

RULES OF THE PACIFIC CATASTROPHE RISK INSURANCE FOUNDATION

Amended and Restated by special resolution of the Foundation Council passed on the 1st day of October 2021, and intended to come into force on the Commencement Date of the Act, being 6 December 2021.

1. Definitions

In these Rules, unless the context otherwise requires, words and expressions shall have the meaning ascribed to them in the Act.

For ease of reference some terms defined in the Act are repeated below, together with further definitions applicable to these Rules:

Act means the Pacific Catastrophe Risk Insurance Facility Act 2021 as amended from time to time, and shall include any regulations made thereunder.

2016 Act means the Pacific Catastrophe Risk Insurance Facility Act 2016.

Chair means the person representing the Council Member who holds the position as chair of the Foundation Council pursuant to Rule 7.2.

Company means the Pacific Catastrophe Risk Insurance Company established by the 2016 Act and continued by the Act.

Council Member or **Member** means the representative of the Member Country or the Developing Partner appointed to the Foundation Council pursuant to these Rules.

Developing Partner means a donor who has contributed a minimum of US DOLLARS THREE MILLION (US\$3,000,000.00) to the Facility, either to the Foundation as Foundation Capital or to the Company or through the MDTF.

Enforcer means the person from time to time appointed as the Enforcer pursuant to these Rules.

Facility means the Pacific Catastrophe Risk Insurance Facility that is constituted by the Foundation and the Company as established by the 2016 Act and continued by the Act.

Foundation means the Pacific Catastrophe Risk Insurance Foundation established by the 2016 Act and continued by the Act.

Foundation business address means the offices of Asiaciti Trust Pacific Limited at Bermuda House, Tutakimoa, Avarua, Rarotonga, Cook Islands or such other address as the Foundation Council may determine from time to time by ordinary resolution, provided that the Foundation shall only have one Foundation business address at any given time.

Foundation Capital means the capital of the Foundation as defined in Rule 4.

Foundation Council or **Council** means the Foundation Council created pursuant to Rule 6.

Foundation Objectives means the objectives of the Foundation set out in Rule 2.

Founding Pacific Island Country means each of the Cook Islands, Marshall Islands, Samoa, Tonga and Vanuatu.

Initial Capital means the sum of NZ\$500.00 as referenced in section 7(1) of the Act.

Initial Contribution means a non-refundable sum of US DOLLARS TWENTY THOUSAND (US\$20,000.00) or such other amount determined by special resolution of the Foundation Council from time to time.

MDTF means the Multi Donor Trust Fund.

Member Country means:

- (a) a Founding Pacific Island Country (Cook Islands, Marshall Islands, Samoa, Tonga and Vanuatu); or
- (b) a Pacific Island Country (Fiji, Kiribati, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Solomon Islands, and Tuvalu) or another country who has:
 - (i) expressed a written interest to participate in the Facility and has been invited to do so by the Foundation Council; and
 - (ii) has paid the Initial Contribution; or
- (c) another country accepted under the procedures set forth in Rule 6.6.
- (d) Fiji, having been accepted pursuant to Rule 6.6 on 13 September 2018.

2. Foundation Objectives

2.1 The objectives of the Foundation, which are consistent with section 8 of the Act, are:

- (a) To own the Company to undertake all activities as are set out in section 18(4) of the Act for the benefit of the Member Countries; and
- (b) To review and approve the strategic plan for the Facility with a view to providing the Member Countries with a sustainable long-term risk management solution to natural disasters and climate catastrophes.

2.2 In carrying out the Foundation Objectives the Foundation shall adhere to the following 6 core principles:

- (a) Country ownership;
- (b) Financial sustainability;
- (c) Contingency planning;
- (d) Accountability and transparency;
- (e) Comprehensive disaster risk financing strategy; and
- (f) Links to the disaster risk management agenda as developed by the Member Countries.

