



GREEN
CLIMATE
FUND

Template for the Bilateral Agreement on Privileges and Immunities

GCF/B.09/19

17 February 2015

Meeting of the Board

24–26 March 2015

Songdo, Republic of Korea

Agenda item 21

Recommended action by the Board

It is recommended that the Board:

- (a) Take note of the information presented in document GCF/B.09/19 *Template Bilateral Agreement on Privileges and Immunities*; and
- (b) Adopt the draft decision presented in Annex I to this document.

Template for the Bilateral Agreement on Privileges and Immunities

I. Background and introduction

1. The Board of the Green Climate Fund, in its report to the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) at its twentieth session, emphasized the “utmost importance for the quick operation of the Fund to ensure that the staff of the Fund’s Secretariat are covered by the privileges and immunities in the countries where the Fund is operating.”¹

2. In decision B.08/24, the Board requested the following:

“that, in order for the Fund and its operations, members of the Board, consultants, and other persons affiliated with the Fund, as well as its staff, to have similar privileges and immunities to operate effectively, the Secretariat shall develop immediately for the Board’s consideration and approval a template bilateral agreement that would provide such privileges and immunities in countries in which the Fund operates.”

3. In response to the report of the Board to the COP at its twentieth session, the COP requested the Board to continue further deliberation on privileges and immunities, and to report on this matter at the twenty-first session of the COP (COP 21). It also requested the Board to report biennially to the COP on the status of existing privileges and immunities with regard to operational activities, starting at COP 21.²

4. The template bilateral agreement (the “Agreement”) in Annex II has been prepared in response to the request of the Board in decision B.08/24 as the basis for the Fund’s negotiations with countries where the Fund operates. These are developing country Parties that are eligible to receive resources from the Fund in accordance with paragraph 35 of the Governing Instrument. In addition, privileges and immunities should be granted by other country Parties, as in the relevant country where the Fund may have assets, members of the Board and other persons associated with the Fund may be residing or traveling through, and meetings of the Fund, including meetings of the Board, may be held.

5. The purpose of the Agreement is to facilitate the effective implementation of the Fund’s activities in these countries, and to ensure that the Fund’s legal status and the privileges and immunities of the Fund and the persons associated with it are recognized.

6. It is suggested to commence negotiations without delay upon Board approval of the Agreement in Annex II, with those country Parties to the Convention where the Fund may be operating or may otherwise have a link with, as described above in paragraph 3, and to conclude with them agreements which take into account the specific circumstances of each country. Moreover, the Agreement is intended as a means to facilitate effective implementation of the Fund’s operational activities through a legal framework which ensures that the Fund, members and alternate members of the Board, staff and experts, and other persons associated with the Fund, are covered by privileges, immunities and other customary exemptions.

¹ Document FCCC/CP/2014/8.

² Decision 7/CP.20 (Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund).

II. Proposed content of template agreement

7. The wording of the Agreement is modelled on that of the Agreement between the Republic of Korea and the Green Climate Fund concerning the Headquarters of the Green Climate Fund (Headquarters Agreement), the provisions of which were previously considered by the Board and currently govern the Fund's relationship with the Republic of Korea. In particular, the core provisions on the objectives and interpretation of the following reflect the approved language of the Headquarters Agreement that has been adjusted to the Agreement, and, in a few cases, has been shortened:

- (a) Definitions (Article 1);
- (b) Juridical personality (Article 2);
- (c) Communication facilities (Article 3);
- (d) Inviolability of archives (Article 4);
- (e) Immunity of the Fund and its property (Article 5);
- (f) Exemption from taxation and custom duties (Article 6);
- (g) Identity cards and travel documents (Article 8);
- (h) Waiver of privileges and immunities (Article 10);
- (i) Flag, emblem and markings (Article 11); and
- (j) Settlement of disputes (Article 13).

8. Consistent with the purpose of the Agreement, some changes to the language of Article 11 of the Headquarters Agreement regarding "Access, Transit, Residence, Visas and Meetings" were necessary which have been incorporated in Article 8 of the Agreement. This Article also includes some elements which were incorporated in the Headquarters Agreement in Article 4, paragraph 3 (a) and Article 5, paragraph 1.

9. Some changes were also necessary to Article 13 of the Headquarters Agreement. Consistent with the purpose of the Agreement, provisions equivalent to paragraph 2 (b) of Article 13 of the Headquarters Agreement have not been incorporated. Instead, an adjustment to paragraph 2 (a) of the said Article has been made, which is incorporated in Article 10, paragraph 2 (a) of the Agreement. Such adjustment is consistent with the practice adopted in relation to arrangements with country Parties regarding the conduct of meetings of the Board. Also, the provisions of Article 13, paragraph 3 of the Headquarters Agreement regarding the privileges and immunities of experts have been simplified, as reflected in Article 10, paragraph 3 of the Agreement.

