



GF/B5/7
(amended)

REPORT OF THE GOVERNANCE AND PARTNERSHIP COMMITTEE

Outline: This paper presents the results of the deliberations of the Governance and Partnership Committee. It contains seven annexes which outline the issues addressed and present recommendations for consideration by the Board.

Summary of Decision Points:

1. The Board is requested to **approve** the revised Bylaws and Board Operating Procedures as presented in Annex 2.1 and 2.2, indicating which of the proposed texts is acceptable.
2. Annex 3 presents a paper on the Country Coordinating Mechanism which the Committee is recommending to the Board for **endorsement**.
3. Annex 4 outlines the proposed approach for the establishment of the Partnership Forum and requests the Board to:
 1. **Decide** on a location for the Forum
 2. **Mandate** the Chair of the Board to establish a Steering Committee for the Forum
 3. **Mandate** the Secretariat to proceed with the process for contracting an event organiser for the Forum.
4. Annex 5 presents the Partnership Agreements reviewed by the Committee to date, namely the Memoranda of Understanding with UNAIDS and the Inter-American Development Bank and the Letter of Agreement with ILO, and recommends them to the Board for **acknowledgement**.
5. Annex 6 presents an Update on the Legal Status of the Fund and requests **endorsement** for several actions before the next Board meeting.
6. Annex 7 presents recommendations regarding the outstanding issues on the Conflict of Interest policy.

Part 1: Background

1. The Governance and Partnership Committee met on 2nd – 3rd April and 5th May 2003 in Geneva (Annex 1 contains details of attendance) to consider the main items remaining in their Agenda, namely:
 - a. Revision of the Bylaws and Board Operating Procedures
 - b. Country Coordinating Mechanisms
 - c. Partnership Forum
 - d. Partnership Agreements
 - e. Legal Status of the Fund
 - f. Outstanding concerns regarding Conflict of Interest
2. This paper outlines the issues debated and highlights decision points that arose from the discussion. In every case the text references an Annex which provides more information on the topic and explains the rationale behind the recommendation emerging from the Committee.

Part 2: Revision of the Bylaws and Board Operating Procedures

1. At its Fourth Board Meeting in January 2003, the Global Fund Board asked the Governance and Partnership Committee to review the Bylaws and prepare revisions for discussion and adoption by the Board at its next meeting. Furthermore, it requested the commission of a legal study to ensure the consistency of Article 3 of the Board Operating Procedures (BOP) with the Bylaws.
2. The revised Bylaws are attached as Annex 2.1. Taking into account the modifications of the Bylaws and the comments on the BOP by the Board at its last meeting, the amendments to the BOP are presented in Annex 2.2.
3. Modifications to the Bylaws and BOP are furthermore summarized in the table attached as Annex 2.3. The findings of the legal study on Article 3 of the BOP are attached as Annex 2. 4. Many of the changes to the Bylaws are formal and do not change the substance of the provisions (see Annex 2.3).

Bylaws: Substantial changes

4. The more substantial changes involve Article 12, Paragraph 1 and 2¹: the Term of Office of the Chair and Vice Chair. The legal opinion presented at the Fourth Board meeting (GF/B4/3 page 5/8) has set out the contradiction in this Article concerning the principles of alternation (between voting groups) and renewal (of incumbents). Alternation is an essential principle of the Global Fund and must be maintained. Two solutions are therefore proposed:

¹ In the proposed amended Bylaws and BOP all the options are indicated in italics and differences in bold text, either in the same paragraph or immediately following a paragraph

- a) A term of office of two years without renewal; this solution has the advantage of maintaining a certain stability of the positions of Chair and Vice Chair;
- b) A term of office of one year, renewable for one additional year, but with the principle of alternation between the two voting groups maintained for the two-year period. This solution corresponds to the rotation of certain constituencies.

4. Additional changes in the same article include the issue of contingencies when the Chair is unable to carry out duties and the delegation of duties of the Chair (Paragraph 3) and the power of signature (Paragraph 4). The latter, the individual power of signature of the Chair and Vice Chair, is a precision of the existing procedure. However, the text in italics depends on the decision on Article 20 of the Bylaws.

5. The main issue for decision is the authority of the Chair and Vice Chair (Article 20). The first paragraph outlines the general power of representation vis-à-vis third parties. This provision is linked to Article 12, paragraph 4 referenced above and is intended to conform to the existing rules of representation of the Foundation vis-à-vis third parties by the Chair, Vice Chair and Executive Director as published in the Registre du Commerce of the Canton of Geneva . According to Swiss law, the power of signature may only be individual or collective. Limitations other than collective signature (for example financial limits or by reference to the Bylaws or the BOP) are not possible.

