

The FSB as a Swiss association

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

For its first years, the FSB had no legal personality. It was a forum of authorities whose secretariat was employed by the BIS and housed in its building. This arrangement was criticised as inadequate for a body that the G20 had placed at the centre of global financial reform. In June 2012, the G20 leaders at their Los Cabos summit endorsed recommendations to place the FSB on an enduring organisational footing, with legal personality, greater financial autonomy and enhanced capacity to coordinate the development and implementation of financial regulatory policies.¹

The legal form chosen was the association under Swiss private law. On 28 January 2013, the FSB held its inaugural meeting as an association under Articles 60 et seq. of the Swiss Civil Code, with its seat in Basel, and adopted its Articles of Association.² The choice deserves attention from a lawyer's perspective. An association under Swiss law is easy to establish, requires no minimum capital and acquires legal personality as soon as its statutes express the intention to exist as a corporate body. It enjoys considerable freedom in arranging its internal governance. For an international body that wished to remain a network of authorities while obtaining the capacity to conclude contracts, employ staff and hold assets, the Swiss association offered an elegant solution that avoided the time-consuming conclusion of an intergovernmental treaty.

The Articles of Association were drafted to preserve the non-binding character of the FSB's work. They state expressly that they are not intended to create legal rights or obligations for the members of the association. Nor do they turn the FSB's standards into binding law.³ The Articles regulate membership, the Plenary as the sole decision-making body, the Steering Committee, the standing committees, the chair and the Secretary General. Membership is held by national authorities, such as central banks, finance ministries and supervisory agencies, and by international organisations and standard-setting bodies. Each member jurisdiction has a number of

seats in the Plenary that reflects the size of its economy and financial market and its national arrangements for financial stability.

The FSB's relationship with the BIS was set out in a service agreement concluded when the association was established. Under this agreement, the BIS continued to host the secretariat, provide the staff, offer premises and supply administrative services, and to fund the FSB's budget for an initial period, while the FSB obtained its own budget and governance.⁴ For the FSB, the arrangement provides the advantages of the BIS's immunities and infrastructure without making the Board an organ of the BIS. Since the BIS enjoys privileges and immunities under its Headquarters Agreement with the Swiss Federal Council of 1987, the arrangement allows the FSB secretariat to work in an environment that Chapter I of this Part described in detail.

The Swiss association is not an unusual vehicle for international bodies. Many sports federations, among them FIFA in Zurich and the International Olympic Committee in Lausanne, are organised in this form, as are numerous international non-governmental organisations. The use of the same vehicle by a body composed of central banks and finance ministries of the largest economies in the world shows how adaptable Swiss association law has proved to be. It also illustrates a broader pattern: Switzerland offers international cooperation a neutral, legally predictable and administratively light home. The question whether a private-law association is an adequate vehicle for a body with such influence on public policy returns at the end of this chapter, where the legitimacy of transgovernmental networks is discussed.

1 Notes

1. G20, Leaders Declaration, Los Cabos, 18–19 June 2012; FSB, Report to the G20 Los Cabos Summit on Strengthening FSB Capacity, Resources and Governance, June 2012. To be verified. ↩
2. FSB press release on the establishment of the FSB as an association under Swiss law, January 2013; FSB Articles of Association, adopted 28 January 2013 and subsequently amended. Date to be verified. ↩
3. FSB Articles of Association, provisions on the purpose of the association and the non-binding nature of the members' commitments. To be verified. ↩

4. Service agreement between the FSB and the BIS (2013), as described in FSB annual reports and on the FSB website; the agreement has been renewed. Terms and current status to be verified. ↩

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