

**FOR DECISION****GAVI Governance Study****1. Background**

This is the third Board paper prepared by CEPA on the Joint Governance Steering Committee's work to improve overall efficiency, accountability and effectiveness of GAVI's governance arrangements. The context and key decisions reached by the Board to date are as follows:

- At the joint Board meeting in November 2006, the two boards decided to review GAVI's dual governance structures, particularly the need for improvements in terms of process and decision-making by the Alliance and Fund Boards.
- At the joint EC meeting in February 2007, the ECs agreed that the work on improving GAVI's governance would be driven by the Board(s), with steering by a joint governance committee. In response to the RFP issued by the Secretariat, CEPA was appointed and started work in April.
- At the joint Board meeting in May 2007, CEPA presented an initial situational analysis of GAVI's current governance structures, and set out the principles of good governance. The Boards provided general direction for the work going forward.
- CEPA presented a range of future governance options to the joint Boards at the 16<sup>th</sup> July retreat. The Boards agreed to consolidate the programmatic and financial functions of GAVI in a single legal entity with unified governance arrangements, comprising a single inclusive Board comprising 'Representative' and 'Independent' members, and a strong Executive Committee (which would be a sub-set of the Board) with significant delegated authority, supported by other Board committees and advisory entities.
- Since July, CEPA has worked on the detailed description of the proposed governance arrangements and possible legal implementation structures. Earlier drafts of the paper have been shared with the Joint Governance Steering Committee,<sup>1</sup> which has met four times (in part or full) so far since July to discuss the work and agree the key recommendations.

**2. Recommendations for Board decision**

We set out here our key recommendations for Board decision, as discussed [and agreed] with the Joint Governance Steering Committee. These follow from the joint Boards' decision in July to integrate GAVI's governance arrangements within a single not-for-profit legal entity.

**Recommendation 1:** To agree the vertically integrated new governance structure (that combines the GAVI Alliance and GAVI Fund Boards into a single common structure preserving the roles of both), including the size and broad composition of the GAVI Board, the EC, and the Board sub-committees (as set out in Figure 3.1).

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<sup>1</sup> The steering committee members include Mary Robinson (Co-Chair), Joy Phumaphi (Co-Chair), George Welde, Gavin McGillivray, Jean-Louis Sarbib, Philip O'Brien, Dan Kraushaar, and Major Courage Quashigah.

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**Recommendation 2:** To agree the allocation of functions between the Board and the EC (Section 4.2).

**Recommendation 3:** To agree the detailed composition of the Board and the entrenchment proposal (Section 4.3).

**Recommendation 4:** To agree the detailed composition of the EC and the entrenchment proposal (Section 4.4).

**Recommendation 5:** To agree the functions and composition of the standing Board committees reporting to the Board and to the EC (Sections 4.5 and 4.6).

**Recommendation 6:** To agree the functions and composition of the newly constituted Programme and Policy Committee (Section 4.6.1).

**Recommendation 7:** To agree the term, functions and appointment process for the Board Chair and Vice Chair (Section 5.1). In particular, (a) the process for appointing the Chair; and (b) that the Vice Chair (who would also be the EC Chair) should be an Independent Board member.

**Recommendation 8:** To note the expected time input of Board/ Committee members given the proposed changes in governance structure and improvements in management and scheduling of meetings (Section 5.2).

**Recommendation 9:** To agree the requirement to have an effective policy for the management of Board members' interests. (Section 5.3).

**Recommendation 9:** To note the analysis of the two legal structure options – US or Swiss (Section 6). To agree in principle that the single legal entity should be the GAVI Foundation (Option 2), subject to the following conditions:

- The GAVI Foundation obtains 'international institution' status and the resulting privileges and immunities under the Swiss Host State Act.
- The GAVI Fund Board agrees that the proposed transfer (and the resulting changes) are consistent with the furtherance of its charitable mission and objectives.
- Detailed due diligence on the transfer mechanism and likely transaction costs for Option 2 confirm that transaction costs are not likely to be materially in excess of \$5m.
- Detailed analysis of expected budgets confirm that annual operating costs of Option 2 (as compared with the current situation) are no higher than under Option 1.

### 3. Proposed governance structure

The proposed governance arrangements are designed to be 'fit for purpose' for a multi-billion dollar organisation, and to ensure the appropriate degree of oversight and performance management necessary to support the achievement of GAVI's mission in an accountable and

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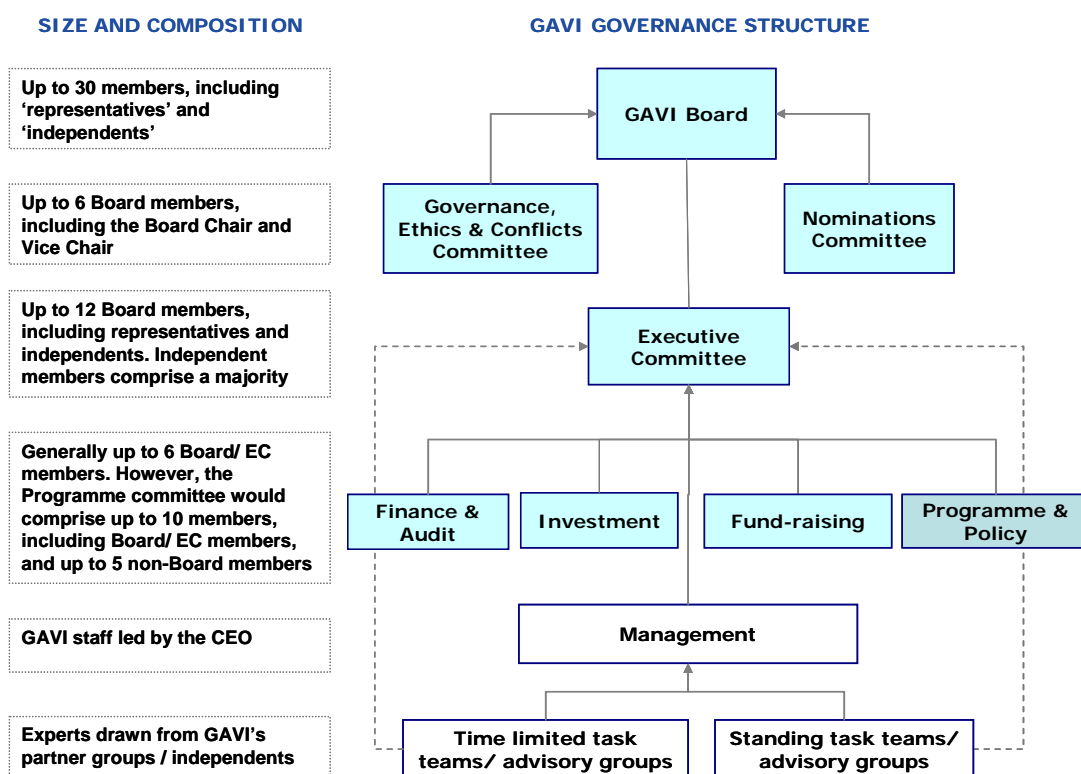
effective manner. Whilst developing ‘best in class’ governance arrangements, the core features of the ‘Alliance’ have been preserved and strengthened.<sup>2</sup>

The roles of the recommended Board committees and advisory entities in the vertically integrated structure are intended to ensure more effective decision-making – fully taking into account the advice/ recommendations of the expert group that is best placed, in terms of skills and time commitment, to deliberate on the matter. The structure also aims to clarify the functions, composition, reporting relationships, and decision processes of the various governance entities. In addition, the structure seeks to ensure that all partners have at least as much control of the organisation as is currently the case.

### 3.1. Governance organogram

Figure 3.1 summarises the proposed governance structure, with a brief description of the size and composition of the various governance entities. Further details of the functions and composition of the various governance entities are discussed in the subsequent sections.

Figure 3.1 – Summary of proposed governance arrangements



<sup>2</sup> This is further described in Section A2 of Annex A to this paper.

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### 4. Key recommendations of the proposed governance structures

#### 4.1. Single legal entity

The current governance structure involves the existence of two parallel entities - the unincorporated GAVI Alliance and the 501(c)(3) GAVI Fund. Programmatic and fiduciary responsibilities are split between the two entities, with the Alliance taking primary responsibility for programmatic decisions, and the GAVI Fund assuming overall financial and fiduciary responsibility. As agreed by the joint Boards at the 16<sup>th</sup> July retreat, we propose that the two organisations be brought together in a single, not-for profit legal entity. This is a “merger” that retains at the Board level and in its committees, the stakeholders and individuals drawn from **both** Boards and intends to build a new governance structure, whose members reflect the best of public and private values, dynamics, capacities and skills, in a unique new Alliance structure. Annex A to this report provides a more detailed discussion of our views on why a single entity is essential to create a sustainable platform for successful innovative financing and managing associated risk, and for ‘best in class’ governance arrangements for GAVI. It helps to build a structure that reflects the strengths and values of public and private sector approaches, whilst preserving and strengthening the characteristics of the Alliance.

#### 4.2. Allocation of functions between the Board and the EC

In the proposed new structure, there is a clear separation between the provision of strategic direction and operational oversight:

- The unified **GAVI Board** would be the highest decision making body in the organisation. It would be responsible for approving its mission, strategy, key policies and the annual work plan and budget. As part of its six-monthly meetings, the Board would expect to receive detailed reports from the EC/ CEO on progress against the approved strategy and plan. The Board would also be responsible for the appointment (and potential dismissal) of the CEO.
- The **EC** would have delegated responsibility, within the agreed policies and decisions of the Board, for decision-making on matters such as operational policies, approving country programs, implementation of strategy and work plan, and performance management of the CEO and GAVI as a whole. In addition, it would be required to make recommendations for approval by the full Board on the 5-year strategy, annual work plan and budget, and the appointment of the CEO.

