



## Diplomatic Privileges and Immunities (Green Climate Fund) Order 2016

His Excellency, Tom Marsters

Queen's Representative

### Order in Executive Council

At Avarua, Rarotonga this 6<sup>th</sup> day of December 2016

Present:

### His Excellency the Queen's Representative in Executive Council

Pursuant to sections 9(2)(a) and 26 of the Diplomatic Privileges and Immunities Act 1968, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following order—

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#### Order

- 1 **Title**  
This order is the Diplomatic Privileges and Immunities (Green Climate Fund) Order 2016.
- 2 **Commencement**  
This order comes into force on the day after the date on which it is made.
- 3 **Declaration as to the Green Climate Fund**  
The Green Climate Fund (GCF) forms part of the Commonwealth Secretariat, the members of which are the Governments of Commonwealth countries.

**4 Agreement as to Privileges and Immunities**

- (1) The privileges and immunities of the GCF are those privileges and immunities agreed upon between the Government of the Cook Islands and the GCF, in the Schedule to this Order.
- (2) The agreement is deemed part of the laws of the Cook Islands and is enforceable.
- (3) Any variations to the agreement as agreed by the parties are deemed part of this order and take effect on such date as agreed to by the parties.
- (4) The agreement comes into force on the date that it is signed by the parties.

**Schedule  
Agreement**

**AGREEMENT**

**between**

**THE GOVERNMENT OF THE COOK ISLANDS**

**and**

**THE GREEN CLIMATE FUND**

**On the Privileges and Immunities of the Green Climate Fund**

AGREEMENT BETWEEN THE GOVERNMENT OF THE COOK ISLANDS AND THE GREEN CLIMATE FUND ON THE PRIVILEGES AND IMMUNITIES OF THE GREEN CLIMATE FUND (Agreement)

WHEREAS the Green Climate Fund ("Fund") and the Government of the Cook Islands ("Government") are conscious of the need to ensure, consistent with paragraphs 7 and 8 of the Governing Instrument for the Green Climate Fund, that the Fund and the persons associated with the Fund are covered by privileges and immunities in the Cook Islands;

WHEREAS the Diplomatic Privileges and Immunities Act 1968 (Act) of New Zealand is extended to the Cook Islands pursuant to section 26 of that Act, and pursuant to section 9(2)(a) of that Act and by Order in Executive Council the Queens Representative to the Cook Islands has authority to provide that the Fund have the privileges and immunities specified in the Second Schedule to the Act.

WHEREAS the Fund and the Government agree that the grant of privileges and immunities to the Fund and the persons associated with it is essential for the effective performance of the Fund's functions.

Desiring to conclude an agreement on this matter:

THE GREEN CLIMATE FUND AND THE GOVERNMENT OF THE COOK ISLANDS HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of this 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 the Cook Islands;
- (c) "Archives of the Fund" means all records, correspondences, 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) "Custom duties" means any duties, taxes or levies on items imported or exported by the Fund for official purposes, including vehicles, equipment, materials and supplies;
- (g) "Duty" means any excise duty or other levy on purchases of goods and services for official purposes;
- (h) "Executive Director" means the head of the Secretariat appointed by the Board;
- (i) "Expert performing missions for the Fund" means an expert or consultant providing services under contractual arrangements with the Fund (either between the expert

and the Fund or between an entity and the Fund), including the Accountability Units and members of Board committees, panels and working groups;

- (j) "Government" means the Government of the Cook Islands;
- (k) "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;
- (l) "Officials" means the members and alternate members of the Board and their advisers, the Executive Director, the staff of the Secretariat and any other officers and employees of the Fund, including staff of the Accountability Units, irrespective of their nationality, with the exception of the persons recruited locally and assigned to hourly rates of pay;
- (m) "Party" or "Parties" mean the Fund and/or the Cook Islands, as the case may be;
- (n) "Property of the Fund" means assets, funds, income and rights belonging to, or held or administered by, the Fund;
- (o) "Secretariat" means the Secretariat of the Fund established by the Fund pursuant to the Governing Instrument; and
- (p) "Tax" means any direct or indirect tax, including any value-added tax and/or other similar tax.

