

The Adaptation Fund

AFB/B.1/Inf.4/Rev.1
March 21, 2008

Adaptation Fund Board
First meeting
Bonn, March 26-28, 2008

LEGAL STATUS OF THE ADAPTATION FUND AND THE ADAPTATION FUND
BOARD

AND

PRIVILEGES AND IMMUNITIES OF THE ADAPTATION FUND BOARD AND
ITS MEMBERS

1. The legal status of the Adaptation Fund and its Board flows from the provisions of the United Nations Framework Convention on Climate Change and its Kyoto Protocol as well as relevant decisions of the Conference of the Parties to the Convention and the Conference of the Parties serving as the meeting of the Parties to the Protocol. Article 13, paragraph 4(h), of the Kyoto Protocol authorizes the Conference of the Parties serving as the meeting of the Parties to the Protocol to “[e]stablish such subsidiary bodies as are deemed necessary for the implementation of this Protocol.” In decision 10 CP 7, the Conference of the Parties established the Adaptation Fund. This decision was endorsed by the Conference of the Parties serving as the meeting of the Parties to the Protocol through its decision 28/CMP.1. In decision 1/CMP.3, the Conference of the Parties serving as the meeting of the Parties (meeting of the Parties) established the Adaptation Fund Board. These relevant COP and CMP decisions lend legal status to the Adaptation Fund and the Adaptation Fund Board.

2. To ensure that the Adaptation Fund's role and responsibilities are clear, it is recommended that it be established as a legal entity with direct capacity to enter into agreements with other entities eligible to receive resources. Thus, the Adaptation Fund would have the legal capacity to enter into contracts, hold assets and assume liabilities. The Adaptation Fund itself would enter into financing agreements with executing entities. The Board may wish to request the Secretariat, in collaboration with the invited Trustee, to explore options and bring a specific proposal for consideration at the Board's June meeting.

3. Moreover, members of the Adaptation Fund Board enjoy privileges and immunities while attending Board meetings in Bonn pursuant to relevant provisions of the Headquarters Agreement (the Agreement) for the UNFCCC secretariat between the United Nations, the Government of the Federal Republic of Germany and the secretariat of the UNFCCC. This Agreement was signed on 20 June 1996 and amended on 7 December 2005 to reflect the entry into force of the Kyoto Protocol. Article 5 of the Agreement as amended provides that:

“Without prejudice to the pertinent provisions of the UNV Headquarters Agreement, all persons invited to participate in the official business of the Convention [and the Kyoto Protocol] shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.

Such immunity shall continue to be accorded after termination of their business. They shall also be accorded inviolability for all papers and documents.”

4. For meetings of the Adaptation Fund Board which are held away from headquarters in conjunction with sessions of the CMP or with sessions of the subsidiary bodies under the Convention, in accordance with decision 1/CMP.3, paragraph 15, the relevant host country agreement would provide the necessary privileges and immunities to the Adaptation Fund Board members.

5. The text of the English version of the UNFCCC Headquarters Agreement is located at: <http://unfccc.int/resource/docs/cop2/misc01.pdf>.