

THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS & MALARIA

BY-LAWS

As Amended

5 May 2009¹

¹ Approved by the Global Fund Board at the 19th Board Meeting, confirmation of registration pending with the Swiss Federal Supervisory Authority.

Article 1. Structure

The Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Foundation”) is a non-profit foundation, governed by these Bylaws and the applicable provisions of Swiss law. The Foundation is registered at the “Registre du Commerce” in Geneva and operates under the supervision of the Federal Supervisory Board for Foundations.

Article 2. Purpose

The purpose of the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Foundation”) is to attract, manage and disburse resources through a new public-private foundation that will make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis and malaria in countries in need, and contributing to poverty reduction as part of the Millennium Development Goals established by the United Nations.

Article 3. Headquarters

The Foundation's headquarters is in the Canton of Geneva, Switzerland.

Article 4. Duration

The Foundation shall remain in operation indefinitely.

Article 5. Governing, Administrative and Advisory bodies

The governing, administrative and advisory bodies of the Foundation are:

- the Partnership Forum;
- the Foundation Board;
- the Secretariat; and
- the Technical Review Panel.

Article 6. Partnership Forum

6.1. Purpose and Composition

The Partnership Forum shall be convened periodically in order to provide persons and entities concerned about the prevention, care, treatment and eventual eradication of HIV/AIDS, Tuberculosis and Malaria, a forum to express their views on the Foundation's policies and strategies.

Participation in the Forum shall be open to a wide range of stakeholders that actively support the Foundation's objectives, including representatives of donors, multilateral development cooperation agencies, developed and developing countries, civil society, NGO and community based organizations, technical and research agencies, and the private sector.

6.2. Functions

The Partnership Forum will:

- Review progress based on reports from the Foundation Board and provide advice to the Foundation on general policies;
- Provide an important and visible platform for debate, advocacy, continued fund raising, and inclusion of new partners;
- Mobilize and sustain high level coordination, political commitment and momentum to achieve the Foundation's objectives; and
- Provide a communication channel for those stakeholders who are not formally represented elsewhere in the governance structure.

6.3. Frequency and Notice of Meetings

The Partnership Forum will meet every 24 to 30 months.

Meetings of the Partnership Forum shall be convened by written notice from or on behalf of the Foundation Board.

Article 7. Foundation Board

7.1. Composition

The Foundation Board shall consist of twenty voting members and six nonvoting members. Each voting member shall have one vote.

Voting members of the Foundation Board shall consist of:

- Seven representatives from developing countries, one representative based on each of the six World Health Organization (“WHO”) regions and one additional representative from Africa.
- Eight representatives from donors.
- Five representatives from civil society and the private sector (one representative of a non-governmental organization (“NGO”) from a developing country, one representative of an NGO from a developed country, one representative of the private sector, one representative of a private foundation, and one representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria).

The six ex-officio nonvoting members of the Foundation Board shall consist of:

- One representative from the WHO;
- One representative from the Joint United Nations Programme on HIV/AIDS (“UNAIDS”);
- One representative from the Partners constituency;
- One representative from the trustee;
- One Swiss citizen with his or her domicile in Switzerland authorized to act on behalf of the Foundation to the extent required by Swiss law; and
- The Executive Director of the Foundation.

Members of the Foundation Board (“Board Members”) may each appoint one Alternate Member to serve in their stead, under policies and procedures determined by the Foundation Board.

7.2. Appointment of Foundation Board Members

Each group mentioned in Article 7.1 of these Bylaws will determine a process for selecting its Foundation Board representation. Board Members will serve as representatives of their constituencies. Foundation Board Members will serve on the Foundation Board for two years or such other term that the Foundation Board may determine. The Executive Director shall act in his or her capacity as chief executive officer of the Foundation and will serve the Foundation Board for the duration of his or her term.

Board Members shall be deemed to act in their capacity as representatives of their respective governments, organizations, constituencies or other entities.

7.3. Chair and Vice Chair

Board Members will select the Chair and the Vice Chair of the Foundation Board from among voting Board Members, provided that the two positions will alternate every two years between the voting groups described in Article 7.6. The Chair and the Vice Chair will each be elected for two-year terms. In addition to chairing board meetings, the Chair will also have an important advocacy and fund raising role.

Between Board meetings, the Chair and the Vice Chair, acting together, shall take action on behalf of the Foundation Board which they consider must be taken urgently without recourse to other procedures as provided in the Bylaws or Board Operating Procedures. In the event the Chair and Vice Chair are unable to agree, the Chair shall take the decision.

Decisions taken between Foundation Board meetings shall be notified to the Foundation Board immediately, with an explanation of why such decision was deemed urgent. A full report on the decision shall be presented to the Foundation Board at its subsequent meeting. The Foundation Board will review, and may modify or reverse, the decision.

7.4. Functions

The Foundation Board is the supreme governing body of the Foundation. The Board shall exercise the powers of the Foundation, including the following:

- appoint Board Members selected in accordance with Article 7.2;
- set policies and strategies for the Foundation;
- set operational guidelines, work plans and budgets for the Secretariat and the Technical Review Panel;

- make funding decisions;
- select and, if necessary, replace the Executive Director (other Secretariat appointments will be made by the Executive Director under procedures approved by the Foundation Board);
- set criteria for membership of, and appoint, members of the Technical Review Panel and other advisory groups as appropriate;
- validate eligibility criteria for projects;
- establish a framework for monitoring and periodic independent evaluation of performance and financial accountability of activities supported by the Foundation;
- establish conflict of interest policies for the Foundation Board, the Technical Review Panel, the Secretariat staff and others as appropriate;
- consider, approve, and monitor cooperative arrangements or agreements with other organizations and institutions;
- coordinate with outside agencies;
- advocate for the Foundation and mobilize resources;
- establish Foundation Board committees as appropriate;
- establish criteria for participation and rules of procedure for the Partnership Forum;
- approve the annual report of the Foundation; and
- all other powers required to carry out the purposes of the Foundation.