2.3 The Foundation Objectives may be amended at any time by the Foundation Council by ordinary resolution in any manner whatsoever.

2.4 In carrying out the Foundation Objectives the Foundation Council shall consult with the board of directors of the Company on issues affecting the operation of the Company.

3. Term

3.1 The term of the Foundation commenced on 26 July 2016 and shall continue for a period of 100 years or such longer or shorter term as the Foundation Council shall by subsequent special resolution determine.

4. Capital

4.1 The Foundation Capital shall consist of:

- (a) the Initial Capital;
- (a) all money investments or other property of any nature whatsoever paid or transferred by any person or persons to, and accepted by, the Foundation as additions to the Foundation Capital; and
- (b) all accumulations (if any) of income held by the Foundation as an accretion to capital.

5. Foundation Irrevocable

5.1 The Foundation is irrevocable.

6. Foundation Council

6.1 The Foundation Council shall:

- (a) administer and manage the Foundation Capital and the affairs of the Foundation;
- (b) be responsible for carrying out the Foundation Objectives;
- (c) conduct the operations and activities of the Foundation, including but not limited to:
 - (i) approving new Member Countries;
 - (ii) approving the annual audited accounts of the Company;
 - (iii) reviewing and amending these Rules;
 - (iv) reviewing the Company's establishment of segregated portfolios.
- (d) perform all duties and exercise all powers vested in the Foundation Council pursuant to the constitution of the Company as sole shareholder of the Company, which shall include, but shall not be limited to, the approval and review of the Company's constitution, the appointment of the Board of directors and removal of the same, and the exercise of all other powers of the Foundation set out in the constitution of the Company.

6.2 The membership of the Foundation Council shall comprise of:

- (a) one representative from each of the Member Countries; and
- (b) four representatives from the Developing Partners.

6.3 The Foundation Council Members are:

- (a) The person holding the position of Secretary of the Ministry of Finance and Economic Management in the Cook Islands from time to time;
- (b) The person holding the position of Secretary of the Ministry of Finance in the Marshall Islands from time to time;
- (c) The person holding the position of Chief Executive Officer of the Ministry of Finance in Samoa from time to time;
- (d) The person holding the position of Chief Executive Officer of the Ministry of Finance and National Planning in Tonga from time to time;
- (e) The person holding the position of Director General of the Ministry of Finance and Economic Management in Vanuatu from time to time;
- (f) The person holding the position of Head of Division, Special Unit on Climate Change, Federal Ministry for Economic Cooperation and Development, Germany from time to time;
- (g) The person holding the position of Senior Economist, Asia Regional Team, Department for International Development, London, United Kingdom from time to time;
- (h) The person holding the position of Director, Development Issues, International Bureau, Ministry of Finance, Japan from time to time;
- (i) The person holding the position of Deputy Assistant Secretary, MDB Operations and Policy, U.S. Department of the Treasury, United States of America from time to time;
- (j) The person holding the position of Permanent Secretary for the Fijian Ministry of Economy, Fiji from time to time.

PROVIDED HOWEVER that the organisations noted above shall include all legal successors thereto or changes in name thereof, and the relevant organisation may change the designated position or title of the designated position upon giving notice to the Foundation at the Foundation business address.

6.4 In the event that there are more than 4 Developing Partners at any one time, all Developing Partners shall determine who shall represent them on the Foundation Council in such manner, and for such term, as the Developing Partners shall decide.

6.5 The Foundation Council may invite representatives from Pacific countries or territories, international or regional organisations, to become Observers at all meetings of the Foundation Council for such term as the Foundation Council shall determine, by ordinary resolution of the Foundation Council, provided however that Observer Members shall have no voting rights. The World Bank, in recognition of its position as trustee of the MDTF, shall be an Observer for the duration of the MDTF.

