



**MINISTRY: HEALTH
REPUBLIC OF SOUTH AFRICA**

Private Bag X399, Pretoria, 0001, 28th Floor,
Civitas Building, Cnr Thabo Sehume and
Struben Street, Pretoria, 0001.
Tel: +27 12 395 8086 Fax: +27 (12) 395 9165

Private Bag X9070, Cape Town, 8000, Room
413, 120 Plein Street, Cape Town, 8000.
Tel: +27 21 465 7407/8 Fax: +27 (21) 465 1575



**MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA**

Private Bag X116, Pretoria, 0001 Tel: +27 12 323 8811
Fax: +27 12 323 3262

P O Box 29, Cape Town 8000 Tel +27 21 401 3700

Website : www.treasury.gov.za , email
mbreg@treasury.gov.za

The Chief Executive Officer
The Johnson & Johnson Family of Companies
PO Box 273
HALFWAY HOUSE
685
South Africa

Dear Sir

RE: LETTER OF COMMITMENT TO ESTABLISH A NO-FAULT COMPENSATION SCHEME FOR ADVERSE EFFECT SUFFERED AS A RESULT OF THE ADMINISTRATION OF COVID-19 VACCINES

In respect of the Agreement for the procurement of CoVID-19 vaccines with Janssen Pharmaceutical NV, pharmaceutical companies of Johnson & Johnson ("J & J"), a key term requested by J & J is that a no-fault compensation scheme be established to address adverse events that are suffered as a result of the administration of the vaccine.

It has been noted in discussions with J & J, and acknowledged by J & J, that a no-fault compensation scheme for vaccine related adverse events does not exist in South Africa, and that the available legislative mechanisms for establishing a scheme would require some time to undertake, even if the most expeditious processes available are pursued. A scheme would not be able to be established within the timeframes desired to enter into the Agreement.

In the interim, we hereby jointly commit to take the requisite steps to establish a no-fault compensation scheme for South Africa, backed by adequate funding arrangements to cover claims and the administration of the scheme.

In this regard, we have taken into account that the establishment of this scheme is precipitated by the vaccination roll out programme in response to the COVID-19 pandemic. The purpose of this scheme would be to facilitate expeditious and easy access to compensation for persons who suffer damages as a consequence of the COVID-19 vaccine being administered.

As you are well aware, the pandemic led to a declaration of a Public Health Emergency by the World Health Organisation. Subsequently, the South African government declared a State of National Disaster in terms of the Disaster Management Act 52 of 2002 ("the DMA"). The DMA is meant to enable government to ensure an integrated and coordinated policy to manage disasters

such as the COVID-19 pandemic, focusing on reducing, mitigating and preparing rapid and effective response to them.

It is in this light that the National Department of Health and Treasury undertake to establish this scheme which shall be called the COVID-19 Vaccine Adverse Events Fund ("the Fund"). The Fund will cover injuries resulting from COVID-19 vaccines and all persons who are eligible for vaccination in accordance with the COVID-19 vaccination policy of South Africa, and are administered with a vaccine procured by Government, will be eligible to claim for severe injuries resulting from such a vaccine. This will follow a proper, lawful and efficient assessment of each claim brought against government in order to establish causality.

It is envisaged that the Fund will be established through the promulgation of Regulations under the DMA, subject to relevant processes and approvals. In the event that the State of National Disaster ceases, the Regulations would enable the Fund to remain in place for sufficient time to finalise the claims of those individuals whose vaccination doses are covered in terms of this agreement.

We further undertake that the fund will be transparent, independent, and built on public trust. In this regard, we have resolved to appoint a panel with the required expertise to oversee the proper implementation and administration of the fund. This panel will be comprised of experts the fields of medicine, actuarial science, law and psychology. The full panel and its terms of reference will be publicly announced once the Regulations are gazetted.

In line with the indemnity clause in the APA, this fund will provide protection to the manufacturing company and its associates involved in the development, manufacture, funding, procurement, distribution, and administration, from any liability (with the exception of wilful misconduct), for the period which the indemnification clause in the agreement applies.

Government will announce in the Budget Speech on Wednesday 24 February the establishment of a no-fault compensation fund to cover claims in the event of any unlikely severe vaccine injuries. Budget allocations will be announced in due course. Government will use its best efforts through necessary legislative and other processes to ensure that adequate funding will be made available to fund both the compensation awarded and the cost of administering this fund.

Yours sincerely



DR ZL MKIZE, MP
MINISTER OF HEALTH
Date: 23/02/2021



TT MBOWENI, MP
MINISTER OF FINANCE
Date: 23/2/2021