

40th Board Meeting

Annual Report on Privileges and Immunities

GF/B40/11

14-15 November 2018, Geneva

Board Information

The purpose of this paper is to inform the Board of the Secretariat's efforts to secure privileges and immunities, as overseen by the Ethics and Governance Committee.

Executive Summary

1. 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”). The EGC reports to the Board on the acquisition of privileges and immunities by the Global Fund on an annual basis.

2. Privileges and immunities provide critical protections and rights which reduce risk exposure to Global Fund officials, 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. The relevant decisions of the Board and the EGC on privileges and immunities are set out in Annex 1 to this paper.

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3. Implementing and donor countries may confer privileges and immunities on the Global Fund either through application of their domestic legislation or by signing the Board-endorsed Agreement on Privileges and Immunities (the “P&I Agreement”).
4. The following states have granted the Global Fund certain privileges and immunities under their domestic laws: Switzerland, Uganda, the United States of America, and Zimbabwe.
5. Since the EGC’s last annual report to the Board on privileges and immunities (November 2017):
 - a. Dedicated efforts have led to the signature of the P&I Agreement by 3 additional states (Liberia, Malawi and Mozambique) with the result that 18 implementing states have now become signatories of the P&I Agreement, namely: Burkina Faso, Burundi, Côte d’Ivoire, Ethiopia, Georgia, Ghana, Liberia, Malawi, Moldova, Montenegro, Mozambique, Niger, Rwanda, Senegal, Swaziland, Togo, Uganda, and Zimbabwe.
 - b. Liberia, Mozambique and Malawi have also formally ratified the P&I Agreement with the result that 11 of the 16 signatories have ratified the P&I Agreement; namely: Ethiopia, Georgia, Liberia, Malawi, Moldova, Mozambique, Niger, Rwanda, Swaziland, Togo, and Zimbabwe. The Secretariat is in the process finalizing with a small subset of this group some formalities that are necessary for the P&I Agreement to become effective.
6. The Secretariat continued to engage with the signatories who have yet to ratify the P&I Agreement undertaking advocacy measures to obtain the necessary additional ratifications for the P&I Agreement to enter into force are ongoing.
7. The EGC supports the Secretariat in its efforts to remind relevant countries of the contractual obligation they agreed to in the grant documentation to take all appropriate and necessary actions to ensure that the Global Fund is accorded with privileges and immunities. The EGC has invited the Secretariat to consider further measures with respect to countries which fail to comply with their contractual obligation.
8. The EGC welcomes the Secretariat’s initiative to approach donor countries to discuss the signature and ratification of the P&I Agreement.
9. The EGC encourages countries wishing to host a Global Fund event to confer P&Is to the Global Fund, its governance officials and staff, either by signing and ratifying the P&I Agreement or by entering into a memorandum of understanding concerning the specific event.
10. The Board approved in June 2018 the review of the terms of reference and renewal of the term and composition of the Privileges and Immunities Advisory Group (“PIAG”). As requested, the EGC will select and appoint the members of the PIAG and to inform the Board of the outcome of the selection process.

Annex 1 – Relevant Past Decisions

Relevant past Decision Point	Summary and Impact
GF/B39/EDP04: Review of the terms of reference and renewal of the term and composition of the PIAG (June 2018)	The Board approved the review of the terms of reference and renewal of the term and composition of the Privileges and Immunities Advisory Group (“PIAG”) and requested the EGC to select and appoint the members of the PIAG and to inform the Board of the outcome of the selection process.
GF/EGC02/EDP02: Privileges and Immunities (October 2016)	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.
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 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.

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/>

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:

- 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.

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)