The effectiveness of both the Board and the EC will be critical to the success of GAVI as a whole. Table 4.2 sets out the functions retained by the Board and those delegated to the EC.<sup>3</sup>

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<sup>3</sup> Figure B4 in Annex B to this report provides an illustration of the Board agenda items pertaining to the May and November 2007 Joint Board meetings (some requiring decisions) under the proposed governance structures.

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Table 4.2: Key functions of the Board and the EC

Key functions	Board	EC	Remarks
<b>I. Mission, strategy, and governance</b>			
a. Agree mission and purpose of GAVI and consider/approve changes	<input checked="" type="checkbox"/>		
b. Approve GAVI's 5 year strategy / policy for the achievement of its mission, and any updates to this strategy	<input checked="" type="checkbox"/>		Based on the EC's recommendations. – Includes any major new funding (e.g. IFFIm) or programme initiatives (e.g. HSS) or policies (e.g. co-financing)
a. Approve overall governance approach	<input checked="" type="checkbox"/>		
c. Approve risk management, financial audit and control procedures		<input checked="" type="checkbox"/>	
<b>II. Appointments and procedures</b>			
a. Operational policy / procedures <sup>4</sup>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Most operational policies remain with the EC, but some may be reserved for the Board.
b. Appoint, replace and extend the tenure of board members	<input checked="" type="checkbox"/>		Based on the Nominations committee recommendations.
c. Coordinate the work of the Board committees		<input checked="" type="checkbox"/>	The standing Board committees would report to the EC.
d. Appoint (and the power to dismiss) the CEO	<input checked="" type="checkbox"/>		Based on recommendations of the EC, which oversees the CEO's performance.
e. Approve composition and terms of reference of the standing advisory groups	<input checked="" type="checkbox"/>		
f. Approve composition and terms of reference of the time limited advisory groups		<input checked="" type="checkbox"/>	The EC may draw on the Programme Committee's advice on certain issues.
<b>III. Programmatic and financial issues</b>			
a. Approve annual budget and work-plan	<input checked="" type="checkbox"/>		Based on the EC's recommendations.
b. Approve any major new funding, or program initiatives	<input checked="" type="checkbox"/>		For example, decision on new vaccine investment strategy.
c. Approve country program grants		<input checked="" type="checkbox"/>	Within delegated authority
d. Contribute to fund mobilisation and advocacy initiatives	<input checked="" type="checkbox"/>		
<b>IV. Oversight/ performance mgt.</b>			
a. Review progress in implementing the strategy, programs and use of funds		<input checked="" type="checkbox"/>	The Board would also expect to monitor this – but would delegate detailed scrutiny to the EC.
b. Oversee performance of GAVI programmes and work plans		<input checked="" type="checkbox"/>	
c. Performance manage the CEO		<input checked="" type="checkbox"/>	

<sup>4</sup> Procedures here relate to the operational guidelines that inform how GAVI goes about achieving its mission. Most of the operational procedures will be approved by the EC (e.g. HR and environmental policies). However, the Board may wish to reserve some key policies for it to approve on recommendation of the EC. These might include, for example, its conflict of interest policy.

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### 4.3. The GAVI Board

In the new governance arrangements, the Alliance and Fund Board members will become members of a unified GAVI Board. The Board will have up to 25 Board members<sup>5</sup> that would comprise:

- 'Representative members': These are the representatives of key GAVI partner institutions and stakeholders; and
- 'Independent members': These are individuals appointed in their personal capacity on the basis of their skills and networks but without any 'representational affiliation'.<sup>6</sup>

Board members will be appointed for a period of three years, renewable for a single term at the Board's discretion, unless otherwise agreed. The rotation of Board members will be staggered to ensure continuity and effectiveness in the operation of the Board.

The composition of the Board seats would include:

- 4 seats for representatives of the WHO, UNICEF, the World Bank, and the Gates Foundation. These four members would have 'entrenched' seats on the Board in recognition of their contributions to the conception and growth of GAVI. The multilateral partners play a key role in developing the strategy, policies and programmes of GAVI, and are its main implementation partners for delivery of in-country operations. The Gates Foundation has made significant investments in GAVI, in immunisation, and in the future pipeline of vaccines that GAVI would help to introduce in countries.
- Up to 12 seats for constituency representatives (as set out in Table 4.3 below). The current constituency arrangements for donors and implementing countries have not been reviewed as part of this work and the presumption is that they would continue.
- Up to 9 seats for 'independent' Board members - such that they constitute at least one-third of the total Board membership. This is intended to ensure: (i) a certain number of Board members are independent of any constituency and do not have any direct conflict of interest in GAVI's activities; and (ii) a set of value added skills additional to those skills currently found in the Alliance (for example, risk measurement and analysis, commercialisation expertise, exercising of fiduciary responsibilities, and financial market knowledge); in order that GAVI retains its overall PPP characteristics.

The CEO of GAVI would serve *ex officio*<sup>7</sup> on the Board, and would have full voting rights at Board meetings.

All Board members would be expected (and indeed required by law) to act in the interest of GAVI. In performing their role, all Board members are accountable to GAVI's stakeholders as a

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<sup>5</sup> The number written in the constitution documents could be 'up to 30' to allow flexibility, e.g. to increase the participation of certain constituencies such as implementing country representatives and donors.

<sup>6</sup> Independent members are defined as non-representative members who are (i) not a direct beneficiary or the representative of a direct beneficiary of funding from GAVI; (ii) not a substantial donor or the representative of a donor of funds to GAVI; and (iii) not an executive of the organisation.

<sup>7</sup> By virtue of his/ her office.

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whole. With respect to ‘representative’ members, there are additional responsibilities (not withstanding the legal requirement to act solely in the best interest of GAVI) to keep informed and consult with the nominating institution and/ or their constituencies. Board members would be expected to sign and comply with a code of conduct and a formal Board member assessment process, which will include a review of their attendance and performance.

*Table 4.3: Constituency representative Board members*

<b>Representative</b>	<b>Allocation of Board member seats</b>
OECD Industry	Up to 1
Developing Country Industry	Up to 1
NGOs	Up to 1
Recipient Country	Up to 4
Donors	Up to 5
<b>Total</b>	<b>Up to 12</b>

### *Alternates*

In order to promote efficiency and maintain consistency, the strong presumption is that the named Board member should attend the meetings. However, in defined exceptional circumstances<sup>8</sup> and subject to the agreement of the Chair of the Board, a named alternate of the ‘representative’ board member may be permitted to participate and vote. The named alternate should be a senior individual capable of discharging the fiduciary responsibility of a Board member as well as representing a constituency.

Board members serving on the EC/ other Board Committees will however not be permitted to send alternates in the case of their absence at any Committee meeting. The only exception to this are the multilaterals and the Gates Foundation, who have the option for a high-level official to represent the organisation on the Board, and for a senior individual (with the required skills and time commitment) to be a named ‘deputy’ to serve on the EC/ other Board committees.<sup>9</sup> For these four organisations, only the named deputy shall participate and vote at the EC/ Board committee meetings (with no possibility of replacement by others).

Board members’ attendance record will be monitored and will form part of a regular assessment of their performance by the Nominations Committee.

### *Voting rights*

The expectation is that most decisions will be taken by consensus. Where a vote is required, each Board member will have a single vote. All decisions would be taken by a simple majority. The only exception would be the approval (from time to time) of the overall mission and constitution of GAVI – including the appropriate delegation of authority to EC, Board committees and the Management – which would require a ‘super’ majority of two thirds or more

<sup>8</sup> Exceptional circumstances include adverse personal circumstances, unavoidable conflicting work engagements, or any situations of disaster/ emergency.

<sup>9</sup> The ‘deputy’ would also be a Director with fiduciary responsibilities, under the US and Swiss law.

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of the board members. In the event of a tie on any matter, the Chair of the Board would have the casting vote.

**4.4. Executive Committee**

There will be a new, single EC that would carry out a range of functions as delegated to it by the GAVI Board.

The total EC membership will be up to 12 Board members (including the CEO, who would serve in ex-officio capacity).<sup>10</sup> It would not be possible for EC members to be replaced by alternates in case of absence.

The EC will be comprised of a majority of Independent Board members.<sup>11</sup> This is to ensure that: there are sufficient number of EC members without real or perceived interests in particular decisions of the EC (e.g. on funding). This is appropriate to ensure that potential conflicts are, and are seen to be, properly and transparently managed. Further, this allows GAVI to have access to the full range of skills available from both Representatives and Independents – including the financial and fiduciary skills of experienced senior individuals drawn from private sector backgrounds; essential for GAVI to retain its public private dynamic.

EC members will be appointed based on their skills and time commitment to perform their delegated functions. They will be appointed for a three year term – renewable once at the Board’s discretion, unless otherwise agreed. As with the Board, the appointment of new EC members will be staggered to ensure continuity and effectiveness in its operations.

