

Agreement
between the Swiss Federal Council
and
the Global Fund to Fight AIDS, Tuberculosis and Malaria
in view of determining the legal status of the Global Fund in
Switzerland

The Swiss Federal Council, of the one part,
and
the Global Fund to Fight AIDS, Tuberculosis and Malaria, of the other,
wishing to regulate their relationship in a headquarters agreement,
have agreed on the following provisions:

I. Status, privileges and immunities of the Global Fund

Article 1

Personality and capacity

The Swiss Federal Council recognizes for the purposes of this Agreement the international juridical personality and legal capacity in Switzerland of the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter referred to as the Global Fund).

Article 2

Independence and freedom of action

1. The Swiss Federal Council guarantees to the Global Fund independence and freedom of action.
2. It recognizes that the Global Fund enjoys absolute freedom of meeting, including freedom of discussion, decision and publication within the territory of Switzerland.

Article 3

Inviolability of premises

The buildings or parts of buildings and adjoining grounds, irrespective of who owns them, and used for the purposes of the Global Fund, are inviolable. No agent of the Swiss public authority may enter them without the express consent of the Executive Director of the Global Fund or his duly authorized representative.

Article 4

Inviolability of the archives

The archives of the Global Fund and, in general, all documents and data storage media belonging to it or in its possession are inviolable at all times, irrespective of their location.

Article 5

Immunity from legal process and enforcement of legal measures

1. In the conduct of its business, the Global Fund shall enjoy immunity from every form of legal process and enforcement, except:

- a) In so far as this immunity is formally waived in specific cases by the Executive Director of the Global Fund or his duly authorized representative;
- b) In the case of civil liability proceedings initiated against the Global Fund for damages caused in Switzerland by any vehicle belonging to it or operating on its behalf;
- c) In the case of seizure by court order of salaries, wages and other emoluments owed by the Global Fund to one of its officials;
- d) In the case of a counter claim directly related to principal proceedings initiated by the Global Fund; and
- e) In the case of application of an arbitration award pursuant to Article 29 of this Agreement.

2. The buildings or parts of buildings, adjoining grounds and assets owned by the Global Fund or used by it for its purposes, wherever they may be and by whomsoever they may be held, shall enjoy immunity from:

- a) Any measure of requisition, confiscation or expropriation;
- b) Any measure of seizure, administrative enforcement order or presentencing measure save in the cases provided for in the first paragraph.

Article 6

Publications and communications

The publications and communications of the Global Fund shall not be subject to any restrictive measures.

Article 7

Fiscal status

1. The Global Fund, its assets, income and other property are exempt from direct federal, cantonal and communal taxes, it being understood that regarding immovable property, this exemption applies only to that of which the Global Fund is the owner and which is occupied by its services as well as to the income derived therefrom.
2. The Global Fund is exempt from indirect federal, cantonal and communal taxes. It is, in particular, exempt from value-added tax (VAT) on all purchases intended for official use and on all services provided for official use, in conformity with Swiss law.
3. The Global Fund is exempt from all federal, cantonal and communal taxes, it being understood that it does not claim exemption from charges corresponding to specific services rendered.
4. If need be, the exemptions mentioned above shall be effected through reimbursement at the request of the Global Fund and in accordance with a procedure to be agreed by the Global Fund and the competent authorities.

Article 8

Customs treatment

Customs clearance of all articles intended for official use by the Global Fund is governed by the Ordinance of 13 November 1985 concerning the customs privileges of international organizations, States in their relations with these organizations and special missions of foreign States.

Article 9

Free disposal of funds

The Global Fund may receive, hold, convert and transfer any funds, currencies, cash, gold and other securities and may dispose of them freely both within Switzerland and in its relations with other countries.

Article 10

Official communications

1. The Global Fund shall enjoy for its official communications, treatment not less favourable than that accorded to international organizations in Switzerland, to the extent compatible with the

International Telecommunications Union Convention of 22 December 1992, as amended on 14 October 1994 at Kyoto and on 6 November 1998 at Minneapolis.

2. The Global Fund has the right to use codes in its official communications. It may send and receive correspondence, including data storage media, by duly identified courier or diplomatic bags, which shall enjoy the same privileges and immunities as diplomatic couriers and bags.

3. No censorship shall be applied to the official correspondence and other duly authenticated official communications of the Global Fund.

