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# **A draft model Agreement on Privileges and Immunities for the International Solar Alliance**

## **Summary**

The document presents a draft model Agreement on Privileges and Immunities for the ISA', between the ISA and its member countries, submitted for consideration of the Assembly.

## 1. Introduction

In accordance with Article XIII of the Framework Agreement, the ISA treaty entered into force on 6<sup>th</sup> December, 2017, thereby making the ISA a *de jure* treaty based International Intergovernmental Organization.

Further, in accordance with Article X of the Framework Agreement, the Headquarters Agreement between the Host Country, i.e., Government of the Republic of India and the ISA was signed on 26<sup>th</sup> March, 2018 at New Delhi. The Host Country has also notified that the United Nations (Privileges and Immunities) Act, 1947, applies *mutatis mutandi* to the ISA and its officials.

In accordance with Article X (3) of the Framework Agreement, under the territory of each member, subject to its National Laws and in accordance with a separate Agreement, if necessary, the ISA Secretariat may enjoy such immunity and privileges that are necessary for the independent discharge of its functions and programmes.

To implement Article X (3), 'a draft model Agreement on Privileges and Immunities for the ISA', between the ISA and its member countries has been presented in the document for consideration of the Assembly.

## **2. Draft Agreement on Privileges and Immunities for the International Solar Alliance (ISA)**

### **PREAMBLE**

Whereas Article X (3) of the Framework Agreement provides that under the territory of each Member, subject to its National Laws and in accordance with a separate Agreement, if necessary; the ISA may enjoy such immunity and privileges that are necessary for the independent discharge of its functions and programmes; and

Whereas Article X (1) the Headquarter Agreement between the host country and ISA has been signed on 26<sup>th</sup> March, 2016 under which ISA possess judicial personality, the capacity to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings.

Whereas the host country has notified on 5<sup>th</sup> June, 2018 the Privileges and Immunities to ISA under UN P&I Act, 1947 mutatis mutandis.

Consequently, the ISA Secretariat propose before the first Assembly the text of the Privileges and Immunities for International Solar Alliance for consideration, ratification, acceptance, approval or accession by each Member of the International Solar Alliance.

### **Article I**

### **DEFINITIONS**

#### **Section 1**

In this Agreement:

- (a) the word “Framework Agreement” means the Framework Agreement on the Establishment of the International Solar Alliance, which was opened for signature at the CoP 21 Conference of the International Solar Alliance which took place in Morocco on 15 November 2016 and entered into force on 6 December 2017;
- (b) the word “ISA” means the International Solar Alliance established by the Framework Agreement;
- (c) the word “host country” means the government of the Republic of India.

- (d) the word “Member” or “Members” means signatories who have ratified the ISA Framework Agreement;
- (e) for the purposes of Article III of this Agreement, the words “property, funds and assets” shall include any property, funds and assets administered by the ISA in furtherance of its functions as laid down in the Framework Agreement;
- (f) for the purposes of Article V and Article VIII of this Agreement, the expression “representatives of Members” shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of Members’ delegations; and
- (g) in sections 12, 13, 14 and 27 of this Agreement, the expression “meetings convened by the ISA” means meetings:
  - 1) of the Assembly and of the Secretariat, and
  - 2) of any international conference convened by the ISA; and
  - 3) of any committee, sub-committee or working group of the ISA.

## **Article II**

### **LEGAL PERSONALITY**

#### **Section 2**

The ISA shall possess legal personality. It shall have the capacity:

- (a) To contract;
- (b) To acquire and dispose of immovable and movable property; and
- (c) To institute legal proceedings.

## **Article III**

### **PROPERTY, FUNDS AND ASSETS**

#### **Section 3**

The ISA, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the ISA has expressly waived the immunity of the ISA. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

**Section 4**

The premises of the ISA shall be inviolable. The property and assets of the ISA, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

**Section 5**

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

**Section 6**

Without being restricted by financial controls, regulations or moratoria of any kind:

- (a) ISA may hold funds, gold or currency of any kind and operate accounts in any currency;
- (b) ISA may freely transfer its funds, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.

**Section 7**

The ISA shall, in exercising its rights under section 6 above, pay due regard to any representations made by a Member party to this Agreement in so far as it is considered that effect can be given to such representations without detriment to the interests of the ISA.

**Section 8**

ISA, its assets, income and other property shall be:

- (a) Exempt from all direct taxes; it is understood, however, that the ISA will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the ISA for its official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;
- (c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.