6. As regards Article 20 paragraph 2, two solutions are proposed.

Board Operating Procedures

7. The changes in Articles 3, 9, 14, 22 and 23, result from a clarification of the duties of the Chair and Vice Chair to be adapted according to the decision regarding Article 20 of the Bylaws.

8. Article 20 outlines the proposed election procedure. The Board will specifically have to approve how the terms of office of the current incumbent Chair and Vice Chair will be adapted to the amended Bylaws.

Recommendations:

The Committee recommends that the Board:

1. **Approves** the amended Bylaws and Board Operating Procedures indicating which proposal is acceptable.
2. **Confirms** that the terms of office of the incumbent Chair and Vice Chair, at the date of entry into force of these amended bylaws, shall

have commenced on the date of their respective election. This decision of the Board is subject to approval of the Bylaws by the Swiss Supervisory Authority.

Part 3: Country Coordinating Mechanisms

1. At the Fourth Board Meeting the Committee was asked to review the proposed approach to Country Coordinating Mechanism (CCM) guidelines and monitoring and to produce a more acceptable set of guidelines on which to base CCM evaluation.
2. Attached as Annex 3, are the Guidelines on the Purpose, Structure and Composition of Country Coordinating Mechanisms. This document has been discussed and agreed upon by the members of the Committee and is hereby presented to the full Board for endorsement.
3. The Secretariat has already taken the first steps to collect information on the functioning of CCMs through country case studies commissioned from the regional networks of people living with HIV/AIDS. Based on these and other case studies, good practices for CCMs can be shared across countries. For example, these good practices could relate to:
 - Meaningful participation of broad groups of stakeholders in CCM processes;
 - CCM members' interactions with their wider constituencies to ensure that their views and concerns are represented in the national forum;
 - CCM involvement in the monitoring of program performance and accountability; and
 - Efforts to link to and build on existing mechanisms for coordination and planning at the national level to respond to the three diseases and to the broader national development agenda, including the Millennium Development Goals and Poverty Reduction Strategies.
4. Additional information on CCMs, through the commissioned case studies and other efforts by the Secretariat, will be available for consideration at the October Board meeting.

Recommendations:

The Committee recommends that the Board:

1. **Approves** the guidelines for CCMs as outlined in Annex 3.
2. **Requests** that the Governance and Partnership Committee continue to monitor the issue of CCMs.

3. **Requests** the Secretariat to report back on the case studies when the findings of these studies become available.

Part 4: Partnership Forum

1. A paper outlining an approach to the Partnership Forum is attached as Annex 4. The Committee has discussed the various aspects of the proposal and has decided that it is only necessary for the Board to consider certain key decisions at this point. Nonetheless these items for decision should be seen within the general approach proposed in the paper. They are:

- a. The formation of a Steering Committee
- b. The location (with the related decision on the number of participants)
- c. The procuring of the services of a conference organiser.

2. The Committee believes that to ensure a close link between the Board and the Forum there should be a Steering Committee consisting of the Chair and Vice Chair of the Board (or their designates), other nominated Board Members, the Secretariat and the conference organiser. This composition is merely illustrative and the Committee agreed that the membership should not be pre-defined but that the Board Chair should be requested to constitute a Committee as a matter of urgency.

3. The Board had several discussions regarding suitable and appropriate locations. For the reasons outlined in the paper it is strongly recommended that the first Forum be held in Africa. The Committee was very favourable to the proposal of Arusha, Tanzania as the first choice of venue. Tanzania has a high disease burden in all three diseases, is one of the start-up countries and has a history of political commitment to addressing the health challenges it faces. Arusha is in the heart of the country and is not a large city; it is at the frontline of the malaria challenge. Participants will be required to take malaria prophylaxis which, aside from being a gesture of solidarity, will also be a concrete reminder of the Fund's *raison d'être*. While a relatively modest town, it has an international conference centre of good reputation, and relatively simple international flight connections.

4. The challenge of this venue is that in order to be manageable the participant numbers must be limited to under 1000. Although the venue advertises capacity at 1000, consultation with other users indicates that 800 is probably the comfort zone. The Committee estimates that without strict access control the participant level will probably be around 1200. However, there are strong arguments for keeping the numbers closer to the 720 range as proposed. These are: if the purpose of the Forum is to hear the voices of stakeholders not normally represented through other structures, then less is probably more. More people will have the chance to speak and to be heard if the numbers are kept small enough for sessions to reach out to people and not just be speech-making occasions.

5. Another central concern is cost. Even if the Global Fund puts a cap on funding at a certain number and leaves additional participants to find financing themselves, the total cost of the meeting will rise to US\$ 5 million or more and that kind of public outlay for a conference does not seem to be justifiable and sends the wrong message about what the Global Fund is trying to achieve.