The process for appointment will involve the Nominations Committee carrying out an assessment of the skills and time required at the EC level and seeking nominations. Based on this, the Nominations Committee would make a recommendation to the Board. The Chair of the EC will play a key role in this selection process. Table 4.4 sets out the range of skills and experience that should ideally be available to the EC. The CEO of GAVI would serve ex officio on the EC and would have voting rights.

*Table 4.4: EC skills matrix*

<b>EC member skills</b>	
Investment and finance	Academic / scientific / research
Accounting	Development aid architecture
Legal/ transactional	Fund-raising/ public charity experience
Vaccine development	Immunisation programme design
Developing country healthcare delivery	Vaccine procurement
Strategic management / oversight	Healthcare policy

Whilst only EC members would have voting or decision rights, other Board members may participate as observers in the EC meetings. In addition, at the request of the Chair of the EC,

<sup>10</sup> The multilaterals and Gates Foundation have the option for their named deputies to sit on the EC.

<sup>11</sup> This implies that the Independent Board members would have at least six seats on the EC. Along with the Chair of the EC (who we recommend – in Section 5.1.2 - should be an Independent Board member), this provides them with a voting majority.

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other Board members/ stakeholders may participate in EC meetings to advise/ consult on specific issues, as appropriate.

### *'Entrenchment' at the EC level*

It has not been possible for the Joint Governance Steering Committee to reach a consensus on this issue in time for circulation of this paper – although we will meet again before the November Board meeting. The following analysis and views are therefore those of CEPA/ CA Legal.

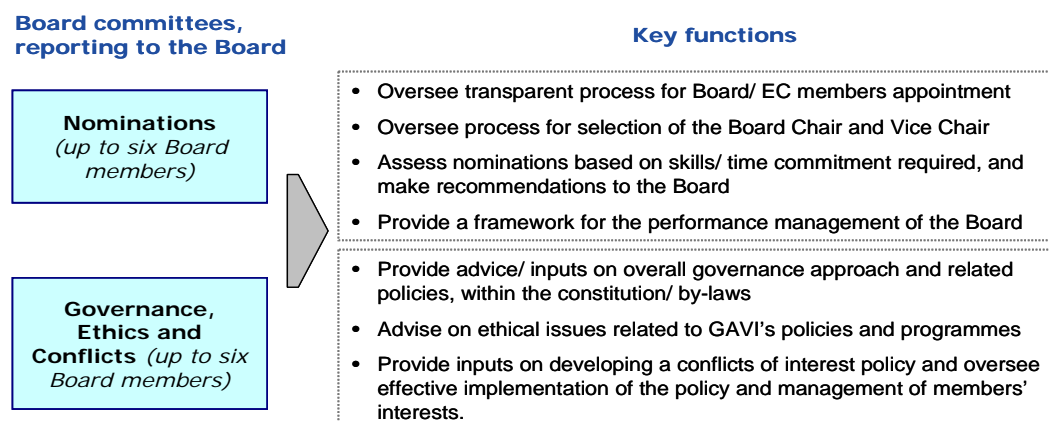
Our preference would be that there is no entrenchment at the EC level for particular organisations or constituencies. Rather the appointment should be skills and experience-based. We believe that this skill-based approach (if properly implemented) would provide GAVI with the most flexibility and increase the likelihood that its governance arrangements function efficiently and effectively. Entrenchment at the EC level has the potential to undermine: (i) the principle of skill-based appointment; and (ii) the exercise of fiduciary responsibility at the EC level – if there is a perception that members are appointed as representatives of an organisation or constituency.

However, if the Board(s) believe that it is important to entrench some allocation of seats in the short-term, we suggest that:

- No single organisation should have an allocated seat.
- The allocation of seat should only be for a defined period (say five years) and should be subject to review. It would not therefore be written into the constitution documents of the new single legal entity.
- The Board member who takes up an allocated seat should be subject to the same requirements in relation to performance, attendance and skills as other EC members.

#### **4.5. Standing Board committees, reporting to the Board**

The key functions of the two committees reporting to the Board are set out in Figure 4.5. Both these committees would be comprised of the Board Chair, Vice Chair, and up to 4 other Board members. It is recommended that the Nominations Committee include the Chairs of the Finance and Audit, and Programme and Policy Committees.

**FOR DECISION***Figure 4.5 – Board committees reporting to the Board***4.6. Standing Board committees, reporting to the EC**

The Board would establish four standing committees that would report to the EC, and support it in the detailed oversight and input into certain programmatic and financial aspects of GAVI's activities. These committees are:

- Finance and Audit,
- Investment,
- Fund-raising (currently referred to in the Fund as the 'Development' Committee), and
- Programme and Policy.

The Programme and Policy Committee would be a newly constituted committee that would be a hybrid between the existing Working Group and a Board committee. The rationale for this proposal is set out in Supporting Papers I.

In addition, a Remuneration Committee may be convened by the EC Chair to make recommendations (to the EC) on the remuneration of the CEO/ senior management. This would be comprised of the Chairs of the key Board committees such as Finance and Audit and Programme and Policy; and would meet as required (likely to be at least annually).

The delegated functions of these committees are provided in Figure 4.6 below.

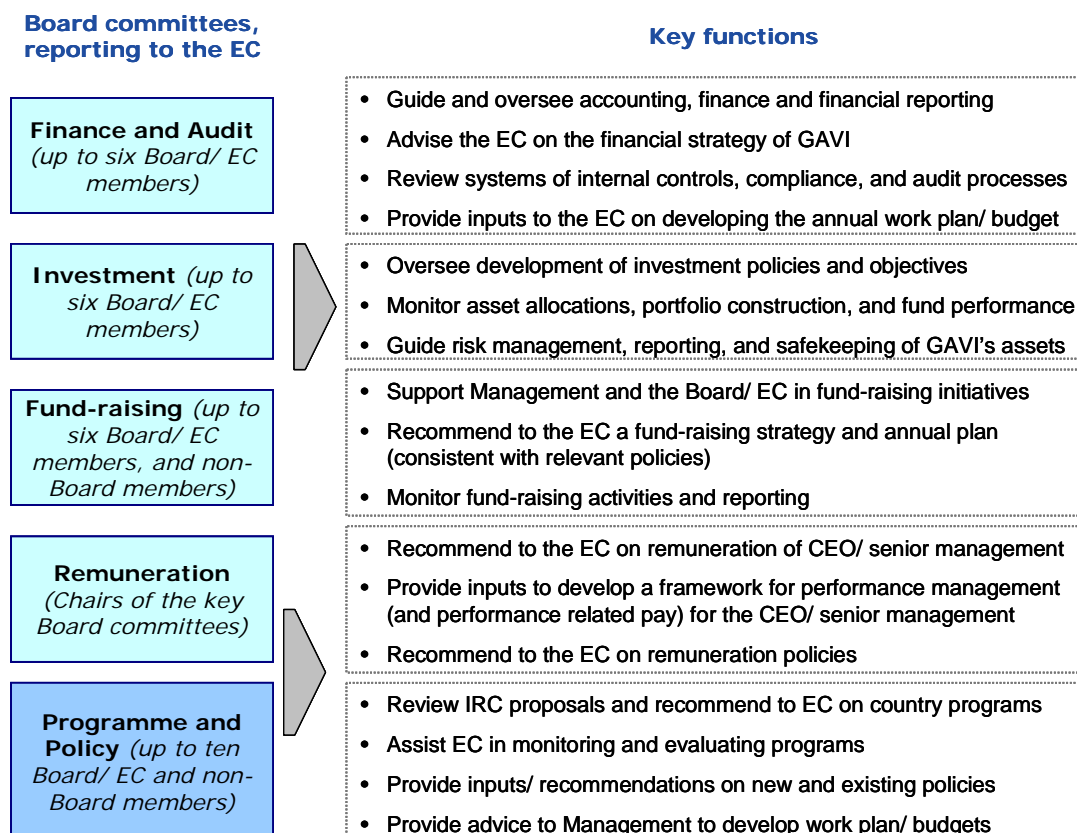
The Board committees would generally be comprised of a maximum of six Board/ EC members (including at least 3 EC members).<sup>12</sup> Only the Programme and Policy Committee would have up to 10 members. Further details of this committee are provided in Section 4.6.1. below. The other key points to note in relation to the composition of Board committees are:

<sup>12</sup> The presumption is that this is possible and preferred from a good governance perspective. However, it is subject to the time that specific EC members are able to commit.

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- In the case of the Finance and Audit Committee, the majority of the members would be Independent Board members – in order to ensure objective and effective decision making in relation to GAVI's financial strategy and oversight.
- As part of or in addition to the recommended six Board/ EC members on the Fund-raising Committee, GAVI may co-opt on the Committee pre-eminent individuals with fund-raising experience/ skills as the 'brand ambassadors' of GAVI. Therefore, this Committee may include non-Board members, selected for their specific skills.

Figure 4.6: Standing Board committees reporting to the EC



### 4.6.1. Programme and Policy Committee

Our proposal is that this Committee is a 'hybrid' between a standing Board Committee and the current Working Group, protecting the Working Group functions and role within a governance structure. This would mean that:

- As with the other Board Committees that report to the EC, the role of this committee would be to provide more detailed oversight and input on specific programme and policy issues; and to make recommendations to the EC for decision.
- However, it would be comprised of Board/ EC members and other (non-Board member) individuals selected for their technical expertise/ knowledge such as those currently in the Working Group.

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This committee would provide a forum for detailed discussion and scrutiny of GAVI policies and programmes submitted by the relevant advisory entities (such as the IRC on country programmes), and make recommendations to the EC. It would also advise Management in developing the annual work plan and budget.

