

GREEN
CLIMATE
FUND

Template for the Bilateral Agreement on Privileges and Immunities

GCF/B.10/12

18 June 2015

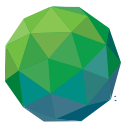
Meeting of the Board

6-9 July 2015

Songdo, Republic of Korea

Provisional Agenda item 26*

* The agenda item number will be determined when the final sequence of items in the provisional agenda is confirmed by the Co-Chairs.



Recommended action by the Board

It is recommended that the Board:

- (a) Take note of the information presented in document GCF/B.10/12 *Template for the 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 rationale for the revised template

1. Paragraphs 7 and 8 of the Governing Instrument for the Green Climate Fund state:

“7. 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 interest.”

“8. The Fund will enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. 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.”

2. Consistent with the aforementioned provisions, 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 privileges and immunities in the countries where the Fund is operating.”¹

3. 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.”

4. 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

5. At its meeting in Songdo from 24 to 26 March 2015, the Board considered a proposed “Template for the Bilateral Agreement on Privileges and Immunities” prepared by the Secretariat. In this context, several members of the Board expressed concerns regarding the agreement, in particular, as there was a perception that the Fund was seeking more in terms of privileges and immunities than was applicable under the Convention on the Privileges and Immunities of the United Nations (General Convention) and the corresponding Convention on the Privileges and Immunities of the Specialized Agencies (CPISA).

6. In response to the concerns expressed by the Board, the template previously submitted to Board at the March meeting has been substantially revised and restructured. In this context, the Secretariat made every effort to engage with members of the Board and address their concerns. The revised template (the Template) in Annex II is modelled on the General Convention, which has been ratified by 161 parties.³ However, certain provisions of the General

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).

³ A list of the signatories to the General Convention may be found under <http://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html>.

Convention had to be streamlined⁴ or adjusted, consistent with the governance structure of the Fund⁵ and the fact that some provisions of the General Convention are not applicable to the Fund.⁶

7. Overall, the Template reflects a standard which is consistent with, but slightly lower than that which is applicable under the General Convention.⁷ The content of the Template is also similar to that of agreements and arrangements which the Fund has entered into with both developed and developing countries in relation to meetings of the Board conducted in those countries. Thus, the Template provides a useful framework for agreements and arrangements on privileges and immunities with both developed and developing countries.

II. Purpose of the Template

8. The purpose of the Template is to facilitate negotiations of individual agreements with country Parties to the Convention by proposing a framework for a possible agreement and standard provisions modelled on the General Convention which may be considered for incorporation. However, differences between countries' domestic and policy environments will need to be accommodated in the specific agreements or arrangements on privileges and immunities that will be concluded with country Parties to the Convention.

9. As regards the substance of the agreements, the specific circumstances of country Parties need to be considered in the wording of each agreement. In this context, due note has been taken *inter alia* of the declarations and reservations made by country Parties to the General Convention. If so requested, such declarations and reservations will be reflected in the wording of the individual agreements with country Parties. Moreover, in general, including for those country Parties which have not ratified the General Convention, careful consideration will be given to any constraints which may exist under their constitution and laws.

10. Countries may have alternative options for conferring to the Fund and the persons associated with it a similar status as provided for in the Template. Instead of specifying in detail the privileges and immunities which are applicable in the individual agreement with the Fund, some countries may be able to incorporate into such an agreement a general statement to the effect that the General Convention shall apply *mutatis mutandis*, i.e. with necessary changes, to the Fund and the persons associated with it. In the past, some countries have also found it convenient to extend to members and alternate members of the Board and the Executive Director, privileges and immunities equivalent to those provided for under the Convention on Special Missions of 1969. The individual agreement on privileges and immunities can be modified accordingly.

⁴ Article III of the Template has been shortened substantially in comparison with Article III of the General Convention.

⁵ While Article IV of the General Convention extends privileges and immunities to Representatives of Members, Article IV of the Template covers members and alternate members of the Board of the Fund and external members of Board committees, panels and working groups, i.e. a much smaller group of individuals.

⁶ Article VII needed to be adjusted as the staff of the Fund cannot currently take advantage of the UN laissez-passer. In addition, Article VIII needed to be adjusted as the Fund does not have the right of referral to the International Court of Justice.

⁷ Article V, Section 19 of the General Convention extends to the Secretary-General and all Assistant Secretaries-General of the United Nations "in respect of themselves, their spouses and minor children, the privileges and immunities exemptions and facilities accorded to diplomatic envoys, in accordance with international law". The proposed draft of the Template, however, provides for the Executive Director to enjoy immunity from arrest and detention and from seizure of personal baggage (Article V, paragraph 2 of the Template). Article VI, Section 22 (a) of the General Convention provides for experts on missions to enjoy "immunity from personal arrest or detention and from seizure of their personal baggage." This has been removed. Thus, Article VI, paragraph 1 (a) of the Template only provides for functional immunity for Experts.