**Section 9**

While the ISA will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the ISA is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members party to this Agreement will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

**Article IV****FACILITIES IN RESPECT OF COMMUNICATIONS****Section 10**

The ISA shall enjoy, in the territory of each Member party to this Agreement, for its official communications, treatment not less favorable than that accorded by the Government of such State to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, including electronic communications, and press rates for information to the press and radio.

**Section 11**

No censorship shall be applied to the official correspondence and other official communications of the ISA. The ISA shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags. Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a Member and the ISA.

## **Article V**

### **REPRESENTATIVES OF MEMBERS**

#### **Section 12**

Representatives of Members at meetings convened by the ISA shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State which they are visiting or through which they are passing in the exercise of their functions;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

#### **Section 13**

In order to secure for the representatives of Members at meetings convened by the ISA complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

#### **Section 14**

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members are present at meetings convened by the ISA in the territory of a Member party to this Agreement for the discharge of their duties shall not be considered as periods of residence.

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**Section 15**

Privileges and immunities are accorded to the representatives of Members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the ISA. Consequently, a Member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the Member, 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.

**Section 16**

The provisions of sections 12, 13 and 14 are not applicable in relation to the authorities of a Member of which the person is a national or of which he or she is or has been a representative.

**Article VI****OFFICIALS****Section 17**

ISA will specify the categories of officials to which the provisions of this Article shall apply. It shall communicate them to Members. The names of the officials included in these categories shall from time to time be made known to Members.

**Section 18**

Officials of the ISA shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Enjoy exemptions from taxation in respect of the salaries and emoluments paid to them by the ISA;
- (c) Be immune, together with their spouses and relatives' dependent on them, from immigration restrictions and alien registration;
- (d) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;



- (e) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
- (f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

## **Section 19**

1. The officials of the ISA shall be exempt from national service obligations, provided that in relation to the Members of which they are nationals, such exemption shall be confined to officials of the ISA whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the ISA and approved by the Member concerned.
2. Should other officials of the ISA be called up for national service, the Member concerned shall, at the request of the ISA, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

## **Section 20**

In addition to the immunities and privileges specified in sections 18 and 19, the Director-General of the ISA, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law.

## **Section 21**

Privileges and immunities are granted to officials in the interests of the ISA only and not for personal benefit of the individuals themselves. The Director-General shall have the right and the duty to waive the immunity of any official in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the ISA. In the case of the Director-General, the Assembly shall have the right to waive the immunity.

## **Section 22**

The ISA shall co-operate at all times with the appropriate authorities of Members party to this Agreement in order to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this Article.

## **Article VII**

### **EXPERTS**

#### **Section 23**

1. Experts (other than officials coming within the scope of Article VI) serving on committees or working groups of, or performing missions for, the ISA shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connexion with service on such committees, working groups or missions:

- (a) Immunity from personal arrest or seizure of their personal baggage;
- (b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees or working groups of, or employed on missions for, the ISA;
- (c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Government on temporary official missions;
- (d) Inviolability of their papers and documents relating to the work on which they are engaged for the ISA;
- (e) The right to use codes and to receive papers or correspondence by courier or in sealed bags for the purpose of their communications with the ISA.

2. For the purpose of paragraph 1, experts shall be given a certificate signed by the Director General attesting that they are travelling on the business of the ISA.

#### **Section 24**

In connexion with section 23, paragraph 1(d), the principle contained in the last sentence of section 11 shall be applicable.

#### **Section 25**

Privileges and immunities are granted to the experts referred to in section 23, paragraph 1, in the interests of the ISA and not for the personal benefit of the individuals themselves. The ISA shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the ISA.

## **Article VIII**

### **ABUSES OF PRIVILEGE**

#### **Section 26**

If any Member party to this Agreement considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between that Member and the ISA to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Member and the ISA, the question whether an abuse of a privilege or immunity has occurred shall be submitted to arbitration in accordance with section 32. If the tribunal makes a finding that such an abuse has occurred, the Member party to this Agreement affected by such abuse shall have the right, after notification to the ISA, to withhold from the ISA the benefits of the privilege or immunity so abused and to request that the individual concerned leave the territory of the Member party to this Agreement affected by such abuse.

#### **Section 27**

Representatives of Members at meetings convened by the ISA, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 17, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his or her official functions, he or she may be required to leave by the Government of that country provided that:

(a) Representatives of Members, or persons who are entitled to diplomatic immunity under section 20, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic agents accredited to that country;

(b) In the case of an official to whom section 20 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the Director-General of the ISA; and, if expulsion proceedings are taken against an official, the Director-General of the ISA shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

## **Article IX**

### **TRAVEL AND VISAS**

#### **Section 28**

Applications for visas, where required, from officials of the ISA, when accompanied by a certificate that they are travelling on the business of the ISA, shall be dealt with as speedily as possible by Members party to this Agreement. In addition, such persons shall be granted facilities for speedy travel.