- 6.6 The Foundation Council may invite additional countries, in the Pacific region or elsewhere, to become members of the Foundation where a country has expressed an interest to participate in the Facility and has indicated a willingness to pay the Initial Contribution; or has been admitted as an observer member pursuant to Rule 6.5 and has indicated a willingness to purchase an insurance policy offered by the Company. Once the Foundation Council has determined, by ordinary resolution, to extend such an invitation, and the invitation has been accepted and either the Initial Contribution has been paid or the Company policy has been purchased, that new member shall become a Member Country.
- 6.7 The Council Members shall not be entitled to receive any remuneration from the Foundation for services rendered or to be rendered in any capacity to the Foundation.
- 6.8 A Council Member shall hold office until:
- (a) the individual holding the position specified in Rule 6.3 ceases to hold that position; in which case he or she shall, subject only to the provision of acceptable AML/KYC documentation by the proposed successor as required by the Foundation from time to time, be immediately, and without further action by the Foundation Council, replaced by his or her successor in the named position;
 - (b) the Council Member resigns his or her office by notice in writing to the Foundation Council;
 - (c) the Council Member is removed by the Enforcer;
 - (d) such membership is terminated by special resolution of the Foundation Council provided however that this sub-rule shall only apply to an Observer Member; or
 - (e) the individual is appointed as a director of the Company; in which case the entity which is represented by that individual (as set out in Rule 6.2) will appoint a new representative.
- 6.9 A Council Member by writing under his hand deposited at the Foundation business address may from time to time appoint another Council Member or any other person to be his alternate. Every such alternate shall be entitled to be given notice of Foundation Council meetings and to attend and vote as a Council Member at any such meeting at which the Council Member appointing him is not personally present and generally at such meeting to have and exercise all the powers, rights, duties and authorities of the Council Member appointing him. Every such alternate shall be deemed to be a Council Member and shall not be deemed to be an agent of the Council Member appointing him. A Council Member by writing under his hand delivered to the Foundation business address may at any time revoke the appointment of an alternate appointed by him. If a Council Member shall die or cease to hold the office of Council Member, the appointment of his alternate shall thereupon cease and terminate.
- 6.10 No Council Member shall contract with the Foundation, either as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Foundation in which any Council Member shall be in any way interested.

- 6.11 Other than as may be expressly provided in these Rules, no Council Member or the Enforcer shall be entitled to benefit from or share in either the income or the capital of the Foundation.
- 6.12 The Foundation Council may entrust to and confer upon any Council Member any of the powers exercisable by the Foundation Council upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers. The Foundation Council may delegate any of its powers to committees consisting of such Council Member or Members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Foundation Council.
- 6.13 The Foundation Council may from time to time and at any time, by power of attorney, appoint any firm or person or body of persons, whether nominated directly or indirectly by the Council Members, to be the attorney or attorneys of the Foundation for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Council Members under these Rules), for such period and subject to such conditions, as they may think fit; and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Foundation Council may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 6.14 Any Council Member who is a body corporate may appoint any person its duly authorised representative for the purpose of representing it at meetings and of transacting any of the business of the Foundation Council.
- 6.15 The exercise of a power under the Act or these Rules may, unless it is expressly stated that such exercise requires a special resolution, be undertaken by the Foundation Council:
- (a) By a resolution at a meeting of the Council Members that is passed by a majority of Council Members who are present at such meeting and (being entitled to do so) vote on the matter; or
 - (b) By a written resolution of Council Members consented to in writing or by electronic communication by a majority of Council Members.
- 6.16 The exercise of a power under the Act or these Rules that requires a special resolution may be undertaken by the Foundation Council:
- (a) By a resolution at a meeting of the Council Members provided that not less than two-thirds of the Council Members are present and the resolution is approved by a two-third majority of the Council Members entitled to vote on the matter, including by at least 50 percent of the Developing Partner Council Members and at least 50 percent of the Member Country Council Members; or
 - (b) By a written resolution of the Council Members consented to in writing or by electronic communication by not less than two thirds of the Council Members, including at least 50% of the Developing Partner Council Members and at least 50% of the Member Country Council Members.

