

No. 854

**SWITZERLAND
and
AFRICAN DEVELOPMENT FUND**

**Agreement establishing the Swiss Special Fund for Africa
(with exchange of letters). Signed at Berne on 17 Sep-
tember 1974**

Authentic texts: French and English.

Filed and recorded at the request of Switzerland on 12 August 1980.

**SUISSE
et
FONDS AFRICAIN DE DÉVELOPPEMENT**

**Accord créant le Fonds spécial suisse pour l'Afrique (avec
échange de lettres). Signé à Berne le 17 septembre 1974**

Textes authentiques : français et anglais.

Classé et inscrit au répertoire à la demande de la Suisse le 12 août 1980.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE AFRICAN DEVELOPMENT FUND ESTABLISHING THE SWISS SPECIAL FUND FOR AFRICA

The Government of the Swiss Confederation (hereinafter called the Confederation) and the African Development Fund (hereinafter called ADF),

Desiring to co-operate in promoting the economic and social development of Africa,

Have agreed as follows:

Article 1. ESTABLISHMENT OF THE SWISS SPECIAL FUND FOR AFRICA

The present Agreement hereby establishes, within ADF, the Swiss Special Fund for Africa (hereinafter called the Swiss Fund), the resources of which shall be constituted in accordance with article 3 of this Agreement.

Article 2. PURPOSE OF THE SWISS FUND

The Swiss Fund shall be used to provide loans on concessional terms to any government or entity of developing countries which are members of the African Development Bank, in order to assist in the financing of projects designed to promote the economic and social development of the least favoured of such countries.

Article 3. RESOURCES OF THE SWISS FUND

a) The Confederation shall place at the disposal of the Swiss Fund, on the terms and conditions hereinafter set forth, the sum of twelve (12) million Swiss francs (hereinafter called the Contribution).

b) All amounts received by the Swiss Fund in repayment of portions of loans or other reimbursable assistance financed from the Contribution, together with all income accruing from the Contribution, other than the service charge referred to in article 6, shall form part of the resources of the Swiss Fund and shall be available for further use in accordance with the provisions of this Agreement.

Article 4. DESIGNATION OF ADF AS ADMINISTRATOR

ADF is designated Administrator of the Swiss Fund, which it shall administer in accordance with the provisions of this Agreement.

Article 5. PAYMENT PROCEDURES

a) The Contribution shall be made available to ADF in two instalments. The first such instalment, in the amount of five (5) million Swiss francs, shall become due within thirty days after the entry into force of this Agreement. The second instalment, in the amount of seven (7) million Swiss francs, shall become due on March 31, 1976.

¹ Came into force on 3 October 1975, the date on which the Parties notified each other of the completion of their constitutional requirements, in accordance with article 18.

b) The instalments mentioned in sub-paragraph (a) above shall be paid in cash by deposit in a special account denominated "African Development Fund—Swiss Special Fund for Africa" which shall be non-interest bearing and shall be opened with the Swiss National Bank, provided that when the Contribution in Swiss francs is used for payments to countries other than Switzerland, the Swiss francs shall be converted into other currencies with the Swiss National Bank, unless the latter agrees to proceed otherwise.

Article 6. USE OF THE SWISS FUND

a) ADF may utilize the Swiss Fund for any of the operations referred to in article 2 of this Agreement to finance the costs thereof (including foreign exchange costs and local expenditures), in accordance with the general principles and procedures laid down by ADF for its loans, provided that the Swiss Fund may not be used to finance non-reimbursable assistance.

b) Without limiting the generality of sub-paragraph (a) above, the Swiss Fund may be used to finance:

- (i) The cost of procurement in the territories of State Participants of ADF or members of the African Development Bank, of goods and services produced in such territories;
- (ii) The payment of local costs in the borrowing country;
- (iii) Administrative expenses charged by ADF to its borrowers at the rate of 0.75 per cent per annum on the amounts of loans disbursed or outstanding as remuneration for services it renders pursuant to this Agreement.

c) Loans made from the Swiss Fund shall be denominated in Units of Account as defined in the Agreement Establishing ADF.

Article 7. RESPONSIBILITY FOR THE SELECTION OF PROJECTS

ADF shall assume responsibility for the selection, appraisal and approval of projects suitable for financing and, subject to the provisions of this Agreement, shall determine the terms and conditions for loans. To this end, it shall apply its general policy and procedures and it shall use the staff and services available to it. ADF shall, however, consult the Confederation at an early stage in the selection of projects with a view to obtaining its approval for the use of the Swiss Fund for a particular project. ADF shall provide the Confederation with all such information and documentation as the latter may reasonably request.

Article 8. SEPARATION OF ASSETS AND ACCOUNTS

The assets and accounts of the Swiss Fund shall be kept separate and apart from all other ADF resources and accounts and shall be designated separately in an appropriate manner.