6. If the Board believes that numbers higher than 1000 are inevitable then we suggest that one of the other proposed venues is chosen: Cape Town, South Africa or Nairobi, Kenya. Both of these cities have international conference centres and ample hotel accommodations.

6. Regardless of the choice of venue, there is an urgent need to identify a conference organiser who can very quickly take on the organisational task and, under the guidance of the Steering Committee and working with the Secretariat, plan the Forum.

Recommendations:

The Committee recommends that the Board

1. **Decides** on a location for the Forum.
2. **Mandates** the Chair of the Board to establish a Steering Committee for the Forum.
3. **Mandates** the Secretariat to proceed with the process for contracting a conference organiser for the Forum.

Part 5: Partnership Agreements

1. As requested at the Fourth Board Meeting the Committee has reviewed the Partnership Agreements proposed by the Secretariat to date. The following agreements are proposed for endorsement at the Fifth Board Meeting (see Annex 5):

- a. Memorandum of Understanding with UNAIDS
- b. Letter of Agreement with the International Labour Organisation
- c. Memorandum of Understanding with the Inter-American Development Bank.

2. Several other agreements are under negotiation and the Committee has received updates on progress, these include MOUs with Roll Back Malaria and Stop TB which should be ready for presentation by the October Board Meeting.

Recommendations:

The Committee recommends that the Board:

1. **Acknowledges** the Memorandum of Understanding between the Global Fund and UNAIDS, and requests the Secretariat to provide periodic reports on cooperation between the Fund and UNAIDS under the agreement.
2. **Acknowledges** the Letter of Agreement between the Global Fund and the ILO, and requests the Secretariat to provide periodic reports on cooperation between the Fund and the ILO under the agreement.
3. **Acknowledges** the Memorandum of Understanding between the Global Fund and the Inter-American Development Bank, and takes note of the fact that the MOU does not provide for the IDB to perform the functions of Local Fund Agent in member state countries. The Board requests the Secretariat to provide periodic reports on cooperation between the Fund and the IDB under the agreement.

Part 6: Legal Status of the Fund

1. The Committee was asked to review progress on investigating an alternative legal status for the Fund, and to examine the legal opinion on the requirements for moving to International Organisation status.
2. An update on progress is provided in Annex 6. The Committee also invited WHO to one of their meetings to hear more about the challenges faced by both parties in executing the Administrative Services Agreement.
3. The Committee does not yet feel that it is in a position to recommend any one course of action to remedy the situation and therefore proposes several steps which it believes will further the understanding of the options open to the Board for the future, and also begin to address in concrete terms the operational difficulties currently being encountered.

Recommendations

The Committee recommends that the Board:

1. **Requests** the Secretariat to pursue negotiations with the Swiss authorities for expanded Board member immunities as well as privileges and immunities for the Secretariat in Switzerland, and present a draft agreement between the Global Fund and the Swiss authorities for approval at the October meeting.
2. **Requests** the Secretariat to work closely with WHO to record key areas of concern and identify mutually agreed and tangible solutions to improve the functioning of the Administrative Services Agreement to ensure greater administrative efficiencies and independent authority for decisions and actions for the Global Fund.

3. **Requests** the Secretariat to continue to clarify the implications of moving to the status of an Intergovernmental Organisation, including how to ensure a strong governance role for the private sector, NGOs and civil society that meets the Global Fund's commitment to the public-private partnership.

Part 7: Conflict of Interest

1. The Committee reviewed the proposed changes to the Conflict of Interest policy in response to the issues raised by Board Members. The Committee was satisfied with the proposed changes as well as the proposed Local Fund Agent (LFA) Conflict of Interest Policy.

2. As regards the Rules and Procedures of the Ethics Committee, the Governance and Partnership Committee raised several basic issues including:

- Is it tenable that the members of the Ethics Committee be members of the Board? Would it not be more judicious to foresee a completely independent Ethics Committee?
- What confidentiality is provided to data processing resulting from disclosure statements and the settlement of COI problems?
- What are the powers of the Ethics Committee?

3. The proposed Ethics Committee Rules only being the application of the COI policy adopted by the Board at its Fourth Board meeting, the answers to the issues raised by the Committee must be handled on the level of the COI policy and not the Ethics Committee Rules.

4. Taking into consideration these questions and the relatively heavy agenda of the Fifth Board meeting, the Committee proposes to deliver an explanation at the June Board meeting with concrete recommendations proposed at the Sixth Board Meeting. The explanation is attached as Annex 7.

Recommendations:

The Committee recommends that the Board:

1. **Takes note** of the explanatory document on the principal issues raised by the COI policy for information at the Fifth Board meeting.
2. **Requests** the Committee to work with the newly appointed Ethics Official to amend the COI Policy and Ethics Committee Rules for presentation and approval at the Sixth Board meeting.