections 5.2 and 5.3 of the present Regulation, a foreign government may freely appoint the members of the *staff of a Representative Office*.

5.2 A foreign government may, if requested by the Transitional Administration, be required to notify the Transitional Administration, in writing, of any military persons it proposes to appoint as a member of the *representative staff*.

5.3 A foreign government shall notify the Transitional Administration, in writing, of any person it proposes to appoint:

- (a) as a member of the *local staff*; or

(b) as a member of the *representative staff* who is a national of a state other than that represented by the *Representative Office*.

Section 6
Notification of status

A foreign government shall notify the Transitional Administration, in writing, of the appointment of members of the *staff of its Representative Office*, their first arrival in East Timor, the termination of their functions and their final departure, as the case may be.

Section 7
Obligations of a Representative Office and its staff

7.1 The *premises of a Representative Office* shall not be used in any matter incompatible with the functions of a *Representative Office* as specified in:

- (a) Section 3 of the present Regulation; or
- (b) any agreements in force between the Transitional Administration and the foreign government represented by the *Representative Office*.

7.2 All official business of a foreign government with East Timor that is entrusted to the *Representative Office* of that foreign government shall be conducted with or through the Transitional Administration.

7.3 Without prejudice to the privileges, immunities and exemptions provided under the present Regulation, all persons enjoying such privileges, immunities and exemptions shall respect the laws applicable in East Timor.

7.4 All persons enjoying privileges, immunities and exemptions provided under the present Regulation shall not interfere in the internal affairs of East Timor.

7.5 A member of the *representative staff* shall not practice for personal profit any professional or commercial activity in East Timor.

Section 8
Notifications in relation to staff

8.1 The Transitional Administration may, at any time, request a foreign government to recall, within a specified time, an appointed member of its *representative staff*.

8.2 The Transitional Administration may only make a request pursuant to Section 8.1 of the present Regulation if the Transitional Administration has reasonable grounds to believe that the member of the *staff of a Representative Office*:

(a) has performed or is performing functions other than those specified in Section 3 of the present Regulation;

(b) has breached or is breaching the obligations specified in Section 7 of the present Regulation; or

(c) has undertaken or is undertaking activities which are detrimental to the fulfillment of the mandate of UNTAET.

8.3 If a foreign government refuses or fails within the specified period to recall a staff member who is the subject of a request pursuant to Section 8.1 of the present Regulation, the Transitional Administration may notify the foreign government that the person shall not be recognized as a member of the *staff of a Representative Office*.

Section 9

Premises of a Representative Office and its staff

9.1 The Transitional Administration shall assist a *Representative Office* to acquire premises necessary for the performance of its functions, in accordance with applicable law in East Timor.

9.2 The Transitional Administration shall also, where necessary, assist a *Representative Office* to obtain suitable accommodation for the members of its staff, in accordance with applicable law in East Timor.

9.3 A foreign government shall not, without the prior consent of the Transitional Administration, establish offices forming part of its *Representative Office* in localities other than those in which the *Representative Office* itself is established.

9.4 The *premises of a Representative Office* shall be inviolable. No person, other than a member of the *staff of a Representative Office*, shall enter the *premises of a Representative Office* without the consent of the Head of that *Representative Office*.

9.5 The Transitional Administration shall, at all times, protect the *premises of a Representative Office*, together with its property and assets, from any intrusion or damage and prevent any disturbance of the peace of a *Representative Office*.

9.6 The protections specified in Section 9.5 of the present Regulation shall be extended to the *premises of a Representative Office* if members of the *staff of a Representative Office*, including the Head of that Office, are permanently or temporarily recalled.

9.7 A foreign government may entrust the custody of the *premises of a Representative Office*, together with the property and assets of that Office, to another foreign government in the circumstances specified in Section 9.6 of the present Regulation.

9.8 The private residences of *representative staff* shall enjoy the same inviolability and protection as the *premises of a Representative Office* provided for under this Section.

Section 10
Provision of facilities

10.1 The Transitional Administration shall, as necessary, accord full facilities for the performance of the functions of a *Representative Office*.

10.2 The Transitional Administration shall, even in the case of armed conflict, grant facilities in order to enable persons enjoying privileges, immunities and exemptions provided under the present Regulation, other than the *local staff* and the members of their families, to leave East Timor at the earliest possible time. In particular, the Transitional Administration shall, where necessary, place at their disposal the necessary means of transport for themselves and their property.

Section 11
Representation by another foreign government

A *Representative Office* may, with the consent of the Transitional Administration and at the request of another foreign government not represented in East Timor, undertake the protection of the interests of the unrepresented foreign government and those of its nationals.

III. Privileges, Immunities and Exemptions

Section 12
Applicable privileges, immunities and exemptions

12.1 The family members of a member of the *representative staff* shall, if they are not nationals of, or permanently resident in, East Timor, enjoy the privileges, immunities and exemptions provided in Sections 16 to 22 of the present Regulation.

