

The Headquarters Agreement of 1987

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The Constituent Charter of 1930 regulated the status of the BIS under Swiss law in a fragmentary manner. It protected the bank's assets and granted fiscal privileges, but it did not deal comprehensively with the immunity of the bank from jurisdiction, the inviolability of its premises or the status of its staff. As the BIS grew and its activities as host of international committees expanded, the need for a modern legal framework became evident. On 10 February 1987 the Swiss Federal Council and the BIS concluded an Agreement to determine the legal status of the Bank in Switzerland, usually referred to as the Headquarters Agreement. Part A has mentioned this agreement in the context of the long tradition of safe conduct in Basel.¹

The agreement follows the model of the headquarters agreements that Switzerland has concluded with the international organisations in Geneva. Switzerland guarantees the independence and freedom of action of the BIS and recognises its international legal personality and its capacity under Swiss law. The premises of the bank are inviolable, so that the Swiss authorities may enter them only with the consent of the General Manager. The archives and documents of the bank are inviolable wherever they are located. The BIS enjoys immunity from criminal, civil and administrative jurisdiction, subject to exceptions which the agreement defines. Its assets enjoy immunity from measures of execution, which may only be lifted by the bank's express waiver.²

For the practitioner the immunity from jurisdiction and execution is the most important provision. A creditor of a central bank cannot attach the deposits that this central bank holds with the BIS in Basel. A claimant who sues the BIS itself in the Swiss courts will likewise be met by the plea of immunity unless the bank waives it or one of the exceptions in the agreement applies. The agreement provides for exceptions in matters such as civil claims arising from the bank's banking or financial transactions

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where the parties have agreed to the jurisdiction of the Swiss courts, and claims for damages arising from accidents caused by vehicles belonging to the bank. Since the immunity of assets extends to deposits of third parties held at the bank, it makes the BIS a safe haven for official reserves and explains part of its attraction for central banks of countries exposed to litigation by private creditors.³

The agreement also regulates the fiscal position of the bank and the status of its staff. The BIS is exempt from direct and indirect federal, cantonal and communal taxes. Its staff members are exempt from Swiss taxes on the salaries paid by the bank, which in turn levies an internal tax on these salaries. Senior officials enjoy privileges and immunities comparable to those of diplomatic agents, while other staff members enjoy functional immunity for acts performed in their official capacity. Members of the Board and representatives of central banks attending meetings enjoy immunities during their stay in Switzerland. The BIS cooperates with the Swiss authorities to facilitate the proper administration of justice and to prevent any abuse of these privileges.⁴

Since 2008 the Headquarters Agreement has been supplemented in Swiss domestic law by the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State, the Host State Act, and its implementing ordinance. The Act provides the legal basis on which the Federal Council concludes headquarters agreements and grants privileges to international organisations and conferences. For the BIS, the Act does not change the substance of the 1987 agreement, although it places it in a coherent framework of Swiss host state policy that covers the organisations in Geneva, Bern and Basel alike.⁵

1 Notes

1. Agreement between the Swiss Federal Council and the Bank for International Settlements to determine the Bank's legal status in Switzerland of 10 February 1987 (SR 0.192.122.971); see also Part A, Chapter IV. Date and SR number to be verified. ↩
2. Headquarters Agreement of 1987, Arts. 1–4 (independence, legal personality, inviolability of premises and archives, immunity from jurisdiction and execution). Article numbering to be verified. ↩
3. Headquarters Agreement of 1987, Art. 4 (immunity from jurisdiction and its exceptions) and related provisions on the immunity of assets deposited with the bank; on the practical significance for central bank

reserves, see the literature on sovereign immunity and central bank assets. Exceptions and wording to be verified. ↩

4. Headquarters Agreement of 1987, provisions on fiscal exemptions, staff privileges and immunities and on the prevention of abuse; on the internal tax on salaries, see the BIS staff rules as described in its Annual Report. To be verified. ↩
5. Federal Act of 22 June 2007 on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State (Host State Act, SR 192.12), in force since 1 January 2008, and Host State Ordinance (SR 192.121). To be verified. ↩

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