11. As regards procedure, it would be preferable for an agreement on privileges and immunities to be concluded with country Parties to the Convention, whenever feasible. However, other types of arrangements may also be considered, if warranted.

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

12. For the effective performance of the Fund's functions, and to enable the Fund to commence its operational activities, it is important to ensure that the Fund, members and alternate members of the Board, the Executive Director and staff of the Secretariat, and experts and other persons associated with the Fund, are covered by privileges and immunities in the country Parties to the Convention. For that purpose, it will be necessary to negotiate individual agreements with country Parties to the Convention which take account of their specific circumstances and constraints. This will require frequent interaction between the Secretariat and the country Parties concerned. Considering the urgency of the matter, and to allow the Secretariat to effectively engage with country Parties, it is recommended that the Board authorize the Executive Director to negotiate, sign and implement agreements and arrangements with country Parties to the Convention on the privileges and immunities of the Green Climate Fund.

13. 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, starting with the Fund's report to COP 21.

Annex I: Draft decision of the Board

The Board, having reviewed document GCF/B.10/12 *Template for the Bilateral Agreement on Privileges and Immunities*:

- (a) Authorizes the Executive Director to negotiate sign, and implement, taking account of the Template for the Bilateral Agreement on Privileges and Immunities set out in Annex II hereto and the specific circumstances of country Parties to the UNFCCC, agreements or arrangements with country Parties on the privileges and immunities of the Green Climate Fund;
- (b) 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, and on any problems or special issues which have arisen in this context; and
- (c) Requests the Secretariat to incorporate in the draft report to the Conference of the Parties to the UNFCCC at its twenty-first session, and thereafter biennially, a section on the status of the privileges and immunities of the Fund and any action deemed necessary to further enhance the Fund's privileges and immunities.

AGREEMENT

between

THE GOVERNMENT OF [xx]*

and

THE GREEN CLIMATE FUND

On the Privileges and Immunities of the Green Climate Fund

* Name of country

**AGREEMENT
BETWEEN
THE GOVERNMENT OF [xx]*
AND
THE GREEN CLIMATE FUND
ON THE PRIVILEGES AND IMMUNITIES OF THE FUND**

WHEREAS the Conference of the Parties (“COP”) to the United Nations Framework Convention on Climate Change (“Convention”), in its decision 3/CP.17 taken at Durban, South Africa, on 11 December 2011, approved the Governing Instrument (“Governing Instrument”) for the Green Climate Fund (“Fund”), and designated the Fund as an operating entity of the financial mechanism of the Convention under Article 11 of the Convention, with arrangements to be concluded between the COP and the Fund to ensure that the Fund is accountable to and functions under the guidance of the COP to support projects, programmes, policies and other activities in developing country Parties;

WHEREAS the Fund and the Government of [xx] (“Government”) are conscious of the need to ensure, consistent with paragraphs 7 and 8 of the Fund’s Governing Instrument, that the Fund and the persons associated with the Fund are covered by privileges and immunities in [xx];

Desiring to conclude an agreement on this matter:

THE GREEN CLIMATE FUND AND THE GOVERNMENT HAVE AGREED AS FOLLOWS:

**Article I
JURIDICAL PERSONALITY**

The Fund shall possess juridical personality. It shall have the capacity:

- (a) To contract;
- (b) To acquire and dispose of immovable and movable property; and
- (c) To institute legal proceedings.

**Article II
PROPERTY, FUNDS AND ASSETS**

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

2. Any premises in [xx] occupied or used by the Fund, for conferences, meetings of the Board, or other purposes, shall be inviolable. The property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

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

4. Without being restricted by financial controls, regulations or moratoria of any kind,
 - (a) The Fund may hold funds, gold or currency of any kind and operate accounts in any currency; and
 - (b) The Fund shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.
5. In exercising its rights under paragraph 4 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.
6. The Fund, its assets, income and other property shall be:
 - (a) Exempt from all direct taxes; it is understood, however, that the Fund will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Fund for its official use. It is understood, however, that articles imported under such exemption will not be sold in [xx] except under conditions agreed with the Government; and
 - (c) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.
7. When the Fund is making purchases for official use or is incurring other administrative expenses in relation to meetings or conferences or for other purposes agreed with the Government, the Government will make appropriate administrative arrangements for the remission or return of the amount of any indirect duty or tax.¹

Article III FACILITIES IN RESPECT OF COMMUNICATIONS

The Fund shall enjoy in the territory of [xx] for its official communications treatment not less favourable than that accorded by the Government to any other Government including its diplomatic mission in [xx].

Article IV REPRESENTATIVES SERVING ON CONSTITUTED BODIES OF THE GREEN CLIMATE FUND

1. Members and alternate members of the Board of the Fund and external members of Board committees, panels and working groups, shall, while exercising their 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 and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
 - (b) Inviolability for all papers and documents;

¹ Possible alternative wording: "When the Fund is making important purchases for official use or is incurring other important administrative expenses in relation to meetings or conferences or for other purposes agreed with the Government, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of any indirect duty or tax."

- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
 - (d) Exemption in respect of themselves and their spouses² from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
 - (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and
 - (g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.³
2. The names of the individuals covered by paragraph 1 of this Article shall from time to time be made known to the Government.
 3. Observers and individuals not covered by paragraph 1 of this Article invited by the Fund to participate in conferences and meetings, shall, enjoy in respect of words spoken or written and all acts done by them in their capacity as invitees of the Fund, immunity from legal process of every kind.
 4. In order to secure, for individuals covered by paragraphs 1 and 2 of this Article complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned no longer perform their respective functions.
 5. Where the incidence of any form of taxation depends upon residence, periods during which the individuals covered by paragraphs 1 and 2 of this Article are present in [xx] for the discharge of their duties shall not be considered as periods of residence.
 6. Privileges and immunities are accorded to the individuals covered by paragraphs 1 and 2 of this Article not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Fund. Consequently the Fund not only has the right but is under a duty to waive the immunity of the individuals covered under paragraphs 1 and 2 of this Article in any case where in the opinion of the Fund the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Article V OFFICIALS

1. The names of the Officials, as designated by the Executive Director, shall from time to time be made known to the Government.

² Possible alternative wording: "Exemption in respect of themselves and their legal partners..."

³ Possible alternative wording: "Members and alternate members of the Board of the Fund and external members of Board committees, panels and working groups, shall be enjoy privileges and immunities equivalent to those provided for to members of special missions under the Convention on Special Missions of 1969."

2. Officials of the Fund shall:
 - (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - (b) Be exempt from taxation on the salaries and emoluments paid to them by the Fund;
 - (c) Be immune from national service obligations;
 - (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
 - (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the Officials of comparable ranks forming part of diplomatic missions to the Government concerned;
 - (f) Be given, together with their spouses⁴ and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys; and
 - (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in in [xx].
3. In addition to the provisions set forth in paragraph 1 of this Article, the Executive Director⁵ while exercising his or her functions and during the journey to and from the place of meeting, shall enjoy immunity from personal arrest or detention and from seizure of personal baggage.⁶
4. Privileges and immunities are granted to Officials in the interest of the Fund and not for the personal benefit of the individuals themselves. The Fund shall have the right and the duty to waive the immunity of any official in any case where, in the opinion of the Fund, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.
5. The Fund shall co-operate at all times with the appropriate authorities of [xx] to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

EXPERTS ON MISSIONS FOR THE FUND

1. Experts (other than Officials within the scope of Article V) performing missions 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 journeys in connection with their missions. In particular they shall be accorded:
 - (a) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity

⁴ Possible alternative wording: "Be given, together with their legal partners..."

⁵ Possible alternative wording: "In addition to the provisions set forth in paragraph 1 of this Article, the Executive Director and other senior staff of the Fund designated by the Executive Director, while exercising their functions..."

⁶ Possible alternative wording: "In addition to the provisions set forth in paragraph 1 of this Article, the Executive Director [and other senior staff of the Fund designated by the Executive Director], while exercising his or her [their] functions, shall enjoy privileges and immunities equivalent to those provided for to members of special missions under the Convention on Special Missions of 1969."

from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the Fund;

- (b) Inviolability for all papers and documents;
- (c) For the purpose of their communications with the Fund, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; and
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

2. Privileges and immunities are granted to Experts in the interests of the Fund and not for the personal benefit of the individuals themselves. The Fund shall have the right and the duty to waive the immunity of any Expert in any case where, in the opinion of the Fund, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Fund.

Article VII IDENTITY CARDS AND TRAVEL DOCUMENTS

1. The Government shall recognize the use of the United Nations laissez-passers by the Fund's Officials, if so authorized by the United Nations, and the use of any other travel document approved by the Board, for use by members and alternate members of the Board, the Executive Director, and Officials and Experts.

2. Applications for visas (where required) from members and alternate members of the Board, the Executive Director, and Officials and Experts, when accompanied by a certificate from the Fund that they are travelling on the business of the Fund, shall be dealt with as speedily as possible and visa shall be granted free of charge. In addition, such persons shall be granted facilities for speedy travel.

3. The Government shall also facilitate applications for visas by persons other than the members and alternate members of the Board, the Executive Director, and Officials and Experts invited by the Fund.

Article VIII SETTLEMENTS OF DISPUTES

1. The Fund shall make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of a private law character to which the Fund is a party; and
- (b) Disputes involving any Official of the Fund who by reason of his or her official position enjoys immunity, if immunity has not been waived by the Fund.

2. 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) Arbitration Rules 2012 and:

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- (a) The number of arbitrators shall be three;
- (b) The place of arbitration shall be The Hague, the Netherlands at the seat of the Permanent Court of Arbitration; and
- (c) The language to be used in the arbitral proceedings shall be English.
3. 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 IX 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
