African Export-Import Bank (Privileges and Immunities) Regulations 2008

GN No. 132 of 2008

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 **African Export-Import Bank (Privileges and Immunities) Regulations 2008**.

2. In these regulations -

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

"Agreement" means the Agreement establishing the Bank signed in Abidjan on 8 May 1993;

"Bank" means the African Export-Import Bank (AFREXIMBANK);

"Charter" means the Charter of the Bank set out in Annex I to the Agreement;

"Participating State" means a State member to the Agreement.

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

4. The Bank shall have the capacity to -

(a) enter into contracts and conclude agreements;

(b) acquire and dispose of movable and immovable property;

(c) be a party to judicial and other legal or administrative proceedings.

5. (1) Subject to paragraph (2), the Bank shall enjoy immunity from every form of legal process.

(2) No action under paragraph (2) against the Bank shall be brought by -

(a) Government;

(b) a shareholder or a former shareholder of the Bank;

(c) persons acting for or deriving claims from a shareholder or a former shareholder of the Bank; or

(d) any natural or legal person in respect of -

(i) transactions governed by arbitration agreements;

(ii) matters pending before an arbitration tribunal; and

(iii) personnel matters.

(3) Without prejudice to paragraph (2), disputes arising in connection with the operations of the Bank shall be subject to conventional business practices and ordinary legal processes applicable thereto.

6. (1) The property and assets of the Bank wherever located and by whomsoever held shall be immune from –

(a) search, requisition, expropriation, confiscation, nationalisation, and 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 Bank.

(2) Without prejudice to paragraph (1), the property and assets of the Bank shall be subject to due legal processes and judicial action taken by ordinary courts of competent jurisdiction.

(3) To the extent necessary to implement the purpose of the Bank and carry out its functions, but subject to the Agreement, the Bank, its property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative, executive, administrative, fiscal and monitory restrictions of any nature.

(4) In this regulation, "property and assets" or "property, assets" has the same meaning as in Article VIII (3) of the Agreement.

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

8. Every official communication shall be accorded the same treatment and preferential rates as is accorded to the official communications of international organisations.

9. (1) All Representatives, the President, Vice- President, Directors, Alternate Directors, officers and employees of the Bank and consultants and experts performing missions for the Bank –

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

(b) who are not citizens of Mauritius, 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 under any other law in force to representatives, officials and employees of comparable rank of a Participating State; and

(c) where they are not resident nationals, shall be granted the same treatment in respect of traveling facilities as is accorded under any other law in force to representatives, officials and employees of comparable rank of a Participating State.

(2) The President, Vice-President, officers and employees of the Bank -

(a) shall be immune from personal arrest or detention, except that this immunity shall not apply to civil liability arising from a road traffic accident or to a road traffic offence; and

(b) shall be exempt from any form of direct or indirect taxation on salaries, emoluments, indemnities and pension paid by the Bank.

(3) Paragraph (2)(b) shall not apply to a person who is a national of, or is permanently resident in, Mauritius.

10. (1) The President of the Bank shall have the right and the duty to waive the immunity of any officer, employee, consultant or expert of the Bank 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.

(2) In the circumstances referred to in paragraph (1), the Board of Directors of the Bank shall have the right and duty to waive the immunity of the President or any Vice-President, Director or Alternate Director of the Bank.

11. (1) The Bank, its property, assets, income, operations and transactions shall be exempt from all taxation and custom duties.

(2) The Bank and its receiving fiscal and paying agents shall be exempt from any obligations relating to the payment, withholding or collection of any tax or duty out of funds owned by, or otherwise appertaining to, the Bank.

(3) Without prejudice to paragraph (1), the property and assets of the Bank, its capital, reserves and dividends, loans, credits, guarantees, securities, and other investments and transactions, interest, commissions, fees, profits, gains, proceeds of realization and other income, return and moneys of any kind, accruing, appertaining or payable to the Bank from many source shall be exempt from all forms of taxes, duties, charges, levies, and imposts of any kind whatsoever, including stamp duty and other documentary taxes, heretofore levied or hereafter imposed in Mauritius.

(4) Without prejudice to paragraphs (1), (2) and (3), residents of Mauritius shall be taxed in accordance with the relevant legislation in force.

12. (1) The Bank shall be accorded a status not less favourable than that of a non-resident corporation, and shall enjoy all fiscal exemptions, financial facilities, privileges and concessions granted to international organisations, banking establishments and financial institutions by the Participating States under the Agreement.

(2) The Bank may, without prejudice to the generality of the provisions of Article XI of the Agreement and paragraph (1), freely and without any restriction, but to the extent necessary to implement its purpose and carry out its functions -

(a) carry out all forms of banking business and financial services and authorised under the Charter;

(b) purchase, hold and dispose of national currencies;

(c) purchase, hold and dispose of convertible currencies, securities, bills of exchange and negotiable instruments, and transfer the same to, from or within the territory of Mauritius;

(d) open, maintain and operate accounts in national currencies;

(e) open, maintain and operate convertible currency accounts;

(f) raise funds and make loans in convertible currencies, provided that it shall seek the consent of the Participating State in whose market it intends to raise funds; and

(g) carry out any operation authorised under the Charter.

13. These regulations shall come into operation on 8 August 2008.

Made by the Minister on 13th August 2008.