African Development Bank (Privileges and Immunities) Order 1974

GN 95/1974

Order made by the Minister under section 19 of the International Organisation and Conferences (Privileges and Immunities) Act, 1970

1. This Order may be cited as the African Development Bank (Privileges and Immunities) Order 1974.

2. In this Order-

"Act" means the International Organisations and Conferences (Privileges and Immunities) Act, 1970;

"Agreement" means the Agreement establishing the Bank done at Khartoum on the 4th August 1963;

"Bank" means the African Development Bank;

"Chief Infrastructure Investment Specialist" means the Chief Infrastructure Investment Specialist who is reassigned by the Bank to work in the Liaison Office;

"Liaison Office" means the Liaison Office of the Bank located in Mauritius;

"member" means a State member of the Bank;

"officer" —

(a) means a governor, director, alternate or employee of the Bank who is not a citizen or permanent resident of Mauritius;

(b) includes the official heading the Liaison Office;

"official heading the Liaison Office" means the Chief Infrastructure Investment Specialist, or any person who is re-assigned by the Bank to head the Liaison Office, who is not a citizen or permanent resident of Mauritius.

Amended by [GN No. 153 of 2012]; [GN No. 67 of 2014]

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

4. The Bank shall have the capacity-

(a) to contract;
(b) to acquire and dispose of immoveable and moveable property; and
(c) to institute legal proceedings.

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

(2) The Bank may, in relation to the exercise of its borrowing powers, be sued before a court of competent jurisdiction in Mauritius if it has-

(a) appointed an agent for the purpose of accepting service or notice of process; or
(b) issued guaranteed securities.

(3) 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 judgment against the Bank.

6. (1) The 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.

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

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

8. Every official communication of the Bank shall be accorded the same treatment as is, under any other law in force, accorded to the official communications of members.

9. (1) Subject to paragraph (1A), every officer —

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

(b) who is not a citizen 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, under any other law in force, accorded to a representative, official or employee of comparable rank of a member; and

(c) shall be granted the same treatment in respect of travelling facilities as is, under any other law in force, accorded to a representative, official or employee of comparable rank of a member.

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

(b) Every officer who intends to own or drive a motor vehicle in Mauritius shall comply with the relevant motor vehicle insurance legislation in force in Mauritius.

(2) Every expert or consultant performing a mission for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent

exercise of his functions during the period of his mission, including the time spent on journeys in connexion therewith.

Amended by [GN No. 153 of 2012]; [GN No. 67 of 2014]

9A. (1) The official heading the Liaison Office shall, in addition to the privileges and immunities specified in regulation 9—

(a) be immune from personal arrest or detention and from seizure of his official and personal baggage;

(b) be exempt from any form of taxation on income derived from sources outside Mauritius;

(c) be accorded —

(i) the same privileges, in respect of exchange facilities, as are accorded to Heads of international financial organisations represented in Mauritius;

(ii) the freedom to maintain foreign accounts in local currency;

(d) be accorded, whilst under employment with the Bank and upon termination of his re-assignment, the right to transfer, without restriction or limitation, funds out of Mauritius in any foreign currency, provided that the funds are lawfully in his possession;

(e) have the right to import and export, in a single or separate shipment or consignment, free of duty and levies, his personal effects, household equipment, motor vehicles and other articles, provided that the import and export of such effects, equipment, vehicles or articles are not prohibited or controlled;

(f) be granted, together with his spouse and dependants, such other immunities, privileges and exemptions as are accorded to Heads of international financial organisations represented in Mauritius, their spouses and dependants respectively.

(2) The official heading the Liaison Office shall have the right to use codes, to dispatch or receive correspondence, by courier or in sealed bags, with the same immunities and privileges as are conferred on diplomatic couriers and bags.

(3) (a) Subject to subparagraph (b), the publications of the Bank and other articles, which are imported or exported by the Bank for its official use, shall be exempt from prohibitions and restrictions on import and export, except where such publications and articles are prohibited or controlled, in Mauritius.

(b) Any article which has been exempted in accordance with subparagraph (a) and paragraph (1) (e) shall —

(i) not be sold in Mauritius without the approval of Government; and

(ii) only be sold on such conditions as may be imposed by Government.

Added by [GN No. 153 of 2012]; [GN No. 67 of 2014]

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

(2) The Bank shall be exempt from any obligation relating to the payment, withholding or collection of any tax or duty.

(3) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to a director, alternate, officer or other professional staff of the Bank.

(4) No tax 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 the 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.

(5) No tax 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.

Made by the Minister on the 27th June 1974.