Please refer to Annex B (Figures B2 and B3) for illustrative flowcharts on how country programme funding and the vaccine investment strategy decisions might be taken under the future structure, where the Board/ EC decisions would be informed by the recommendations of the Programme and Policy Committee (and the Audit and Finance Committee, where funding requirements need to be endorsed). For the avoidance of doubt, the precise allocation of issues to the Programme and Policy Committee is a decision for the EC, reflecting its composition and work-load, amongst other factors.

The Programme and Policy Committee would have up to ten members, comprising up to five Board members (of which at least three would be EC members, including the Chair)<sup>13</sup>, and up to five non-Board members who provide particular technical expertise. Whilst only Committee members would have voting or decision rights, representatives of other GAVI partners may be observers in the meetings such as those currently in the Working Group. In addition, the Chair can request the participation of any additional representative of the GAVI partners for specific advice on an issue.

### 4.7. Management

The CEO would have delegated authority for the implementation of GAVI's mission and objectives, and would be accountable to the EC and through it, to the full Board. Management includes the GAVI Secretariat staff working across various departments/ divisions such as Operations, Finance, External Relations, Governance, Country Support, and Technical & Policy. It is currently composed of staff working in Geneva and in the US. Appointment and management of staff is the responsibility of the CEO.

### 4.8. Advisory groups

As now, GAVI would continue to access the specialist advice of its standing and time limited advisory groups,<sup>14</sup> which would be composed of representatives of GAVI partners and individual experts. When possible, these entities should be chaired by a Board member, otherwise by the CEO/ senior management. The terms of reference of these entities would be defined by the EC/ Board.<sup>15</sup> Their role is advisory and they would report to the EC 'through' the management. On certain specific issues, the EC may request the advice of/ oversight by the Programme and Policy committee, before it reviews the recommendations of the advisory entity.

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<sup>13</sup> The proposed EC membership on this Committee is to ensure continuity of decision making. This is however, subject to the time that the specific EC members are able to commit.

<sup>14</sup> Please note that the current Working Group, re-constituted as the Programme and Policy Committee, would no longer be an advisory group.

<sup>15</sup> The recommendation is that the Board will set the terms of reference for the standing advisory groups, and the EC for the time-limited groups.

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Please refer to Annex B (Figure B1) for a graphic showing the decision making process on the proposals of the various advisory groups, and their relationship to the board committees.

### 5. Other governance issues

This section provides our recommendations, subject to approval by the Joint Boards, on some of other key aspects of the proposed governance arrangements.

#### 5.1. Chair and Vice Chair of the Board

##### 5.1.1. Functions and appointment of the Chair

The Board Chair's role is to facilitate the process of arriving at consensual decisions on matters presented to the Board; and in the event of a vote, to have the casting vote. The Chair would also be expected to oversee (as a member of the Nominations Committee) the performance monitoring of Board members. The Chair (together with the Vice Chair) also has an important advocacy role as the head of organisation. The expected time commitment for this function is around 1-2 days a month.

The Chair may be any 'representative' or 'independent' voting Board member elected by the Board members on recommendation from the Nominations Committee. The Chair would serve for a period of three years, renewable once for another term, at the Board's discretion.

It is a matter for the newly constituted GAVI Board to decide whether or not to continue with the current practice of the GAVI Alliance that the Chair rotates between the UNICEF and WHO.

##### 5.1.2. Functions and appointment of the Vice Chair/ Chair of the EC

The Vice Chair of the Board would also be the Chair of the EC – with a key role, working with the Chair, in providing leadership/ oversight of the organisation. In addition to facilitating the decision making at the EC level, the Vice Chair would have specific responsibility for performance managing the CEO. The Vice Chair would also serve on the Nominations, and the Governance, Ethics and Conflicts Committees, and would chair the Board meetings in the absence of the Chair. The Vice Chair would also be responsible (as a member of the Nominations Committee) for monitoring the performance of EC members. The time commitment for the position is likely to be about 4-5 days a month. The Vice Chair would serve for a period of three years, renewable for a single term.

The selection of the Vice Chair would be skill-based, taking account of the considerable time commitment of the role. These skills should include, as a minimum, the experience of providing oversight and leadership of a major PPP organisation; and a good understanding of GAVI's mission and operations.

The EC makes decisions/ recommendations to the Board on important matters such as the 5-year strategy, annual work plan and budget, ongoing programme funding, and performance management of the CEO and GAVI as a whole. Given the vital role of the EC Chair in carrying out these functions, our recommendation is that the EC Chair should be an Independent Board

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member. Since the EC Chair has the casting vote, it is important that they do not currently have (or are expected to have in the future) any significant (real or perceived) conflict of interest in the EC's decisions. We believe that this recommendation is consistent with the proper and transparent management of the organisation.

### 5.2. Efficient management of governance arrangements

There is room to improve the efficiency and effectiveness of the organisation and running of the key governance meetings. For example, in many organisations, it is rare for the substantive (decision-making) Board meetings to be longer than 3 hours.

Improving the efficiency of the Board/ EC meetings will be essential if GAVI is to retain senior/ experienced 'representative' and 'independent' Board members (to keep the time commitment manageable).

The actions required to improve efficiency have not been discussed by the Joint Governance Steering Committee to date. CEPA's view is that as a minimum:

- All Board/ EC and Committee meetings - including standing agenda items – should be set at the beginning of each governance year. Wherever possible, given the extensive need for travel to Board Meetings, EC and other Committee meetings should take place over the same few days.
- Agendas, papers and discussions should set out the matters for decision, with a clear recommendation for consideration by the Board/ EC.
- Papers should always be circulated at least a week in advance of the meetings, with a mechanism for members to clarify on any issues in advance of the meeting.
- Where a Board Committee/ EC has been asked to scrutinise a particular point, the Chair of the respective Committee should be asked to report to the Board/ EC.

The expected frequency of meetings for each of the governance entities is as follows:

- GAVI Board – twice a year.
- EC – not less than 4 times (and probably 6 times) a year, over half a day each (i.e. 3 hours).
- Other standing Board committees (Finance and Audit, Investment, Fund-raising) – not less than 4 times (and probably 6 times) a year.
- Programme and Policy – not less than 8 times a year (including at least 4 times in person).

Assuming that it is possible to improve the efficiency of key governance arrangements, and based on the expected meeting frequency as well as the time required for preparation and follow-up, Table 5.2 below sets out the total expected time commitment of Board/ Committee members with different levels of responsibility.

**FOR DECISION***Table 5.2: Indicative time commitment required for members of each governance entity*

<b>Governance entity</b>	<b>Time commitment</b>
GAVI Board member (no Board committee commitment)	Less than 1 day per month (8-10 days/ year)
Chair of the GAVI Board	1 day per month
Chair of the EC (Vice Chair of the Board)	4-5 days per month
EC member (no Board committee commitment)	1 day per month
EC member (including standing Board committee commitment)	2 days per month
EC member (including Chair of standing Board committee)	2-3 days per month
Member of standing Board committees (not an EC member)	Around 1 day per month <sup>16</sup>

**5.3. Conflicts of interest issues**

In most PPPs or charitable organisations, situations arise in which partners or directors have an interest in a decision to be taken. This is not unusual, nor does it necessarily pose a problem.

In GAVI potentially, most of the directors could find themselves in a situation in which they have an interest in a specific decision. Having a policy to manage such situations does not suggest that Board members are unable to separate their organisations' or their individual interests from GAVI's interest, or that they do not act in the GAVI's best interest. Rather, it is intended to:

- ensure accountability between the partners and to the organisation; and
- protect GAVI and the representative/ independent Board members from the appearance of impropriety.

The key principles for an effective policy for the management of members' interests are set out in Supporting Papers I.

**6. Legal structure options**

In July, the joint Boards agreed to consolidate GAVI's governance in a single legal entity that would be more accountable and effective, better enable GAVI's innovative financing and programme initiatives, and strengthen the characteristics of the Alliance. In this final section, we evaluate the two legal options to implement the proposal for a single legal entity.

**6.1 The options**

*Option 1 – The re-constituted GAVI Fund (bringing together the current GAVI Alliance and the GAVI Fund) becomes the primary governing entity, with the GAVI Foundation in Switzerland as a supporting entity.<sup>17</sup>*

<sup>16</sup> The time commitment may be slightly higher than 1 day per month for a non-Board member of the Programme and Policy Committee.

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Under this option, the GAVI Fund becomes the principal governing entity and owns GAVI's assets and liabilities. In this case, the GAVI Foundation could be retained as supporting entity that employs the Geneva based staff (under contract with the GAVI Fund).<sup>18</sup>

*Option 2 - The GAVI Foundation in Switzerland (bringing together the current GAVI Alliance and the GAVI Fund) becomes the primary governing entity, with a 501(c)(3) entity in the US as a supporting entity.*<sup>19</sup>

In option 2, the existing GAVI Foundation becomes the principal governing entity and owns GAVI's assets, with a new or existing US 501(c)(3) as a 'friends of' supporting entity. In order to implement this option, the GAVI Fund would need to transfer its assets to the GAVI Foundation, and the GAVI Foundation would agree to assume the liabilities of the GAVI Fund.

