

## FOR DECISION

Most donor funding restrictions are minimal and can be managed by the Secretariat through administrative means. The United States has a particular funding restriction that implicates individual Board members (and staff): US citizens and permanent residents (and organisations) are barred from any involvement in decisions that result in funding to so-called ‘Restricted Countries’ (currently includes the governments of Myanmar, North Sudan and Cuba).

The Board is requested to:

- Acknowledge that Board members who are US citizens or permanent residents will need to recuse themselves from any decisions that lead to funding for Restricted Countries.

The Secretariat will request recusal forms for signature by concerned board members (as it has done for concerned Secretariat staff) so that if programme applications from Restricted Countries are presented to the GAVI Alliance Board or Executive Committee for review and approval, concerned Board members will be protected.

## Managing United States funding restrictions

### Background

The United States Government restricts financial transactions with certain governments. Referred to as US Sanctions, these restrictions are administered by the US Treasury’s Office of Foreign Assets Control (OFAC) and apply to US organisations, US citizens or permanent residents (even if located outside the US) and non-US nationals acting within the US.

In the past, the GAVI Fund managed Restricted Country license activities. If a license is obtained from the US Treasury’s Office of Foreign Assets Control (“**OFAC**”) then the Fund, and its US Board members and staff were allowed to approve and disburse funding. The OFAC licensing application process can consume time and considerable resources and does not always result in an approval. If an OFAC license is approved, there are additional administrative processes that must be maintained to ensure compliance with the license (e.g., in one license “monthly progress reports” were requested from OFAC).

Given that the GAVI Alliance is a Swiss entity and not subject to OFAC regulations, it is not required to obtain OFAC licenses. However US persons are still required to comply with OFAC rules, worldwide, unless immune by virtue of international civil servant status (e.g., working for the UN). Though the GAVI Alliance is to be granted privileges and immunities in Switzerland, GAVI’s status does not give global immunity from national laws, like that granted UN or other international organization employees to protect them while fulfilling their duties.

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By comparison, OFAC compliance issues are unlikely to arise in the context of internationally organizations. For example, in the case of the World Health Organization its governing bodies are not normally required to approve funding to specific countries. WHO's privileges and immunities extend worldwide and may be invoked if OFAC issues ever arose.

[GAVI is advised by its DC-based outside counsel, Latham and Watkins, that companies and organisations operating globally, place shields in place to protect US persons facilitating transactions with Restricted Countries. The approach described in this paper is consistent with those standard practices.]

For example, in 2007, the GAVI Alliance and Fund Boards approved HSS and ISS support for North Sudan. The GAVI Fund applied for an OFAC license, which was approved after a year. The license limit has now been exhausted.

In 2007, the GAVI Alliance and Fund Boards approved Injection Safety Support for Cuba. The GAVI Fund applied for a license. OFAC responded after a year requesting clarifications. The application was eventually withdrawn as unlikely to be approved. In 2008, the GAVI Alliance and Fund Boards approved HSS support for Myanmar. Based on an analysis of the time required to obtain a license, and the low probability of approval license being by OFAC for funding directly to the Government of Myanmar, the GAVI Fund, with advice of outside legal counsel, decided not to apply for an OFAC license.

### Recommendation

In order to shield Board members who are “US Persons” the GAVI Secretariat proposes the following two step approach:

1. US Board Members sign a form recusing themselves from any decisions that result in funding for Restricted Countries (the form will be updated for changes in the Restricted Counties list); and
2. Restricted Country programme funding requests will be presented to the GAVI Alliance Board or Executive Committee in the normal manner, however a recused person would abstain from deliberation and voting. The Secretariat will manage the decision making and disbursement processes to help ensure that a funding decision is not facilitated by US staff or in the US and will not be not funded with US donor contributions.

### Next Steps

- US Persons will be provided with recusal forms for Restricted Countries.
- Pending and future Restricted Country programme funding requests will be managed as described in this paper.