

FOR DECISION**IFFIm Agreements and Administrative Amendments****Background**

The International Finance Facility for Immunisation (“IFFIm”) was launched in 2006 supported by the United Kingdom France, Italy, Spain, Sweden, Norway and South Africa who have together pledged to contribute US\$ 5.3 billion to IFFIm over 20 years. IFFIm raises finance by issuing bonds in the capital markets to convert long-term IFFIm donor pledges into cash resources to fund GAVI Alliance programmes.

The IFFIm was established via a set of legal documents, including a Finance Framework Agreement, Procedures Memorandum, Master Definitions Agreement, Administrative Support Agreements for the GFA and IFFIm and donor Pledge Agreements (collectively the “**IFFIm Agreements**”). The signatories are the IFFIm donors, the World Bank, the GAVI Fund Affiliate, the IFFImCo and the GAVI Fund.

Prior to GAVI’s reorganisation in October 2008, the GAVI Alliance was not a legal entity with contracting capacity, so it requested that the GAVI Fund enter into the IFFIm Agreements. The GAVI Fund approved entry into the IFFIm Agreements on 13 September 2006.

Summary of Implications and Duties

Duties Assumed under the IFFIm Agreements. The following duties are currently performed (or coordinated) by the GAVI Fund. These duties will be assumed entirely by the GAVI Alliance under the IFFIm Agreements. The Novation (Section 2.2) substitutes the GAVI Alliance for the GAVI Fund and provides that “*the GAVI Alliance accepts all the liabilities of, and agrees to perform all the duties and to discharge all the obligations arising on or after the Novation Effective Date*”.

- **GAVI Programme Application/Funding Requests and Disbursements:** The GAVI Alliance must manage the process for reviewing and approving country specific and non-country specific applications and present those funding request to the IFFImCo as required by the Procedures Memorandum.
- **Reporting:** The GAVI Alliance must provide annual audited financial accounts, periodic banking statements relating to IFFIm funding and the Annual Progress Report to each IFFIm donor.
- **Pay Administrative Costs for the GFA:** If investment income on IFFIm funds managed by the World Bank (prior to disbursement for Alliance programmes) is insufficient to cover the GFA’s administrative costs (e.g., for outside accounting, legal and similar services) the GAVI Alliance must cover those costs. Currently, the GFA possesses sufficient investment income to cover approximately 15 years of administrative costs, into the future. Historically, the GFA’s administrative costs have been approximately US\$1.6mn annually. The IFFImCo covers its own administrative costs.

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- Maintain Charitable Status: The Alliance must maintain its charitable status as a Swiss foundation.
- No Right to Assert Privileges and Immunities to Avoid Duties: Each IFFIm donor was required to waive its privileges/immunities in its IFFIm Grant Agreement. This was necessary to confirm to the other parties (and to bondholders) that a donor could not assert its privileges and immunities to avoid performing its duties in the Grant Agreement. Similarly, the GAVI Alliance is also requested to waive any privileges and immunities in Switzerland under its Seat Agreement to ensure that the Alliance cannot assert those privileges and immunities in order to avoid performing its duties under the IFFIm Agreements. After consultation with outside counsel [and legal counsel for the multilaterals] this waiver has been drafted narrowly. It only applies if the GAVI Alliance has been found liable to one of the IFFIm parties in the dispute resolution/arbitration process to which all IFFIm parties have agreed. If, for example, the arbitration panel rules that the GAVI Alliance owes 1000£ to the UK because it breached a duty, then the Alliance could not assert its privileges and immunities in Switzerland to avoid paying the amount. *[Note to Lisa and JLL: I have calls in to Gian Luca, Peter Mason and Andrea Stumpf. On this topic generally, I have consulted with Uli von Blumenthal head of Legal at UNOG – who advised me that all waivers should be drafted narrowly to cover only specific matter waived and not a general waiver without limitations. That point is obvious and useful.]*

Additional Administrative Matters:

The GAVI Fund served as founding member of the IFFImCo and GFA and performed administrative support for both entities. The GAVI Alliance will assume the role of member and administrative support duties.

- The GAVI Alliance becomes Sole Member of the IFFImCo and GFA: For administrative efficiency and to align with current governance structures, the GAVI Alliance will become sole member of the IFFImCo and GFA. In summary, a “member” of a UK charity has the right to approve changes to the formation documents/bylaws, to appoint new Board members and to receive audited financial statements annually. Currently, the GAVI Alliance is a joint member of the IFFImCo alongside the GAVI Fund. For technical reasons the GAVI Fund is the sole member of the GFA. The Alliance will now be the sole member of each of the IFFImCo and GFA respectively. The GAVI Alliance’s legal liability for the activities of the IFFImCo or GFA is limited to 10£ respectively.
- Administrative Support for the IFFImCo and GFA: By design, the IFFImCo and the GFA have Boards but no staff. This was a decision, driven in part, by IFFIm donor intentions to limit operating costs. The GAVI Alliance will provide administrative support for the IFFImCo and GFA including coordinating legal, accounting, media, governance and logistics support. These services are provided in-kind, without charge.

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Next steps

- If the Board approves the decisions requested in this document, the Secretariat will continue to coordinate with all parties to the IFFIm Agreements until the Novation and related documents are executed. The Novation and related documents have been drafted and are currently under review by legal advisors for all parties. Further, legal opinions are being prepared to confirm that each party has taken the necessary steps to execute the Novation and related documents.

Annexes

- Draft Deed of Novation, Amendment and Restatement