Africa Finance Corporation (Privileges and Immunities) Regulations 2021

GN No. 248 of 2021

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THE INTERNATIONAL ORGANISATIONS AND CONFERENCES (PRIVILEGES AND IMMUNITIES) ACT

Regulations made by the Minister under section 19 of the International Organisations and Conferences (Privileges and Immunities) Act

1. These regulations may be cited as the **Africa Finance Corporation (Privileges and Immunities) Regulations 2021**.

2. In these regulations —

"Act" means the International Organisations and Conferences (Privileges and Immunities) Act;

"Agreement" means the Agreement for the Establishment of the Africa Finance Corporation done at Abuja on 28 May 2007;

"Corporation" means the Africa Finance Corporation;

"representative" means the Chief Executive, Director, Officers or employees of the Corporation, who is not a citizen of Mauritius.

3. Part V of the Act shall apply to the Corporation.

4. The Corporation, its property and representatives shall have and enjoy inviolability, exemptions, facilities, privileges, and immunities subject to such limitations as are accorded in Articles 8 to 14 of the Agreement set out in the Schedule and regulation 5.

5. (1) No representative shall be entitled to any immunity from jurisdiction where he contravenes any road traffic legislation in force in Mauritius or caused any injury or damage whilst driving a motor vehicle.

(2) Any representative who intends to own or drive a motor vehicle in Mauritius shall comply with the relevant motor vehicle insurance legislation in force in Mauritius.

6. These regulations will come into operation on 15 September 2021.

Made by the Minister on 15 September 2021.

SCHEDULE

[Regulation 4]

Article 8: Legal Process

The Corporation shall enjoy immunity from every form of legal action or process except in respect of its operations where legal action may be brought against the Corporation in any court of competent jurisdiction in the territory of the state where the headquarters of the Corporation is situated or in which the Corporation has a representative or branch office or a subsidiary, or has appointed an agent for the purpose of accepting service or notice of process or in which it has issued securities or guaranteed same or has otherwise agreed to be sued. No such action against the Corporation shall be brought by:

a. Member State;

b. Shareholder or a former Shareholder of the Corporation or persons acting for or deriving claims from a Shareholder or a former Shareholder; or

c. any natural or legal persons in respect of:

   i. transactions governed by arbitration agreements;
   ii. matters pending before an arbitral tribunal; and
   iii. personnel matters.

Article 9: Immunity of Property and Assets

1. The property and assets of the Corporation wherever located and by whomsoever held shall be immune from:
   a. search, requisition, expropriation, confiscation, nationalization and all other forms of seizure, taking or foreclosure by executive or legislative action; and
   b. seizure, attachment or execution before the delivery of final judgment or award against the Corporation.

2. For the purpose of this Article and Article 10 of this Agreement, the term "property and assets of the Corporation" shall include property and assets owned or held by the Corporation and deposits and funds entrusted to the Corporation in the ordinary course of business.

Article 10: Freedom of Property, Assets and Operations from Restriction

1. To the extent necessary to implement the purpose of the Corporation and carry out its functions, each Member State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that are likely to hinder in any manner the smooth functioning of the Corporation or impair its operations.

2. To this end, the Corporation, its property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative executive, administrative, fiscal and monetary restrictions of any nature.

Article 11: Immunity of Archives

The archives of the Corporation and, in general, all documents belonging to, or held by the Corporation shall be inviolable wherever located, except that the immunity provided for in this Article shall not extend to documents required to be produce& in the course of judicial or arbitral proceedings to which the Corporation is a party or proceedings arising out of transactions concluded by the Corporation

Article 12: Privilege for Communications

Official communications of the Corporation shall be accorded by each Member State the same treatment and preferential rates that it accords to the official communications of international organizations.

Article 13: Personal Immunities, Privileges and Exemptions

1. All Representatives, the Chief Executive Officer, Directors, officers and employees of the Corporation and consultants and experts performing missions for the Corporation:

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

    b. shall be accorded the same immunities from immigration restrictions and alien registration requirements, and, not being local nationals, shall be accorded the same immunities from national service obligations and the same facilities as regards exchange regulations, as are accorded by each Member State to representatives, officials and employees of comparable rank of other states or international organizations; and

c. where they are not resident nationals, shall be granted the same treatment in respect of travelling facilities as is accorded by Member States to representatives, officials and employees of comparable rank of other states or international organizations.

2. The Chief Executive Officer, Directors, officers and employees of the Corporation:

a. shall be immune from personal arrest or detention;

Article 14: Waiver of Immunities and Privileges

The immunities and privileges provided in this Agreement are granted in the interest of the Corporation and may only be waived, to such extent and upon such conditions as the Board of Directors of the Corporation shall determine, in cases where such a waiver would not, in its opinion, prejudice the interests of the Corporation. The Chief Executive Officer of the Corporation shall have the right and the duty to waive the immunity of any officer, employee, consultant or expert of the Corporation 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 Corporation. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive the immunity of the Chief Executive Officer or any Director of the Corporation.