10. The only substantially new provision of the Agreement is that in Article 13 which allows the Fund to appoint a local fund agent. It may be occasionally advisable to do so if special circumstances so warrant. Also, other organizations, such as the Global Fund to Fight Aids, Tuberculosis and Malaria that rely on country systems, have made provision for the appointment of a local fund agent.³ Therefore, provisions regarding the appointment of a local fund agent have been incorporated in the Agreement.

III. Need to consider the circumstances of each country

11. It is anticipated that core provisions of the Fund's legal status and privileges and immunities of the Fund, members of the Board, staff and other persons associated with the Fund

³ <http://www.theglobalfund.org/en/lfa/>

will be incorporated in all agreements with country Parties to the Convention where the Fund will be operating. Nevertheless, flexibility is required in negotiating specific agreements with country Parties, also taking into account constitutional and other constraints of country Parties to the Convention.

12. In doing so, it is necessary to take account of the specific circumstances of each country Party. Countries may prefer alternative solutions for conferring to the Fund and the persons associated with it a similar status as provided for in the Agreement. Experience shows that some countries may be able to extend to the Fund and the persons associated with it treatment similar to that applicable to the United Nations and its staff and experts under the Convention on the Privileges and Immunities of the United Nations. Other countries have found it convenient in the past to extend to the officials of the Fund covered in Article 10, paragraph 2 of the Agreement (i.e. members and alternate members of the Board and the Executive Director) privileges and immunities similar to those provided for under the Convention on Special Mission of 1969. Moreover, there may be other special circumstances of country Parties which need to be considered. Thus, flexibility is required for negotiating agreements with country Parties to the Convention.

IV. Signature of agreements and report to the Conference of the Parties to the United Nations Framework Convention on Climate Change

13. Given the urgency of concluding such agreements, it is recommended that the Board authorize the Executive Director to negotiate and sign agreements with country Parties eligible to receive resources from the Fund which take account of the specific circumstances of these Parties.

14. In addition, it is recommended that the Board authorize the Executive Director to negotiate agreements or arrangements with other country Parties to the Convention (e.g. in the form of an agreement, memorandum of understanding, letter exchange, or involving another legally binding commitment) which contain core provisions relating to the Fund's status and privileges and immunities of the Fund, members of the Board and other persons involved with the Fund (e.g. immunity of jurisdiction, immunity of assets and archives and freedom of assets from restrictions, privilege of communication and exemption from taxation, and inviolability of premises used for the conduct of meetings, granting of visa, etc.).

15. The Executive Director will report at each meeting of the Board as part of the Secretariat's activities on agreements and other arrangements which are being negotiated and have been signed to ensure recognition of the Fund's legal status and the privileges and immunities of the Fund and the persons associated with it in country Parties to the Convention. Moreover, in accordance with the guidance provided by the COP, a report on this matter will be included in the report of the Board to the COP 21.

Annex I: Draft decision of the Board

The Board, having reviewed document GCF/B.09/19 *Template Bilateral Agreement on Privileges and Immunities*:

- (a) Authorizes the Executive Director to negotiate and sign, on the basis of the template bilateral agreement set forth in Annex II hereto, agreements with country Parties to the UNFCCC that are eligible to receive resources from the Fund, taking account of the specific circumstances of each country Party;
- (b) Highlights the importance and urgency of concluding the agreements mentioned in paragraph (a) above to facilitate the effective implementation of the Fund's operational activities through a legal framework which ensures that the Fund, members and alternate members of the Board, staff and experts, and other persons associated with the Fund, are covered by privileges and immunities;
- (c) Encourages all other country Parties to the Convention to enter into agreements or arrangements with the Fund to ensure that the Fund, members and alternate members of the Board, staff and experts, and other persons associated with the Fund are covered by privileges and immunities;
- (d) Authorizes the Executive Director to negotiate, sign and implement agreements or arrangements as referred to in paragraph (c) above;
- (e) Requests the Secretariat to report at each meeting of the Board as part of the Secretariat's activities on any agreements or arrangements which have been concluded and implemented pursuant to paragraphs (a) and (c) above, and on any problems or special issues which have arisen in this context; and
- (f) Requests the Secretariat to incorporate in its draft report to the Conference of the Parties to the Convention at its twenty-first session a section on the status of the privileges and immunities of the Fund and any action deemed necessary to further enhance such privileges and immunities.

