

SUBJECT: CONSENT AGENDA: REVISION OF STATUTES AND INTRODUCTION OF OPERATING PROCEDURES

Agenda item: 01g

Category: For Decision

Section A: Executive Summary

- At its meeting of 11 February 2020, Governance Committee members noted a proposal to:
 - review and update Gavi's Statutes to remove some ambiguities that currently exist and provide more clarity on a number of its provisions;
 - retire Gavi's By-laws and replace them with a set of Operating Procedures for the Board and Board Committees falling under the purview of the Board; and
 - incorporate any elements of the By-laws into the Statutes which might be required to ensure compliance with the Swiss Civil Code (as Gavi is a Swiss Foundation).
- This paper seeks to provide some further context to that proposal and the ensuing work which has been overseen and endorsed by the Governance Committee, which now recommends to the Board that it approve the revised and updated Statutes and the new Operating Procedures and retire the By-laws.
- The revised and updated Statutes have received the prior approval of the Swiss Supervisory Authority for Foundations (Supervisory Authority) and the new Operating Procedures in place of the By-laws have been cleared by the Supervisory Authority.

Section B: Statutes, By-laws and Operating Procedures

1. Introduction

- 1.1 When the Gavi Alliance was set up as a Swiss Foundation in 2009, the Board approved the Gavi Statutes and the Gavi By-laws as the two principal governing documents of the organisation.
- 1.2 Articles 80 to 89 of the Swiss Civil Code provide the legal framework under which Swiss Foundations may operate and determine that their work is supervised by the Supervisory Authority, which falls within the Federal Ministry of the Interior.

- 1.3 The “acte de fondation”, which corresponds to the Gavi Statutes, must contain a number of elements as defined in the Swiss Civil Code, and constitutes the foundational principles establishing the Gavi Alliance. Any amendments to the Statutes are subject to the prior approval of the Supervisory Authority.
- 1.4 The Gavi By-laws are more operational in nature and expand on a number of the provisions of the Statutes and include details around the more operational side of the work of the governing bodies that constitute the governance of the Gavi Alliance.
- 1.5 As per Article 26 of the Gavi Statutes “*The Board may adopt By-laws and other internal guidelines which shall be subject to the prior approval of the Supervisory Authority*”.
- 1.6 This provision is specific to Gavi, in that it is not mandatory for operating procedures/guidelines of Swiss Foundations to be subject to the prior approval of the Supervisory Authority. They are normally subject to declaratory approval which means that they come into effect on approval of the Board and are subsequently shared with the Supervisory Authority which will revert if there are any questions or concerns.
- 1.7 Over the years, some modest amendments have been made to both the Statutes and By-laws, in particular following the 2016 Board and Committee Self-Evaluation review. There has not been a comprehensive review of Gavi’s constitutional documents since 2009 when the Gavi Alliance was established.

2. Process

- 2.1 Since the initial discussion on this issue at its meeting of 11 February 2020, the Governance Committee has overseen the work which has comprised (i) reviewing and updating the Statutes and (ii) transforming the By-laws into “Operating Procedures”, the basis for which was the By-laws themselves.
- 2.2 This second exercise focused on enhancing and clarifying Gavi’s operating procedures for the Board and its Committees. It will give more flexibility to the Governance Committee and the Board to make adjustments going forward as circumstances might require from time to time.
- 2.2 At its meeting of 17 March 2020, the Governance Committee was invited to provide input on a:
 - (i) High-level analysis of the Gavi Statutes with proposed amendments for consideration/discussion.
 - (ii) Draft Framework for Operating Procedures for consideration/discussion.
 - (iii) High-level analysis of the Gavi By-laws in the context of plans to “transform” into Operating Procedures.

- 2.3 At its meeting of 30 April 2020, the Governance Committee was presented with proposed amendments to the Gavi Statutes in line with the proposal presented at the March meeting, and a first draft of the Operating Procedures. These draft documents were also made available to the Governance Committee after the meeting for further review and comments.
- 2.4 Finally, at its meeting of 18 June 2020, the Governance Committee considered the final versions of both documents and recommended them to the Board for approval.

3. Amendments to Gavi Statutes

- 3.1 Among a number of clarifying amendments made to the Gavi Statutes, particular attention was given to the following:
- (i) Article 10 – Appointment of Board Members
 - (ii) Article 12 – Organisation of the Board
 - (iii) Article 14 – Functions of the Board

Detailed information on the nature of the amendments to the above can be found in Doc 07 to the 30 April 2020 meeting of the Governance Committee.

- 3.4 Articles 22 (*Liability*), 23 (*Indemnification*) and 28 (*Conflicts of Interest*) have been removed, with relevant wording included in the Operating Procedures as appropriate.

4. Operating Procedures

- 4.1 The Operating Procedures build on text which has been incorporated from Gavi's By-laws and includes further provisions to align with current practice, particularly in relation to the following:
- (i) Nomination and Appointment of Representative Board Members
 - (ii) Chair, Vice Chair and CEO
 - (iii) Meeting notices, agendas and papers, presenters and observers and closed sessions
 - (iv) Transparency

More detailed information on the nature of the provisions listed above can be found in Doc 07 to the 30 April 2020 meeting of the Governance Committee.

5. Next Steps

- 5.1 Following approval by the Board, the revised and updated Statutes will be submitted to the Supervisory Authority for Foundations for formal approval and subsequent filing with the Registry of Commerce of the Canton of Geneva.
- 5.2 A number of documents annexed to the Operating Procedures, which have already been endorsed and/or approved by the Board as appropriate, will need to be reviewed to amend references to the By-laws and ensure consistency across Gavi's governing documents in terms of the use of language and terminology.
- 5.3 This review will be done during the second half of 2020 with the aim to have amendments to submit to the Board for approval at its December 2020 meeting. This will not detract from the current operation of these documents.

Section C: Actions requested of the Board

The Gavi Alliance Governance Committee **recommends** to the Gavi Alliance Board that it:

- a) **Approve** the amended Gavi Alliance Statutes attached as Annex A to Doc 01g;
- b) **Agree** to replace the Gavi Alliance By-laws with the Board and Board Committee Operating Procedures; and
- c) **Approve** the Board and Board Committee Operating Procedures attached as Annex B to Doc 01g.

Annexes

Annex A: Revised and Updated Gavi Alliance Statutes

Annex B: Gavi Alliance Board and Committee Operating Procedures