CEPA/ CA Legal have carried out a desk-study, working with the Secretariat and GAVI's external legal and accounting advisers, to understand the mechanics of achieving this option. A full description of this analysis is in Supporting Papers II. Subject to the full transaction due diligence necessary if the Board were to decide to pursue this Option, the key points to note are as follows:

- None of the documents that we have reviewed, or any advice that we have received suggests that there are any 'show-stoppers' in the implementation of Option 2. Assuming that this remains the case, it should be possible to complete the transfer of assets and liabilities from the GAVI Fund to the GAVI Foundation within a period of 12 months or so – although this is a non-trivial exercise.
- We understand that the transfer of assets would not require any market trades and can be achieved by a change in the title of beneficial ownership to the GAVI Foundation – meaning that the main transaction costs are administrative in nature as opposed to relating to the 'principal' i.e. there are no expected losses in the capital value of the assets.
- GAVI's auditors do not foresee any material issue with Option 2. They advise, for example, that GAVI's consolidated accounts could continue to be reported under US GAAP (or any internationally recognised accounting standard).
- We understand that there are no major tax implications of the transfer. Option 2 could be implemented in a manner that is consistent with the current 501(c)(3) status of the GAVI Fund, so that: (i) GAVI would itself continue to be exempt from tax, and (ii) would maintain its public charity status to allow its current US donors to receive the same tax deductions as now.
- Further work is required to define the best option for achieving the transfer from a legal perspective. KL Gates have identified two options which would allow a relatively 'clean' transfer of assets and liabilities. Linklaters advise that there will be some changes to some of the IFFIm/ GFA documentation – but these are not material and do not impact the bondholders or the governance of these entities.

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<sup>17</sup> Henceforth, this option is termed 'the re-constituted GAVI Fund'

<sup>18</sup> The GAVI Foundation, would of course be expected to have its own Governance arrangements. But these would be 'light touch' – and would be commensurate with its role as a supporting organisation.

<sup>19</sup> Henceforth, this option is termed 'the GAVI Foundation'

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Table 6.2 below provides a summary of the key criteria against which we have evaluated the two options. As part of our analysis, we have also carried out a preliminary analysis of other key factors such as GAVI's ability to mobilise funds, and flexibly manage its balance sheet. Our overall assessment is that there is unlikely to be material differences between the two options on these additional factors.

Annex C to this paper explains how the analysis of these options relates to two other related issues: the location of staff and the hosting study. In summary, it is important to note that:

- This analysis only relates to the location of the single legal entity. Consideration of staff location is a separate but related issue for the GAVI Boards and management, and has not been part of the terms of reference for the Governance work.
- In the light of advice recently received by the Hosting Committee, it has concluded that the only option for the future hosting of Swiss-based GAVI staff is the GAVI Foundation. This advice also suggests that it appears unlikely that the GAVI Foundation would achieve immunities and privileges under the Host State Act if the GAVI Fund was to become the lead governance entity.

*Table 6.2: Options assessment criteria*

<b>Criteria</b>	<b>Description</b>
1. Full partner participation	The ease with which all GAVI partners (including the Multilaterals) are able to participate as voting members of GAVI
2. Regulatory costs and risks	Minimise: (i) the risks of litigation; and (ii) the costs associated with complying with regulations, financial control regimes
3. Transaction / disruption costs	Minimise the transactions costs and disruption caused by the transition
4. Time table	The extent to which changes can be implemented in a timely fashion
5. Operating costs	The annual recurrent costs of running the business
6. Privileges and immunities	Whether GAVI would be able to obtain the privileges and immunities of an International Institution under the Host State Act.
7. Tax status issues	The extent of / and ease with which GAVI can get any tax (including VAT) exemptions in each of the jurisdictions
8. Fund mobilisation	GAVI's public charity status and ability to mobilise funds from different funding agencies/ donors across jurisdictions in the most tax efficient manner possible.
9. Management of assets and liabilities	Manage GAVI's assets and liabilities efficiently and protect from risk. Also, provide for flexibility to manage balance sheets across jurisdictions.

**6.3. Evaluating the options**

In this final section, we set out a summary assessment of the likely costs and benefits of the two options. As agreed with the Joint Governance Steering Committee, this has not been an exhaustive process. Rather we provide only high-level estimates of the costs associated with the

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transaction and relevant operating cost differences between the options. The other criteria are assessed on a qualitative basis.

*Implementation costs*

Table 6.3 set out our judgement on the order of magnitude of transaction costs and the relevant change in annual operating costs. A detailed estimated break-down of these costs are provided in the Supporting Papers II.

The key points to note are as follows:

- Neither option results in ‘principal costs’ – e.g. significant losses on sale and re-purchase of assets.
- Transaction costs for Option 2 are expected to be significantly higher than Option 1, and as much as \$5m.
- However, Option 1 is expected to result in net additional annual operating costs of \$1m (compared to Option 2). This does not include the costs of any changes in staff requirements under either options.

This initial analysis suggests that the higher transaction costs of Option 2 would be offset by the ‘savings’ associated with its lower operating costs within 3-5 years<sup>20</sup> (based on the assumption that the GAVI Foundation obtains the ‘international institution’ status under the Host State Act).

*Table 6.3: Illustrative cost analysis*

<b>Cost category</b>	<b>Option 1 (re-constituted GAVI Fund)</b>	<b>Option 2 (GAVI Foundation)</b>
<b>(a) Principal costs</b>	<b>Nil</b>	<b>Nil</b>
<b>(b) Transaction costs</b>	<b>Up to \$ 0.5 million</b>	<b>Up to \$ 5 million</b>
<b>(c) Annual operating costs</b>	<b>+\$ 1 million</b>	<b>-</b>

*Wider cost-benefit analysis*

Table 6.4 provides a summary assessment of the options against each of the criteria. Based on this initial review, the preferred option is the GAVI Foundation (Option 2), subject to the following factors:

- The assessment of a significant number of the criteria is dependent on the assumption that the GAVI Foundation would be able to access the privileges and immunities of an ‘international institution’ under the Host State Act under Option 2 – where the Foundation is the primary governing entity. If this is not the case, the relative pros and cons are more finely balanced.

<sup>20</sup>5 years assumes the difference in operating costs between the two options to be \$1m per annum (it may take longer in case of additional staff costs under Option 2). Analysis is based on ‘cash’, not discounted.

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- The restructuring process required for the transfer of assets and liabilities under Option 2 is non-trivial – and will require a full due diligence of the implementation of the transaction, as well as significant amounts of senior input (particularly of the Finance team). The expectation is that it will be necessary to provide additional internal resources to the Finance team in the short-term.

Table 6.4: Comparative assessment of the legal structure options

Criteria	Option 1 (US 501(c)(3))	Option 2 (GAVI Foundation)
1. Stakeholder participation	<b>☒ Relative disadvantage</b> Multilaterals may find it more difficult (and time consuming) to participate on a 501(c)(3) Board. Obtaining 'international institution' status is difficult in the US.	<b>☑ Relative advantage</b> Easier for multilaterals to participate in a Swiss foundation – provided that the Foundation obtains 'international institution' status under the Host State Act.
2. Minimise costs associated with risk and regulation	<b>☒ Relative disadvantage</b> Exposure to the risk of litigation and the costs of regulatory compliance are expected to be higher in the US.	<b>☑ Relative advantage</b> It is presumed that the Swiss compliance requirements are less cumbersome. <sup>21</sup> However, the Swiss entity may need to comply with specific US laws for financial transactions managed and executed in the US.
3. Minimising transaction costs	<b>☑ Relative advantage</b> Relatively low transaction costs of c\$0.5m, as the 501(c)(3) already owns all assets and liabilities.	<b>☒ Relative disadvantage</b> Much higher transaction costs of c\$5m million, for the transfer of assets and liabilities to the GAVI Foundation. In addition the amount of senior management time necessary to oversee the transfer.
4. Time table	<b>☑ Relative advantage</b> Quicker rationalisation of GAVI's governance as the 501(c)(3) already has fiduciary responsibility and owns GAVI's assets and liabilities.	<b>☒ Relative disadvantage</b> Subject to the approach and speed of transfer of the assets and liabilities, this option is expected to take longer to implement although could be achievable in 12 months.
5. Operating costs	<b>☒ Relative disadvantage</b> Higher net annual operating costs of \$ 1m per annum (compared to option 2) as the staff contracts would not benefit from any tax privileges.	<b>☑ Relative advantage</b> Lower annual recurrent costs subject to obtaining the tax privileges under the Host State Act, although some higher costs in relation to operating and governing the 501(c)(3) "friends of" entity.

<sup>21</sup> For example, the application of the Patriot Act and OFAC (Office of Foreign Asset Control) in the U.S. place restrictions on transfer of money and goods from a U.S. charity to certain countries (e.g., Sudan, Cuba and North Korea). Swiss law does not restrict development funding to GAVI countries.

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6. Privileges and immunities	<input checked="" type="checkbox"/> <b>Relative disadvantage</b> If the primary governing entity is a US 501(c)(3), it would be more difficult for the GAVI Foundation (as a supporting entity) to obtain the privileges and immunities of an 'international institution' under the Host State Act.	<input checked="" type="checkbox"/> <b>Potential advantage</b> Obtaining privileges and immunities under the Host State Act (whilst not guaranteed) is more likely under this option.
7. Tax status	<input checked="" type="checkbox"/> <b>Relative disadvantage</b> While the US 501(c)(3) has tax exemptions on income, it is liable to pay a portion of social security, sales tax on certain transactions.	<input checked="" type="checkbox"/> <b>Relative advantage</b> The GAVI Foundation has tax exemptions on income and in addition, may receive social security and VAT exemption under the provisions of the new Host State Act.
8. Fund mobilisation	<b>Option neutral</b> , as both geographies provide similar tax exemptions and can allow fund mobilisation from any jurisdiction.	
9. Management of assets and liabilities	<b>Option neutral</b> , as the assets and liabilities can be ring fenced in a special purpose vehicle in the case of both the 501(c)(3) and the GAVI Foundation, allowing the flexibility to ring-fence certain assets and liabilities. There is no reason to expect any difference between the two approaches in terms of retaining the flexibility to use different jurisdictions.	

