

DECEMBER 4-5, 2024 – MEETING OF THE BOARD OF DIRECTORS

EMIRATES OF DUBAI – BOD/2024/12 DOC 05 – FOR DECISION

GPE NON-PROFIT LEGAL ENTITY

Please note: In accordance with the GPE Transparency Policy, documents are public only after their appraisal by the relevant governance instance. Governance officials may circulate documents to their constituency for consultation purposes, except for documents of a confidential nature.

Key issues for consideration:

- At its November 6 meeting, the Executive Committee expressed broad support to establish a non-profit legal entity.
- Committee members expressed appreciation for both countries who expressed interest in hosting the entity, and requested they be given a final opportunity to either confirm or revise the offers previously submitted. Following this process, EXCO agreed with the recommendation of the Ad Hoc Working Group to recommend Geneva, Switzerland as the location for the non-profit legal entity.

Objective

1. The document sets out a recommendation on the creation of a non-profit legal entity in support of GPE to be based in Geneva, Switzerland, for Board decision.

Recommended decision

BOD/2024/12-XX – GPE Non-profit legal entity: The Board of Directors:

1. Refers to its decision on GPE's operational flexibilities from June 2024 ([BOD/2024/06-04](#)) and welcomes the progress made to advance the actions set out in a roadmap in the consultant's report (BOD/2024/06 DOC 07 Annex C) for the creation of a non-profit legal entity in Switzerland or France.
2. Expresses its appreciation for the work of the Secretariat working with external legal support, the World Bank, and in cooperation with relevant and interested GPE partners including the Ad Hoc Working Group, the Executive Committee, and the Governments of France and Switzerland.
3. Determines its support for the creation of a non-profit legal entity in Geneva, Switzerland as outlined in BOD/2024/12-DOC 05 with the sole purpose to support GPE's mission and objectives, particularly around resource mobilization.
4. Requests the Ad Hoc Working Group and Government of Switzerland under the oversight of the Executive Committee, to take the necessary actions to support the establishment of the non-profit legal entity, including but not limited to the creation of terms of reference for the Board of Directors of the non-profit legal

entity, and the development of founding documents for the non-profit legal entity, and a coordination Memorandum of Understanding (MoU) between the non-profit legal entity and the GPE Board, to be presented for GPE Board decision as soon as practicable in 2025.

5. Requests the Secretariat and World Bank to support the process to the maximum extent possible.

Background and overview

1. At its December 2023 meeting, the Board of Directors mandated the Secretariat to further explore fundraising approaches and operational flexibilities ([BOD/2023/12-01](#)). A legal expert, Dr. Tim Nielander, then undertook an analysis of the potential of non-profit legal entities in the jurisdictions of the United States, the United Kingdom, France, Switzerland, the UAE, and Singapore to deliver the capabilities GPE requires in a separate legal entity.
2. In June 2024, the GPE Board noted ([BOD/2024/06-04](#)) that establishing a non-profit legal entity in Switzerland or France could be beneficial to support GPE objectives, particularly around resource mobilization. It mandated the Secretariat to work with external legal support, the World Bank, and in cooperation with relevant and interested GPE partners to explore in more depth the potential for the creation of a legal entity in France or Switzerland, and to submit the necessary information for Board decision at either the December 2024 or June 2025 Board meeting ([BOD/2024/06-04](#)).
3. The Secretariat retained the services of Dr. Tim Nielander, to build upon prior analysis for the Board ([BOD/2024/06-DOC 07](#)) and present in a report (Annex A) the conclusions of consultations undertaken during September 2024 with France's Ministry for Europe and Foreign Affairs and Switzerland's Swiss Development and Cooperation Agency, to assess costs, risks, and implications of the creation of a non-profit legal entity. France and Switzerland responded to a request to submit indicative expressions of support for the non-profit legal entity (Annex B). The consultant's report incorporates feedback from the Ad Hoc Working Group of the Board and various GPE constituencies. Further, the report incorporates consultations with the World Bank to clarify how the GPE Board and Secretariat would relate to and interact with a separate legal entity and the limitations on the use of Secretariat staff. At EXCO's request, a briefing on the non-profit legal entity was also provided to the Finance and Risk Committee at its October 2024 meeting.
4. The findings of the consultant's report are that:

