

Ensuring that this select group [central banks of the world] of international bankers could operate without any form of accountability to any other authority in the world, the BIS 'Headquarters Agreement with Switzerland' Articles 4 and 12 specifically identify a range of 'privileges and immunities' that, among others, provide that 'The Bank shall enjoy immunity from jurisdiction' and 'members of the Board of Directors of the Bank, together with the representatives of those central banks which are members of the Bank' with 'immunity from arrest or imprisonment'. See 'Agreement between the Swiss Federal Council and the Bank for International Settlements to determine the Bank's legal status in Switzerland'.

Agreement between the Swiss Federal Council and the Bank for International Settlements to determine the Bank's legal status in Switzerland¹

(of 10 February 1987; text as amended
effective 1 January 2003 by the exchange of letters
of 18 December 2002/13 January 2003)²

The Swiss Federal Council
of the one part, and

The Bank for International Settlements
of the other part.

Having regard to the Convention of 20th January 1930 respecting the Bank for International Settlements, the Constituent Charter and Statutes of the Bank, and the Protocol of 30th July 1936 regarding the immunities of the Bank for International Settlements;

Desiring, in the light of the practice followed since 1930, to settle their mutual relationships in a Headquarters Agreement;

Have agreed upon the following provisions:

¹ The footnotes in this document have been prepared for explanatory purposes by the Bank's Legal Service. Throughout the Agreement, the masculine gender also implies the feminine.

² Compendium of Swiss Laws (Recueil systématique): 0.192.122.971.3.

I. Status, privileges and immunities of the Bank

Article 1

Legal personality

The Swiss Federal Council acknowledges the international legal personality and the legal capacity within Switzerland of the Bank for International Settlements (hereinafter referred to as “the Bank”).

Article 2

Freedom of action of the Bank

1. The Swiss Federal Council shall guarantee to the Bank the autonomy and freedom of action to which it is entitled as an international organisation.
2. In particular, it shall grant to the Bank, as well as to its member institutions in their relations with the Bank, absolute freedom to hold meetings, including freedom of discussion and decision.

Article 3

Inviolability

1. The buildings or parts of buildings and surrounding land which, whoever may be the owner thereof, are used for the purposes of the Bank shall be inviolable. No agent of the Swiss public authorities may enter therein without the express consent

of the Bank. Only the President,³ the General Manager of the Bank, or their duly authorised representative shall be competent to waive such inviolability.

2. The archives of the Bank and, in general, all documents and any data media belonging to the Bank or in its possession, shall be inviolable at all times and in all places.

3. The Bank shall exercise supervision of and police power over its premises.

Article 4

Immunity from jurisdiction and execution

1. The Bank shall enjoy immunity from jurisdiction, save:

- (a) to the extent that such immunity is formally waived in individual cases by the President,³ the General Manager of the Bank, or their duly authorised representatives;
- (b) in civil or commercial suits, arising from banking or financial transactions, initiated by contractual counterparties of the Bank, except in those cases in which provision for arbitration has been or shall have been made;
- (c) in the case of any civil action against the Bank for damage caused by any vehicle belonging to or operated on behalf of the Bank.

2. Disputes arising in matters of employment relations between the Bank and its Officials or former Officials, or persons claiming through them, shall be settled by the Administrative Tribunal of the Bank. The Board of Directors of the Bank shall determine the constitution of the Administrative Tribunal, which shall have exclusive and final jurisdiction.

³ The reference in the Agreement to the President of the Bank is no longer relevant as this position was abolished by decision of the Extraordinary General Meeting of the Bank on 27 June 2005.

Matters of employment relations shall be deemed to include in particular all questions relating to the interpretation or application of contracts between the Bank and its Officials concerning their employment, of the regulations to which the said contracts refer, including the provisions governing the Bank's pension scheme and other welfare arrangements provided by the Bank.

3. The Bank shall enjoy, in respect of its property and assets, wherever located and by whomsoever held, immunity from any measure of execution (including seizure, attachment, freeze or any other measure of execution, enforcement or sequestration, and in particular of attachment within the meaning of Swiss law), except:

- (a) in cases where execution is claimed on the basis of a final judgment rendered by a court which has jurisdiction over the Bank in accordance with paragraph 1(a), (b) or (c) above;
- (b) in cases of execution of an award made by an arbitral tribunal pursuant to Article 27 of this Agreement.

4. All deposits entrusted to the Bank, all claims against the Bank and the shares issued by the Bank shall, without the express prior agreement of the Bank, wherever located and by whomsoever held, be immune from any measure of execution (including seizure, attachment, freeze or any other measure of execution, enforcement or sequestration, and in particular of attachment within the meaning of Swiss law).

