

PSES: Exceptional Circumstances Exemptions

Please note: Board documents are deliberative in nature and, in accordance with the GPE Transparency Policy, are considered public documents only after their appraisal by the Board. It is understood that constituencies will circulate Board documents among their members prior to Board consideration for consultation purposes.

Recommended by: GPC and SIC

Committee Consideration:

- The GPC and SIC recommend Board approval of the proposals contained in this paper. Both committees have considered the matter in some detail, the GPC from the perspective of process, governance and operational implications, and the SIC from the perspective of policy, adherence to the Private Sector Engagement Strategy approved in June 2019.
- Both committees stressed that, as per the Board decision, the request for exemption must come from the DCP government. They were also firmly of the view that this exemption policy should be viewed as a last resort and would only be considered where relevant public **and** not-for-profit provision is unavailable. A clear sequencing of decision-making should occur.
- The committees agreed that wherever possible existing processes, review and approval mechanisms should be applied, and transaction costs kept proportionate: using the [EPR principles](#) as a guide is helpful. The committees agreed that the application for and implementation of exceptional circumstances exemptions should be reviewed after 12 months with a view to whether any modifications would be needed.
- The committees agreed that only the GPC can consider exemption requests: there is no delegated authority to the Secretariat to do so. Similarly, delegated responsibility from the Board to the GPC to approve small grants cannot be applied to cases of exemptions: these would always go to the Board for final affirmative vote approval.
- Not all committee members agreed on all aspects of the proposals in front of the Board, but in the spirit of seeking compromise, consensus has been reached. Both committees encourage Board members not to re-open previously settled points of contention.

Board Policy Reference: BOD/2019/06 – 06 Private Sector Engagement Strategy

1. OBJECTIVE

1.1 The purpose of this paper is to provide a definition and framework of exceptional circumstances exemptions to the Board June 2019 decision that no GPE funds can be used to support for-profit provision of core education services.

2. RECOMMENDED DECISION

BOD/2019/12 XX – Private Sector Engagement Strategy: Exceptional Circumstances Exemptions: The Board of Directors:

1. Approves the process outlined in Annex 1 through which exemptions to the Board policy of no GPE financing for for-profit provision of core education services may be considered in exceptional circumstances, and associated definitions, conditions, safeguards and time limits. In accordance with GPE grant processes, it is only Developing Country Partners that can apply for an exemption.

3. BACKGROUND

3.1 In June 2019, the Board directed the SIC and the GPC to submit the definition of exceptional circumstances exemptions and develop a framework that identifies appropriate conditions, safeguards, time limits and processes to apply in these exemptions.

3.2 The SIC Chair shared initial ideas with GPC Chair and Secretariat. The Secretariat built on this input from SIC Chair, added some insights from the EPR and produced a first draft shared with the SIC for their feedback in August 2019. During its October meeting the GPC considered a revised document along with the written SIC feedback, as per its mandate focusing specifically on the operational aspects of the proposals and implications for implementation. The SIC then considered the document once more at its face to face meeting in late October, taking on board the GPC decisions and recommendations. As per its mandate, the SIC focused specifically on policy and definition issues, as well as alignment with Board decisions, policies and strategies.

3.3 The Secretariat and Chairs of the GPC and SIC finalized the document, which was shared with both committees for review before recommending it to the Board. The Exemptions policy is at Annex A.

4. NEXT STEPS

4.1 The Secretariat will provide some guidance to countries for review by the GPC and SIC.

4.2 The GPC and SIC, according to their respective mandates, will review the application and implementation of this exemption policy on an annual basis.

