Multilateral Investment Guarantee Agency (Privileges and Immunities) Regulations 1998

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the International Organisations (Privileges and Immunities) Act 1963.


WILLIAM DEANE
Governor-General

By His Excellency’s Command,

ALEXANDER DOWNER
Minister for Foreign Affairs

Name of Regulations

1. These Regulations are the Multilateral Investment Guarantee Agency (Privileges and Immunities) Regulations 1998.
Commencement

2. These Regulations take effect from the day specified in a written determination made by the Minister under subsection 13 (2) of the Act for the purposes of the commencement of these Regulations.

Definitions

3. In these Regulations:
Act means the International Organisations (Privileges and Immunities) Act 1963.
Agency means the Multilateral Investment Guarantee Agency established under Article 1 of the Convention.
expert means a person performing short term or temporary missions for or on behalf of the Agency.
President means the person who holds, or is performing the duties of, the office of President of the Agency.

Act to apply to the Agency

4. The Agency is declared to be an international organisation to which the Act applies.

Agency has legal personality and capacity

5. The Agency:
(a) is a body corporate with perpetual succession; and
(b) is capable, in its corporate name:
   (i) of entering into contracts; and
   (ii) of acquiring, holding and disposing of real and personal property; and
   (iii) of suing and being sued.
Privileges and immunities of the Agency

6. (1) Subject to this regulation, the Agency has all the privileges and immunities specified in the First Schedule to the Act.

(2) For item 1 of the First Schedule to the Act, an action may be brought against the Agency in an Australian court of competent jurisdiction if:

(a) the action:
   (i) is not a dispute to which Article 57 or Article 58 of the Convention refers; or
   (ii) does not concern personnel matters; or
   (iii) is not an action taken by a member of the Agency or a person acting for or deriving a claim from a member of the Agency; and

(b) the Agency:
   (i) has an office established in Australia; or
   (ii) has appointed an agent in Australia for the purpose of accepting service or notice of process.

(3) In any action against the Agency to which subregulation (2) applies, the property and assets of the Agency are immune from all forms of seizure, attachment or execution before delivery of the final judgment or award against the Agency.

(4) Except as mentioned in subregulation (5), the privileges mentioned in items 3, 5, 6 and 9 of the First Schedule to the Act do not apply to the Agency for property or assets acquired by the Agency as successor to or by subrogation from:

(a) a holder of a guarantee; or
(b) a reinsured entity; or
(c) an investor insured by a reinsured entity.

(5) For property or assets mentioned in subregulation (4), the privileges referred to only apply to the Agency to the extent that they would have applied to the holder, entity or investor to whom the Agency is successor or is subrogated.
(6) Item 8 of the First Schedule to the Act only applies to an investment guaranteed or reinsured by the Agency, or an insurance policy reinsured by the Agency, that is held by any person or organisation, if:

(a) the levying of tax would discriminate against that investment or insurance only because it is guaranteed or reinsured by the Agency; or

(b) the sole jurisdictional basis for the levying of tax is the location of an office or place of business maintained by the Agency.

Privileges and immunities of President

7. (1) The office of President is a high office in the Agency for subparagraph 6 (1) (b) (i) of the Act.

(2) Subject to subregulations (4) and (5), a person who holds, or is performing the duties of, the office of President has the privileges and immunities specified in Part I of the Second Schedule to the Act.

(3) Subject to subregulation (5), a person who has ceased to hold, or perform the duties of, the office of President has the immunities specified in Part II of the Second Schedule to the Act.

(4) The privileges and immunities conferred on a person under subregulation (2) do not apply to a child of the person if the child:

(a) has attained the age of 18 years; or

(b) ceases to be a dependant of the person.

(5) Subject to subregulation (6), the privileges and immunities conferred on a person by subregulation (2), or the immunities conferred on a person by subregulation (3), do not extend to a person who is an Australian citizen or a permanent resident of Australia.