Annex II: Template for the Bilateral Agreement on Privileges and Immunities

AGREEMENT

between

THE GOVERNMENT OF [xx]*

and

THE GREEN CLIMATE FUND

**REGARDING THE FUND'S LEGAL STATUS AND PRIVILEGES AND IMMUNITIES AND
FACILITATE EFFECTIVE IMPLEMENTATION OF THE FUND'S**

OPERATIONAL ACTIVITIES IN [xx]*

* Name of country

AGREEMENT BETWEEN THE GOVERNMENT OF [xx] AND THE GREEN CLIMATE FUND REGARDING THE FUND'S LEGAL STATUS AND PRIVILEGES AND IMMUNITIES AND FACILITATE EFFECTIVE IMPLEMENTATION OF THE FUND'S OPERATIONAL ACTIVITIES IN [xx]

WHEREAS the Conference of the Parties ("COP") to the United Nations Framework Convention on Climate Change ("Convention"), in its decision 3/CP.17 taken in Durban, South Africa on 11 December 2011, approved the Governing Instrument for the Green Climate Fund ("Fund") ;

WHEREAS, in accordance with paragraph 7 of the Governing Instrument, in order to operate effectively internationally, the Fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests;

WHEREAS, in accordance with paragraph 8 of the Governing Instrument, the Fund will enjoy such privileges and immunities as are necessary for the fulfilment of its purposes, and the officials of the Fund will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the Fund; and

WHEREAS the Fund and the Government of [xx] are conscious of the need to regulate the legal relations between the Fund and [xx] in order to ensure that the Fund possess juridical personality to operate effectively internationally and has the legal status, capacity and privileges and immunities to exercise its functions and protect its interests, including for its Board, Secretariat and its staff and experts, and other persons associated with the Fund.

Desiring to conclude an agreement on these matters:

THE GREEN CLIMATE FUND AND [xx] HAVE AGREED AS FOLLOWS:

**Article 1
DEFINITIONS**

For the purpose of the present Agreement, the following definitions shall apply:

- (a) "Accountability Units" means the evaluation unit, the integrity unit and the redress mechanism established by the Board pursuant to the Governing Instrument;
- (b) "Agreement" means this Agreement between the Fund and [xx];
- (c) "Archives of the Fund" means all records, correspondence, documents, manuscripts, still and moving pictures, films, sound recordings, computer or media data, and other digital and electronic records, or other compilations of data or other material, whether in machine-readable or other form, belonging to, or held by, the Fund;
- (d) "Board" means the Board of the Fund;
- (e) "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992 and which entered into force on 21 March 1994;
- (f) "Executive Director" means the head of the Secretariat appointed by the Board;

- (g) “Expert” or “Experts” means an expert or experts providing services to the Secretariat or any Accountability Units under contractual arrangements between the expert and the Fund or between an entity and the Fund;
- (h) “Government” means the Government of [xx];
- (i) “Observers” means the active observers invited to participate in Board meetings and any designated representative of an observer who has been accredited by the Fund;
- (j) “Meetings convened by the Fund” means any meetings of the Fund, including any international conference or other gathering convened by the Fund, and any commission, committee or sub-group of any of such meetings;
- (k) “Party” or “Parties” mean the Fund and/or the [xx], as the case may be;
- (l) “Property of the Fund” means assets, funds, income and rights belonging to, or held or administered by, the Fund;
- (m) “Secretariat” means the Secretariat of the Fund established by the Fund pursuant to the Governing Instrument; and
- (n) “Staff” means the Executive Director and all the staff of the Secretariat and the Accountability Units, irrespective of their nationality, with the exception of the persons recruited locally and assigned to hourly rates of pay.

Article 2 JURIDICAL PERSONALITY AND LEGAL CAPACITY

The Fund shall possess such juridical personality and legal capacity as may be necessary to operate effectively internationally, to enter into this Agreement, and for the exercise of its official functions and the fulfilment of its purposes, including the capacity to contract, acquire and dispose of immovable and movable property, and to be party to and institute judicial proceedings.

Article 3 COMMUNICATION FACILITIES FOR THE IMPLEMENTATION OF FUND ACTIVITIES

The Fund shall enjoy, for its official communications and telecommunications, treatment not less favourable than that accorded by [xx] to any other intergovernmental organization or diplomatic mission.

Article 4 INVIOABILITY OF ARCHIVES

The Archives of the Fund wherever located shall be inviolable.

