



The Global Fund to Fight AIDS, Tuberculosis and Malaria Report to the Governance and Partnership Committee

GF/B7/7
Annex 9
Document 1

Preliminary Report on the Agreement between the Swiss Federal Council and the Global Fund to Fight AIDS, Tuberculosis & Malaria

- 1 Following Swiss President Pascal Couchepin's announcement on September 22, 2003 on the decision of principle to grant to the Global Fund privileges and immunities similar to those of an international organization, the Swiss Department of Foreign Affairs, through Ms. Evelyne Gerber, has issued to the Global Fund on November 11, 2003 a draft Headquarters Agreement.
- 2 The Governance and Partnership Committee (GPC) has recommended the following steps be taken to address the draft Headquarters Agreement which has been received:
 - 2.1 *Secretariat to negotiate a headquarters agreement with the Department of Foreign Affairs;*
 - 2.2 *Secretariat to prepare an analysis of the headquarters agreement, and a discussion of the impact on the Fund if it chooses to accept or reject the agreement;*
 - 2.3 *Board to consider the headquarters agreement;;*
 - 2.4 *If approved by the Board, the agreement will enter into force upon approval by the Swiss Federal Council and the Canton of Geneva.*
- 3 The draft has now been translated to English (from its original version in French) and is ready for review by GPC, accompanied by a brief overview of the legal provisions afforded by the agreement and a plan to evaluate the operational considerations.
- 4 The draft Headquarters Agreement would provide the Global Fund, institutionally, and many of those who serve it, individually, certain legal privileges and immunities in Switzerland similar to those granted to international organizations. Some of the privileges and immunities are subject to certain limitations, as detailed in the Agreement. The following highlights some of the key aspects of the attached Agreement, but does not attempt to analyze or explain the provisions, as we assume that during the

negotiation process some of the language may be altered or further clarified. Upon finalization, we will provide a thorough discussion of the content of the Agreement and its impact on the Fund.

- 5 Legal organization. The Agreement would preserve the Fund's legal organization as a Foundation organized under the laws of Switzerland. However, the Swiss Federal Council would recognize the Fund to have "international juridical personality."
- 6 Privileges and Immunities for the Global Fund. The Agreement would provide the Fund, and several of its bodies and the individuals that serve it, significant privileges and immunities under Swiss law. These include the following:
 - 6.1 Immunity from Legal Process. Article 5 provides for comprehensive legal immunities for the Fund. Subject to the limited exceptions set out in the agreement, this provision would insulate the Fund from liabilities arising from the conduct of its business.
 - 6.2 Inviolability of records/premises. The Fund's records would not be subject to search (Article 4); its buildings and assets would not be subject to seizure, or certain other legal actions that would result in closure (Article 5).
 - 6.3 Tax Exemptions. The Fund would be granted certain exemptions from taxes and customs duties, set out more fully in Articles 7 and 8.
 - 6.4 Exemption from regulatory social insurance contributions. The Fund would be exempt from the standard compulsory contributions to certain social insurance programs (Article 12).
 - 6.5 Pension Funds. Global Fund pension or provident funds benefit from the same privileges and immunities extended to the Fund. (Article 11).
- 7 Privileges and Immunities for Individuals
 - 7.1 Board Members. Board Members would be granted immunity from legal process in Switzerland for certain civil and criminal claims arising from official acts taken in their capacity as members of the Board. They would also be granted certain other privileges and immunities outlined in detail in Article 13.

- 7.2 Executive Director and Senior Officials. Senior staff of the Global Fund would be granted “privileges, immunities and facilities granted to diplomatic agents in accordance with public international law and custom.” While the level of the officials covered in this article needs to be expanded to include certain non-senior professionals who currently have diplomatic privileges, this language appears to provide such individuals status akin to that granted other diplomats, and equivalent to the status conveyed to the diplomatic staff of the WHO. Such status includes certain individual tax exemptions, as set out more fully in Article 14.
- 7.3 All Global Fund Officials. All officials of the Global Fund would be granted immunity from legal process in Switzerland for certain civil and criminal claims arising from official acts taken in their capacity Fund officials. They would also be granted certain other privileges and immunities outlined in Articles 15 through 18.
- 7.4 Members of the TRP and “experts on mission to the Global Fund.” Though the scope of the individuals captured under the agreement as “experts” needs further clarity, these individuals are granted immunity from jurisdiction for their official acts, together with other privileges and immunities set out in Article 19.

Next Steps

The following next steps are proposed in pursuit of a final negotiated and approved Headquarters Agreement:

- 8 The Secretariat will complete negotiations with the representative of the Swiss Department of Foreign Affairs;
- 9 The GPC will review the agreement and a comprehensive analysis of the agreement and its legal and operational implications and make any appropriate recommendations to the Board in preparation for a decision by the Board at the 7th Board meeting on a course of action.
- 10 The Secretariat will circulate the final proposed agreement to the Board, together with the comprehensive analysis of the agreement and the legal and operational implications for the Fund if it decides to accept or reject the agreement (to be delivered to GPC upon completion of negotiations and to the Board prior to its 7th meeting in March 2004.

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