



Report of the Governance and Partnership Committee

ANNEX 2.1

Text in italic is proposed variations. Modifications are indicated in bold

**THE BY-LAWS OF THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS
AND MALARIA**

Section I: Definition –Purpose– Headquarters – Duration

Article 1 Definition

There is a non-profit foundation, governed by the present bylaws and Article 80 of the Swiss Civil Code, under the name of **Global Fund to Fight AIDS, Tuberculosis and Malaria** (hereinafter the "Foundation").

The Foundation is registered at the "Registre du Commerce" in Geneva and thereby placed under the supervision of the competent Swiss Authority.

Article 2 Purpose

The purpose of the Fund 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.

Section II: Funding Sources

Article 5

The Foundation was established with a capital endowment of fifty thousand Swiss Francs (CHF 50'000).

The Foundation shall be funded from donations from nations, non-governmental organizations ("NGO"), private foundations individuals and the private sector.

In order to protect the assets of the Foundation and to facilitate their management, any moneys contributed to the Foundation will be held in a trust account opened with The International Bank for the Reconstruction and Development, also known as World Bank ("World Bank"), who has initially agreed to act as trustee.

Section III: Organization

Article 6

The Governing, Administrative and Advisory bodies

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

- A. The Partnership Forum
- B. The Foundation Board
- C. The Secretariat
- D. The Technical Review Panel

A. The Partnership Forum

Article 7

Composition of the Partnership Forum

The Partnership Forum is an informal grouping of persons and entities concerned in the prevention, care, treatment and eventual eradication of HIV/AIDS, Tuberculosis and Malaria, meeting periodically to express their views on the Foundation's policies and strategies.

Participation in the Forum will be open to a wide range of stakeholders that actively support the Foundation's objectives. Members of the Partnership Forum will include 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. The Foundation Board will establish criteria for participation and rules of procedure.

Article 8

Functions of the Partnership Forum

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 Fund's objectives; and
- Provide a communication channel for those stakeholders who are not formally represented elsewhere in the governance structure.

Article 9

Operations of the Partnership Forum

The Forum will meet at least once every two years.

A meeting of the Partnership Forum shall be convened by written notification from or on behalf of the Foundation Board.

The Foundation Board shall establish the rules of procedure governing the meetings of the Partnership Forum.

B. The Foundation Board

Article 10

Composition of the Board

The Foundation Board shall initially consist of three (3) members ("Initial Foundation Board"). At least one of those members who are entitled to sign for the Foundation shall be a Swiss citizen and have his or her domicile in Switzerland.

Then, the Initial Foundation Board shall rapidly appoint according to Article 11 a new Foundation Board, which shall be composed of eighteen (18) voting members and five (5) nonvoting members, or such other number as determined from time by the same Foundation Board, and thereupon the Initial Foundation Board shall resign. Each voting member shall have one vote.

The Voting Members consist of

Seven (7) representatives from developing countries (based upon 6 World Health Organization regions and one (1) additional from Africa).

Seven (7) representatives from donors.

Four (4) representatives from Civil society/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 , and one representative of a private foundation).

The nonvoting members consist of

The Foundation Board shall have five (5) additional *ex officio* nonvoting members, who are:

- One (1) representative of a Non Governmental Organization (NGO) who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria;
- One (1) representative from the World Health Organization ("WHO");
- One (1) representative from the United Nations Programme on HIV/AIDS ("UNAIDS"); and
- One (1) representative from the Trustee.
- One (1) Swiss citizen appointed by the Board with his or her domicile in Switzerland authorized to act on behalf of the Foundation to the extent required by Swiss law.

Members may appoint one Alternate Member to serve in their stead, under policies and procedures determined by the Foundation Board.

Article 11

Appointment of Foundation Board Members

Each Foundation Board membership group mentioned in Article 10 of these Bylaws (e.g., donors, developing countries, NGOs, civil society/private sector) will determine a process for selecting its representation. Members will serve as representatives of their constituencies. Rotational or renewable status will be determined by constituencies. The Foundation Board members will sit on the Foundation Board for two years or such other term that the Foundation Board may determine.

Institutions shall be represented in Foundation Board meetings by a person holding individual signing authority. All official acts of Board Members shall be deemed to be taken in their capacity as representatives of their respective governments, organizations, or other entities. Each Board member may designate an Alternate member to serve in the event of unavailability of such Board member in accordance with the Board Operating Procedures.

Article 12

The Chair and the Vice Chair of the Board

The Foundation Board members will select the Chair and the Vice Chair of the Foundation Board from among their own voting members, *provided* that the two positions will alternate between voting groups described in Article 15. The Chair and the Vice Chair will each be elected for a period of two years.

¹The Foundation Board members will select the Chair and the Vice Chair of the Foundation Board from among their own voting members, provided, that the two positions will alternate every two year between the voting groups described in Article 15. The Chair and Vice Chair will each be selected for a period of one year renewable for one year. Within the two years period of rotation between voting group, any renewal or election of the Chair and or Vice Chair for the renewal period shall be made from among the same voting groups as the previously renewed or elected Chair and Vice Chair.

¹ Text in italics is proposed variations, modifications are indicated in bold. And will be further indicated in the text by*

In addition to chairing board meetings, the Chair will also have an important advocacy and fund raising role. When the Chair is unable to carry out all or any of his/her duties, the Vice Chair shall act for the Chair. The Chair has the right to delegate functions to the Vice Chair.

The Chair (**and Vice Chair***) shall have the authority to sign on behalf of the Foundation with individual signature.

