

Electronic Report to the Board

Terms of Reference of the Privileges and Immunities Advisory Group

GF/B32/ER12
Board Decision

PURPOSE: This report presents the Terms of Reference of the Privileges and Immunities Advisory Group for Board approval.

1. GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group

This document is part of an internal deliberative process of the Global Fund
and as such cannot be made public.

I. Decision Point

1. Following the Board decision GF/B32/DP06 at the 32nd Board Meeting requesting: “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 for the Global Fund”, the Chair and Vice-Chair of the Board hereby present the Terms of Reference of the Privileges and Immunities Advisory Group for Board approval, set forth in Annex 1.

Decision Point GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group

- 1. The Board notes its decision to establish 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/DP06).**
- 2. Accordingly, the Board approves the terms of reference of the Privileges and Immunities Advisory Group as set forth in Annex 1 to GF/B32/ER12.**

II. Relevant Past Decisions

Relevant past Decision Point	Summary and Impact
GF/B32/DP06: Privileges and Immunities¹	This decision called for 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 for the Global Fund, it also called for additional resources to promote P&I and a joint oversight of AEC and FOPC on P&I. Currently under implementation.
GF/B22/DP21: Privileges and Immunities²	In 2010, the Board affirmed its support of the Secretariat’s efforts to obtain privileges and immunities in 2010, noting that privileges and immunities are necessary for the Global Fund to effectively exercise its functions and efficiently use its resources to deliver its mission.
GF/B20/EDP04: Global Fund Privileges and Immunities³	In 2009, the Board agreed to recommend that states consider granting the Global Fund privileges and immunities through the following channels: a. Applying legislation to confer upon the Global Fund the privileges and immunities ordinarily provided to international organizations; or b. Signing of the Board-endorsed Agreement on Privileges and Immunities (the “P&I Agreement”).

¹ GF/B32/DP06: Privileges and Immunities <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/DP06/>

² GF/B22/DP21: Privileges and Immunities <http://www.theglobalfund.org/Knowledge/Decisions/GF/B22/DP21/>

³ GF/B20/EDP04: Global Fund Privileges and Immunities <http://www.theglobalfund.org/Knowledge/Decisions/GF/B20/EDP04/>

III. Action Required

2. The Privileges and Immunities Advisory Group will submit quarterly written reports on its advocacy work to the Board leadership as well as to the Audit and Ethics Committee (“AEC”) and Finance and Operational Performance Committee (“FOPC”), which jointly oversee the acquisition of privileges and immunities for the Global Fund.
3. The AEC and FOPC will report to the Board annually on progress made.

IV. Discussion

4. Due to the absence of privileges and immunities in both donor and implementer countries, the Global Fund is exposed to a broad set of risks regarding the protection and maximization of the impact of Global Fund resources, the timely and efficient delivery of life-saving commodities and the safety of field activities.
5. The Board has previously affirmed the importance of states according privileges and immunities to the Global Fund, either through the application of relevant domestic legislation or signing of the Board-endorsed Agreement on Privileges and Immunities.
6. To date, eight states have signed the Board-endorsed Agreement on Privileges and Immunities, and the Secretariat is continuing its efforts to secure privileges and immunities in a greater number of states.
7. Based on analysis provided by the Secretariat and the Board Standing Committees, the Board requested the following in November 2014:
 - a. The Secretariat to dedicate required resources for the acquisition of privileges and immunities for the Global Fund;
 - b. The Finance and Operational Performance Committee and the Audit and Ethics Committee to oversee jointly the acquisition of privileges and immunities for the Global Fund, and report to the Board on an annual basis on implementing and donor countries that have and have not provided such protection to the Global Fund; and
 - c. 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 for the Global Fund.”
8. The Board Leadership will launch a membership selection process to elect four members to the Privileges and Immunities Advisory Group, subject to approval of the Terms of Reference presented for Board approval. Two members will be nominated by the implementer constituencies of the Board and two by the donor constituencies of the Board, following an open and transparent selection process among the respective constituencies of the two groups. The nominations put forward by both groups will be reviewed by Board leadership, who will decide upon the final membership, as required by Board decision GF/B32/DPO6.

9. Members of the Privileges and Immunities Advisory Group will:
- a. Be appointed by the Board leadership following the submission of nominations through open and transparent procedures set by donors and implementers for their respective group;
 - b. Be current Board Members, Alternates, Communication Focal Points or Committee members; or previously served as Global Fund Board Members, Alternates, Communication Focal Points or Committee Members; or constituency delegates; and
 - c. Have demonstrated experience and ability to do high level advocacy in an international setting, knowledge of Privileges and Immunities, and diplomatic skills.

Terms of Reference of the Privileges and Immunities Advisory Group

(February 2015)

Background

1. In 2009, the Board agreed to recommend that states consider granting the Global Fund privileges and immunities through the following channels:⁴
 - a. Applying legislation to confer upon the Global Fund privileges and immunities equivalent to those enjoyed by international organizations within their respective legal systems; or
 - b. Adhering to the Board-endorsed Agreement on Privileges and Immunities (the “P&I Agreement”).
2. The Board reaffirmed its support of the Secretariat’s efforts to obtain privileges and immunities in 2010, noting that privileges and immunities are necessary for the Global Fund to effectively exercise its functions and efficiently use its resources to deliver its mission.⁵ In affirming the need for privileges and immunities, the Board encouraged states represented on the Board to support and facilitate the Secretariat’s efforts to secure privileges and immunities.
3. The P&I Agreement, which is to be signed by states, accords the Global Fund juridical personality, under which it has the capacity to contract, acquire and dispose of property or assets, and institute legal proceedings. The privileges and immunities extend to the Global Fund, its assets, archives and officials acting in their official capacity. Furthermore, it provides tax exemptions for goods, supplies, materials, equipment, services or funds introduced into, acquired, or used in a country as part of, or in conjunction with, funding provided under a Global Fund grant. Granting privileges and immunities is critical for the Global Fund to:
 - a. provide legal protections to Global Fund (immunity from lawsuits, seizure, attachment and freezing of its funds) and its staff (immunity from prosecution for their acts related to GF work) in country during missions, audit, investigations;
 - b. be exempt of taxes and customs levies to maximize the impact of Global Fund resources in the fight against the three diseases;
 - c. open bank accounts in which the financial assets of the Fund are protected; and
 - d. conduct its daily activities with all the necessary tools and protections (for example, open a data center).
4. In addition to the P&I Agreement, the Global Fund will sign a new Framework Agreement with recipient countries for all new grants under the current funding model. Under the Framework Agreement, the recipient country is required to provide tax exemptions, or, if taxes are levied and paid, reimbursements of such amounts.