12.2 Members of the *service staff* shall enjoy immunity in respect of their official acts, exemption from taxes and duties on the emoluments they receive by reason of their employment and shall enjoy the immunity provided by Section 21 of the present Regulation.

Section 13
Freedom of movement

13.1 The members of the *staff of a Representative Office* shall enjoy freedom of movement throughout East Timor, including entry in and exit out of East Timor, subject to UNTAET regulations and directives concerning zones into which entry is prohibited or limited for reasons of security.

13.2 In accordance with Section 7.4(a) of UNTAET Regulation 2000/9 of 25 February 2000 on the Establishment of a Border Regime for East Timor, the members of the *representative staff* shall not require a permit for entry to East Timor.

Section 14
Freedom of communication

14.1 A *Representative Office* shall have freedom of communication in respect of the functions specified in Section 3 of the present Regulation.

14.2 A *Representative Office* may employ all appropriate means of communication with the foreign government it is representing, including the use of codes and the dispatch and receipt of *official correspondence* by diplomatic courier or in sealed bags.

14.3 All correspondence relating to a *Representative Office* shall be inviolable. The sealed bags in which *official correspondence* is dispatched or received shall not be opened or detained.

14.4 A foreign government shall provide its diplomatic couriers with an official document indicating their status and the number of packages constituting the diplomatic bag. Diplomatic couriers shall enjoy the immunity provided by Section 18 of the present Regulation in the performance of their functions.

14.5 A foreign government may entrust a diplomatic bag to the captain of a commercial aircraft landing at a designated port of entry in East Timor. That captain shall not be considered to be a diplomatic courier and shall not be entitled to the immunity enjoyed by diplomatic couriers under Section 18 of the present Regulation.

Section 15
Use of national flags and emblems

15.1 A *Representative Office* shall have the right to use its national flag and emblem on its premises, including the private residence of the Head of that *Representative Office*.

15.2 The Head of a *Representative Office* shall have the right to use the national flag and emblem on his or her means of transport.

Section 16
Immunity from jurisdiction and legal process

16.1 Subject to Section 17 of the present Regulation, the members of the *representative staff* shall enjoy immunity from the criminal jurisdiction of East Timor.

16.2 Subject to Section 17 of the present Regulation, the members of the *representative staff* shall also enjoy immunity from the civil and administrative jurisdiction of East Timor, except in the case of:

(a) an action relating to private real property situated in East Timor, unless that staff member holds such property on behalf of a *Representative Office*;

(b) an action relating to succession in which the staff member is involved as an executor, administrator, heir or legatee as a private person and not on behalf of a *Representative Office*; or

(c) an action relating to any professional or commercial activity undertaken in East Timor by the staff member that is outside his or her official functions.

16.3 Members of the *representative staff* shall not be obliged to give evidence as a witnesses in a court of competent jurisdiction in East Timor.

16.4 No measures of execution shall be taken in respect of a member of the *representative staff* except with respect to the matters specified in Sections 16.2(a) - (c) of the present Regulation, and provided that such measures can be taken without infringing the inviolability of the person or their residence.

16.5 The immunity of the members of the *representative staff* as provided for in this Section does not exempt such staff members from the jurisdiction in which they are a national.

16.6 *Local staff* shall enjoy immunity from legal process in respect of words spoken or written, and acts performed, by them in their official capacity.

Section 17 Waiver of immunity

17.1 An immunity from jurisdiction provided for by Sections 16.2 and 16.3 of the present Regulation may be waived by a foreign government in respect of the members of its *representative staff*.

17.2 The initiation of proceedings by a member of the *representative staff* enjoying the immunity from jurisdiction provided for by Sections 16.2 and 16.3 of the present Regulation shall preclude that staff member from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

17.3 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 judgement, for which a separate waiver shall be necessary.

17.4 Every waiver must be express.

Section 18 Inviolability of persons

18.1 The person of a member of the *representative staff* shall be inviolable. A member of the *representative staff* shall not be liable to any form of arrest or detention.

18.2 The Transitional Administration shall treat a member of the *representative staff* with due respect and shall take all appropriate steps to prevent any attack on their person, their freedom or their dignity.

18.3 The *local staff* shall enjoy the immunity provided in this Section only in respect of official acts performed in the exercise of their functions.

Section 19 Immunity from interference with premises and assets

19.1 The premises and assets of a *Representative Office* shall be immune from search, seizure or any other form of interference, whether by legislative, judicial or executive action.

19.2 The archives of a *Representative Office* and all documents belonging to, or held by, a *Representative Office* shall be inviolable, wherever the archives or documents may be within East Timor.

