

Electronic Report to the Board

Privileges and Immunities Advisory Group

GF/B50/ER04

Board Decision

Purpose of the paper: The Global Fund Board is invited to review and approve the reactivation of the Privileges and Immunities Advisory Group and a revised set of Terms of Reference as recommended by the 23rd Ethics and Governance Committee in GF/EGC23/02.

Decision

Decision Point: GF/B50/EDP04: Reactivation of the Privileges and Immunities Advisory Group and Revisions to its Terms of Reference

Based on the recommendation of the Ethics and Governance Committee (EGC), the Board:

- 1. Approves the reactivation of the Privileges and Immunities Advisory Group (PIAG), as set out in Annex 1 to GF/B50/ER04.***
- 2. Approves the revisions to the PIAG's terms of reference, as set out in Annex 1 to GF/B50/ER04.***
- 3. Delegates to the EGC the authority to select and appoint members to the PIAG, and to extend the term of the group or dissolve it after its initial 3-year term.***

A summary of relevant past decisions providing context to the proposed Electronic Decision Point can be found in Annex 2.

Input Sought

1. The Board is requested to approve the above decision point approving the reactivation of the Privileges and Immunities Advisory Group (PIAG) with a revised set of Terms of Reference (ToRs).

Input Received

2. During its July and October 2023 meetings, the Ethics and Governance Committee ("EGC") recognized the importance of the conferral of privileges and immunities (P&Is) to the Global Fund. Relatedly, the EGC also acknowledged a role for a reconstituted PIAG in advocating for and advising on the conferral of P&Is.
3. In July 2023, the EGC requested that Secretariat present a proposal for the reactivation of the PIAG and possible changes to its ToRs. At the October 2023 EGC meeting, the Secretariat presented proposed amendments to the PIAG ToRs and addressed several generally supportive constituency statements. The EGC unanimously recommended the reactivation of the PIAG with a revised set of ToRs. The EGC also recognized ongoing progress made and continuous engagement by the Secretariat relating to P&Is.
4. The EGC took note of the Secretariat's observations on the middle-ground approach between moral suasion and conditionality on grant funds to obtain P&Is, focusing among other things on requests for firm commitments from countries to confer P&Is to the Global Fund within agreed timeframes and direct engagement with a wide scope of stakeholders, including ministries of foreign affairs and CCMs. It acknowledged that the current approach continues to be sensible.

What is proposed and why?

5. P&Is provide critical protections and rights which reduce risk exposure to Global Fund governance bodies, officials, staff, experts and resources involved in the fight against the three diseases, with a view to enabling the Global Fund to fulfill its mission and effectively exercise its functions as an international organization. The PIAG would serve as a critical resource to the Secretariat in advancing the Global Fund's P&I agenda. The importance of P&Is to the Global Fund will of course therefore be highlighted and enriched through the dialogue and engagement of the Secretariat and the upcoming PIAG members. Based on these initial discussions, it is expected that a better understanding would be gained around the possibility of envisaged indicative targets.
6. The PIAG was first established for a three-year term by the Global Fund Board in 2015 with an initial set of ToRs and a slate of members. The PIAG was mandated to advocate for the acquisition of P&Is for the Global Fund, including, importantly, in implementer countries. The PIAG's term was renewed by the Board in 2018. Upon its expiry in 2021, the PIAG was not renewed due to overriding priorities brought with the COVID-19 pandemic.
7. Currently, the Global Fund enjoys P&Is in 24 States. The following States have granted P&Is through the Global Fund's multilateral treaty-based P&I Agreement: Afghanistan, Burkina Faso, Burundi, Côte d'Ivoire, Eswatini, Ethiopia, Gabon, Georgia, Lesotho, Liberia, Malawi, Moldova, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Togo, Uganda and Zimbabwe. Furthermore, the Global Fund enjoys P&Is under domestic law or through bilateral agreements in Djibouti, Kenya, Switzerland and the United States of America. Ongoing engagement is taking place with several countries, including Belize, Madagascar and Zambia.
8. Lessons learned and experience have demonstrated the importance of informed, tailored, and high-level advocacy in securing P&Is. The EGC recommends reviving the PIAG with revised ToRs to build on the momentum in acquiring P&Is.
9. The proposed amendments to the PIAG ToRs concern the sections pertaining to the PIAG's mandate, term, membership and methods of work with a view to enabling more flexibility for this group to accomplish its mission of advocating for and advising on the acquisition of P&Is by the Global Fund.
10. **Mandate** – Similarly to the PIAG's previous mandates, the main objective of the revived PIAG would be to undertake advocacy efforts to expand the granting of P&Is to the Global Fund. Additionally, with the revised ToRs, the PIAG would have the mandate to provide advice in this regard, based on members' expertise and/or relevant experience.
11. **Methods of Work** – The PIAG members will act as goodwill ambassadors of the Global Fund in pursuit of the PIAG's mandate and will serve on a pro bono basis. With the revised ToRs, the PIAG will continue to benefit from the Secretariat's support to fulfill its mandate. That support would be reinforced by the Secretariat's regular reporting to the EGC on the PIAG's activities following its reactivation.
12. **The EGC's Role with respect to the PIAG Term** – The revised ToRs delegate to the EGC the authority to decide whether to renew the PIAG's term after its first post-revival three-year term. As per its Charter, the EGC has responsibility for oversight and review for the acquisition of P&Is, including the activities of the PIAG. The Board had previously entrusted the EGC with the

authority to select the PIAG members. Therefore, the proposed delegation would be consistent with EGC's existing responsibilities, and it would also increase efficiency.

