

FACT SHEET ON INDEMNIFICATION ISSUES

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Q1

What role does National Treasury play and what role does the Department of Health play in the indemnification process?

A

The Department of Health enters into the vaccine agreements on behalf of the Government. The Minister of Finance is required in terms of the PFMA to grant concurrence in respect of the granting of an indemnity in terms of the indemnification provision in the vaccine agreement.

Q2

Who are vaccine rollout contracts signed with?

A

Contracts are signed by Department of Health with each company, but indemnity clauses also need concurrence from the Minister of Finance.

Q3

Has the Minister of Finance granted concurrence with regards to entering into agreements with vaccine manufacturers?

A

The Minister of Finance has granted concurrence in respect of the entering into agreements with identified manufactures.

Q4

Which companies has the Minister of Finance concurred?

A

The Minister of Finance has already concurred for two of the companies (Serum Institute and Pfizer)

Q5

Do the Serum Institute and Pfizer agreements include indemnity clauses?

A

Yes – and concurrence has been granted.

Q6

Indemnification requirements were suspended for the 2010 World Cup. Can the same happen for vaccine manufacturers?

A

The Public Finance Management Act (PFMA) does not provide for the “suspension” of indemnification requirements, it provides that indemnification can only be granted by a Minister with the concurrence of the Minister of Finance. Concurrence was granted in respect of certain agreements relating to the 2010 World Cup, and similarly, concurrence can be granted in respect of an agreement for the procurement of vaccines. Concurrence may be granted after an assessment of the particular indemnity provision, and in light of other relevant factors that may relate to the agreement in question.

Q7

What are the terms that National Treasury expects companies to agree to regarding indemnification?

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A

The National Treasury assesses each proposed indemnification provision, considering the potential liability that Government would potentially assume in terms of the provision, and raises as matters of concern with the particular manufacturer aspects of the indemnification provision that would require government to assume liability in respect of matters that are not properly under the control of the Government.

Q8

Does government, represented by the Department of Health, have to sign indemnification clauses with pharmaceutical companies for the rollout of the COVID-19 vaccines?

A

The Minister of Health, representing the Government, signs the Agreement with the pharmaceutical companies for the procurement of the vaccines. The Minister of Finance would grant concurrence in respect of the granting of indemnity that may be provided for in terms of the Agreement.

Q9

What is National Treasury's stance regarding the indemnification of pharmaceutical companies?

The National Treasury and the Department of Health have been engaging on an ongoing basis regarding the procurement agreements that are proposed to be entered into with various vaccine manufacturers, and the Departments have engaged on the content of the indemnification provisions in the Agreements with the vaccine manufacturers, which then enables the Minister of Finance to be properly and promptly briefed regarding requests to the Minister of Finance to grant concurrence regarding the proposed indemnification provisions as required in terms of the Public Finance Management Act (PFMA).

Q10

Is National Treasury working closely with the Department of Health regarding the indemnification issues?

A

The National Treasury engages on an ongoing basis with the Department of Health during the finalisation of the vaccine agreements, particularly in respect of the indemnification provisions, to facilitate the conclusion of agreements. The National Treasury certainly is seeking to ensure that the issue of indemnity does not delay the vital procurement and roll-out of vaccines.

Q11

What is National Treasury's approach to these indemnification clauses?

A

The approach of the National Treasury and the Minister of Finance is that any proposed indemnity provision in each potential vaccine procurement agreement is assessed individually, and the Minister of Finance then assesses whether or not to give concurrence in respect of the granting of the requested indemnity in respect of that particular agreement. A blanket approach to indemnities is not adopted, as the provisions of agreements may vary significantly. The Department of Health has been engaging with the National Treasury regarding the proposed procurement agreements that are proposed to be entered into with various vaccine manufacturers, and the Departments have engaged on the content of the provisions, which then enables the Minister of Finance to be properly briefed regarding the proposed indemnity provisions that are contained in the Agreements.

Q12

How will National Treasury ensure that procurement processes do not become an obstacle to the acquisition of vaccines?

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A

The National Treasury is seeking to implement appropriate measures to balance the urgent need to obtain vaccines to protect the health of the population. The National Treasury is certainly seeking to ensure that the issue of indemnity will not prove to be an obstacle that ultimately inhibits the vital procurement of vaccines.

A

A No-fault compensation scheme is a mechanism to ensure that indemnity claims against Government are settled in a specific, pre-determined manner, which would typically entail setting up a government run public entity and Fund. It is separate from, but related to, the indemnity provision in terms of which government assumes specified liability in terms of the Agreement.

Q13

What is the difference between the scenario in which the government accepts indemnity and a no-fault compensation fund scenario?