
Annex XXV: Draft provisions for privileges and immunities

Article * Purpose

To enable the Green Climate Fund (the Fund) to effectively fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth shall be accorded to the Fund in the territory of [country].

Article * Legal Status

The Fund shall possess full juridical personality and, in particular, full capacity to:

- (a) Contract;
- (b) Acquire, and dispose of, immovable and movable property; and
- (c) Institute legal proceedings.

Article * Immunity from Judicial Proceedings

1. The Fund shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which case, action may be brought against the Fund in a court of competent jurisdiction in the territory of a country in which the Fund has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Fund by [country], or by any agency or instrumentality of [country], or by any entity or person directly or indirectly acting for or deriving claims from [country] or from any agency or instrumentality of [country]. Any dispute regarding the application or interpretation of this agreement will be resolved through mutual consultation.
3. Property and assets of the Fund, shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Fund.

Article ** Immunity of Assets

Property and assets of the Fund, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article ** Immunity of Archives

The archives of the Fund, and, in general, all documents and data, in whatever format, including electronic format, belonging to it, or held by it, shall be inviolable, wherever located.

Article ** Freedom of Assets from Restrictions

1. To the extent necessary to carry out the purpose and functions of the Fund effectively, and subject to the provisions of this Agreement and the laws and regulations of [country], all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.
2. Subject to the laws and regulations of [country], the Fund may without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) Hold funds, gold or currency of any kind and operate accounts in any currency; and
 - (b) Shall be free to transfer its funds, gold or currency from one country to another, or within any country, and convert any convertible currency held by it into any other convertible currency.
3. In exercising its rights under paragraph 1 of this Article, the Fund shall pay due regard to any representations made by the Government insofar as it is considered that effect can be given to such representations without detriment to the interests of the Fund.

Article ** Privileges for Communications

Official communications of the Fund shall be accorded treatment no less favourable than that accorded to the official communications of international organizations present in [country].

Article ** Immunities and Privileges of Fund Officials

All Board members, alternates, their advisers, officers and employees of the Fund, including experts performing missions for the Fund:

- (a) Shall be immune from legal processes with respect to acts performed by them in their official capacity, except when the Fund waives the immunity;
- (b) Where they are not local citizens or nationals, shall be accorded the same treatment with respect to immigration requirements, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other international organizations; and
- (c) Shall be granted the same treatment in respect of travelling facilities as is accorded by [country] to representatives, officials and employees of comparable rank of other international organizations.

For the purposes of Article **, **, and **, “experts performing missions for the Fund” includes an expert or consultant providing services under contractual arrangement with the Fund, including its monitoring and accountability units and members of Board committees, panels, and working groups.

Article ** Facilitation of Travel

[Country] shall facilitate transit of movement, including through the expedited processing of applications of visas, where required, and where the laws and regulations of [country] allow, for Board members, alternates, their advisers, officers, and employees of the Fund, including experts performing missions for the Fund.

Article ** Exemption from Taxation

1. The Fund, its assets, property, income and its operations and transactions shall be exempt from all taxation and from all customs duties. The Fund shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. No tax shall be levied on or in respect of salaries or emoluments paid by the Fund to Board members, alternates, their advisers, officers or employees of the Fund, including experts performing missions for the Fund, except for the salaries and emoluments paid by the Fund to citizens or nationals of [country].
3. [Country] shall not levy any tax on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held:
 - (a) If it discriminates against such obligation or security solely because it is issued by the Fund; or
 - (b) If the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Fund, including any dividend or interest thereon, by whomsoever held:
 - (a) Which discriminates against such obligation or security solely because it is guaranteed by the Fund; or
 - (b) If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Fund.

Article ** Waiver of Immunities, Exemptions and Privileges

The Fund, at its discretion, may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Fund, taking into account that privileges and immunities are accorded to Board members, alternates, their advisers, officers and employees of the Fund, including experts performing missions the Fund, not for their personal benefit, but in the interest of the effective functioning of the Fund. Consequently, the Fund not only has the right but is under a duty to waive the immunity of Board members, alternates, their advisers, officers and employees of the Fund, including experts performing missions for the Fund, in any case where, in the opinion of the Fund, as the case may be, the immunity would impede the course of justice, and where it can be waived, without prejudice to the purpose for which the immunity is accorded or to the interests of the Fund, as the case may be.