19.3 Subject to Section 19.4 of the present Regulation, the premises and assets of the members of the *representative staff* shall enjoy the same inviolability and protection as the property and assets of a *Representative Office* provided for under Sections 19.1 and 19.2 of the present Regulation. All documents belonging to members of the *representative staff* shall enjoy inviolability.

19.4 The personal luggage of a member of the *representative staff* shall be exempt from inspection unless an officer of the Border Service under Section 14 of UNTAET Regulation 2000/9 has serious grounds to believe that it contains goods the import or export of which is:

- (a) not covered by the exemption in Section 20.2 of the present Regulation; or
- (b) prohibited by applicable law in East Timor.

19.5 A search and seizure conducted pursuant to Section 19.4 of the present Regulation shall be conducted only in the presence of the staff member concerned, or his or her authorized representative.

Section 20 Exemption from taxes and duties

20.1 The *Representative Office*s shall be exempt from all taxes and duties in respect of the *premises of a Representative Office*, whether owned or leased, other than such as represent payment for specific services rendered.

20.2 The *Representative Office* shall be exempt from all customs restrictions, duties and related charges, other than charges for storage, cartage and similar services, in respect of:

- (a) equipment, provisions, supplies and other articles for the exclusive and official use of the *Representative Office* or the members of the *representative staff*; and

(b) articles for the personal use of a member of the *representative staff* or members of his/her family forming part of the household of that member, including articles intended for establishment.

20.3 The members of the *representative staff* shall be exempt from all taxes and duties, including taxes on the salaries and emoluments paid to them by the foreign government they represent and in respect of their private residences, whether owned or leased, other than such fees or charges as may be payable for specific services rendered.

Section 21

Exemption of staff from social security

21.1 A member of the *representative staff* shall, with respect to services rendered for a foreign government, be exempt from social security provisions that may be in force in East Timor.

21.2 The exemption shall also apply to *private servants* who are in the sole employ of a member of the *representative staff*, on condition that they are not nationals of, or permanently resident in, East Timor and that they are covered by the social security provisions which may be in force elsewhere.

21.3 A member of the *representative staff* who employs persons to whom the exemption provided for in Section 21.2 of the present Regulation does not apply shall observe any obligations which the social security provisions of East Timor impose upon employers.

21.4 The exemption provided for in Sections 21.1 and 21.2 of the present Regulation shall not preclude voluntary participation in the social security system of East Timor.

Section 22

Exemption of staff from public service obligations

The members of the *representative staff* are exempt from all public service obligations.

IV. Operational Provisions

Section 23

Duration of privileges, immunities and exemptions

23.1 Every person entitled to the privileges, immunities and exemptions provided by the present Regulation shall enjoy them from the time:

(a) he/she enters East Timor for the purpose of accepting his/her appointment with a *Representative Office* or, if a member of the family of a member of the *staff of a Representative Office*, from the time they enter East Timor for the purpose of joining that staff member; or

(b) his/her appointment is notified to the Transitional Administration pursuant to Section 6 of the present Regulation, if already in East Timor.

23.2 When the functions of a member of the *local staff* have come to an end, such privileges, immunities and exemptions shall cease immediately.

23.3 When the functions of a member of the *staff of a Representative Office*, other than a member of the *local staff*, have come to an end, the privileges, immunities and exemptions provided in the present Regulation shall cease upon the first to occur of:

(a) the departure of that person from East Timor; or

(b) thirty (30) days following the date on which the functions of that member of the *staff of a Representative Office* have come to an end.

23.4 The privileges, immunities and exemptions provided in the present Regulation in respect of a family member of a member of the *staff of a Representative Office* shall cease upon the first to occur of:

(a) the departure of that person from East Timor;

(b) thirty (30) days following the date on which the functions of that member of the *staff of a Representative Office* to whom the person is related have come to an end;

(c) the date on which a dependant child of a member of the *staff of a Representative Office* obtains the age of majority; or

(d) the date on which the relationship of that person with the member of the *staff of a Representative Office* shall have terminated.

23.5 In the case of the death of a member of the *staff of a Representative Office*, the members of his or her family shall continue to enjoy the privileges, immunities and exemptions to which they are entitled under the present Regulation until the expiry of a reasonable period during which to depart East Timor.

23.6 With respect to acts performed by a member of the *staff of a Representative Office* in his or her official capacity, including *local staff*, the immunities to which they are entitled under the present Regulation shall continue to apply notwithstanding that the functions of that staff member have come to an end.

23.7 For the purposes of this Section, the functions of a member of the *staff of a Representative Office* come to an end upon:

(a) a foreign government having notified the Transitional Administration of the termination of the functions of that staff member pursuant to Section 6 of the present Regulation; or

(b) The Transitional Administration having issued a notification regarding that staff member pursuant to Section 8.3 of the present Regulation.

Section 24
Entry into Force

The present regulation shall enter into force on 27 September 2000.

Jean-Christian Cady
Acting Transitional Administrator