

34th Board Meeting

Privileges and Immunities

GF/B34/19
Board Information

PURPOSE: The purpose of this paper is to inform the Board of the Secretariat's efforts to secure privileges and immunities for the Global Fund, including through the advocacy activities and strategy guidance of the Privileges and Immunities Advisory Group, as jointly overseen by the Audit and Ethics Committee and Finance and Operational Performance Committee.

I. Relevant Past Decisions

1. The following summarizes relevant past Board and Committee decision points:

Relevant past Decision Point	Summary and Impact
GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group (March 2015)¹	The Board approved the Terms of Reference of the Privileges and Immunities Advisory Group, a dedicated group of donor and implementer representatives to identify strategies and advocate for the acquisition of privileges and immunities for the Global Fund.
GF/B32/DPO6: Privileges and Immunities (November 2014)²	The Board acknowledges past decisions on privileges and immunities and further requests: <ul style="list-style-type: none"> • the Secretariat to dedicate required resources for the acquisition of privileges and immunities; • the FOPC and the Audit and Ethics Committee to oversee jointly the acquisition of privileges and immunities, and report on progress to the Board on an annual basis; and • the Board Leadership to constitute a dedicated group of donor and implementer representatives to identify strategies and advocate for the acquisition of privileges and immunities.
GF/B22/DP21: Privileges and Immunities (December 2010)³	The Board acknowledges the serious challenges and risks faced by Global Fund staff in the discharge of their duties in many countries, reiterates the importance of states granting to the Global Fund privileges and immunities, and encourages members of the Board and their respective constituencies to support, facilitate and promote the Secretariat's efforts in securing privileges and immunities.
GF/B20/EDP04: Global Fund Privileges and Immunities (December 2009)⁴	The Board recognizes the importance of the Global Fund obtaining such privileges and immunities as necessary for the effective exercise of its functions and efficient use of its resources. The Board recommends that states consider granting privileges and immunities to the Global Fund by: <ul style="list-style-type: none"> • applying domestic legislation that specifically confers on the Global Fund status, capacities, privileges and immunities equivalent to those enjoyed by international organizations within their respective legal systems; and/or • adhering to the Agreement on Privileges and Immunities of the Global Fund.⁵ The Board requests the Secretariat to report back to the Board on measures taken by states in response to the decision point.

¹ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/EDP12/>

² <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/DPO6/>

³ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B22/DP21/>

⁴ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B20/EDP04/>

⁵ Attachment 1 - Revision 1 of the Policy and Strategy Committee's Report to the Board (GF/B20/4)

II. Executive Summary

2. The Audit and Ethics Committee (AEC) and the Finance and Operational Performance Committee (FOPC) are responsible for joint oversight of the acquisition of privileges and immunities for the Global Fund. To that end, the AEC and FOPC will together report to the Board on the implementing and donor countries that have and have not provided such protections to the Global Fund as well as the activities of the Privileges and Immunities Advisory Group (the “PIAG”) to advocate for such protections and support the Secretariat’s work in securing them.⁶

3. Privileges and immunities provide critical protections and rights which reduce risk exposure to Global Fund staff and resources in the fight against the three diseases, with a view to enabling it to fulfill its mission and exercise effectively its functions as an international organization. Acknowledging the serious challenges and risks faced by Global Fund staff in the discharge of their duties in many countries as well as risks to Global Fund-financed programs, the Board has reaffirmed repeatedly the importance of privileges and immunities on three separate occasions, in December 2009, December 2010 and November 2014.

4. The PIAG is a dedicated expert advisory group representing Global Fund stakeholders, donors and implementers, with a twofold mandate to: (i) identify strategies for acquiring privileges and immunities (the “P&I Strategy”), and (ii) support the acquisition of privileges and immunities through advocacy to the Board and external stakeholders. Following Board approval of the PIAG’s Terms of Reference in March 2015, the process of identifying and selecting appropriate members began. Four members were duly appointed over the following months, with two each representing donors (Switzerland and the European Commission) and implementers (Nigeria and Sri Lanka), respectively.

5. Once constituted, the PIAG held an introductory teleconference and also met with Board Leadership in Geneva in July 2015, prior to convening to offer strategic guidance to the Secretariat in September 2015. The PIAG developed the P&I Strategy based on reference to (i) the unique legal status of the Global Fund; (ii) the historical context and considerations leading to this legal status; and (iii) the Global Fund’s approach to securing such rights and protections from states, as well as results and lessons learned through Secretariat efforts to date. The following components of the P&I Strategy are described in further detail below:

- a) areas of strategic focus in securing privileges and immunities;
- b) advocacy activities that may be undertaken by members of the PIAG towards the Board and external stakeholders of the Global Fund; and
- c) objectives to be achieved with respect to the P&I Strategy.

