

ANTIGUA AND BARBUDA



**RESOLUTION OF THE HOUSE OF REPRESENTATIVES RATIFYING THE
AGREEMENT BETWEEN ANTIGUA AND BARBUDA AND THE GREEN CLIMATE
FUND ON THE PRIVILEGES AND IMMUNITIES OF THE GREEN CLIMATE FUND**

STATUTORY INSTRUMENT

2016, No. 34

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WHEREAS Antigua and Barbuda is a party to the Agreement dated 20th July 2016, between Antigua and Barbuda and The Green Climate Fund on The Privileges and Immunities of the Green Climate Fund; and

WHEREAS the Ratification of treaties Act (Cap. 364) provides in section 3 (1) *inter alia* that where a Treaty to which Antigua and Barbuda becomes a Party is one which affects or concerns the relationship of Antigua and Barbuda with any international organisation, agency, association or similar body, such Treaty shall not enter into force with respect to Antigua and Barbuda unless it has been ratified or approved in accordance with the provisions of the Act; and

WHEREAS the Agreement between Antigua and Barbuda and The Privileges and Immunities of The Green Climate Fund is a bilateral agreement which is governed by international law and concerns the relationship of Antigua and Barbuda and The Green Climate Fund.

NOW THEREFORE BE IT RESOLVED BY this Honourable House that the bilateral Agreement between Antigua and Barbuda and The Green Climate Fund on The Privileges and Immunities of The Green Climate Fund, the text of which is attached hereto as a schedule, be ratified as a treaty under section 3(1) (c) of the Ratification of Treaties Act, Cap. 364.

Passed the House of Representatives this 25th day of July, 2016.

Sir Gerald Watt Q.C,
Speaker of the House of Representatives

Ramona Small,
Clerk to the House of Representatives

SCHEDULE 1



AGREEMENT

BETWEEN

THE GOVERNMENT OF ANTIGUA AND BARBUDA

AND

THE GREEN CLIMATE FUND

On the Privileges and Immunities of the Green Climate Fund

**AGREEMENT BETWEEN THE GOVERNMENT OF ANTIGUA AND BARBUDA AND
THE GREEN CLIMATE FUND ON THE PRIVILEGES AND IMMUNITIES OF THE
GREEN CLIMATE FUND**

This Agreement is made between the Government of Antigua and Barbuda acting through the Ministry of Health and the Environment (“Government”) having its principal place of business at #1 Victoria Park, Botanical Gardens, St. John’s Antigua and the Green Climate Fund (“Fund”), having its headquarters at Songdo, Republic of Korea, established in accordance with Decision1/CP.16 of the Conference of the Parties to the United Nations Framework Convention on Climate Change and governed by the Governing Instrument of the Green Climate Fund (“Governing Instrument”) approved by the said Conference of the Parties which provides in paragraph 7 that “in order to operate effectively internationally, the fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests.”

WHEREAS the Fund and the Government of Antigua and Barbuda are conscious of the need to ensure, consistent with paragraphs 7 and 8 of the Governing Instrument, that the Fund and the

persons associated with the Fund are covered by privileges and immunities in Antigua and Barbuda;

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 ANTIGUA AND BARBUDA HAVE AGREED AS FOLLOWS:

**Article 1
Definitions**

For the purpose of the present Agreement, the following definitions shall apply:

- (a) "Accountability Units" means evaluation unit, the integrity unit, and the redress mechanism established by the Board pursuant to the Governing Instrument;
- (b) "Agreement" means this Agreement between Fund and Antigua and Barbuda;
- (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 Antigua and Barbuda;
- (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 Antigua and Barbuda, 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 effectively fulfil 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 Antigua and Barbuda.

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

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

- (c) Which discriminates against such obligation or security solely because it is guaranteed by the Fund; or
- (d) 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 immunity is accorded or to the interests of the Funds, 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 proceeding 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 Amendment and Modification

This Agreement may be amended or modified in whole or in part at any time but only by means of an agreement in writing between the Parties.

Article 15 Supplementary Agreements and Entry into Force

*Resolution of the House of Representatives Ratifying
The Agreement between Antigua and Barbuda and the Green
Climate Fund on the Privileges and Immunities of the Green Climate Fund*

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.

IN WITNESS WHEREOF, the respective representatives duly authorized thereto, have signed this agreement.

For and on behalf of the
GOVERNMENT OF ANTIGUA BARBUDA

For and on behalf of the
GREEN CLIMATE FUND

Honourable Minister Molwyn Joseph
Ministry of Health and the Environment

Hèla Cheikhrouhou
For Executive Director

Date: 20th July, 2016

Date: 20th July, 2016