**7. Next steps**

Subject to the decision of the Boards on the recommendations set out in Section 2 of this paper, the next steps are:

- A full due diligence to draw up the implementation plan and budget for the implementation of a 'single legal entity' structure.
- Instruction to lawyers and other advisers to effect the relevant changes in the legal documents to implement the agreed new governance arrangements.

We have been advised by the Hosting Committee that, it is important that the Boards make a decision in principle on the location of the single legal entity (Swiss or US) because the nature of implementation of the hosting option (the GAVI Foundation), and the application for privileges and immunities of an 'international institution' under the Swiss Host State Act (effective January 2008) is contingent on the governance decisions.

In addition, Board members should note that a single unified legal structure for GAVI would need to be in place as at the end/ beginning of an accounting year – to make the accounting consolidation manageable. If the Boards decide in principle to proceed at the November meetings, the earliest a possible date for the transfer to take place is 1<sup>st</sup> January, 2009.

## ANNEX A

### ANNEX A – CASE FOR A SINGLE ENTITY: STRENGTHENING THE ALLIANCE

#### A1. Background

At the 16<sup>th</sup> July retreat, the joint Boards unanimously agreed to consolidate the existing GAVI Alliance and GAVI Fund structures in a single not-for-profit legal entity, with vertically integrated accountable governance structures.

Given the importance of this decision, this annex sets out the context and reasoning behind the need for a single legal entity.

#### A2. The story of GAVI's evolution and meaning of Alliance<sup>22</sup>

An earlier paper<sup>23</sup> set out CEPA's understanding of the story of GAVI's evolution. One of the key features of this story is that, largely as a result of its success, including a significant increase in programmes, there has been a gradual shift in the nature of GAVI from an informal Alliance embodied in the working group, towards a 'global partnership institution' in its own right.

With this has come the necessary development of more formal governance arrangements (such as the Board(s), their committees, advisory committees and, more recently, donor constituencies) and an increase in the size and role of the Secretariat to support finance, operations and programmes.

It is not possible or sensible to seek to 'turn the clock' back in terms of the nature of the organisation. Rather the challenge is to put in place governance arrangements that are appropriate for a multi-billion donor organisation undertaking high value/ high risk innovative financing initiatives; whilst at the same time retaining the essential features of the Alliance. The current structure/governance arrangements expose the organisation to significant risk.

In our view, the proposed new arrangements would both address these risks and strengthen the Alliance. The key characteristics of the Alliance that need to be preserved and strengthened include:

- GAVI's public and private nature - which means that the organisation has access to individual and institutional private sector expertise, the skills and networks of 'luminaries', as well as those available in the public sector.
- The participation and commitment of different public and private stakeholders across the donor entities and beneficiary countries, facilitating innovation in financing and programme initiatives.
- The importance of the multilateral partners' continued ownership of and commitment to GAVI.

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<sup>22</sup> An alliance is a close association of groups, formed to advance common interests.

<sup>23</sup> Story of GAVI's Evolution, Annex A in the 16<sup>th</sup> July Board paper.

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- The fact that multilateral agencies should be regarded primarily as key, founding partners – and only secondly as service providers or implementation partners.<sup>24</sup>
- The potential for input and participation of all the partners at both the strategic level (in the formulation of GAVI's long term strategy and priorities) and at a working level (in the development of GAVI's work plan, and policies and programmes).
- Building on those skills bought by the public sector, the capacity to bring and engage market-driven solutions to resolve some of GAVI's most pressing challenges such as for example incentives to spur the faster commercialization and uptake of new vaccines and utilization of financial markets to reduce the traditional volatility in traditional donor aid.
- That the Alliance can and should accommodate a much broader group of partners and stakeholders than at its creation.

### A3. The need for a single legal entity

We believe that there is an overwhelming case for bringing together GAVI's programmatic and financial activities in a single not-for-profit entity.<sup>25</sup> This can be thought of as a 'merger' of the existing Alliance and the Fund.

To do otherwise exposes the individual and representative Board members to considerable risk.

#### A3.1 *The current arrangements undermine effective and accountable management of GAVI*

The current combination of an unincorporated Alliance (making programme and policy decisions) and an incorporated Fund (with financial and fiduciary responsibility) creates significant issues in relation to the effective and accountable management of the organisation. Key points (as noted at the 16<sup>th</sup> July retreat) are as follows:

- The parallel existence of two very different entities linked only by a broadly drafted Memorandum of Understanding (MoU) creates significant potential for confusion about who is responsible for doing what, to whom the parties are accountable, and who makes decisions if and when consensus cannot be achieved. For example, the Alliance rightly believes that it is responsible for programmatic decisions; but the Fund (and its Directors) are legally liable for these decisions at the point that they agree to fund them.
- It also raises issues in relation to accountability. Notwithstanding recent changes, neither the Alliance nor Fund boards have complete visibility over all of GAVI's activities. Major expenditure decisions in almost all other organisations bring together in one governance structure those responsible for oversight of the expenditure (programmatic) and funding aspects of the organisation.

<sup>24</sup> Unlike the case with the Global Fund for AIDS, TB and Malaria

<sup>25</sup> Please note that the case presented here for a single legal entity is separate from its implementation in either the US or Swiss context. Also, the discussion is distinct from the issues related to hosting.

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- Nor it is clear to whom the senior management team is accountable to and who is responsible for performance managing the CEO (the Alliance and/or Fund boards, or Committees of the Alliance and/or Fund boards, the hosting organisation?) As a result, there is insufficient scrutiny of (and support for) senior management team performance, and limited assurance that it is functioning in an effective and efficient manner.
- There is a widely shared view that there are currently significant inefficiencies in the current arrangements to service the two boards and other supporting governance entities. This means that a disproportionate amount of the time (and resultant costs) of the senior management team/secretariat and staff is diverted from pursuing the Board's priority activities.

*A3.2 There are risks to board members and the organisation in the current structure*

The Alliance and Fund Boards have different 'types' of board membership. The Alliance board members represent their constituencies/institutions, whereas the Fund board members act in their individual/independent capacity and are subject to the fiduciary responsibilities of being Directors of a 501(c)(3) entity.

This difference means that there is an inherent instability in the governance arrangements. The original intention for the Fund to act as a 'holding pen' (particularly for donations from the Gates Foundation) is only sustainable to the extent that there is a 'tacit' agreement on the part of the Fund's Directors to act in this way. But this agreement is in conflict with the legal and fiduciary responsibilities of the Fund<sup>26</sup>.

We believe that this creates:

- A weakness in the structure that could undermine accountability, and the continued support of donors.
- Risks for representatives of the Alliance Board to the extent that they do not, in practice, have legal control over the eventual deployment of resources by the Fund.
- Risks for Fund Board members (to the extent that they are not perceived to be fulfilling their fiduciary responsibilities).

As has been pointed out by a number of Board members in discussion, governance arrangements are rarely the subject of external scrutiny when things are going well. However, we believe that current arrangements are such that there is a strong likelihood that GAVI would attract considerable criticism of its governance structures in the event that things go wrong in any way. This poses considerable reputational risk for the organisation and could adversely impact GAVI's ability to raise funds for its mission in a material way.

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<sup>26</sup> Note that there is a distinction in terms of the way that the Fund works currently and how a possible, future 'Friends of GAVI' 501(c)(3) organisation would work. The distinction is that a "friends of" is set up and managed solely as one of the sources of funds for the principal GAVI entity; whereas currently the GAVI Fund holds all of GAVI's assets and liabilities, and its directors are legally responsible for ensuring that the assets are properly applied.

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### *A3.3 A separate legal personality is necessary to facilitate financing and programme activity innovations*

Having a separate legal personality and a strong balance sheet is a necessary part of preserving flexibility and innovation and providing a platform from which the GAVI can achieve its objectives:

- Having a strong balance sheet supports GAVI's ability to cost-effectively procure vaccines from the private sector and support the development of new priority vaccines.
- It facilitates GAVI credibly providing medium/long-term commitments to beneficiary country governments (through the decision letters) to support their multi-year vaccination and health systems strengthening programmes.
- It provides the basis on which GAVI is able to attract new and innovative sources of financing – for example IFFIm and AMC's, and the current emphasis on mobilising additional private sector funding.

We believe that the strengths of GAVI as a public-private partnership and also as a distinct legal entity has the potential to offer significant comfort to donors - in terms of transparency and accountability.

### *A3.4 A single entity with unified governance arrangements strengthens the Alliance*

The GAVI Alliance involves the active participation of like-minded partner institutions and individuals who share a common commitment to achieve the goals of the organisation. The unification of GAVI's programmatic, policy and financial management functions in a single entity enables the Alliance to function more effectively, and enhances the ability of its partners to contribute their unique skills and expertise within a better defined governance structure. In our view, the proposed new governance arrangements allow for the wider participation of the GAVI stakeholders at both the strategic (Board and committees) and working (subsidiary advisory bodies) levels.