7.5 *Delegation of Board Authority*

The Board may delegate its powers, except where governing law or these Bylaws may otherwise prohibit delegation. Powers delegated by the Board under this Article will, notwithstanding such delegation, be exercised under the authority and direction of the Board.

7.6 Operations

The Foundation Board shall meet as often as necessary but not less than twice per year.

A meeting of the Foundation Board shall be convened by written notification from the Chair or the Vice Chair of the Foundation Board, or by the Executive Director at the direction of the Chair or the Vice Chair.

The Foundation Board shall use best efforts to make all decisions by consensus. If all practical efforts by the Foundation Board and the Chair have not led to consensus, any member of the Foundation Board with voting privileges may call for a vote. In order to pass, motions require a two-thirds majority of those present of both: a) the group encompassing the eight donor seats and the two private sector seats and b) the group encompassing the seven developing country seats, the two non-governmental organization seats, and the representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria.

Notwithstanding the foregoing, the Board may decide to take action on a no-objection basis. On such basis, and subject to procedures set by the Board, a motion shall be deemed approved unless four Board members of one of the voting groups described above objects to the motion, except that a motion not to make a funding commitment shall be deemed approved unless four Board members of each of the voting groups described above object to the motion.

The Foundation Board may act by means of proxy letter, teleconference, e-mail or such other method of communication in which the votes of each Board Member may be recorded, subject to procedures determined by the Foundation Board. When acting on a no-objection basis by proxy, e-mail, or other mode of communication in which actual participation may not be verified, participation shall be deemed to have occurred provided that notice to Board members of the action to be taken conforms to standards set by the Board.

All decisions of the Foundation Board will be recorded in minutes of the Foundation Board meetings, approved by the Board and provided to all voting and non-voting Board Members, and retained in the permanent records of the Foundation.

7.7 Quorum

The Board may conduct business only when a majority of Board Members of each of the two voting groups defined in Article 7.6 are present.

Article 8. Secretariat

8.1 Composition

The Secretariat is responsible for managing the day-to-day operations of the Foundation.

The Secretariat is headed by an Executive Director, who is selected by the Foundation Board based on merit, in a non-political, open and competitive manner. The Executive Director acts as the chief executive officer of the Foundation and serves for a term of four years, renewable for not more than one additional term of three years.

The Executive Director is responsible to the Foundation Board for the day-to-day management of the Foundation, and for specific duties and responsibilities assigned to him or her by the Foundation Board.

Secretariat staff are selected by the Executive Director, under policies and procedures approved by the Foundation Board.

8.2. Functions

Within its responsibility for managing the day-to-day operations of the Foundation, the Secretariat will undertake the following functions:

- organize the receipt and review of grant applications and negotiate and execute grant agreements;
- commission the Technical Review Panel and ensure the independence of the review process;
- coordinate the process for recommending members of the Technical Review Panel and other advisory group candidates to the Foundation Board;
- coordinate the preparation of issues papers and operational strategies for Foundation Board meetings and assist committees of the Board, their advisory and technical panels, and other support structures;
- commission and supervise contracted work;
- coordinate with relevant agencies;
- communicate the Foundation Board's decisions to stakeholders;
- oversee the monitoring and evaluation process;

- support the Foundation Board in advocacy and fund raising;
- organize and prepare for meetings of the Partnership Forum; and
- organize translation and interpretation services.

Article 9. Technical Review Panel

The Technical Review Panel is an independent, impartial team of experts appointed by the Foundation Board to guarantee the integrity and consistency of an open and transparent proposal review process. It reviews applications submitted for Foundation support, makes recommendations to the Board, and undertakes such other functions as may be directed by the Board.

Article 10. Audit

The Foundation Board will select an external, independent auditor to annually audit the accounts of the Foundation.

The Auditor shall deliver a written report of the audit findings to the Board, who shall file it with the Supervisory Authority.

The fiscal year of the Foundation shall be the calendar year.

Article 11. Account

Funds contributed to the Foundation will be held in a trust account at The International Bank for the Reconstruction and Development ("World Bank").

Article 12. Vacancies.

A vacancy in the office of Chair or Vice Chair resulting from death, resignation, disqualification or any other reason, shall be filled in the same manner in which the original holder of that office or position was appointed or selected. Individuals selected or appointed to fill vacant positions shall hold such positions for the unexpired term of their predecessor.

Article 13. Dissolution and Liquidation

In the event that the Foundation is unable to continue its activities, the Foundation Board shall notify the Supervisory Authority.

The Foundation may be dissolved in accordance with Articles 88 and 89 of the Swiss Civil Code. The Foundation Board shall carry out the liquidation unless it designates another party to act as a liquidator.

In the event of liquidation, the assets of the Foundation shall be returned to the donors to be applied to similar objectives to those of the Foundation.

The dissolution of the Foundation shall only be carried out with the consent of the Supervisory Authority and based on a written report which sets out justification for the dissolution.

Article 14. Amendment

These Bylaws may be amended by the Board at any time.

Article 15. Entry Into Force

These Bylaws shall enter into force after their approval by the Foundation Board and the Federal Supervisory Board for Foundations.