Article 5 IMMUNITY OF THE FUND AND ITS PROPERTY

1. The Fund and the property of the Fund, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process, including search, requisition, confiscation, foreclosure, seizure, all forms of attachment, injunction and expropriation whether by executive, administrative, judicial or legislative action, except as provided in

this article and insofar as in any particular case the Fund expressly has waived its immunity in writing. It is, however, understood that no such waiver of immunity shall extend to any measure of execution.

2. The Fund shall not enjoy immunity from legal process in cases arising out of, or in connection with, the exercise of the Fund's powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities. In such cases, the Fund shall be immune from all forms of seizure, attachment or execution prior to final delivery of judgment against the Fund.
3. Without being restricted by financial controls, regulations or moratoria of any kind, the Fund may:
 - (a) Hold funds, gold or currency of any kind and operate accounts in any currency;
 - (b) Freely transfer its funds, gold or currency from one country to another or within a country and convert any currency held by it into any other currency; and
 - (c) In addition, when purchasing, holding and disposing of funds, currencies, financial instruments, securities and gold, and when engaging in financial transactions and concluding financial contracts, the Fund shall be accorded terms, including all applicable exemptions and preferential treatments, which shall not be less favourable than those granted by [xx] to any other international financial institution.

Article 6

EXEMPTION FROM TAXATION AND CUSTOMS DUTIES

1. The Property of the Fund, including the property of any offices or facilities established by the Fund, the Fund's operations and transactions, and any property of the Fund in transit to, or from [xx], shall be exempt from:
 - (a) All direct taxes, except those which are, in fact, no more than charges for public utility services;
 - (b) All indirect taxes, including any value-added tax and/or other similar tax, and excise duties levied on important purchases of goods and services for official purposes. The Government may decide that in certain cases the exemptions mentioned above shall be given effect at the request of the Fund by way of a refund, which shall be made by the Government in accordance with its procedures and practices on terms not less favourable than those applicable to any diplomatic mission or intergovernmental organization in [xx]; and
 - (c) Customs duties, prohibitions and restrictions on imports and exports in respect of articles of any kind, imported or exported by the Fund for its official use, except for prohibitions and restrictions on imports or exports relating to health and safety. It is understood, however, that articles of any kind imported under such exemption will not be sold in [xx] except under conditions agreed with the Government.
2. Staff shall enjoy exemption from taxation on the salaries and emoluments paid to them by the Fund.

Article 7

MEETINGS AND CONFERENCES, ACCESS, TRANSIT, VISAS

1. Members and alternate members of the Board, Staff, Experts and other persons acting in an official capacity on behalf of the Fund shall be given the opportunity to visit project sites and facilities and review in [xx] the implementation by the Fund's accredited entities of projects, programmes and activities financed by the Fund. They shall have the right of entry into, and exit from [xx], and no impediment shall be imposed on their transit. The aforementioned officials may hold discussions and meetings with relevant stakeholders relating to, and in connection with, such projects and programmes.
2. [xx] shall issue to its embassies, legations and consulates general instructions to grant visas to the persons referred to in paragraph 1 above without any delay, waiting period, or payment of any charges, and without requiring their personal presence.
3. With the agreement of the Government, the Fund may hold a meeting of the Board in [xx]. Attendance at the meeting of the Board shall be open to members and alternate members of the Board and their advisors, Staff, representatives of the Interim Trustee or any successor trustee of the Fund, Parties to the Convention, and to Observers and relevant organizations and persons invited to the meeting of the Board.
4. With the agreement of the Government, the Fund may establish an office, including a temporary office, in [xx]. Moreover, in consultation with the Government, the Fund may organize conferences in [xx].
5. The meeting or conference rooms used by the Fund for meetings and conferences, and any office, including a temporary office, established by the Fund with the agreement of the Government, shall be subject to the authority and control of the Fund, and shall be inviolable for the duration of their use by the Fund.
6. The Government shall exercise due diligence to ensure the security, safety and protection of the Fund, Property of the Fund, and of meeting or conference rooms, or any office of the Fund, preserve order and prevent the impairment of the proper functioning of the Fund.
7. All persons invited and accredited for a meeting of the Board or conference organized by the Fund, shall have the right of entry into, and exit from [xx], and no impediment shall be imposed on their transit to, and from, the premises of the meeting of the Board or conference. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted, free of charge, as speedily as possible in accordance with applicable law.
8. The provisions of this Article shall be applicable irrespective of the relations existing between the Government of [xx] and the government of any of the persons referred to in paragraph 1 of this Article.

Article 8

IDENTITY CARDS AND TRAVEL DOCUMENTS

The Government shall recognize the use of the United Nations laissez-passer by the Staff, if so authorized by the United Nations, and the use of any other travel document approved by the Board, by members and alternate members of the Board, the Executive Director, and other Staff and Experts.