4. The Global Fund shall receive a dispensation for the approval requirement for user wire installations (wire communication) which it may set up and operate exclusively within its buildings or parts of buildings and grounds. User installations shall be set up and operated in such a manner as not to endanger persons and property or to disrupt telecommunications and broadcasting.

5. The operation of telecommunication installations (wire and wireless communication) must be coordinated on the technical level with the Federal Communications Office.

Article 11

Pension and special funds

1. Any pension funds or provident funds, operating officially on behalf of the officials of the Global Fund shall have the same legal capacity in Switzerland as the Global Fund. They shall enjoy, insofar as they operate on behalf of the officials, the same privileges and immunities as the Global Fund with respect to movable property.

2. Funds and foundations with or without separate legal status, administered under the auspices of the Global Fund and devoted to its official objectives, are given the benefit of the same exemptions, privileges and immunities as the Global Fund itself, with regard to movable property. Funds established after the entry into force of this Agreement shall enjoy the same privileges and immunities, subject to the approval of the competent Federal authorities.

Article 12

Social insurance

The Global Fund in its capacity as an employer, is exempt from all compulsory contributions under Swiss law to old age and survivor insurance, disability and unemployment insurance, loss of income allowances and compulsory occupational old age, survivor and disability insurance as well as from health insurance.

II. Privileges and immunities granted to persons serving the Global Fund in an official capacity

Article 13

Privileges and immunities granted to Members of the Board

1. The Members of the Board, acting in their official capacity on behalf of the Global Fund, shall enjoy the following privileges and immunities in Switzerland arising from the discharge of their duties:

a) Immunity from arrest or detention, except in cases of flagrant offence, and exemption from the inspection of personal luggage;

b) Immunity from jurisdiction, even after conclusion of their mission, for acts performed in the discharge of their duties, including words spoken or written, subject to Article 20 of this Agreement;

c) Inviolability of all official papers, data storage media and documents;

d) Customs privileges and facilities granted in conformity with the Ordinance of 13 November 1985 concerning the customs privileges of international organizations, States in their relations with these organizations and special missions of foreign States;

e) Exemption for themselves and for their spouses from measures to restrict entry, alien registration formalities, and from all obligations in respect of national military service;

f) The same monetary and exchange facilities as those granted to representatives of foreign governments on temporary mission.

2. Privileges and immunities are not designed for the personal benefit of the Members of the Board but to ensure complete independence in the discharge of their duties related to the Global Fund. The Chairperson of the Board has the authority to waive the immunity of any Board Member.

Article 14

Privileges and immunities granted to the Executive Director and senior officials of the Global Fund

1. Subject to Article 20 of this agreement, the Executive Director of the Global Fund, or his/her replacement if the former is unable to discharge his/her duties, and senior officials are granted the privileges, immunities and facilities granted to diplomatic agents in accordance with public

international law and custom.

2. The persons mentioned above not of Swiss nationality shall be exempt from all federal, cantonal and communal taxes on salaries, emoluments and allowances paid to them by the Global Fund; this exemption shall apply to persons of Swiss nationality on condition that the Global Fund makes provisions for internal taxation. Capital sums due under any circumstances by the pension fund or provident fund in the meaning of Article 11 of this Agreement shall be exempt in Switzerland at the time of payment. The same principle shall apply to all indemnities paid to such persons for sickness, accident, etc., it being understood that interest on these capital sums, as well as retirement benefits and pensions paid to persons who have ceased to discharge their duties with the Global Fund, shall not be given the benefit of this exemption.

In addition, it is understood that Switzerland retains the option of taking into account wages, salaries and other tax-exempt items of income for determining the rate of taxation on other ordinarily taxable items of income of such persons.

3. The persons mentioned above not of Swiss nationality are exempt from value added tax (VAT), in accordance with Swiss law, for purchases intended strictly for their personal use and for all services provided strictly for their personal use.

4. Customs privileges are granted in conformity with the Ordinance of 13 November 1985 concerning the customs privileges of international organizations, States in their relations with these organizations and special missions of foreign States.

