UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK

September 16, 2011

HC-125-11

The United States Mission to the United Nations presents its compliments to the Permanent Missions to the United Nations and has the honor to restate the policies and procedures regarding the application of the Foreign Missions Act ("the Act") concerning the rules and procedures associated with the acquisition, construction, renovation and use of real property in the United States. This note supersedes USUN's circular diplomatic note No. HC-35-04, dated April 21, 2004.

Pursuant to Section 4305 of the Act, the Permanent Missions are obligated to notify and obtain the approval of the Department of State's Office of Foreign Missions (OFM) **before** finalizing a proposed lease, purchase, sale, or other acquisition or disposition of real property in the United States, undertaken by or on behalf of a mission. In accordance with Section 4305, all such transactions are subject to disapproval by the Department of State.

Absent OFM's approval of a proposed acquisition, use, or disposition of real property, as required by Section 4305 of the Act, the Permanent Missions are advised that their properties would be assumed not to enjoy any otherwise applicable diplomatic privileges and immunities, including inviolability and exemption from real estate taxation.

DIPLOMATIC NOTE

In addition to the prior notification and approval of all mission leases, purchases, or sale of a new or existing property, the alteration, renovation, addition, or change in use of an existing property (including change in tenant if property is being leased by a foreign government owner) is also considered an “acquisition” under the Act and must be submitted to OFM for approval. The Department of State understands "alteration" to include any type of construction, repair, installation or other work that requires the issuance of a permit from the relevant and authorized local governmental authority. In this regard, missions are reminded that in nearly all cases, property used as diplomatic premises or residences are not exempt from the requirement of obtaining relevant zoning and/or building permits.

Missions are encouraged to seek the OFM’s New York Regional Office’s approval of proposed acquisitions or dispositions as early in the process as possible. Missions that obtain the benefit of OFM’'s experience and advice in the early stages of an acquisition, alteration, or disposition, may avoid any unnecessary financial or legal complications.

Missions may request OFM’s approval of proposed acquisitions, construction, renovations, or dispositions of real property by delivering a written request to OFM’s New York Regional Office, which is located at 799 United Nations Plaza, 8th Floor, New York, NY 10017. Such requests may be faxed to (642) 282-2823 or sent via electronic mail to OFMNYCustomerService@state.gov.

At a minimum, the request should include:

1. The exact address of the property, including apartment, suite, or floor number;

2. The proposed or existing use of the property, i.e., UN Mission, UN Mission annex, Residence of the Permanent Representative, Staff Residence, etc.;

3. The proposed transaction, i.e., purchase, lease (including lease term), sale, alteration or expansion;

4. The inclusion of one of the following statements:

    a. No part of this property is or will be used for commercial purposes; or

    b. A portion or all of this property is or will be used for commercial purposes and by doing so the mission understands that such use deprives the area used for such purposes of both its inviolability status and eligibility for exemption from property taxation.

        - If a portion or all of a property is or will be used for commercial purposes, missions are required to provide OFM with information detailing the square footage of the premises that is or will be used for commercial purposes.

5. The inclusion of the following statement: This mission acknowledges that it must request and obtain the approval of the Department of State's Office of Foreign Missions prior to changing the use of this property from that which is described in this note.

6. *Renovations* - A description of the proposed alteration or expansion of an existing property, including a listing of the anticipated types of permits needed to complete the project.

7. *Residential* – The name(s) and position title of the intended tenant/resident.

8. *Point of Contact* – The name and contact information of the mission member authorized to discuss the proposed property acquisition with OFM.

After receiving the request described above, the Act allows the Department of State a review period of up to sixty (60) calendar days. Although OFM is normally able to provide a response within a few weeks, the full review period may be required. Therefore, missions are encouraged to submit the aforementioned request as far in advance as possible.

Prior to receiving a response from OFM to the proposed acquisition, alteration, disposition, missions **may not** enter into a contract or lease agreement, or make any alteration, unless the agreement expressly states that the execution of the agreement is subject to disapproval by the Department of State. Missions are reminded that significant financial and legal complications may result if this requirement is overlooked.

Unless specifically otherwise approved, properties acquired by foreign missions for diplomatic purposes are to be used in their entirety for such purposes. Without separately requesting and obtaining OFM approval, properties authorized to be used for diplomatic purposes may not be used, even in part, for any other purpose, such as office space for other governmental organizations, state-owned or private commercial entities, and may not be leased to any other party not affiliated with the mission.

In addition to the Act's notification and approval requirements, mission properties are subject to the applicable building and land-use laws and regulations of local jurisdictions. Missions are reminded that they are also required to request and obtain OFM's consent for the issuance of all property-related permits.

It is the responsibility of the mission to be informed of, and in compliance with, the regulations of the jurisdiction in which they are located. Inasmuch as failure to comply with local laws could result in legal and financial complications, missions are encouraged to consult with OFM regarding every prospective property acquisition, construction, renovations or disposition of real property at the earliest possible date.

Inquiries may be addressed to OFM's New York Regional Office by telephone at (646) 282-2825 or by electronic mail at OFMNYCustomerService@state.gov.

The United States Mission to the United Nations avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.