

38th Board Meeting

Annual Report on Privileges and Immunities

GF/B38/15

14-15 November 2017, Geneva, Switzerland

Board Information

The purpose of this paper is to provide an update on the privileges and immunities of the Global Fund.

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.
3. 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. Four members were duly appointed over the following months, two representing donors (Switzerland and the European Commission) and two implementers (Nigeria and Sri Lanka), respectively.

Background and Discussion

4. 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”).
5. The following states have granted the Global Fund certain privileges and immunities under their domestic laws: Switzerland, Uganda (which has also signed the P&I Agreement), the United States of America, and Zimbabwe (which has also signed the P&I Agreement).
6. Since the EGC’s last annual report to the Board on privileges and immunities (November 2016), dedicated efforts have led to the signature of the P&I Agreement by 2 additional states (Niger and Senegal) with the result that some **15** implementing states have now become signatories of the P&I Agreement, namely: Burkina Faso, Burundi, Côte d’Ivoire, Ethiopia, Georgia, Ghana, Moldova, Montenegro, Niger, Rwanda, Senegal, Swaziland, Togo, Uganda, and Zimbabwe.
7. Dedicated efforts have also led to the increase in the number of ratifications of the P&I Agreement. It is recalled in this regard that the P&I Agreement will become effective 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, if any, under its domestic laws to ratify, accept or approve treaties. Since the EGC’s last report to the Board, some 4 states have ratified the P&I Agreement with the result that the instrument has now been ratified by **8** of the 15 signatories; namely: Ethiopia, Georgia, Moldova, Niger, Rwanda, Swaziland, Togo, and Zimbabwe.
8. Thus, **2** additional ratifications are required before the P&I Agreement becomes effective.
9. The EGC requested the Secretariat to develop and present proposals to further enhance the levels of signature and ratification of the P&I Agreement.
10. In response to this request, the Secretariat confirmed to the EGC in its October 2017 meeting that it will continue to engage with the signatories who have yet to ratify the P&I Agreement and that

increased advocacy measures to obtain the necessary additional ratifications for the P&I Agreement to enter into force are ongoing.

11. The Secretariat will also remind implementing 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. Additional proposals presented at the October 2017 EGC meeting include increased advocacy efforts at Board and country levels, including with respect of requests for the hosting of Global Fund sponsored events which could be made subject to the conferral of privileges and immunities to the Global Fund.

12. Finally, the Secretariat will engage with Board and EGC Leaderships to discuss options related to the PIAG following the expiry of the term of its current members in May 2018.¹

¹ Article 14 of the PIAG's Terms of Reference provides that: "*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.*"

Annex 1 – Relevant Past Decisions

Relevant past Decision Point	Summary and Impact
<p>GF/EGCo2/EDPo2: Privileges and Immunities (October 2016)</p>	<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>
<p>GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group (March 2015)²</p>	<p>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.</p>
<p>GF/B32/DPO6: Privileges and Immunities (November 2014)³</p>	<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 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.
<p>GF/B22/DP21: Privileges and Immunities (December 2010)⁴</p>	<p>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.</p>

² <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/EDP12/>

³ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/DPO6/>

⁴ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B22/DP21/>

GF/B20/EDP04: Global Fund Privileges and Immunities (December 2009)⁵

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.⁶

The Board requests the Secretariat to report back to the Board on measures taken by states in response to the decision point.

⁵ <http://www.theglobalfund.org/Knowledge/Decisions/GF/B20/EDP04/>

⁶ Attachment 1 - Revision 1 of the Policy and Strategy Committee's Report to the Board (GF/B20/4)