7. Meetings of the Foundation Council

- 7.1 Meetings of the Foundation Council or any committee thereof shall be held at such place or places as the Council Members shall decide.
- 7.2 The Chair of the Council shall be rotated amongst the Member Countries. If at any meeting the Chair is not present at the time appointed for holding the same, the Council Members present may choose one of their numbers to be Chair of the meeting.
- 7.3 The Council Members may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. A Council Member may request the Chair to convene a meeting of the Council Members.
- 7.4 A Council Member shall be given not less than 1 month's notice of a meeting of the Council Members.
- 7.5 The inadvertent failure to give notice of a meeting to a Council Member, or the fact that a Council Member has not received the notice, does not invalidate the meeting.
- 7.6 A meeting of Council Members is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate not less than half of the total number of Council Members; provided however that included in that number is not less than one representative from a Member Country and not less than one representative from a Developing Partner.
- 7.7 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.
- 7.8 Any one or more of the Council Members or any committee thereof may participate in a meeting of Council Members or of a committee of Council Members by means of a videoconference, teleconference, skype, telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.
- 7.9 Unless otherwise expressly stated in these Rules or required under the Act, any determination with respect to the affairs and business of the Foundation shall be by way of ordinary resolution.
- 7.10 A resolution in writing, signed in accordance with the requirements of Rule 6.15(b) (ordinary resolution) or Rule 6.16(b) (special resolution) shall be as valid and effectual as if it had been passed at a meeting of the Foundation Council duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Council Members. An email or similar form of electronic transmission purporting to have been sent by a Council Member or a facsimile or scanned copy of a resolution in writing signed by a Council Member shall be deemed to be a resolution in writing signed by the Council Member pursuant to this Rule unless and until it is proved not to have been sent by that Council Member.

8. Enforcer

- 8.1 If a Council Member makes a written request to the Foundation to appoint an enforcer, the Foundation must do so, acting in accordance with the Act and as follows:
- (a) Upon receipt of the request the Chair must notify all other Council Members of the request and invite nominations for suitably qualified persons to fill the role;
 - (b) A nomination shall not be accepted by the Chair unless such nomination is accompanied by a written acceptance of the nomination by the person so nominated.
 - (c) A Council Member or a director or employee of the Company may not be nominated for the role of enforcer;
 - (d) Upon receipt of nominations the Chair shall circulate the same to all Council Members and call a meeting of the Council Members in accordance with Rule 7 to decide on the appointment. The Chair shall be entitled to override the notice requirement set out in Rule 7.4 should he or she determine urgency is required;
 - (e) The appointment of the enforcer shall be determined by special resolution of the Foundation Council.
- 8.2 If the Foundation Council fails to appoint an enforcer, the Council Member who made the request for appointment of an enforcer may apply to the High Court of the Cook Islands for an order appointing an enforcer.
- 8.3 The functions of the Enforcer are to:
- (a) Take reasonable steps to ensure the Council carries out its functions; and
 - (b) Enforce these Rules.
- 8.4 The Enforcer has the powers necessary to perform the functions set out in Rule 8.3 and has the following further powers:
- (a) review the decisions of the Foundation Council to ensure that they are within the bounds of the Foundation Rules;
 - (b) assess the impact of any decision of the Foundation Council on the sustainability of the operations of the Facility;
 - (c) adjudicate disputes between Council Members;
 - (d) ensure that the decisions of the Council do not encroach on the autonomy of the Board of the Company; and
 - (e) make application to the High Court of the Cook Islands for directions on matters of interpretation and the application of these Rules and the Act.
- 8.5 The Foundation Council must cooperate with the Enforcer, and on the written request of the Enforcer, provide the Enforcer with complete and accurate:
- (a) financial statements in a form reasonably requested by the Enforcer that address such matters and cover such period as the Enforcer may direct;
 - (b) other information concerning the assets, liabilities and affairs of the Foundation as requested;

- (c) information as to the Council's performance of its functions under section 9 of the Act and these Rules.

