

36th Board Meeting

Annual Report on Privileges and Immunities

GF/B36/21

16-17 November 2016, Montreux, Switzerland

Board Information

Purpose of the paper: The purpose of this paper is to provide an update on the acquisition of privileges and immunities by the Global Fund and to inform the Board of Secretariat's and the Privileges and Immunities Advisory Group's efforts in relation to this topic.

Part 1 – Decision Point

1. This paper is for information purposes and does not propose any decision points.

Part 2 – Relevant Past Decisions

2. The following summarizes relevant past Board and committee decision points.

Relevant past Decision Point	Summary and Impact
GF/EGCo2/EDPo2: Privileges and Immunities (October 2016)	<p>The Ethics and Governance Committee acknowledges the serious challenges and risks faced by Global Fund and its staff members in the discharge of their duties in many countries; stresses the importance of states granting to the Global Fund privileges and immunities through the signature of the Agreement on Privileges and Immunities of the Global Fund (“P&I Agreement”); and, requests the Secretariat to develop, in consultation with the Privileges and Immunities Advisory Group, proposals to further enhance the levels of signature and ratification of the P&I Agreement.</p>
GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group (March 2015)¹	<p>The Board approves 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.</p>
GF/B32/DPO6: Privileges and Immunities (November 2014)²	<p>The Board acknowledges past decisions on privileges and immunities and further requests:</p> <ul style="list-style-type: none"> • the Secretariat to dedicate required resources for the acquisition of privileges and immunities; • the Finance and Operational Performance Committee 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

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

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

Relevant past Decision Point	Summary and Impact
	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 the 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/EDPo4: Global Fund Privileges and Immunities (December 2009) ⁴	<p>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:</p> <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 <p>The Board requests the Secretariat to report back to the Board on measures taken by states in response to the decision point.</p>

Part 3 – Executive Summary

3. The Ethics and Governance Committee (the “EGC”) is responsible for the oversight of the acquisition of privileges and immunities for the Global Fund, including the activities of the Privileges and Immunities Advisory Group (the “PIAG”). To that end, the EGC reports to the Board on the implementing and donor countries that have and have not accorded such protections to the Global Fund as well as the activities of the PIAG to advocate for such protections and support the Secretariat’s work in securing them.⁶

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

⁴ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B20/EDPo4/>

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

⁶ In 2014, the Board requested the Finance and Operational Performance Committee 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. New charters were adopted for these two committees in 2016 which became, respectively, the Audits and Finance Committee and the Ethics Governance Committee (“EGC”). The reporting channel on the acquisition of privileges and immunities by the Global Fund now lies exclusively with the EGC.

4. 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.

5. The Board Leadership constituted the PIAG as a dedicated expert advisory group to increase support among stakeholders for the acquisition of Global Fund privileges and immunities. The Board approved PIAG's Terms of Reference in March 2015 and four members were duly appointed over the following months (two representing donors, Switzerland and the European Commission,⁷ and two representing the implementers, Nigeria and Sri Lanka⁸). The PIAG then developed a multi-pronged strategy (the "P&I Strategy"), which was approved by the Board Leadership in October 2015, and is pursuing, together with the Secretariat, its advocacy work under the P&I Strategy.

Part 4 – Background

6. Implementing and donor countries may confer privileges and immunities on the Global Fund either through application of their domestic legislation, if any, or by signing the Board-endorsed Agreement on Privileges and Immunities (the "P&I Agreement").⁹

7. The following states have granted the Global Fund certain privileges and immunities under their domestic laws:

- a. Switzerland,
- b. Uganda (which has also signed the P&I Agreement),
- c. the United States of America, and
- d. Zimbabwe (which has also signed the P&I Agreement).