Article 15

Privileges and immunities granted to all officials of the Global Fund

All officials of the Global Fund, irrespective of nationality, shall enjoy the following privileges and immunities:

- a) immunity from jurisdiction for all acts performed in the discharge of their duties, including their spoken words and written documents, even after they have ceased to discharge their duties, subject to Article 20 of this Agreement;
- b) inviolability of all official papers, data storage media and documents;
- c) exemption from all federal, cantonal and communal taxes on salaries, emoluments and indemnities paid to them by the Global Fund. This principle shall apply to persons of Swiss nationality on the condition that the Global Fund makes provisions for internal taxation. Capital sums due under any circumstances by the pension fund or provident fund in the meaning of Article 11 of this Agreement shall be exempt in Switzerland at the time of payment. The same principle shall apply to all capital sums paid as indemnities for sickness, accident, etc., it being understood that interest on these capital sums, as well as retirement benefits and pensions paid to

persons who have ceased to discharge their duties with the Global Fund, shall not be given the benefit of this exemption.

In addition, it is understood that Switzerland retains the option of taking into account wages, salaries and other tax-exempt items of income for determining the rate of taxation on other, ordinarily taxable items of income of such persons.

Article 16

Privileges and immunities accorded to officials not of Swiss nationality

In addition to the privileges and immunities enumerated in Article 15, officials of the Global Fund not of Swiss nationality:

- a) Are exempt from all obligations relative to military service in Switzerland;
- b) Are exempt, as well as their spouses and other dependants, from measures to restrict immigration and from alien registration formalities;
- c) Enjoy the same exchange facilities as those granted to the officials of other international organizations;
- d) Enjoy, as well as their dependants, the same repatriation facilities as the officials of other international organizations;
- e) Enjoy the customs privileges and facilities provided for in the Ordinance of 13 November 1985 concerning the customs privileges of international organizations, States in their relations with these organizations and special missions of foreign States.

Article 17

Social insurance

1. Officials of the Global Fund not of Swiss nationality are not subject to Swiss legislation on old age and survivor insurance, disability and unemployment insurance, loss of income allowances and compulsory occupational old age, survivor and disability insurance. The status of officials of Swiss nationality shall be determined by an exchange of letters.
2. Officials of the Global Fund, whether Swiss or foreign nationals, are not required to take out Swiss health insurance. However, they may request to be subject to the Swiss health insurance scheme.
3. Officials of the Global Fund are not subject to compulsory Swiss accident insurance on condition that the Global Fund provides them with an equivalent protection against occupational and non-occupational accidents and occupational illness.

Article 18

Military service of Swiss officials

1. Officials of the Global Fund of Swiss nationality are subject to military obligations in Switzerland in conformity with current Swiss law.
2. A limited number of leaves of absence from military service (leave for foreign countries) may be granted to certain Swiss officials of the Global Fund; persons granted such leave shall be accorded dispensation from military service, inspection and compulsory firing exercises outside military service.
3. For officials of Swiss nationality who do not fall under the category defined in paragraph 2 above, requests for dispensation from or postponement of military service, duly justified and signed by the person concerned, may be submitted.
4. The Global Fund shall submit requests for leaves of absence for foreign countries and for dispensation from or postponement of military service to the Federal Department of Foreign Affairs, to the attention of the Federal Department of Defence, Civilian Protection and of Sports.

Article 19

Privileges and immunities granted to the members of the Technical Review Panel, the Technical Evaluation Reference Group, and to experts on mission to the Global Fund

The members of the Technical Review Panel, the Technical Evaluation Reference Group, and experts on mission on behalf of the Global Fund, irrespective of nationality, shall enjoy the following privileges and immunities:

- a) Immunity from jurisdiction for all acts performed in the discharge of their duties, including their spoken words and written documents, even after they have ceased to discharge their duties, subject to Article 20 of this Agreement;
- b) Inviolability of all official papers, data storage media and documents;
- c) Exemption from all measures to restrict entry, alien registration formalities, and from all obligations concerning national military service;
- d) The same monetary and exchange facilities as those granted to representatives of foreign governments on temporary mission;
- e) The same immunities and facilities for their personal luggage as those accorded to diplomatic agents.

Article 20

Exceptions to immunity from legal process

The persons referred to in Articles 13, 14, 15 and 19 of this Agreement shall not enjoy immunity from legal process in the event of civil liability proceedings initiated against them for damages caused in Switzerland by any vehicle belonging to or driven by them, or in the event of offences punishable by fines under federal road traffic regulations.