#### **Section 29**

Similar facilities to those specified in section 28 shall be accorded to experts and other persons who have a certificate that they are travelling on the business of the ISA.

#### **Section 30**

The Director-General, the Deputy Director-General, and heads of departments travelling on the business of the ISA, shall be granted the same facilities for travel as are accorded to agents of comparable rank in diplomatic missions.

## **Article X**

### **SETTLEMENT OF DISPUTES**

#### **Section 31**

The ISA shall make provision for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of private character to which the ISA is a party, including disputes between the ISA and a staff member or another individual whose services have been retained by the ISA;
- (b) Disputes involving any official of the ISA who by reason of his or her official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 21.

## **Section 32**

1. Any dispute between a Member party to this Agreement and the ISA or between Members party to this Agreement on the interpretation or application of this Agreement that cannot be settled by negotiation or other agreed mode of settlement shall be submitted for final decision to a tribunal of three arbitrators at the request of either party to the dispute. Each party shall appoint one arbitrator and advise the other party of the name of its arbitrator. The third arbitrator, who shall be the chairman of the tribunal, shall be appointed by the first two arbitrators. Should the first two arbitrators fail to agree upon the third arbitrator within thirty (30) days of the date of appointment of the second arbitrator, the third arbitrator shall be appointed by the President of the International Court of Justice.
2. The arbitration shall be held in a language and at a location agreed upon between the parties to the dispute. A majority vote of the arbitrators shall be sufficient to reach decisions, including those on procedural matters, which shall be final and binding.
3. The expenses of arbitration shall be borne by the parties to the dispute as assessed by the tribunal.

## **Article XI**

### **GENERAL PROVISIONS**

## **Section 33**

The provisions of this Agreement in relation to the ISA shall be interpreted in the light of the functions with which the ISA is entrusted by the Framework Agreement.

## **Section 34**

The provisions of this Agreement shall in no way be construed to limit or prejudice the privileges and immunities which have been, or may hereafter be, agreed between a Member and the ISA in any agreement concluded by reason of the location of the ISA's headquarters or offices in the territory of that Member. This Agreement shall not be deemed to prevent the conclusion between any Member party to this Agreement and the ISA of supplemental agreements adjusting the provisions of this Agreement or extending or curtailing the privileges and immunities thereby granted.

**Section 35**

This Agreement shall not be construed so as to abrogate, or derogate from, any provisions of the Framework Agreement or any rights or obligations which the ISA may otherwise have, acquire, or assume.

**Article XII****FINAL PROVISIONS****Section 36**

1. A Member's consent to be bound by this Agreement shall be effected by its deposit with the Director-General of an instrument of ratification, acceptance, approval or accession.
2. This Agreement shall enter into force thirty (30) days after the date of deposit of the first instrument of ratification, acceptance, approval or accession.

**Section 37**

It is understood that, when an instrument of ratification, acceptance, approval or accession is deposited on behalf of any Member, that Member will be in a position under its own laws or regulations to give effect to the terms of this Agreement.

**Section 38**

For each Member which ratifies, accepts, approves or accedes to this Agreement after the deposit of the first instrument of ratification, acceptance, approval or accession, this Agreement shall enter into force in respect of that Member on the thirtieth day following the deposit of its instrument of ratification, acceptance, approval or accession.

**Section 39**

1. Subject to the provisions of the following paragraphs of this section, each Member party to this Agreement undertakes to apply this Agreement until such time as a revised Agreement shall have become applicable and the said Member party shall have accepted the revised Agreement.
2. Each Member party to this Agreement, however, which has ceased to be a Member may address a written notification to the Director-General to the effect that it intends to withhold

from the ISA the benefits of this Agreement as from a specified date, which shall not be earlier than three months from the date of receipt of the notification.

3. The Director-General shall inform all Members of any notification transmitted to him under the provisions of this section.

#### **Section 40**

At the request of one third of the Members party to this Agreement, the Director-General of the ISA shall convene a conference with a view to its revision.

#### **Section 41**

This Agreement is to be established by the ISA in the Arabic, English, French and Spanish languages, as well as in the language of the State of the Depositary of the Framework Agreement, all being authentic. Official texts of other versions in any one of the official languages of the United Nations other than Arabic, English, French and Spanish, shall be authenticated on the request of one or more of the Members.