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**OPINION**

We provide this opinion in response to your inquiry on whether the Sri Lanka State Pharmaceuticals Corporation (SPC), or any other entity, complied with the relevant laws and applicable regulations, in undertaking the procurement of vaccines for Sri Lanka, and possible remedies available for appropriate redress in the event of any cause of action.

The following questions were presented to us in response to which our opinion is provided:

a. Did the SPC or any other party violate any applicable law with respect to procurement in the process of attempting to procure COVID-19 vaccines in Sri Lanka, and if so, does such violation constitute a cause of action?

b. Did the SPC or any other party violate any applicable law with respect to procurement in obtaining no objection letters from relevant local agents of the relevant vaccine manufacturers, and if so, does such conduct constitute a cause of action?

c. Did the conduct of SPC or any other party result in delay in procurement of vaccines, and if so, does such delay constitute a cause of action?

Our instructions in this regard are as follows:

1. On 31 December 2020, a Presidential Task Force for National Deployment and Vaccination Plan for COVID-19 Vaccine was appointed by H.E. the President by Gazette Extraordinary No. 2208/33 in accordance with the powers vested under article 33 of the Constitution. The said Task Force was tasked with *inter alia* establishing 'appropriate and streamlined regulatory and administrative procedures for emergency approval, fast track procurement, imports, customs clearances and release to the national immunization programme in order to facilitate timely access to COVID-19 vaccines'.

2. We are instructed that overseas vaccine manufacturers usually have a local agent with exclusive rights with respect to the procurement and distribution of the said vaccines in Sri Lanka.

3. We are instructed that overseas manufacturers had decided to provide the said vaccines at cost. The standard procedure for procurement of vaccines entails the payment of an

advance when placing an order for shipment. Orders are placed on a first-come-first-serve basis. Therefore, any delay in placement of orders would result in significant delays with respect to the actual receipt of shipments.

4. We are instructed that the Sri Lanka State Pharmaceuticals Corporation (SPC) acquired the sole remit to import COVID-19 vaccines to Sri Lanka, and proceeded to obtain no objection letters from the relevant local agencies.

## A. Covishield Vaccine

5. On 22 January 2021, the National Medicines Regulatory Authority (NMRA) completed its evaluation of the Covishield vaccine manufactured by the Serum Institute Life Sciences Private Limited in India (Serum Institute).

6. On 25 January 2021, the Office of the Cabinet of Ministers confirmed that the Government of Sri Lanka would receive a donation of **500,000** doses of the Covishield vaccine from the Government of India. The said doses were accordingly received on 28 January 2021.

7. At the time NMRA provided its evaluation of the Covishield vaccine manufactured by Serum Institute, i.e. on **22 January 2021**, the local agent for the said manufacturer was Citihealth Imports (Private) Limited.

8. We are instructed that, according to relevant procurement guidelines, the following *bona fide* steps ought to have been taken by the relevant authorities, in order to secure the procurement of the Covishield vaccine:

    a. Immediately following approval by the NMRA on 22 January 2021, a procurement request ought to have been made by the Epidemiology Unit of the Ministry of Health (MOH), and forwarded through the Medical Supplies Division (MSD) of the MOH;

    b. Given that the anticipated procurement was in excess of Rs. 500 million, the approval of the Cabinet of Ministers ought to have been expeditiously secured to proceed with the procurement; and

    c. Once Cabinet approval was secured, an order ought to have been expeditiously placed by the Procuring Entity, along with an advance payment, when placing the order.

9. We are instructed that, following NMRA approval on **22 January 2021**, the Epidemiology Unit of the MOH did not forward any request to SPC through the MSD.

10. We are instructed that, during the month of January 2021, instead of awaiting a formal procurement request from MSD, SPC unilaterally engaged the local agent for Serum

Institute, and sought to obtain a no objection letter from the said local agent in order to operate as the sole importer of the said vaccine. We are instructed that a no objection letter dated 3 February 2021 was submitted by the said local agent to NMRA, with a copy to the Chairman, SPC.

11. We are also instructed that SPC's decision to obtain a no objection letter from the said local agent was **not pursuant to a Cabinet-decision authorising the same**.

12. Additionally, we are instructed that, given that it had purported to act as the sole importer of the Covishield vaccine, SPC ought to have enlisted the support of the local agent for Serum Institute to place an order, and secure timely delivery of the said shipment, given the unique business relationship that was already maintained between the said local agent and Serum Institute.

13. We are instructed that the aforementioned **chain of events caused a delay of over one month between NMRA approval for the Covishield vaccine on 22 January 2021, and the obtaining of Cabinet approval for the procurement of the said vaccine on or about 23 February 2021**.

14. On 19 February 2021, SPC was reported in the media to have announced that it had successfully signed an agreement with Serum Institute to purchase **10 million** doses of the Covishield vaccine. We are instructed that this announcement, if it was indeed made, **was misleading, as no Cabinet approval for any procurement had been obtained at the time**.

15. On 23 February 2021, the Office of the Cabinet of Ministers announced that Cabinet approval had been granted to the following proposals made by the Acting Minister of Health:

    a. To sign the Standardised Indemnification Agreement forwarded by the World Health Organisation's COVAX mechanism, enabling Sri Lanka to obtain the COVID-19 Vaccine under the COVAX facility expeditiously.

    b. **To purchase 10 million doses of the Oxford/AstraZeneca Vaccine from the Serum Institute as a direct procurement at a sum of US$ 52.5 million by SPC**.

    c. For SPC to enter into an Agreement to purchase **3.5 million** doses of COVID-19 Vaccines manufactured by the AstraZeneca Institute of Great Britain.