Article 21

Object of the immunities

1. The privileges and immunities provided for in this Agreement in respect of officials of the Global Fund are not designed for the personal benefit of those officials but solely to ensure the free functioning in all circumstances of the Global Fund and the complete independence of its agents.
2. The Executive Director has the right and duty to waive the immunity of any official or expert in any case in which he considers that such immunity would impede the course of justice and may be waived without prejudice to the interests of the Global Fund. The Chairperson of the Board is authorized to waive the immunity of the Executive Director.

Article 22

Access, sojourn and departure

The Swiss authorities shall take the necessary measures to facilitate the entry into, sojourn in, and departure from Swiss territory of all persons having official business with the Global Fund, irrespective of nationality, that is to say:

- a) Members of the Board of the Global Fund and their spouses;
- b) The Executive Director, senior officials and all other officials of the Global Fund as well as their dependants living under the same roof;
- c) The members of the Technical Review Panel;
- d) The members of the Technical Evaluation Reference Group;
- e) Experts on mission on behalf of the Global Fund;
- f) Other persons, irrespective of nationality, serving the Global Fund on official business.

Article 23

Carte de légitimation

1. The Federal Department of Foreign Affairs shall furnish each official of the Global Fund with a *Carte de légitimation* bearing the photograph of the holder. This card shall also be furnished to the official's dependants who are not gainfully employed as part of the family unit living under the same roof. This card shall serve to identify the official in relation to all federal, cantonal and communal authorities.

2. The Global Fund will regularly communicate to the Federal Department of Foreign Affairs a list of the officials of the Global Fund as well as their dependants, indicating in each case the official's date of birth, nationality, residence and category or type of post.

Article 24

Prevention of abuses

The Global Fund shall cooperate at all times with the Swiss authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges and immunities, facilities and exemptions provided for in this Agreement.

Without prejudice to their privileges and immunities, all persons enjoying these privileges and immunities are duty-bound to respect Swiss law and regulations.

Article 25

Disputes of a private nature

The Global Fund shall make provisions for appropriate methods of settlement of:

a) Disputes arising out of contracts and disputes of a private law character to which the Global Fund is party;

b) Disputes involving persons mentioned in Articles 13, 14, 15 et 19 who by reason of their official position enjoy immunity, if such immunity has not been waived pursuant to the provisions of Articles 13, paragraph 2 and Article 21 of this Agreement.

III. Non-responsibility and the security of Switzerland

Article 26

Non-responsibility of Switzerland

Switzerland shall not incur, by reason of the activity of the Global Fund on its territory, any international responsibility for acts or omissions of the Global Fund or of its officials.

Article 27

Security of Switzerland

1. The Swiss Federal Council is competent to take the precautions necessary for the security of Switzerland.
2. If the Swiss Federal Council considers it necessary to apply the first paragraph of this Article, it shall approach the Global Fund as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the interests of the Global Fund.
3. The Global Fund shall collaborate with the Swiss authorities to avoid any prejudice to the security of Switzerland resulting from its activity.

IV. Final provisions

Article 28

Execution of the Agreement by Switzerland

The Federal Department of Foreign Affairs is the Swiss authority entrusted with the execution of this agreement.

Article 29

Settlement of disputes

1. Any dispute concerning the interpretation or application of this Agreement which has not been settled by negotiations between the parties may be submitted by either party to an arbitral tribunal composed of three members.
2. The Swiss Federal Council and the Global Fund shall each choose one member of the arbitral tribunal.
3. The members so appointed shall choose the third member, who shall serve as president. In the event of a disagreement between the members on the choice of president and should no agreement be reached within a reasonable deadline, the president shall be chosen by the President of the International Court of Justice at the request of either party.
4. The tribunal shall determine its own procedure.

5. The arbitration award shall be binding on the parties to the dispute and shall not be subject to review.

Article 30

Modification of the Agreement

1. This Agreement may be revised at the request of either party.
2. In this event, the two parties shall consult each other concerning the modifications to its provisions.

Article 31

Termination of the Agreement

This agreement may be terminated by either party giving two years' written notice.

Article 32

Entry into force

This Agreement shall enter into force on the date of signature.

Done in Bern on 13 December 2004, in two copies in French.

For the Swiss Federal Council:

Paul Seger
Ambassador
Director - Office for Public International Law

For the Global Fund to Fight AIDS, Tuberculosis and Malaria:

Professor Richard G.A. Feachem
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