Article 5

Communications

1. The Bank shall benefit, in respect of its official communications, from treatment at least as favourable as that which is granted to other international organisations in Switzerland, insofar as such treatment is compatible with the International Telecommunication Convention of 6th November 1982.

2. The Bank shall have the right to use codes for its official communications. It shall also have the right to send and receive correspondence, including data media, by duly identified couriers or bags enjoying the same privileges and immunities as diplomatic couriers or bags.

3. Official correspondence and other official communications of the Bank, when duly identified, may not be subject to censorship.

4. The use of telecommunication equipment shall be coordinated at the technical level with the Swiss postal and telecommunications administration.

Article 6

Publications and data media

1. The importation of publications for the Bank's use and the exportation of the Bank's publications shall not be subject to any restriction.

2. The provisions of the preceding paragraph shall also extend to data media of all kinds.

Article 7

Tax exemptions

1. The Bank, its assets, income and other property shall be exempt from direct Federal, cantonal and communal taxes. With regard to buildings, however, such exemption shall apply only to those owned by the Bank and occupied by its services, and to income deriving therefrom. The Bank shall not be subject to taxation on the rent it pays for premises rented by it and occupied by its services.

2. The Bank shall be exempt from indirect Federal, cantonal and communal taxes. With regard to the Federal turnover tax included in prices or separately charged, exemption shall apply only to articles purchased for the official use of the Bank,

provided that the amount invoiced for one and the same purchase exceeds five hundred Swiss francs.

3. The operations of the Bank shall be exempt within Switzerland from all taxes and dues to the extent that such operations take place outside the Swiss market or are undertaken in the interests of international monetary cooperation; the procedure for such exemption shall be mutually agreed with the competent Swiss authorities.

4. The Bank shall be exempt from all Federal, cantonal and communal dues, except dues charged as the price of actual services rendered.

5. Where appropriate, the exemptions mentioned above may take the form of reimbursement at the request of the Bank and according to a procedure to be determined by the Bank and the competent Swiss authorities.

Article 8

Customs treatment

The treatment by customs authorities of articles intended for the Bank shall be governed by the Ordinance of 13th November 1985 concerning the preferential customs treatment of international organisations, of States in their relations with such organisations and of the special missions of foreign States.

Article 9

Free disposal of funds and freedom to conduct operations

1. The Bank may receive, hold, convert and transfer all funds, gold, currency, cash and other transferable securities, and dispose freely thereof, and generally carry out without any restriction all the operations permitted by its Statutes, both within Switzerland and in its relations with foreign countries.

2. As regards its operations on the Swiss market, the Bank shall nevertheless be obliged to confer with the Swiss National Bank in accordance with Article 19 of the Bank's Statutes.

Article 10

Pension funds and special funds

1. The pension fund of the Bank, which is administered under the auspices of the Bank for its official purposes, shall enjoy, irrespective of whether or not the fund has separate legal personality, the same exemptions, privileges and immunities as those enjoyed by the Bank itself with regard to its movable property. The said pension fund consists of earmarked assets guaranteeing the Bank's obligations pursuant to the pension scheme established for the benefit of its Officials engaged in a permanent capacity.

2. The provisions of the preceding paragraph shall also extend to any special funds which may be created by the Bank in connection with other welfare arrangements provided by the Bank, in particular in order to accumulate reserves in relation thereto.

Article 11

Social security

1. The Bank, in its capacity as an employer, shall not be subject to Swiss legislation regarding old-age and surviving-dependants insurance, incapacity insurance, unemployment insurance, the compensation for loss of income scheme, and compulsory provision of occupational pension schemes for old age, surviving relatives and incapacity.

2. Those Officials of the Bank who do not have Swiss nationality shall not be subject to the legislation referred to in the preceding paragraph.

3. The Officials of the Bank shall not be subject to cantonal or communal insurance against illness, whenever such

insurance is compulsory, to the extent that the Bank offers them equivalent protection in respect of illness, accident or maternity.

4. The Officials of the Bank shall not be subject to the Swiss scheme for compulsory insurance against accident to the extent that the Bank offers them equivalent protection in respect of accident, whether employment-related or not, and employment-related illnesses.