## **A4. Summary**

In summary, we consider that:

- With the rapid and successful growth in GAVI's funding and programmes, the current Alliance and Fund structures no longer provide the best possible (and cost-effective) platform for: (i) the effective and accountable governance of an organisation of GAVI's size and importance; and (ii) the achievement of its mission – including the use of innovative financing mechanisms.
- The structure also creates significant risks going forward for the organisation as a whole, and for the members of both Alliance and Fund Boards.
- The consolidation of GAVI's activities into a single entity with appropriate allocation of roles and responsibilities offers an appropriate platform for better accountability and oversight of GAVI's activities, and improved management of the risks associated with innovative financing and long-term programme commitments. It also increases GAVI's

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ability to act flexibly and confidently in responding to the changing demands of fulfilling its mission.

- The single entity gives GAVI members direct control over the application of GAVI's assets previously under separate legal ownership in the GAVI Fund and therefore greater direct control over the fulfilment of GAVI's mission.
- The proposed unified governance structures are designed to preserve the characteristics of the Alliance, leverage the unique strengths of all GAVI partners including individuals, organisations/institutions, companies and governments, and allow the wider participation of the various stakeholders.

The concerns (and costs) of moving from the current structure to a single legal entity should therefore be outweighed by the benefits. In our view, the transition to a single entity 'partnership institution' structure with unified governance arrangements is entirely consistent with the public-private dynamic and strengthens the 'Alliance' concept that is central to GAVI's success.

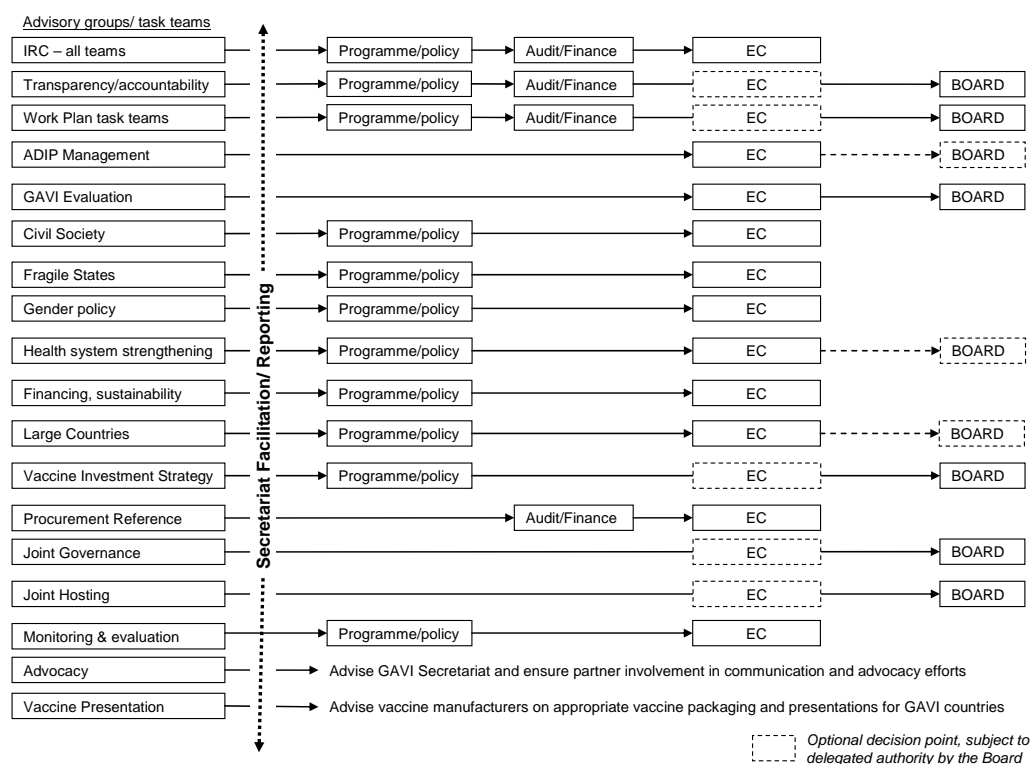
# ANNEX B

## ANNEX B – ILLUSTRATIONS OF DECISION MAKING PROCESSES

Figure B1: Illustrative examples of a selection of current GAVI advisory groups

This figure describes how the various advisory groups/ task teams might work in relation to the proposed governance structure. The precise arrangements would be a matter for the EC to decide taking into account both the particular individuals on the various committees and the levels of workload of each committee. It is important to note that these arrangements are not prescribed by the structure. Please also note that the advisory groups in the illustration is not exhaustive. For example, there are several technical advisory groups in relation to the AMC such as the AMC Donor Committee, AMC Economic Expert Group, AMC Communications sub-group and the AMC Independent Assessment Committee.

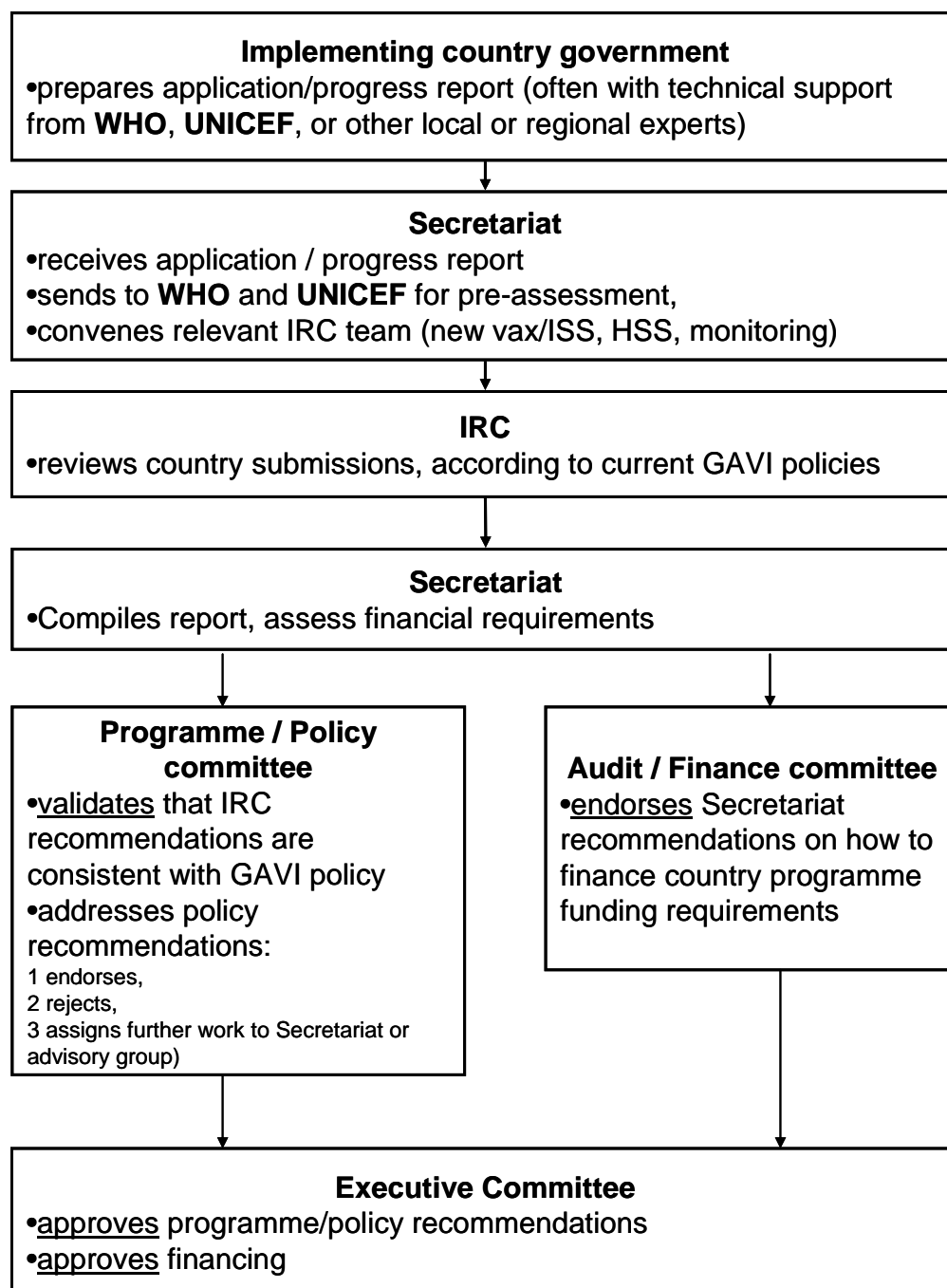
The flowchart indicates the decision making process in terms of the proposals/ advice provided by the advisory groups.<sup>27</sup> While key strategic policies related to matters such as HSS, vaccine investment strategy, and governance require the Board’s approval, other operational issues/ policies can be decided by the EC, within the authority delegated to it by the Board.



<sup>27</sup> Where the recommendations of the advisory group need to be endorsed by the Finance and Audit Committee in terms of funding requirements, the input/ advice of the Committee is sought in parallel to the Programme and Policy Committee (which endorses the technical aspects of the proposal). The covering recommendations/ advice of both these Committees are then presented to the EC/ Board for approval.