ANNEX A: EXCEPTIONAL CIRCUMSTANCES POLICY - RECOMMENDED BY SIC AND GPC

In June 2019 The Board made the following decision:

BOD/2019/06-06—Private Sector Engagement Strategy: The Board of Directors:

- 1. Extends its appreciation to the Strategy and Impact Committee for its work to date.*
- 2. Reaffirms its commitment to education as a public good, a fundamental human right and a basis for guaranteeing the realization of other rights and strengthening of public education.*
- 3. Recognizes that governments should ensure 12 years of free, publicly funded, equitable, quality primary and secondary education.*
- 4. Further recognizes that GPE's development model is country led and supports country ownership.*
- 5. Approves the Private Sector Engagement Strategy as set out in BOD/2019/06 DOC 08.*
- 6. Affirms that no GPE funds can be used to support for-profit provision of core education services.*
- 7. Directs the Strategy and Impact Committee and the Grants and Performance Committee to submit to the Board meeting in December 2019 the definition of exceptional circumstances exemptions to paragraph 6 and directs the committees to develop a framework that identifies appropriate conditions, safeguards, time limits and processes to apply in these exemptions. In accordance with GPE grant processes, it is only Developing Country Partners that can apply and seek these exemptions*
- 8. Determines that the Board will review the PSES by June 2022.*

This Exemptions Policy responds to paragraph 7 of the Board decision

1. DEFINITION OF EXCEPTIONAL CIRCUMSTANCES

1.1 Exemptions to the Board June 2019 decision that no GPE funds can be used to support for-profit¹ provision of core education services must be **truly exceptional** and can under no circumstances include internationally owned network (chain) schools, or part-internationally owned (majority or minority investment). Exemptions will allow for bottom-up, community-

¹ Please see the typology and definitions of private sector actors contained in the [GPE Board-approved Private Sector Engagement Strategy](#). This typology applies throughout this document.

derived networks and sole proprietor-owned schools that do not pay dividends. The Secretariat will provide practical guidance to partner countries.

1.2 Exemptions can only be considered **as a last resort** where there is no available public provision of core education services for marginalized populations and no alternatively available not-for-profit provision. Where relevant public provision is not available, appropriate not-for-profit provision should be considered. For-profit provision may only be considered if other options are not available and cannot realistically be put in place.

1.3 As per the Board's June decision to recognize *"that governments should ensure 12 years of free, publicly funded, equitable, quality primary and secondary education"* (BOD/2019/06-06), it must be clearly established by the Developing Country Partner (DCP) government applying for an exemption that the provision of core education services through for-profit providers will not result in an additional financial burden for poor families.

1.4 GPE and Developing Country Partners will take due diligence measures to meet the procedural and operational conditions required for adherence to human rights law and international agreements (see 3.1.iii below).

2. CONDITIONS

2.1 Any request for an exemption to the Board policy must be submitted by the DCP government. As with all grant applications under the GPE operational model, the Local Education Group needs to endorse any exemption request. The DCP government must be able to demonstrate clearly in writing that such an exemption adheres to human rights law and international agreements as well as standard GPE requirements, and that:

- i. it is the only effective option to advance the realization of the right to a free, quality education in the situation in question, whereby, support for a for-profit provider of core education services is the only immediate way of reaching the most marginalized, excluded children
- ii. it does not create a foreseeable risk of adverse effect on or delay to the most effective and expeditious possible development of a free public education system of the highest attainable quality
- iii. it does not create a foreseeable risk that the funded for-profit educational institutions could undermine the right to education
- iv. it derives from a credible, inclusive sector analysis and sector planning process

2.2 The partner government should guarantee provision of free education in adherence to human rights law and international obligations and should:

- i. ensure that any for-profit provision of core education services should only supplement, not supplant, public provision since the vast majority of GPE's funding supports public education.
- ii. have a clearly determined plan and timeframe for transitioning from for-profit provision to public provision of core education services
- iii. undertake measures to overcome as effectively and expeditiously as possible the inability to deliver or manage any aspect of the provision of education services which justified the use of GPE funding for the private provider.
- iv. fully adhere to standard GPE policies regarding grant agent selection and accreditation, as per the revised ESPIG GA selection process decided by the Board in June 2019, whereby GPE funding passes to a grant agent and thence thorough the partner government to a for-profit provider, or from the grant agent to a government-designated for-profit provider.

