



STATUTORY INSTRUMENTS.

S.I. No. 616 of 2019



AFRICAN DEVELOPMENT (BANK AND FUND) (PRIVILEGES AND
IMMUNITIES) ORDER 2019

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WHEREAS it is enacted by section 42A (amended by section 6 of the Diplomatic Relations (Miscellaneous Provisions) Act 2017 (No. 33 of 2017)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967) that the Government may by order make provision to enable -

- (a) international organisations, communities or bodies, their institutions or organs and their property, and
- (b) persons,

to have and enjoy in the State any inviolability, exemptions, facilities, immunities, privileges or rights equivalent or having like effect to those conferred upon, or afforded in relation to, sending states, missions or international organisations under the Vienna Convention, the Convention on the Privileges and Immunities of the United Nations, or the Convention on the Privileges and Immunities of the Specialised Agencies or any other international agreement scheduled to the Diplomatic Relations and Immunities Act 1967 provided for in relation to them by an international agreement or arrangement to which the State or the Government is or intends to become a party;

AND WHEREAS the African Development Bank is such an international organisation, community or body and the Agreement Establishing the African Development Bank, done at Khartoum on 4 August 1963, is such an international agreement;

AND WHEREAS the African Development Fund is such an international organisation, community or body and the Agreement Establishing the African Development Fund, done at Abidjan on 29 November 1972, is such an international agreement;

NOW, the Government, in exercise of the powers conferred on them by the said section 42A, hereby order as follows:

1. This Order may be cited as the African Development (Bank and Fund) (Privileges and Immunities) Order 2019.
2. Chapter -
 - (a) VII of the Agreement Establishing the African Development Bank (the text of which is, for convenience of reference, set out in Schedule 1), and

- (b) VIII of the Agreement Establishing the African Development Fund (the text of which is, for convenience of reference, set out in Schedule 2),

shall apply for the purposes of section 42A (amended by section 6 of the Diplomatic Relations (Miscellaneous Provisions) Act 2017 (No. 33 of 2017)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967).

SCHEDULE 1

Chapter VII of the Agreement Establishing the African Development Bank done at Khartoum on 4 August 1963 as amended

CHAPTER VII - STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

ARTICLE 50

Status

To enable it to fulfil its purpose and the functions with which it is entrusted, the Bank shall possess full international personality. To those ends, it may enter into agreements with members, non-member States and other international organizations. To the same ends, the status, immunities, exemptions and privileges set forth in this chapter shall be accorded to the Bank in the territory of each member.

ARTICLE 51

Status in Member Countries

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity:

1. To contract;
2. To acquire and dispose of immovable and movable property; and
3. To institute legal proceedings.

ARTICLE 52

Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.

2. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Bank.

ARTICLE 53

Immunity of Assets and Archives

1. Property and assets of the Bank, wherever 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.
2. The archives of the Bank and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.

ARTICLE 54

Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 55

Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

ARTICLE 56

Personal Immunities and Privileges

All governors, directors, alternates, officers and employees of the Bank and experts and consultants performing missions for the Bank:

1. Shall be immune from legal process with respect to acts performed by them in their official capacity;

2. Where they are not local nationals, shall be accorded the same immunities from immigration restrictions, 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 members; and
3. Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

ARTICLE 57

Exemption from Taxation

1. The Bank, its property, other assets, income and its operations and transactions shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding, or collection of any tax or duty.
2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.
3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - a. Which discriminates against such obligation or security solely because it is issued by the Bank; 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 Bank.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - a. Which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

- b. If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 58

Notification of Implementation

Each member shall promptly inform the Bank of the specific action which it has taken to make effective in its territory the provisions of this chapter.

ARTICLE 59

Application of Immunities, Exemptions and Privileges

The immunities, exemptions and privileges provided in this chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in articles 52, 54, 56, and 57 of this Agreement in cases where its action would in its opinion further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

SCHEDULE 2

Chapter VIII of the Agreement Establishing the African Development Fund done at Abidjan on 29 November 1972 as amended

CHAPTER VIII - STATUS; IMMUNITIES; EXEMPTIONS AND PRIVILEGES

ARTICLE 41

Purpose of Chapter

To enable the Fund effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Fund in the territory of each State participant, and each State participant shall inform the Fund of the specific action which it has taken for such purpose.