13. **Membership** – Membership has been expanded to enable larger participation. The EGC retains the authority to select the PIAG members, and for any reason decided by the EGC, it may also remove them. The revised TORs impose no limit to the number of members who can join the PIAG. This, too, is a change from the past, where membership was capped at four. The EGC acknowledged that (i) given historical challenges to recruit members and given that members will serve on a pro bono basis, it was unlikely that the group would grow to unwieldy size and (ii) there is a value in EGC having increased flexibility regarding PIAG membership given the likely need to adapt to differing circumstances throughout the PIAG's term.

Next Steps

14. Should the Board approve the proposed decision point, the EGC will proceed with the selection of the PIAG members, with its mandate starting after the 51st Board Meeting in Spring 2024.

Annex 1

Amended Terms of Reference of the Privileges and Immunities Advisory Group (December 2023) (May 2018)

Mandate

1. The mandate of the Privileges and Immunities Advisory Group (“PIAG”) is to undertake advocacy efforts, in particular, towards implementer and donor countries, and to provide advice, based on members’ expertise and/or relevant experience, in order to expand the granting of privileges and immunities to the Global Fund, ~~including through the signature of the Agreement on Privileges and Immunities of the Global Fund (“P&I Agreement”).~~

Term

2. The ~~PIAG’s term of the PIAG shall~~will commence following the conclusion of the ~~39th~~51st Board Meeting and ~~end on 10 May 2021. Following have an initial three-year term.~~ Prior to the conclusion of the initial three-year term and each term thereafter, the Ethics and Governance Committee (“EGC”) ~~shall make a recommendation as to will determine~~ whether to ~~further~~ extend the ~~term of the PIAG~~PIAG’s term for an additional three years or ~~to~~ dissolve the advisory group.

Membership

3. The PIAG will be composed of ~~four members with demonstrated experience in the field of privileges and immunities as they apply to international organizations, or in key positions to expand the granting of privileges and immunities to the Global Fund. Members may include, among others, former or active senior level governmental officials of, academics, and scholars and/or legal and judicial practitioners. It is encouraged that PIAG members are from implementer and donor countries preferably that signed/ratified the P&I Agreement or granted privileges and immunities to the Global Fund pursuant to domestic law.~~

4. The PIAG members ~~shall~~will be selected by the EGC and appointed for a ~~one~~three-year ~~period which term. The EGC can remove a member from the PIAG if a said member is no longer willing or able to provide their services or for any other reason as may be decided by the EGC, at the discretion of the EGC for additional period up to 10 May 2021.~~

Methods of work

5. The PIAG members ~~shall~~will act as goodwill ambassadors of the Global Fund in pursuit of the mandate of the PIAG and ~~shall~~will serve on an ex-gratia basis.

6. The ~~Secretariat will provide support to the~~ PIAG members ~~shall be supported to fulfil the PIAG’s mandate, as necessary by the needed. The Secretariat which will report on a biannual basis, on behalf of the advisory group, to the EGC~~PIAG, regularly report on the PIAG’s activities ~~to~~ the ~~PIAG~~EGC.

Annex 2 – Relevant Past Board Decisions

Relevant past Decision Point	Summary and Impact
<p>GF/B39/EDP04: Review of the terms of reference and renewal of the term and composition of the PIAG (June 2018)</p>	<p>The Board approved the review of the terms of reference and renewal of the term and composition of the 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.</p>
<p>GF/EGC02/EDP02: Privileges and Immunities (October 2016)</p>	<p>The EGC 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 PIAG, proposals to further enhance the levels of signature and ratification of the P&I Agreement.</p>
<p>GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group (March 2015)</p>	<p>The Board approved the ToRs of the PIAG, a dedicated group of donor and implementer representatives to identify strategies and advocate.</p>
<p>GF/B32/DPO6: Privileges and Immunities (November 2014)</p>	<p>The Board acknowledges past decisions on P&Is and further requests:</p> <p>the Secretariat to dedicate required resources for the acquisition of P&Is; the Finance and Operational Performance Committee (the “FOPC”) and the Audit and Ethics Committee to jointly oversee the acquisition of P&Is, 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 P&Is.</p>