II. Privileges and immunities granted to persons who are called upon by the Bank in an official capacity

Article 12

Status of the members of the Board of Directors and of the representatives of the Bank's member central banks

The members of the Board of Directors of the Bank, together with the representatives of those central banks which are members of the Bank, shall enjoy while carrying out their duties in Switzerland and throughout their journey to or from the place where a meeting is held, the following privileges and immunities:

- (a) immunity from arrest or imprisonment and immunity from seizure of their personal baggage, save in flagrant cases of criminal offence;
- (b) inviolability of all papers and documents;
- (c) immunity from jurisdiction, even after their mission has been accomplished, for acts carried out in the discharge of their duties, including words spoken and writings;
- (d) the customs privileges and facilities granted pursuant to the Ordinance of 13th November 1985 concerning the preferential customs treatment of international organisations, of States in their relations with such

organisations and of the special missions of foreign States;

- (e) exemption for themselves, their spouses and children from any immigration restrictions, from any formalities concerning the registration of aliens and from any obligations relating to national service in Switzerland;
- (f) the same facilities as regards monetary or exchange regulations as those granted to the representatives of foreign governments on a temporary official mission;
- (g) the right to use codes in official communications or to receive or send documents or correspondence by means of couriers or diplomatic bags.

Article 13

Status of the President, the General Manager and Senior Officials

1. The President,³ the General Manager of the Bank, and those Senior Officials who are designated by the latter with the consent of the Federal Department for Foreign Affairs shall enjoy such privileges and immunities, exemptions and facilities as are granted to diplomatic agents in accordance with the law of nations and international custom.

2. Customs privileges and facilities shall be granted pursuant to the Ordinance of 13th November 1985 concerning the preferential customs treatment of international organisations, of States in their relations with such organisations and of the special missions of foreign States.

Article 14

Privileges and immunities granted to all Officials

The Officials of the Bank, whatever their nationality, shall

- (a) enjoy immunity from jurisdiction for acts accomplished in the discharge of their duties, including words spoken and

writings, even after such persons have ceased to be Officials of the Bank;

- (b) enjoy exemption from all Federal, cantonal and communal taxes on salaries, fees and allowances paid to them by the Bank; however, Switzerland may take these emoluments into account for the purpose of determining the tax payable on income from other sources; this exemption shall apply to Officials of Swiss nationality, provided the Bank operates an internal taxation scheme;
- (c) enjoy exemption, at the time of payment, from all Federal, cantonal and communal taxes on capital payments due in whatever circumstances by the Bank; the same shall apply to any capital payments which may be made to Officials of the Bank by way of indemnity for sickness, accidents, etc.; however, income derived from such capital payments, as well as annuities and pensions paid to former Officials of the Bank, shall not be entitled to such exemption.

Article 15

Privileges and immunities granted to non-Swiss Officials

Officials of the Bank who do not have Swiss nationality shall:

- (a) be exempt from all obligations relating to national service in Switzerland;
- (b) together with their spouses and dependent members of their families, not be submitted to the provisions restricting immigration and formalities concerning the registration of aliens;
- (c) enjoy, with respect to exchange facilities and facilities for the transfer of their assets and property in Switzerland and abroad, the same privileges as those granted to the Officials of other international organisations;
- (d) together with the dependent members of their families and their household staff, benefit from the same

repatriation facilities as Officials of other international organisations;

- (e) enjoy the customs privileges and facilities granted pursuant to the Ordinance of 13th November 1985 concerning the preferential customs treatment of international organisations, of States in their relations with such organisations and of the special missions of foreign States.

Article 16

Military service of Swiss Officials

1. The General Manager of the Bank shall furnish the Swiss Federal Council with a list of those Officials who have Swiss nationality and who are subject to the performance of military duties.
2. The General Manager of the Bank and the Swiss Federal Council shall draw up an agreed restrictive list of those Officials who have Swiss nationality and who, by reason of their functions, shall be accorded foreign leave of absence (dispensation from military service).
3. In the event of the call-up of Swiss Officials, the Bank may, through the intermediary of the Federal Department for Foreign Affairs, request dispensation or change of date of military service.

Article 17

Exceptions to the immunity from jurisdiction and execution

The persons referred to in Articles 12, 13 and 14 of the present Agreement shall not benefit from immunity from jurisdiction nor, where applicable, from immunity from execution, in the event of legal proceedings against them with respect to damage occasioned by a vehicle in their ownership or control, or in the

event of their contravening the Federal laws in force regarding road traffic which may give rise to the imposition of a spot fine.

Article 18

Experts

Experts who do not have Swiss nationality and who carry out temporary missions for the account of the Bank shall, for the duration of such mission, be treated as Officials of the Bank, so far as the privileges and immunities enjoyed by such Officials are concerned.

Article 19

Purpose of immunity

1. The privileges and immunities provided for in the present Agreement are not established for the personal benefit of those persons in whose favour they are granted. Their purpose is solely to ensure, in all circumstances, the freedom of action of the Bank and the complete independence of the persons concerned in the carrying-out of their duties with respect to the Bank.

2. The President³ and the General Manager of the Bank shall have not only the right but also the duty to waive the immunity of any Official when they consider that such immunity would hinder the normal course of justice, and that it is possible to waive such immunity without prejudicing the interests of the Bank. In respect of the President³ and the General Manager themselves, the Board of Directors shall have the power to waive immunity.