Article 9
PRIVILEGES AND IMMUNITIES

1. Notwithstanding any other privileges, immunities, exemptions and facilities accorded under this Agreement, the Staff shall:
 - (a) Be immune from legal process in respect of words spoken or written, and all acts performed by them in their official capacity, regardless of their nationality. Such immunity shall continue to be accorded after the termination of employment with the Fund; and
 - (b) Where they are not nationals of [xx]:
 - (i) Enjoy immunity from national service obligations;
 - (ii) Enjoy immunity from immigration restrictions and alien registration requirements; and
 - (iii) Be accorded the same privileges in respect of exchange facilities as are accorded to the members of comparable rank of the diplomatic missions established in [xx].
2. In addition to the provisions set forth in paragraph 1 of this Article:
 - (a) Members and alternate members of the Board and the Executive Director shall, during their stay in [xx], in connection with their official duties with the Fund, enjoy the following privileges and immunities:
 - (i) Immunity from personal arrest or detention and from seizure of their personal baggage;
 - (ii) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them in the performance of their official functions; such immunity shall continue to be accorded notwithstanding that the persons concerned are no longer engaged in the performance of such functions;
 - (iii) Inviolability of all papers and documents;
 - (iv) Exemption with respect to immigration restrictions, alien registration requirements and national service obligations in [xx] when they are visiting or through which they are passing in the exercise of their functions;
 - (v) The same facilities with respect to currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; and
 - (vi) The same immunities and facilities with respect to their official baggage as are accorded to diplomatic envoys, pursuant to security measures that the [xx] may apply according to international law.
 - (b) A member or alternate member of the Board who is a national of [xx] shall not enjoy the privileges and immunities except for those listed under paragraphs 2 (a) (ii) and 2 (a) (iii) above.

3. Experts for the Fund shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on travel in connection with their missions. In particular, they shall be accorded:
 - (a) Immunity from legal process of any kind in respect to words spoken or written, and acts done by them in the course of the performance of their official functions. This immunity from legal process shall continue to be accorded, notwithstanding that the persons concerned are no longer employed by, or providing services to, the Fund;
 - (b) Inviolability of all official papers and documents; and
 - (c) For the purpose of their communication with the Fund, the right to use codes and to receive papers or correspondence by courier or in sealed bags.

Article 10 WAIVER OF PRIVILEGES AND IMMUNITIES

1. The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interest of the Fund and not for the personal benefit of the individuals themselves. The Fund shall waive the immunity accorded to any person if, in its opinion, such immunity would impede the course of justice and the waiver would not prejudice the purpose for which the immunities are accorded.
2. The Fund shall take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and, for this purpose, shall establish such rules and regulations as deemed necessary and expedient.
3. If the Government considers that there has been an abuse of a privilege or immunity conferred by this Agreement, there shall be consultations between the Government and the Fund to determine whether any such abuse has occurred and, if so, to ensure that no repetition of such abuse occurs.
4. The Fund shall cooperate at all times with the competent authorities of [xx] to facilitate the proper administration of justice, to secure the observance of police regulations, and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in Article 9.

Article 11 FLAG, EMBLEM AND MARKINGS

The Fund shall have the right to display its flag and/or other identifiers, on its premises and vehicles.

Article 12 LOCAL FUND AGENT

The Fund shall be entitled to recruit in [xx] local staff and appoint an agent to assist the Fund in reviewing and monitoring project and programme implementation. The Government shall closely cooperate with that agent and provide to the Fund and its agent, as the case may be, all necessary documents and information regarding projects or programmes funded by the Fund.

Article 13
SETTLEMENT OF DISPUTES

1. Any dispute, controversy or claim arising out of, or in relation to this agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Permanent Court of Arbitration (PCA) Rules 2012 and:
 - (a) The number of arbitrators shall be three;
 - (b) The place of arbitration shall be The Hague, the Netherlands, at the seat of the PCA; and
 - (c) The language to be used in the arbitral proceedings shall be English.
2. The Parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Article 14
OTHER PROVISIONS

1. The Government and the Fund may enter into such supplementary agreements as may be necessary within the scope of this Agreement.
2. This Agreement shall enter into force upon signature by the Parties thereto.

IN WITNESS WHEREOF, the respective representatives duly authorized thereto, have signed this Agreement.

Done at _____, _____ this ___ day of _____

For and on behalf of the
GOVERNMENT OF [xx]

For and on behalf of the
GREEN CLIMATE FUND