**ANNEX B***Figure B2: Country programme funding decision*

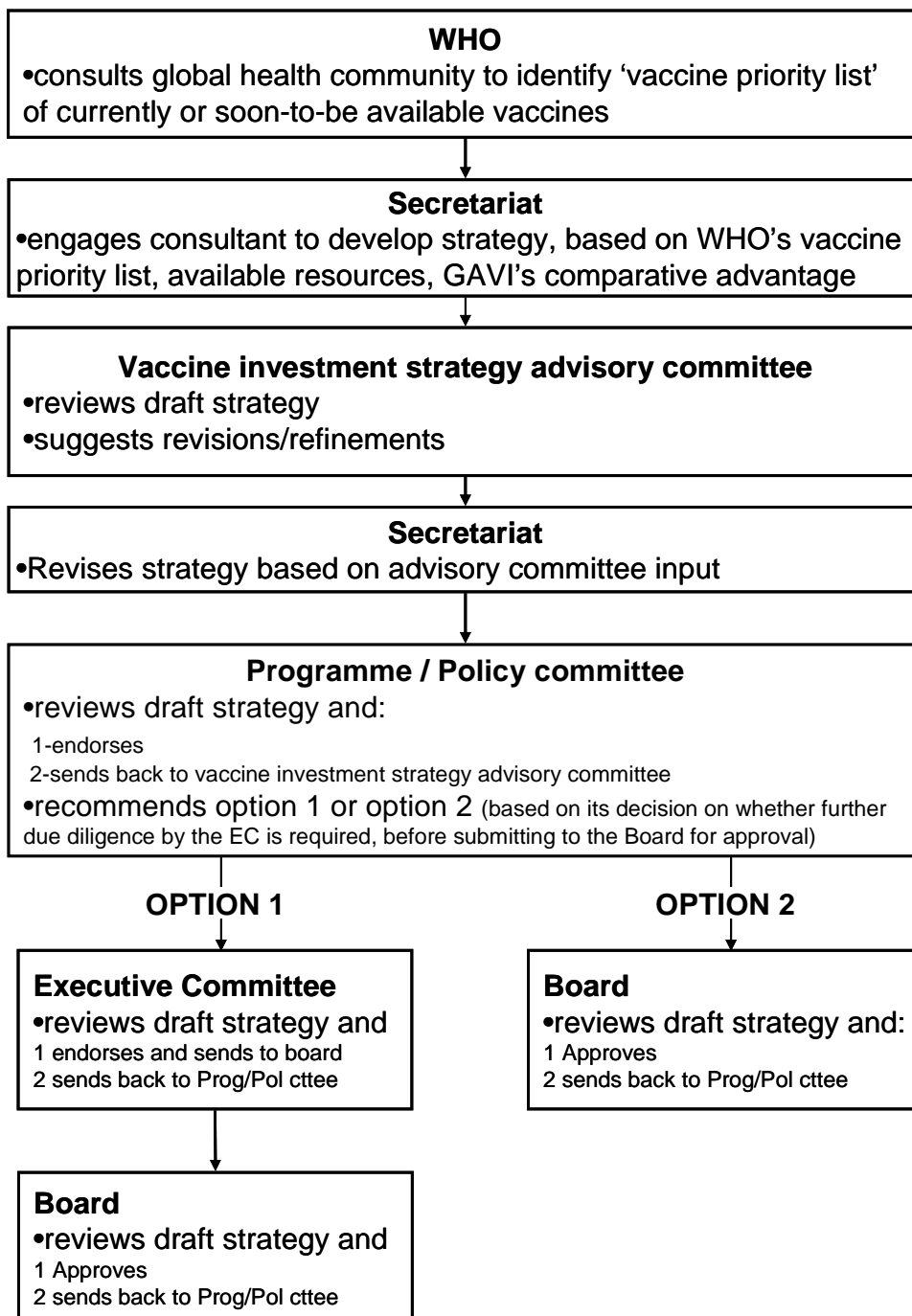
This figure illustrates the process flow in relation to country programme proposals and funding. Decisions on country programme funding would be made by the EC, within the authority delegated to it by the Board. The EC's approval of the funding is informed by the recommendations provided by the Programme and Policy, and Finance Committees.



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Figure B3: Vaccine investment strategy decision

This figure illustrates the process flow in relation to the approval of the vaccine investment strategy. The Board would be responsible for these decisions, although it may request for detailed due diligence/ advice from the EC on the proposal endorsed by the Programme and Policy Committee.



**ANNEX B***Figure B4: Board topics*

This figure lists the agenda items for the May and November 2007 Joint Board meetings. Those topics marked with an 'x' are those where the Board was/ will be asked for a decision. The final column provides an indication of where the topic (some of which were for information only) might go if the proposed arrangements had been in place in 2007.

<b>Topic</b>	<b>Decision?</b>	<b>NEW - presented to</b>
ADIP evaluation and recommendations		Programme/Policy
AMC start-up costs	x	EC
Cash management plan	x	EC
Cash management plan	x	EC
CEO report		Board
CEO report		Board
Conflict of interest policy update	x	Board
Delegation of authority	x	EC
GAVI Evaluation update		EC
Governance - update		Board
Governance - decision	x	Board
Governance - decision	x	Board
Hosting - decision	x	Board
HSS update		Programme/Policy
HSS - increase budget envelope	x	Board
IFFIm update		Board
Country programmes - new and continued	x	EC
Country programmes - new and continued	x	EC
India - funding cap	x	EC
Market development for HepB/Hib containing vaccines		Programme/Policy
Meningitis A - request to consider an investment case		Programme/Policy
New vaccines introduction grant - increase	x	EC
Pandemic flu		Programme/Policy
Polio stockpile - re-programming	x	EC
Private philanthropy update		Board
Proposal to support the developing country constituency		EC
Transparency and accountability policy -update		Audit/Finance
Vaccine introduction support activities - gen'l approach		Programme/Policy
Vaccine investment strategy - agmt to develop		Programme/Policy
Vaccine investment strategy – WHO vaccine priority list		Programme/Policy
Work Plan and Budget- 2008	x	Board

In practice, the Board agendas are likely to cover:

- A regular report of progress of programmes and budget monitoring from the CEO.
- A report from the Chair of the EC on activities undertaken since the last meeting.
- Annual review of the Strategy – including proposed levels of delegated authority to be given to the EC in relation to programme approvals. Meetings would also be expected to deal with major decisions in relations to changes in strategy.
- Discussion and agreement of the work plan and budget.
- Other governance related issues.

## ANNEX C

### ANNEX C – IMPLICATIONS OF HOSTING ON GOVERNANCE

#### C1. Introduction

This short note provides Board members with an update on the relationship between the governance and hosting studies. It takes account of advice received by the GAVI Secretariat and Lenz & Staehelin (Swiss legal advisers) from the Swiss Authorities in relation to the Host State Act.

#### C2. Background

To date, CEPA's approach has been to regard the governance and hosting studies as largely separable as follows.

We have regarded **hosting**, although important, as being subsidiary to the wider governance questions. We have therefore limited our analysis to a high-level check that the legal structure options for implementing the governance proposals (US or Swiss entity) are broadly consistent with the hosting options being considered.

Consideration of **staff location** is a separate but related issue for the GAVI Boards and management, and has not been part of the terms of reference for the Governance work. Therefore we do not comment on these issues, other than where there are possible implications resulting from the legal structure options. In general, our view is:

- That the choice of US or Switzerland as the legal jurisdiction for the primary governance entity does not necessarily require staff in one or other location to relocate – although we do note that additional Swiss accounting expertise will almost certainly be necessary in the event that single entity is the GAVI Foundation.
- However, to the extent that the management / Board do choose at some point in the future to co-locate staff; the choice of legal options clearly does have a bearing on where co-location takes place.

#### C3. Recent developments in relation to hosting

GAVI Secretariat and Lenz & Staehelin met with the Swiss Foreign Affairs Department (SFAD) in October to discuss the implications for GAVI of the Host State Act and its implementing Ordinance – expected to enter into force on January 1<sup>st</sup>, 2008. Key points arising from this meeting in relation to GAVI's hosting and governance are as follows.

##### C3.1 Hosting

We have been advised that once the Host State Act is effective, hosting agreements with Intergovernmental Organisations (IO) such as UNICEF or WHO would no longer comply with the Swiss hosting policy.

##### C3.2 Implications for the legal structure options

## ANNEX C

We have been advised that if GAVI's primary governing entity is a US 501(c)(3), then it would be more difficult for the GAVI Foundation (as a supporting entity) to obtain the privileges and immunities of an 'international institution' under the Host State Act.

In contrast, we understand that if the GAVI Foundation becomes the primary governance entity, then obtaining privileges and immunities (as an 'international institution') under the Host State Act is more likely (subject to the Swiss authorities approving the application).<sup>28</sup>

The implication of this advice is that there is a relative advantage (in cost terms, as well as the associated benefits with obtaining an 'international institution' status) of the GAVI Foundation being the primary governance entity (as opposed to a 501(c)(3)). If the 501(c)(3) were the main governing entity, GAVI would incur additional costs of transferring Swiss staff contracts to the GAVI Foundation without tax privileges. In addition, it would be necessary to obtain work permits for non-EU and non-Swiss staff.

This factor has therefore been added to the assessment criteria for the legal structures and weighed against the other relative advantages/ disadvantages of the options.

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<sup>28</sup> In this regard, SFAD clarified that GAVI should request the privileges and immunities of an International Institution (as described under Article 7 of the Host State Act), and not that of a Quasi-governmental international organisation (as covered under Article 8).