ARTICLE 42

Status

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

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
and
- (iii) to institute legal proceedings.

ARTICLE 43

Legal Process

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 receive loans in accordance with Article 8, in which case actions may be brought against the Fund in a court of competent jurisdiction in the territory of a country in which the Fund has its office, or has appointed an agent for the purpose of accepting service or notice of process, or has otherwise agreed to be sued.

2. Notwithstanding the provisions of paragraph 1, no action shall be brought against the Fund by any participant, or by any agency or instrumentality of a participant, or by any entity or person directly or indirectly acting for or deriving claims from a participant or from any agency or instrumentality of a participant. Participants shall have recourse to such special procedures for the settlement of disputes between the Fund and its participants as may be prescribed in this Agreement, in the by-laws and regulations of the Fund, or in contracts entered into with the Fund.
3. The Fund shall also make provision for appropriate modes of settlement of disputes in cases which do not come within the provisions of paragraph (2) and of Articles 52 and 53 and which are subject to the immunity of the Fund by virtue of paragraph (1) of this Article.
4. Where by virtue of any of the provisions of this Agreement the Fund does not enjoy immunity from legal process, the Fund, and its property and assets wherever located and by whomsoever held, shall nevertheless be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Fund.

ARTICLE 44

Immunity of Assets

Property and assets of the Fund, wherever 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 45

Immunity of Archives

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

ARTICLE 46

Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Fund, and subject to the provisions of this Agreement, all property and other assets of the Fund shall be free from restriction by financial controls, regulations, or moratoria of any kind.

ARTICLE 47

Privilege for Communications

Official communications of the Fund shall be accorded by each State participant the same treatment as it accords to the official communications of other international financial institutions of which it is a member.

ARTICLE 48

Immunities and Privileges of Officials and Personnel

All governors and directors, and their alternates, the President and personnel, including experts performing missions for the Fund:

1. Shall be immune from legal process with respect to acts performed by them in their official capacity;
2. When they are not local nationals, shall be accorded no less favourable immunities from immigration restrictions, alien registration requirements and national service obligations, and no less favourable facilities as regards exchange regulations, than are accorded by the State participant concerned to the representatives, officials and employees of comparable rank of any other international financial institution of which it is a member; and
3. Shall be granted no less favourable treatment in respect of travelling facilities than is accorded by the State participant concerned to representatives, officials and employees of comparable rank of any other international financial institution of which it is a member.

ARTICLE 49

Exemption from Taxation

1. The Fund, its assets, property, income, operations and transactions, shall be exempt from all direct taxation, and from all customs duties, or

taxes having equivalent effect, on goods imported or exported for its official use. The Fund shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. Notwithstanding the provisions of paragraph 1, the Fund shall not claim exemption from taxes which are no more than charges for services rendered.
3. Articles imported under an exemption provided for by paragraph 1 shall not be sold in the territory of the State participant which granted the exemption except under conditions agreed with that participant.
4. No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to the President and personnel including experts performing missions for it.

ARTICLE 50

Waiver by the Fund

1. The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Fund. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this Chapter in cases where its action would in its opinion further the interests of the Fund.
2. Regardless of the provisions of paragraph 1, the President shall have the right and the duty to waive the immunity of any of the personnel, including experts performing missions for the Fund, in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.



GIVEN under the Official Seal of the Government,
3 December, 2019.

LEO VARADKAR,
Taoiseach.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This order provides that privileges and immunities are afforded to the African Development Bank, in accordance with the Agreement Establishing the African Development Bank (done at Khartoum on 4 August 1963), and the African Development Fund, in accordance with the Agreement Establishing the African Development Fund (done at Abidjan on 29 November 1972), pursuant to the Diplomatic Relations and Immunities Act 1967 (as amended).

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