Article 20

Access, residence and departure

The Swiss authorities shall take all the necessary steps to facilitate the entry into, departure from and residence in Swiss

territory of all persons, irrespective of their nationality, who are to attend the Bank in an official capacity, namely:

- (a) the members of the Board of Directors of the Bank, their spouses and children;
- (b) the representatives of central banks which are members of the Bank, their spouses and children;
- (c) the President,³ the General Manager and the Officials of the Bank, as well as the dependent members of their respective families;
- (d) experts;
- (e) any other person, irrespective of his nationality, who is to attend the Bank in an official capacity.

Article 21

Identity cards

1. The Federal Department for Foreign Affairs shall transmit to the Bank an identity card, with a photograph of the holder, for each Official and each dependent member of his family living with him and having no gainful occupation. This card shall be authenticated by the Federal Department for Foreign Affairs and by the Bank and shall serve to identify the holder for the purpose of any Federal, cantonal or communal authority.

2. The Bank shall regularly communicate to the Federal Department for Foreign Affairs the list of the Officials of the Bank, and of the members of their families, indicating, in respect of each, date of birth, nationality, domicile in Switzerland, and category or class of employment.

Article 22

Prevention of abuse of privileges

The Bank and the Swiss authorities shall cooperate at all times to facilitate the satisfactory administration of justice, to ensure

the observance of police regulations and to prevent any abuse of the privileges, immunities, facilities and exemptions provided for in the present Agreement.

Article 23

Disputes of a private nature

The Bank shall take the necessary steps to ensure the satisfactory settlement of:

- (a) disputes arising out of contracts to which the Bank is a party and other disputes on private law matters, where the Bank enjoys immunity from jurisdiction pursuant to Article 4, paragraph 1 above;
- (b) disputes involving any Official of the Bank who, pursuant to Articles 13 and 14, benefits from immunity, where immunity has not been waived in accordance with the provisions of Article 19.

III. Non-responsibility and security of Switzerland

Article 24

Non-responsibility of Switzerland

Switzerland shall not, on account of the Bank's activities on its territory, assume any international responsibility for acts or omissions of the Bank or for those of the Bank's Officials.

Article 25

Security of Switzerland

1. Nothing in this Agreement shall affect the right of the Swiss Federal Council to apply all appropriate safeguards in the interests of the security of Switzerland.
2. Should the Federal Council consider it necessary to apply the provisions of the first paragraph of the present Article, it shall, as promptly as circumstances permit, establish contact with the Bank in order to decide jointly upon such measures as may be necessary to protect the interests of the Bank.
3. The Bank shall cooperate with the Swiss authorities to prevent any prejudice to the security of Switzerland on account of any activity of the Bank.

IV. Final provisions

Article 26

Implementation of the Agreement by Switzerland

The Federal Department for Foreign Affairs shall be the Swiss authority responsible for the application of this Agreement.

Article 27

Settlement of disputes

1. Any difference of opinion concerning the application or interpretation of this Agreement which direct consultations between the parties have failed to settle may be referred, by either party, to the Arbitral Tribunal provided for by the Hague Agreement of 20th January 1930 referred to in Paragraph 11 of the Bank's Constituent Charter.

2. The parties to this Agreement may nevertheless agree to submit such difference of opinion to an ad hoc arbitral tribunal consisting of three members. In this event, the Swiss Federal Council and the Bank will each appoint one member of that tribunal, and the persons so appointed shall select a president. Should the members of the tribunal be unable to agree upon who should be selected as president, he shall be appointed by the President of the International Court of Justice at the request of the members of the tribunal, or, if he is unable to exercise this function, by the Vice-President, or failing him by the most senior member of the Court. The said ad hoc tribunal shall fix its own rules of procedure.

Article 28

Amendment of the Agreement

1. This Agreement may be revised at the request of either party.
2. In such a case, the parties shall jointly examine any appropriate changes in the provisions of the present Agreement.

Article 29

Withdrawal from the Agreement

Either party may withdraw from this Agreement upon giving the other party two years' notice of withdrawal.

Article 30

Existing immunities and privileges

The present Agreement shall not be deemed to affect in any way the privileges and immunities granted to the Bank pursuant to the Convention of 20th January 1930 respecting the Bank for International Settlements, the Constituent Charter and Statutes

of the Bank, or the immunities set forth in the Brussels Protocol of 30th July 1936.

Article 31

Entry into force

The present Agreement shall enter into force on the date of its signature, and shall be applied with effect from 1st January 1987.

Done at Berne on 10th February 1987 in two copies in the French language.