3. SAFEGUARDS

3.1 The primary safeguard for exceptional circumstances exemptions is that the GPC and Secretariat provide adequate professional oversight of the conditions above, and that the GPE Board monitors that such oversight is occurring effectively and taken into consideration in grant decisions. In addition, the following safeguards will be applied in all circumstances:

- i. The LEG will be engaged in the grant process in the same way as in all other instances under the GPE model.
- ii. Any exceptional circumstances exemptions should ideally be preceded by, and at a minimum must be accompanied by, the establishment of a robust regulatory framework for private provision of core education services so that GPE is assured that there is effective national government oversight of any for-profit education provider. This can be included in the ESPIG or be provided by another partner with stronger expertise. The effectiveness and application of the regulatory framework should be monitored throughout the grant period. In circumstances such as complex emergencies where an effective government regulatory framework is impossible, the Grant Agent will need to take on additional safeguard responsibility.
- iii. There will be adequate attention paid to human rights law and international agreements throughout the grant application process, QA and risk assessment.

iv. There will be a clear case-by-case **risk assessment and risk mitigation strategy** for any GPE investments in for-profit provision of core education services.

3.2 In line with the expectation that exemption requests would occur rarely, only a portion of an ESPIG can be used for for-profit provision. Given the difficulty of prescribing pre-determined financial limits, the Secretariat will prepare guidance for countries on this issue, for review by the GPC and SIC.

3.3 Attention will be paid by the GPC, SIC and Secretariat to the danger that the exemption policy perversely attracts exemption requests. For example, if three or more exemptions are requested in one year a serious assessment of the exemption policy would be required. Both the GPC and SIC will undertake an annual review of the application and implementation of this exemptions policy and consider the need for modifications.

4. TIME-LIMITS

4.1 An exemption request for a DCP Government can only be made for one grant cycle and any GPE Board approval may not be carried from one grant to another. There should always be an accompanying clear and time-bound plan for transition as rapidly as possible to enhance the capacity of public provision.

4.2 A DCP government is free to apply for an additional exemption in a subsequent grant, subject to adequate justification. The GPC will expect to see that clear progress has been made in transitioning towards effective public provision, with due consideration of fragility, conflict and country context.

5. GPE PROCESSES

5.1 In line with current practice, at the pre-Grant Agent selection stage, when the strategic use of GPE funds is set, the DCP government, with endorsement from the LEG, should signal initial intent to seek an exemption. The Secretariat will bring this to the attention of the GPC for an early check-in. The GPC will assess whether it finds the exemption applicable in principle and if so, indicate a willingness to entertain an exemption through the ESPIG application process: such an indication should in no way be considered as an agreement to an exemption which can only occur with final Board approval. The Quality Assurance Review process would then include specific assessment at each step to ensure it is the option of last resort, that not-for profit alternatives

cannot be put in place, and that related requirements would be met, including safeguards, conditions and time-limits.

5.2 In reviewing the ESPIG, **the Grants and Performance Committee** must be fully satisfied that any support for the exemption meets all the safeguards, conditions and time-limits.

5.3 Delegated responsibility to the GPC for small grants cannot apply for exemptions: all applications must go to the Board for affirmative vote approval.

5.4 Only the GPC can consider exemptions and recommend for Board affirmative vote approval. There is no delegated authority to the Secretariat to do so.

5.5 The **GPC** will closely monitor performance of any ESPIG granted an exemption, ensuring that the conditions attached to the exemption are being respected and that the investments truly enhance equity and inclusion, and reach the most marginalized children.

5.6 The **FRC** will pay close attention to the risks involved in any country where the GPE ESPIG is supporting for-profit provision of core education services.

5.7 If there are any doubts about the identity or motives of a particular for-profit provider being supported, this will be brought to the attention of the **GEC** for its consideration.