8. Dedicated efforts by the Global Fund's Legal Department have led to 4 additional implementing states signing the P&I Agreement over the course of the last year (Burkina Faso, Burundi, Côte d'Ivoire and Togo) with the result that **13** implementing states have therefore to date become *signatories* to the P&I Agreement, namely:

- a. Burkina Faso,
- b. Burundi,
- c. Côte d'Ivoire,
- d. Ethiopia,
- e. Georgia,

⁷ Represented respectively by Mr. Christian Dunant and Dr. Cornelius Oepen, on behalf of Klaus Rudischhauser.

⁸ Represented respectively by Professor Christian Otu Onyebuchi Chukwu and Dr. Palitha Gunarathna Mahipala.

⁹ The P&I Agreement is an international multilateral legal instrument, governed by international law, pursuant to which states agree to provide privileges and immunities to the Global Fund.

- f. Ghana,
- g. Moldova,
- h. Montenegro,
- i. Rwanda,
- j. Swaziland,
- k. Togo,
- l. Uganda, and
- m. Zimbabwe.

9. It is recalled however that the P&I Agreement will become effective on thirty days after the date of deposit of the tenth instrument of ratification, acceptance, or approval by a signatory and that each state signing the P&I Agreement is expected to fulfil requirements under its domestic laws, if any, to ratify, accept or approve treaties. At present, **4** of the 13 signatories to the P&I Agreement have *ratified, or otherwise accepted or approved*, the instrument under their domestic laws; namely:

- a. Georgia,
- b. Moldova,
- c. Rwanda, and
- d. Swaziland.

10. Thus, **6** additional ratifications, acceptances or approvals are required before the P&I Agreement becomes effective, whether by the **9** current signatories who have yet to do so (Burkina Faso, Burundi, Côte d'Ivoire, Ethiopia, Ghana, Montenegro, Togo, Uganda, Zimbabwe), or by future signatories who may be able complete their domestic processes before such current signatories.

11. The Legal Department of the Global Fund, with the support of the PIAG, is continuing to engage with the **9** current signatories who have yet to ratify, accept or approve the P&I Agreement. The Legal Department and the PIAG are also pursuing opportunities for new signings and ratifications in accordance with the multi-pronged P&I Strategy.

Part 5 – Discussion

12. The P&I Strategy endorsed by the PIAG includes a number of features and aims to accelerate the entry into force of the P&I Agreement: build upon momentum following the signature of framework agreements, leverage relationships with priority implementing countries within the grant portfolio and engage with non-implementing countries.¹⁰

13. The Secretariat's experience to date has demonstrated the importance of high-level advocacy in securing privileges and immunities. Consistent with the P&I Strategy, the PIAG is undertaking a multi-

¹⁰ GF/B34/19 Annual Report on Privileges and Immunities (Nov 2015).

pronged approach to advocacy through high-level engagement with Global Fund stakeholders and their own key contacts within countries.

14. The PIAG is engaging diplomatic channels, including through in-country delegations, and entering into formal communications with governments and relevant ministries of foreign affairs, to enlist their support for conferring upon the Global Fund the privileges and immunities sought through the P&I Agreement. Indeed, thus far, Switzerland and the European Commission have sent advocacy letters to their respective embassies and delegations in implementing countries to facilitate and expedite the process of signature/ratification of the P&I Agreement by the said countries and the PIAG members from Nigeria and Sri Lanka are also engaging with counterparts in countries for which they are acting as focal points, to increase support by the relevant ministries of health as champions for Global Fund privileges and immunities.

15. The Legal Department of the Global Fund also held over the course of the last year high-level meetings with Board and Committee members and a number of diplomatic missions in Geneva for the purpose of advancing the agenda, raising awareness and building support, and continues to seek opportunities to liaise with governmental officials in various countries, including donor countries, to progress on the acquisition of privileges and immunities by the Global Fund.

Part 6 – Recommendation

16. As progress remains slow despite the considerable efforts undertaken by the PIAG and the Secretariat, at the request of the EGC, the Secretariat will develop, in consultation with the PIAG, proposals to further enhance the levels of signature and ratification of the P&I Agreement – taking into consideration, where possible, the role of civil society as well as incentives and other positive reinforcement measures – and will report back in due course to the EGC on the said proposals.