III. Background

6. Implementing and donor countries may confer privileges and immunities on the Global Fund either through domestic legislation or by becoming party to the Board-endorsed Agreement on Privileges and Immunities (the “P&I Agreement”). Dedicated efforts by the Secretariat led to seven implementing states having become parties to the P&I Agreement from 2010-2011. Following adoption of strengthened Framework Agreement obligations towards granting privileges and immunities in 2014, two additional states have become parties to the P&I Agreement, bringing the number of total signatories to nine. Of those nine states parties, four have ratified, or otherwise accepted or approved, the P&I Agreement (Georgia, Moldova, Rwanda and Swaziland). While the Secretariat has sought to

⁶ GF/B32/ER12

continue engagement with the other five signatories (Ethiopia, Ghana, Montenegro, Uganda and Zimbabwe), ratification remains pending.

7. To broaden support for Global Fund privileges and immunities among Global Fund stakeholders and increase the number of signatories to the P&I Agreement, the PIAG was constituted by the Board Leadership and convened to offer its guidance to the Secretariat.

IV. Discussion

01 Strategy to Secure Privileges and Immunities

8. The PIAG endorses the framework for strategic focus as elaborated below.

- a) **Accelerate entry into force of the P&I Agreement.** As an initial area for strategic focus, the P&I Strategy will seek to achieve the entry into force of the P&I Agreement, as this would mark a significant milestone as well as present an historic opportunity to increase the visibility of privileges and immunities for the Global Fund. The P&I Agreement becomes effective upon ratification (or other acceptance or approval under domestic law, if ratification is not required) by ten countries. The Secretariat therefore proposes that efforts be directed to escalate and sustain multi-pronged advocacy and communications with:
 - i) countries that have signed but are yet to ratify the P&I Agreement (or otherwise granted privileges and immunities under domestic law); and
 - ii) countries that have engaged already in substantive discussions on the P&I Agreement, to drive signing and ratification.
- b) **Build upon momentum from Framework Agreement signings.** The process of Framework Agreement negotiations has provided opportunities for the Secretariat to introduce discussions regarding the importance and benefits of privileges and immunities with implementing countries. To build upon momentum from these recent signings, the Global Fund will focus on sustaining communications and increasing advocacy with such countries.
- c) **Leverage relationships with priority implementing countries within the grant portfolio.** Priority countries within the Global Fund grant portfolio comprise an important area on which to focus activities and resources relating to securing privileges and immunities. These priorities may reflect one or more of the following factors:
 - i) high-impact countries that account for a substantial majority of the worldwide burden of HIV/AIDS, tuberculosis and malaria and, accordingly, receive a significant proportion of overall Global Fund financing;
 - ii) country-specific contexts, which could reflect a range of issues such as potential or pending litigation, restrictive foreign currency regimes that impact on resource mobilization from local donors as well as priorities from evolving Treasury and Sourcing activities; and
 - iii) geographic considerations, which could include efforts to secure breakthrough support via first signings of the P&I Agreement in regions outside of Africa and Eastern Europe-Central Asia.
- d) **Engage with non-implementing countries.** Intensified advocacy and strategies could provide a new direction for continued engagement with non-implementing countries, which

would broaden the support base for Global Fund privileges and immunities and may also be useful in demonstrating a balance of support among implementing and non-implementing countries.

02 PIAG Advocacy in Support of Privileges and Immunities

9. The Secretariat's experience to date has demonstrated the importance of high-level advocacy in securing privileges and immunities. Through high-level engagement with Global Fund stakeholders and key contacts within countries, the PIAG will leverage diplomatic and political channels, raise awareness of the importance of privileges and immunities to the Global Fund as an international organization, and facilitate introductions to and communications with appropriate decision-makers in country. The PIAG will therefore undertake a multi-pronged approach to fulfill its advocacy mandate and support the implementation of the P&I Strategy:

- a) **Leveraging Diplomatic and Other Channels.** To reinforce the efforts of Ministries of Health as champions for Global Fund privileges and immunities within implementing countries, PIAG members, where permissible, will request diplomatic and other appropriate channels to engage Ministries of Foreign Affairs and other governmental authorities through direct meetings and/or communications as regards: (i) the importance of privileges and immunities for the Global Fund as an international organization, and (ii) progress toward fulfilling Framework Agreement commitments to privileges and immunities. In addition to advocacy with stakeholders such as Ministries of Health and Country Coordinating Mechanisms, the PIAG strongly urges that, where appropriate opportunities arise, advocacy activities encompass high-level engagement with political leadership in countries as well as deeper integration of privileges and immunities into grant-related discussions and events, such as signing ceremonies.
- b) **Identification of and Introduction to Contacts.** While the Secretariat will continue to engage with stakeholders such as Ministries of Health and Country Coordinating Mechanisms, the PIAG will identify and facilitate introductions to key decision-makers within Ministries of Foreign Affairs and other governmental authorities which are responsible for, or have influence with respect to, the negotiation, execution and ratification of privileges and immunities.
- c) **Board Advocacy.** As an advocate of Global Fund privileges and immunities, the PIAG will communicate with the Board and its constituencies through various means, such as formal reporting, informal communications and direct meetings. Direct meetings may be arranged with the Chair of the PIAG and, subject to availability, individual members.
- d) **External Communications.** In coordination with the Secretariat, through the Legal and Compliance Department, the PIAG may communicate directly with selected country governments, key contacts and other prospective advocates to provide high-level advocacy for privileges and immunities. The PIAG could also consider public statements of support, where permissible, for Global Fund privileges and immunities. PIAG communications may be issued collectively, through the Chair or individually.
- e) **Country Missions.** While acknowledging the competing professional obligations of the PIAG membership, the possibility of each member, subject to availability, participating in at least one country mission with Secretariat staff to advocate for privileges and immunities could be explored.

03 Engagement and Advocacy Targets

10. With a view to ensuring progress on the implementation of the P&I Strategy, the PIAG endorses the targets listed below, subject to availability of resources. Additional or revised targets may be set as the work of the PIAG progresses.

- a) By November 2015: The Secretariat will identify a set of priority countries to be targeted under each of the four strategic focus areas described in paragraph 8 above.
- b) By December 2015: The PIAG will initiate advocacy with the Board. For each subsequent year of its term, the PIAG will meet with the Board at least once per year.
- c) By September 2016: The Secretariat and PIAG will initiate advocacy efforts (including the methods described in paragraph 9 above) with the priority countries identified for each of the strategic focus areas described in paragraph 8 above.
- d) By December 2016: The Secretariat and, resources permitting, PIAG will undertake dedicated missions to at least five countries identified for each of the focus areas described in paragraph 8(a) and paragraph 8(b) above.

V. Process for Review and Approval of the P&I Strategy

11. The AEC and FOPC are responsible for joint oversight of the Global Fund's acquisition of privileges and immunities. In accordance with the PIAG's Terms of Reference, the PIAG reports on a quarterly basis to the AEC and FOPC on its work, including the development of the P&I Strategy and submission to the Board Leadership for their approval.⁷

12. As part of its review of the PIAG's activities, plans and targets at its 13th Meeting⁸, the AEC reiterated its support for scaled-up efforts to secure the protection of privileges and immunities for the Global Fund⁹. Noting the Board's decision at its Thirty-Second Meeting (GF/B32/DPO6)¹⁰, the AEC requested the Secretariat to dedicate required resources for the acquisition of privileges and immunities for the Global Fund. In this regard, the AEC expressed concern that additional resources have not been identified so far to meet the substantial objectives of this Board initiative. The AEC therefore recommended that additional resources be allocated, if needed, to the Legal and Compliance Department to support this initiative, within the 2016 operating expenses budget and for the next three years.

13. As part of its review of the PIAG's activities, plans and targets at its 16th Meeting¹¹, the FOPC reaffirmed the importance of privileges and immunities for the Global Fund. The FOPC furthermore recognized the risks accruing to the Global Fund's mission, resources and staff in many implementing as well as non-implementing countries, as has been noted in previous Board decisions.¹² The FOPC therefore recommended, further to its oversight of operational risks, that the lack of privileges and immunities be designated separately on the Global Fund's organizational risk register to facilitate clearer understanding of the nature and extent of the risk and tracking of mitigating actions.¹³

⁷ *Supra* notes 1, 6.

⁸ GF/AEC13/12.

⁹ GF/AEC13/14: Report of the 13th AEC Meeting (not yet issued)

¹⁰ *Supra* note 2.

¹¹ GF/FOPC16/11.

¹² *Supra* notes 1, 2 and 3.

¹³ GF/FOPC16/xx: Report of the 16th AEC Meeting (not yet issued)