8.6 The Enforcer shall be entitled to remuneration as agreed between the Enforcer and the Foundation Council, and if agreement cannot be reached application may be made to the High Court of the Cook Islands for determination.

8.7 The Enforcer may resign upon giving not less than one month's written notice to the Foundation. An Enforcer's appointment cannot be terminated except by a special resolution of the Foundation Council.

9. Documents to be kept at the business office of the Foundation

9.1 The Foundation shall ensure that the following documents are kept at the Foundation business address:

- (a) A copy of these Rules.
- (b) A register showing the names and addresses of the Council Members.
- (c) Records sufficient to show and explain the transactions of the Foundation and its operations including minutes of meetings of the Foundation Council and resolutions of the Council.
- (d) A record of the appointment of any Enforcer showing the date of appointment of the Enforcer and the Enforcer's name and address.
- (e) A register showing the names and addresses of all dedicators of assets to the Foundation.
- (f) Accurate, reliable financial records that enable the financial position of the Foundation to be determined with reasonable accuracy at any time and allow financial statements to be prepared.

9.2 All records (or a copy of the same) noted in Rule 9.1 must be kept at the Foundation business address for at least 7 years after the date on which the record is made.

10. Accounts

10.1 The Foundation Council shall cause proper financial statements to be prepared within 4 months after the end of each financial year.

10.2 The financial statements must be prepared using generally accepted accounting practices and must detail the Foundation's financial position, financial performance, cashflow, borrowings, capital and financial commitments.

10.3 Not later than 14 days after the financial statements have been prepared, the financial statements must be sent to all Council Members and approved by the Foundation Council at its next general meeting.

10.4 The Foundation Council, or the Enforcer, may require the financial statements for any year to be audited.

11. Indemnity

- 11.1 Subject to the provisions of the Act, every Council Member and the Enforcer shall be entitled to be indemnified out of the assets of the Foundation against all losses or liabilities which s/he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, and no Council Member or Enforcer shall be liable for any loss, damage or misfortune which may happen to, or be incurred by the Foundation in the execution of the duties of his or her office, or in relation thereto.

12. Amendment of Rules

- 12.1 Subject always to the Act, the Foundation Council may add to, alter vary or modify these Rules by special resolution.

13. Distributions of Foundation Assets

- 13.1 There shall be no distribution of the assets of the Foundation other than in the event of dissolution as provided in Rule 14 below.

14. Dissolution or Winding Up

- 14.1 If the Foundation shall be dissolved or wound up the provisions of the Act shall apply to the dissolution or winding up and, subject to the Act, the Foundation Council may divide the whole or any part of the Foundation Capital among Foundation Council Members in specie or in kind in such shares as the Foundation Council shall in its absolute discretion think fit, PROVIDED HOWEVER, that if the Foundation is dissolved within the five years from the date of commencement (being 10 June 2016), any property of the Foundation attributable to grants from the MDTF shall be returned to the MDTF, and that if the Foundation is dissolved after five years from the date of commencement, any property of the Foundation attributable to grants from the MDTF shall be disposed of as agreed by the Developing Partner Members."

15. Transactions and Persons having dealings with the Foundation

- 15.1 Any contract, including a deed which if made by private persons would by law be required to be in writing under seal, may be made on behalf of the Foundation in writing and signed by any person acting under its authority, express or implied.
- 15.2 A person having dealings with the Foundation is, subject to Rule 15.3 entitled to make, in relation to those dealings, the following assumptions, that:
- (a) at all relevant times, these Rules have been complied with;
 - (b) a person who is held out by the Foundation to be a Council Member, employee or agent of the Foundation has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by a Council Member, employee or agent of the kind concerned;
 - (c) a document has been duly authorised and executed by the Foundation in accordance with Rule 15.1 without the need to enquire as to whether or not the person signing had the requisite authority.
- 15.3 Notwithstanding Rule 15.1 a person is not entitled to make an assumption referred to in Rule 15.2 in relation to dealings with the Foundation if he had

actual knowledge or suspected that the matter that, but for this Rule, he would be entitled to assume is not correct; but a person shall be presumed to act in good faith unless the contrary intention is proven.