⁴ As adopted by the Board in December 2009 under Board decision point GF/B20/EDPO4.

⁵ As adopted by the Board in December 2010 under Board decision point GF/B22/DP21.

Failure to provide such exemptions or reimbursements could result in withholdings of disbursements or deductions of grant amounts. If a country is unable to grant privileges and immunities within the three-year period, the Secretariat will review the underlying obstacles and determine appropriate next steps.

5. At the time of the Thirty-Second Board meeting in November 2014, eight countries had signed the Board-endorsed P&I Agreement. These countries are Ethiopia, Georgia, Ghana, Moldova, Montenegro, Rwanda, Swaziland and most recently Uganda. The United States and Switzerland have separately, prior to the Board's endorsement of the P&I Agreement, accorded privileges and immunities to the Global Fund. In December 2014, the European Commission also decided to admit the Global Fund as an International Organization for the purposes of indirect management of EU funds.
6. Upon the tenth instrument of ratification, acceptance or approval (eight have already been signed but so far only 2 instruments of ratification have been deposited), the P&I Agreement comes into force. States express consent to be bound by an international agreement such as the P&I Agreement in various ways depending on national legislation. Typically, the executive branch executes the agreement followed by parliamentary ratification. Timelines can vary depending on parliamentary schedules, so continued engagement with relevant counterparts such as the Ministry of Foreign Affairs as well as the Ministry of Finance is crucial.
7. Political support is instrumental to encouraging states to grant privileges and immunities to the Global Fund. As such, the Board decided at its Thirty-Second meeting to request 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 for the Global Fund".⁶

Mandate and scope

8. Consequently, the Privileges and Immunities Advisory Group (PIAG) will be tasked with guiding and overseeing the development of a strategy for the acquisition of privileges and immunities for the Global Fund (the "P&I Strategy"). In addition, the PIAG will extend advocacy efforts towards the Board and external stakeholders in support of the signing and ratification of the P&I Agreement, and support of the signing and implementation of Framework Agreement.
9. The P&I Strategy will be based on an assessment of efforts to obtain privileges and immunities (successes and challenges), and will define a structured and coherent approach involving all the relevant departments of the Secretariat and the OIG, as well as the Global Fund governance entities, with the objective of progressing on privileges and immunities for the Global Fund.
10. The P&I Strategy will be delivered to the Board leadership for consideration and ultimate approval within three months from the date of the launch of the PIAG.
11. Following approval of the P&I Strategy by the Board leadership, the PIAG, with the support and guidance of the Legal and Compliance Department, will monitor the implementation of the P&I Strategy.

⁶ Decision point GF/B32/DP06.

12. The PIAG will focus on using best practices and lessons learned toward the granting of privileges and immunities and make sure that coherent messaging is shared relating to privileges and immunities by all Global Fund stakeholders.
13. Members of the PIAG will be expected to effectively communicate and promote the acquisition of privileges and immunities and the signing of the P&I Agreement. The Secretariat's Communications Department will support the PIAG in establishing key messages and targeting stakeholders.
14. The PIAG is created for a term of three years. Following conclusion of the three-year term, the incumbent Board leadership will make a recommendation to the Board as to whether to retain the PIAG with a renewed membership, or to dissolve the advisory group.

Membership

15. The PIAG will be composed of two representatives from the donor group and two representatives from the implementer group, appointed for a period of three years.
16. The nominations put forward by both groups will be reviewed by Board leadership, who will decide upon the final membership for the PIAG.

Methods of work

17. The PIAG will work with the support and guidance of the Legal and Compliance Department. The PIAG will also receive updates every two months from the Secretariat on the activities and achievements related to privileges and immunities. The Legal and Compliance Department will coordinate the updates on its activities as well as the work done by the Finance, Information Technology, Sourcing and Administration Division; the Grant Management Division; the Office of the Inspector General; the Office of Board Affairs and the Communications Department. Assigned staff from these six departments/divisions will also work under the coordination of the Legal and Compliance Department to implement the P&I Strategy and to ensure the coordination of Global Fund operational work in pursuit of the acquisition of privileges and immunities.
18. The PIAG will submit quarterly written reports on its advocacy work to the Board leadership as well as to the Audit and Ethics Committee ("AEC") and Finance and Operational Performance Committee ("FOPC"), which jointly oversee the acquisition of privileges and immunities for the Global Fund. The AEC and FOPC will report to the Board annually on progress made. The AEC and FOPC will agree as to the division of labour and methods of collaboration between the two committees in the role in overseeing the acquisition of privileges and immunities.
19. All stakeholders involved in implementing the P&I Strategy will share relevant documents and information on a common platform available to the members of the PIAG and managed by the Legal and Compliance Department.
20. The PIAG will convene via conference call and video conferencing at least every two months. In person meetings may be set up on the side of other meetings requiring the presence of the PIAG members.