## Article 2 Purpose

To enable the Fund to fulfil effectively 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 the Cook Islands.

## Article 3 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 4 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 cases 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 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 the Cook Islands, or by any agency or instrumentality of the

Cook Islands, or by any entity or person directly or indirectly acting for or deriving claims from the Cook Islands or from any agency or instrumentality of the Cook Islands. Any dispute regarding the application or interpretation of this agreement will be resolved through mutual consultation.

3. Property and assets of the Fund shall, wherever located and by whoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Fund.

#### Article 5 Immunity of Assets

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

#### Article 6 Immunity of Archives

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

#### Article 7 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 the Cook Islands, 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 the Cook Islands, the Fund, without being restricted by financial controls, regulations or moratoria of any kind:

- (a) May 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 8 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 the Cook Islands.

## Article 9

## Immunities and Privileges of Fund Officials

1. All members and alternate members of the Board, their advisers, the Executive Director, and officers and employees of the Fund, including experts performing missions for the Fund:
  - (a) Shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Fund waives the immunity;
  - (b) When they are not Cook Islanders, permanent residents or ordinarily resident in the Cook Islands, 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 the Cook Islands 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 the Cook Islands to representatives, officials and employees of comparable rank of other international organizations.
2. In addition to the provisions set forth in paragraph 1 of this Article, members and alternate members of the Board and the Executive Director while exercising their functions and during the journey to and from the Cook Islands, shall enjoy immunity from personal arrest or detention and from seizure of personal baggage.
2. 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.

## Article 10

## Facilitation of Travel and Recognition of Travel Document

1. The Cook Islands shall facilitate transit of movement, including through the expedited processing of applications of visas, where required and where the laws and regulations of the Cook Islands allow, for members and alternate members of the Board, their advisers, the Executive Director, officers and employees of the Fund, including experts performing missions for the Fund.
2. The Cook Islands shall facilitate the applications of visas of observers and other persons invited by the Fund, where required and where the laws and regulations of the Cook Islands allow, to participate in meetings or conferences organized by the Fund.
3. The Government shall recognize the use of the United Nations laissez-passer by the Officials of the Fund, 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 employees and experts performing missions for the Fund.

## Article 11

## 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 except assets, property, and income disposed of in the Cook Islands. 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 and emoluments paid by the Fund to members and alternate members of the Board, their advisers, the Executive Director, officers and employees of the Fund, including experts performing missions for the Fund who if they are employed in the Cook Islands were not ordinarily resident as described in the Constitution of the Cook Islands, three months before taking up the employment.
3. The Cook Islands shall not levy any tax on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomever 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 whomever 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 12  
Waiver

The Fund, at its discretion, may waive any of the privileges, immunities and exemptions conferred under this Agreement 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 members and alternate members of the Board, their advisers, the Executive Director, officers and employees of the Fund, including experts performing missions for 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 members and alternate members of the Board, their advisers, the Executive Director, 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.

Article 13  
Settlement of Disputes

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;



- (c) The language to be used in the arbitral proceedings shall be English; and
- (d) 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] [on the date on which the Ministry of Foreign Affairs notifies the Executive Director of the Fund that all requirements for the Agreement to enter into force have been met.]
3. [The provisions of this Agreement shall be provisionally applied as of the date of signature of this Agreement.]

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 THE COOK ISLANDS

For and on behalf of the  
GREEN CLIMATE FUND

\_\_\_\_\_  
**Aukino Tairea**  
**Clerk of the Executive Council**

\_\_\_\_\_  
This order is administered by the Ministry of Foreign Affairs and Immigration.

This order was made on the \_\_\_\_\_ day of \_\_\_\_\_ 2016.