Article 9. ADF RECORDS

a) With respect to the resources provided under this Agreement, ADF shall maintain separate records and accounts to be available to the Confederation for examination and shall in any event submit to the Confederation an annual comprehensive report on the operations of the Swiss Fund, the status and progress of each loan made with funds provided under this Agreement.

b) In addition to the information contained in the above-mentioned annual reports, ADF shall provide the Confederation with such information as the Confederation may reasonably request with respect to the Swiss Fund and special operations financed therefrom.

Article 10. CONSULTATION

The Confederation and ADF shall consult each other regularly on all matters arising out of this Agreement.

Article 11. PROJECT SUPERVISION

ADF shall assume responsibility for the inspection and supervision of projects financed by the Swiss Fund.

Article 12. STANDARD OF CARE

In discharging its functions under this Agreement, ADF shall exercise the same care as it exercises with respect to the administration and management of its own affairs.

Article 13. NON-COMMITMENT OF ADF

The loans granted by ADF under this Agreement shall not constitute an integral part of ADF's own resources and shall not involve any financial obligation on its part.

Article 14. CONVERSION

ADF agrees that if the Confederation participates in the first replenishment of ADF, the Confederation may at any time thereafter elect to convert the amount of the Contribution made available to the Swiss Fund, as well as any amount of the Contribution which shall have not yet been made available to it, as all or part of the Swiss subscription to the first replenishment of the ADF.

Article 15. INTERPRETATION AND ARBITRATION

Any dispute between the Confederation and ADF concerning the application or interpretation of this Agreement, or of any supplementary arrangement or agreement which is not settled by negotiation, shall be submitted for decision to a panel composed of three arbitrators, the first of whom shall be appointed by the Confederation, the second by the ADF and the third, acting as Chairman, by agreement between the Contracting Parties or, failing such agreement, by the President of the International Court of Justice, unless, in any specific case, the Parties agree to resort to a different mode of settlement.

Article 16. MISCELLANEOUS PROVISIONS

a) Either Party may at any time propose amendments to this Agreement.

b) Any notification or application under this Agreement or any agreement between the Parties provided for in this Agreement shall be in writing.

Article 17. TERMINATION OF THE AGREEMENT

a) If it appears to either Party that the co-operation envisaged under this Agreement cannot be continued in an appropriate and effective manner, this

Agreement may be terminated at the instance of such Party by ninety (90) days notice in writing.

b) After serving or receiving such notice, ADF shall no longer be entitled to grant loans on behalf of the Swiss Fund but shall continue to be responsible for the current operations of the Swiss Fund, including the supervision of projects and the service of outstanding loans until the termination date.

c) Upon the termination of this Agreement in accordance with subparagraphs (*a*) and (*b*) above, unless the Parties agree on another course of action, all the assets of the Swiss Fund, including any contracts entered into pursuant to this Agreement, shall be transferred to the Confederation, whereupon the responsibilities of the Swiss Fund and of ADF by virtue of this Agreement shall be considered to have been terminated.

d) If this Agreement shall be terminated, due regard shall be given to the disposition of current loans.

Article 18. ENTRY INTO FORCE

This Agreement shall enter into force on the day on which the two Parties shall have notified each other that the constitutional requirements for its entry into force have been complied with.

DONE at Berne, on September 17, 1974, in two originals in French and two originals in English, both the French and English texts being equally authoritative.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

For the African Development Fund:

[Signed — Signé]²

EXCHANGE OF LETTERS

I

THE DELEGATE FOR TRADE AGREEMENTS

Berne, September 17, 1974

Dear Mr. President,

With reference to the Agreement which has been signed today between the Government of the Swiss Confederation and the African Development Fund, establishing the Swiss Special Fund for Africa, I have the honour to communicate below the interpretation which the Swiss Government places on article 2 of the said Agreement.

By the "least favoured member countries of the African Development Bank", the Swiss Government means the low-income member countries and whose economies had been most affected by present conditions such as inflation and drought.

¹ Signed by K. Jacobi — Signé par K. Jacobi.

² Signed by A. Labidi — Signé par A. Labidi.

I should be grateful if you would confirm that you agree with this interpretation of article 2.

I take this opportunity of reiterating, Mr. President, the assurances of my highest consideration.

K. JACOBI

His Excellency Mr. A. Labidi
President
African Development Fund
Abidjan

II

AFRICAN DEVELOPMENT FUND

Berne, September 17, 1974

Mr. Ambassador,

I have the honour to acknowledge receipt of your letter of today which reads as follows:

[See letter I]

I have the honour to confirm that the above sets out correctly the understanding reached between us.

Please accept, Mr. Ambassador, the assurance of my highest consideration.

[Signed]

ABDELWAHAB LABIDI
President

His Excellency Ambassador K. Jacobi
Delegate of the Federal Council for Trade Agreements
Berne