- a. A non-profit legal entity could support GPE's fundraising capability by enabling GPE to receive funds from a new range of sources, for example corporations, High Net Worth Individuals, family offices and foundations which currently do not donate using the GPE Fund.
 - b. The non-profit legal entity would not be in any way a replacement for the GPE Fund. If the non-profit legal entity were established, committed donor Official Development Assistance (ODA) funds would continue to be paid into the GPE Fund. The GPE non-profit legal entity would support GPE's fundraising and other efforts in full alignment with GPE objectives. It would not duplicate or replace existing functions of GPE nor any other actor in the development education ecosystem.
 - c. Legislation in either France or Switzerland could enable the creation of the non-profit legal entity. The legislation in France is from 2022 and in Switzerland from 2009. Switzerland provides greater legal flexibility at the present time, based on the track-record since 2009 and certainty regarding eligibility for recognition under the Swiss Host State Act.
5. It was agreed that those members of the Ad Hoc Working Group representing the Governments of France and Switzerland, as well as foundations based in these locations would be conflicted and so should abstain from involvement in the final discussion on the location recommendation to EXCO. The recommendation to EXCO from non-conflicted members of the working group was that Switzerland be recommended to the Board for the preferred location of the non-profit legal entity, based on the following reasons:
- a. The relatively stronger infrastructure of relevant facilities, international organizations, NGOs, private sector actors and foundations based in Geneva, and that two foundations are formally included as part of the expression of support.
 - b. The relatively stronger financial and in-kind contribution from Switzerland, including two dedicated secondments for the non-profit legal entity.
 - c. The legal mechanism for the establishment of non-profit legal entities in Switzerland has a significantly longer track record, and those entities have more familiarity with potential investors and other collaborators.
 - d. The expression of support from Switzerland provided more comprehensive and detailed responses.
6. In terms of the non-profit legal entity's relationship with GPE and governance arrangements:
- a. Through the legal set up of the founding documents of the non-profit legal entity, it could follow the strategy and direction set by the GPE Board.

- b. Benchmarks would suggest that the governing body of the non-profit legal entity could have for example 6-8 board members with appropriate professional expertise.
 - c. Should it be determined that the non-profit legal entity should be closed down in the future, then the normal legal mechanisms for winding down a non-profit support institution apply to conclude the entity's dissolution.
7. During the November 6 EXCO meeting, Committee members requested that the Secretariat give France and Switzerland a final opportunity to either confirm or revise their previously submitted offers. A revised offer was received from France on November 12, with Switzerland opting to maintain its original offer. On November 13, the non-conflicted members of the working group reconvened and concluded that given the key elements of the offer from France remain substantially the same, they unanimously reiterate their recommendation that Switzerland be recommended by EXCO to the Board for the preferred location of the non-profit legal entity, based on the same four reasons in paragraph 5 above.
 8. Should the Board decide to support the establishment of the non-profit legal entity, the next steps would be as follows: the Ad Hoc Working Group and host government, working with external legal support and if applicable a foundation, and under the oversight of the EXCO, would discuss the best way to establish the non-profit legal entity, including its governance arrangements and exact type of entity, founding documents and coordination MoU between the non-profit legal entity and GPE Board. The aim would be to have the final structure and supporting documentation for the non-profit legal entity ready for final approval of the GPE Board by June 2025, in order to have as much clarity as possible that can be factored into GPE's replenishment case for investment.

Annex A – Report by Independent Consultant, including annex containing Secretariat views on location and governance considerations

Annex B1 – Expression of support from Switzerland (Oct. 18)

Annex B2 – Expression of support from France (Nov. 12)

Annex C – Call for expression of support for GPE non-profit legal entity

Annex D – Frequently Asked Questions (forthcoming, to be posted on Governance Portal)