Article 13

General Functions of the Board

The Foundation Board shall be the supreme governing body of the Foundation. It shall possess the highest and most extensive authority concerning the administration of the Foundation.

The Foundation Board shall provide the bylaws and internal guidelines and procedures necessary for the administration and management of the Foundation.

The Foundation Board shall be empowered to make any subsequent modification to these bylaws and internal guidelines and procedures. The bylaws may be amended only in accordance with the voting procedures described in Article 15.

The Foundation Board may delegate to the Secretariat or to any committee it may deem appropriate part of its powers for management purposes of the current business in conformity with the internal guidelines and procedures.

The Foundation Board shall prepare an annual report.

The Foundation Board shall designate persons having the authority to commit the Foundation and determine the type of signing authority.

Article 14

Particular Functions of the Board

In particular, the Foundation Board shall:

- Appoint the Board of Members selected in accordance with Article 11 of the present bylaws;

- 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 membership, the Technical Review Panel, and 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; and
- Authorize the execution of agreements as required to carry out the purposes of the Foundation.
- The Foundation Board shall exercise all other lawful powers required to carry out the purposes of the Foundation.

Article 15

Operations of the Board

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 decision-making will be by consensus. If on any matter of substance 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 would require a two-thirds majority of those present of both: a) the group encompassing the seven (7) donor seats and the two (2) private sector seats and b) the group encompassing the seven (7) developing country seats and the two (2) non-governmental organization seats. The Foundation Board may decide to vote by show of hand or by secret vote.

The Foundation Board shall be empowered to act by means of circulating a proxy letter in which (i) either every Foundation Board Member gives his/her written consent to a proposition or (ii) the majority of the voting members as defined in Article 15 paragraph 3 gives its written consent to a proposition. The opinion of the Board members can also be sought and expressed by teleconference, or e-mail or such other method of communication as may be authorized by the Foundation Board and subject to the procedures determined by the Foundation Board.

All decisions of the Foundation Board will be recorded in minutes of the Foundation Board meetings, copied to all voting and non-voting members and retained in the permanent records of the Foundation.

The Board cannot constitute a meeting unless at least 50% of each of the two voting groups is present.

Comment: taken from the By-Laws

C. The Secretariat

Article 16

Composition

The Secretariat consists of a professional staff and assorted support staff responsible for managing the day-to-day operations of the Foundation.

The head of the Secretariat is the Executive Director. The Executive Director will act as the chief executive officer of the Foundation. He or she shall be responsible to the Foundation Board for the day-to-day management of the Foundation. He/she shall have the authority to sign on behalf of the Foundation with his/her sole signature all

contracts, agreements and other documents which are necessary to ensure the normal operation of the Foundation. He/she shall further carry out such duties and responsibilities as may be lawfully assigned to him by the Foundation Board. The Executive Director shall be selected by the Foundation Board.

The Executive Director will be supported by appropriate professionals and associated support staff. The staff of the Secretariat shall be selected by the Executive Director, under policies and procedures approved by the Foundation Board.

Article 17

Functions

The Secretariat is responsible for day-to-day management of the Foundation. Its functions and composition are based upon tasks assigned by the Foundation Board.

The Executive Director and the Secretariat will undertake duties as delegated by the Foundation Board, to include:

- Organize the receipt of grant applications and the review of such applications
- Commission the Technical Review Panel and ensure the independence of the review process;
- Coordinate the process for and procedures to recommend members of the Technical Review Panel and other advisory group candidates to the Foundation Board;
- Coordinate the preparation of related issues papers and operational strategies for the Foundation Board meetings;
- 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
- Organize translation and interpretation services.

D. Technical Review Panel

Article 18

Technical Review Panel

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

Article 19

Auditing Body

In accordance with Swiss law, the Foundation Board will select an external, independent body to audit the Foundation's annual accounts and present a detailed report to the Foundation Board for approval. It should also monitor compliance with the By-laws, and with the Foundation's purposes.

The auditing body should notify the Foundation Board of defects it is aware of. If these are not corrected within a reasonable space of time, the auditor may have to notify the Supervisory Authority.

The fiscal year runs from January 1 to December 31.

Article 20

Representation

The Chair **and Vice Chair** (for matters which are within the responsibility of the Foundation Board) and the Executive Director (for matters which are delegated to him/her) are entitled to represent the Foundation in all dealings with third parties.

Between Board meetings, the Chair, in close consultation with the Vice Chair, is empowered to take on behalf of the Foundation any decision on matters within the responsibility of the Foundation Board which he/she considers must be taken urgently without recourse to other procedures as provided in the Bylaws and the Board Operating Procedures. In case no consensus is reached between the Chair and the Vice Chair, the Chair shall take the decision.

(*Between Board meetings, the Chair **and the Vice Chair acting together, are empowered to take on behalf of the Foundation any**

decision within the responsibility of the Foundation which they consider must be taken urgently without recourse to other procedures as provided in the Bylaws and the Board Operating Procedures. In case no consensus is reached between the Chair and the Vice Chair, the Chair shall take the decision).

Decisions taken between Board meetings shall be notified to the Board immediately with explanations on the urgency and fully reported at the subsequent Board meeting. The Board will review and may modify or reverse these decisions.

Article 21

Dissolution and Liquidation

In the event that the Foundation should be unable to continue its activities, the Foundation Board shall notify the Supervisory Authority of the situation of the Foundation.

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, to any degree, and particularly to the point of liquidation, shall only be carried out with the consent of the Supervisory Authority, the decision of which must be based on a written report justifying any such action.

Article 22 Entry into force

These amended Bylaws shall enter into force after their approval by the Foundation Board and the Swiss Supervisory Authority.