Annex 1

Foundation Council Decisions that Needs Ordinary Resolution

- 2.3 The Foundation Objectives may be amended at any time by the Foundation Council by ordinary resolution in any manner whatsoever.
- 6.5 The Foundation Council may invite representatives from Pacific countries or territories, international or regional organisations, to become Observers at all meetings of the Foundation Council for such term as the Foundation Council shall determine, by ordinary resolution of the Foundation Council, provided however that Observer Members shall have no voting rights. The World Bank, in recognition of its position as trustee of the MDTF, shall be an Observer for the duration of the MDTF.
- 6.6 The Foundation Council may invite additional countries, in the Pacific region or elsewhere, to become members of the Foundation where a country has expressed an interest to participate in the Facility and has indicated a willingness to pay the Initial Contribution; or has been admitted as an observer member pursuant to Rule 6.5 and has indicated a willingness to purchase an insurance policy offered by the Company. Once the Foundation Council has determined, by ordinary resolution, to extend such an invitation, and the invitation has been accepted and either the Initial Contribution has been paid or the Company policy has been purchased, that new member shall become a Member Country.
- 7.9 Unless otherwise expressly stated in these Rules or required under the Act, any determination with respect to the affairs and business of the Foundation shall be by way of ordinary resolution.

Foundation Council Decisions that Needs Special Resolution

- 3.1 The term of the Foundation commenced on 26 July 2016 and shall continue for a period of 100 years or such longer or shorter term as the Foundation Council shall by subsequent special resolution determine
- 6.8(d) Such membership is terminated by special resolution of the Foundation Council provided however that this sub-rule shall only apply to an Observer Member;
- 8.1(e) The appointment of the Enforcer shall be determined by special resolution of the Foundation Council.
- 8.7 The Enforcer may resign upon giving not less than one month's written notice to the Foundation. An Enforcer's appointment cannot be terminated except by a special resolution of the Foundation Council.
- 12.1 Subject always to the Act, the Foundation Council may add to, alter vary or modify these Rules by special resolution.

From the Constitution – Decisions that need Special Resolution of the Foundation Council

5. The Company may from time to time by special resolution of the Foundation:
 - (a) increase the share capital by such sum to be divided into shares of such amount, as the resolution shall prescribe;
 - (b) increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;
 - (c) increase the par value of any shares by the capitalization of profits; or
 - (d) repay any paid up capital which is in excess of the needs of the company or which is otherwise in the interests of the company as a whole to have paid off.
6. The Foundation may, by special resolution, remove the Trustee Company hereby appointed and appoint a new Trustee Company in its stead.
- 7.(c) Upon receipt of the recruitment agency's recommendations, the Foundation shall select such number of directors as are required at that time through consensus vote. If consensus cannot be achieved, then each director shall be selected by special resolution of the Foundation Council.
12. The remuneration of the directors may be fixed by the Foundation by special resolution and shall be a daily rate.
56. The Foundation may by special resolution, alter the provisions of this constitution.
57. The name of the Company may be changed by special resolution of the Company.

Current as at 6 December 2021

Note the proposed changes to the Foundation Rules that are required due to minor changes between the Pacific Catastrophe Risk Insurance Facility Bill 2021 and the Pacific Catastrophe Risk Insurance Facility Act 2021. It is proposed that these changes be tabled for approval by the Foundation Council Members at the next scheduled Council Meeting in 2022:

1. Rule 2.1 – "section 18(4)" be changed to "section 25"
2. Rule 8.5(c) "section 9" be changed to "section 11"