(6) Subregulation (5) does not affect immunity from civil or criminal process for actions of a person undertaken in performing the duties of the office of President.
Privileges and immunities of representatives attending conferences convened by the Agency

8. (1) A person who is accredited to, or attends a conference in Australia convened by the Agency as a representative of a country other than Australia, has the privileges and immunities specified in items 2, 5 and 6 of Part I of the Third Schedule to the Act.

(2) A person who has ceased to be accredited to, or who has attended a conference convened by the Agency in Australia as a representative of a country other than Australia, has the immunities specified in Part II of the Third Schedule to the Act.

(3) However, subregulations (1) and (2) do not apply to a person who is an Australian citizen or a person permanently resident in Australia.

Privileges and immunities of officers of the Agency

9. (1) Subject to subregulations (2) and (6), a person who holds an office in the Agency (other than the office of President) has the privileges and immunities specified in items 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

(2) For subregulation (1), the salary and allowances received from the Agency for services performed in Australia by a person who is a resident of Australia within the meaning of the Income Tax Assessment Act 1936, are exempt from taxation only if:

   (a) the person is not an Australian citizen or a person permanently resident in Australia; and

   (b) the person came to Australia solely for the purpose of performing duties of the office in the Agency.

(3) A person to whom subregulation (1) applies and who is not an Australian citizen or a person permanently resident in Australia has, in addition to the privileges and immunities mentioned in subregulation (1), the privileges and immunities specified in items 4 and 5 of Part I of the Fourth Schedule to the Act.
(4) A person to whom subregulation (1) applies and who is an Australian citizen or a person permanently resident in Australia has the privilege specified in item 4 of Part I of the Fourth Schedule to the Act, only if the name of that person is included in a list that has been drawn up by the President and approved by the Minister by instrument in writing.

(5) A person who has ceased to hold an office in the Agency (other than the office of President) has the immunities specified in Part II of the Fourth Schedule to the Act.

(6) The privilege specified in item 3 of Part I of the Fourth Schedule to the Act and conferred under subregulation (1) does not apply to a child of the person if the child:
   (a) has attained the age of 18 years; or
   (b) ceases to be a dependant of the person.

Privileges and immunities of experts working with the Agency

10. (1) An expert, not being a person to whom subregulation 8 (1) or 9 (1) applies, has the privileges and immunities specified in items 2, 2A, 3 and 5 of Part I of the Fifth Schedule to the Act.

   (2) An expert who has served on a committee, or participated in the work of the Agency, or performed a mission on behalf of the Agency has the immunities specified in Part II of the Fifth Schedule to the Act.

Waiver of privileges and immunities

11. (1) The Agency may waive a privilege or immunity conferred by the Act or these Regulations on:
   (a) the Agency; or
   (b) a person who holds, or has ceased to hold, the office of President.

   (2) The President may waive a privilege or immunity to which a person is entitled under regulation 9.
(3) The government of a country may waive a privilege or immunity conferred by the Act or these Regulations on a person who, as a representative of that country:
(a) is a person mentioned in regulation 8; or
(b) is, or has been, a member of the official staff of a person mentioned in paragraph (a).

Liability for motor vehicle accident or offence

12. The immunities conferred by these Regulations do not extend to civil or criminal process:
(a) for the recovery of damages for any damage, injury or death resulting from an accident involving a motor vehicle owned or operated by the Agency, or owned or driven by a person to whom a provision of these Regulations applies; or
(b) in relation to the commission of an offence under the law of the Commonwealth, a State or a Territory, relating to motor traffic, motor vehicles or the use of a motor vehicle.

Privileges and immunities subject to quarantine laws etc

13. (1) These Regulations do not affect the application of any law of the Commonwealth, a State or a Territory about:
(a) quarantine; or
(b) importation into, or exportation from, Australia or an External Territory.

(2) However, subregulation (1) does affect any immunity from civil or criminal process.

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NOTE


25 June