16. We are instructed that, pursuant to an agreement between SPC and Serum Institute, an order for 1.5 million doses of the Covishield vaccine was made by SPC. Under such a purchase order, a shipment of **500,000** doses of the said vaccine arrived in Sri Lanka on 25 February 2021.

17. A consignment of **264,000** doses of the Covishield vaccine was received on 7 March 2021 as part of the World Health Organisation's COVAX facility. This consignment brought the total number of acquired doses of the Covishield vaccine to 1,264,000.

18. We are instructed that, on or around 7 March 2021, Serum Institute informed SPC that it would be unable to ship the remaining 1 million doses of the Covishield vaccine under the purchase order for 1.5 million doses of the said vaccine.

19. Moreover, on or around 1 April 2021, **more than nine weeks since NMRA approval was granted to the Covishield vaccine**, the State Minister of Primary Health Care, Epidemics, and COVID Disease Control announced that the procurement process was placed on hold due to domestic demand in India following a major outbreak of COVID-19 in India.

20. We are instructed that following NMRA approval on **22 January 2021**, there were severe delays in placing an order for the Covishield vaccine, and such delays led to the failure to procure the vaccine in a timely manner, and eventually resulted in severe shortages of the said vaccine in Sri Lanka at present.

**B. Sputnik V Vaccine**

21. On **4 March 2021**, the NMRA completed its evaluation of the Sputnik V vaccine manufactured by Generium Joint Stock Company in Russia. According to the evaluation report, SPC is listed as the local agent for the vaccine manufacturer.

22. We are instructed that SPC had previously obtained a no objection letter from Ceyoka (Private) Limited, which is the local agent for Generium Joint Stock Company. We are further instructed that **no Cabinet approval was granted to SPC to seek such a no objection letter**.

23. On 23 March 2021, the Office of the Cabinet of Ministers confirmed that the NMRA had granted permission for the emergency use of the Sputnik V vaccine in Sri Lanka. Accordingly, the Cabinet approved the proposal made by the Minister of Health to purchase **7 million** doses of the said vaccine for a sum of US$ 69.65 million, as recommended by the Cabinet Appointed Negotiating Committee.

24. We are instructed that the Cabinet Appointed Negotiating Committee appointed to negotiate procurement of the Sputnik V vaccine comprised the Secretary to the Ministry of Power and Renewable Energy, the Director General of Health Services, certain Officials from the Ministry of Finance, and the Secretary to the State Ministry of Pharmaceutical Production Supply and Regulation.

25. On 4 April 2021, the Office of the Cabinet of Ministers confirmed that the Cabinet of Ministers approved the procurement of a further **6 million** doses of the Sputnik V vaccine at the same price as approved on 23 March 2021.

26. We are instructed that Sri Lanka is placed low on the list of countries that have secured shipments of the said vaccine. As a result, only small batches of the said vaccine would arrive in Sri Lanka.

## C. Pfizer-BioNTech Vaccine

27. The relevant local agents of Pfizer Incorporated, the manufacturer of the Pfizer-BioNTech vaccine, is Hemas Pharmaceuticals (Private) Limited.

28. We are instructed that SPC obtained a no objection letter from the said local agent in order to become the sole importer of the said vaccine. We are further instructed that **no Cabinet approval was granted to SPC to seek such a no objection letter**.

29. On or about 7 May 2021, the State Minister of Primary Health Care, Epidemics, and COVID Disease Control confirmed that the NMRA had approved the Pfizer-BioNTech vaccine for emergency use in Sri Lanka. It was further confirmed that a purchase order for **5 million** doses of the Pfizer-BioNTech vaccine had been approved by the Cabinet of Ministers.

30. On or about 7 May 2021, the Chairman of SPC announced that Pfizer Incorporated had communicated to SPC that it would deliver 35,000 doses of the Pfizer-BioNTech vaccine between April to June 2021, followed by 105,000 doses from July to September 2021, and 4.8 million from October to December 2021.

31. On 21 May 2021, the local agents for Pfizer Incorporated, Hemas Pharmaceuticals (Private) Limited issued a statement that it would assist the government in all matters relating to the procurement of the Pfizer-BioNTech vaccine. It also acknowledged that SPC is the sole importer of the said vaccine, along with the AstraZeneca vaccine manufactured by the AstraZeneca Institute of Great Britain, for which Hemas Pharmaceuticals (Private) Limited is also the local agent.

32. We are instructed that despite such offer for assistance, and despite assurances by SPC that the said Pfizer-BioNTech would be procured expeditiously, **not a single dose of the said vaccine has arrived in Sri Lanka as of 31 May 2021**.

## D. Sinopharm Vaccine

33. We are instructed that NMRA granted approval to the Sinopharm vaccine manufactured in China for emergency use on or about 7 May 2021. At the time the NMRA granted such approval, SPC was the sole authorised importer of the said vaccine.

34. We are further instructed that no expedited measures were taken to secure a substantial shipment of the said vaccine despite such approval, and despite the fact that the Chinese government had expressed interest in making Sri Lanka one of the

priority locations for export of the said vaccine. We are instructed that no early agreement was negotiated between SPC and China National Biotec Group, which is the relevant vaccine manufacturer, pending NMRA approval of the said vaccine.

35. On 31 March 2021, Sri Lanka received **600,000** doses of the Sinopharm vaccine as a donation from the Chinese government.

36. On 24 May 2021, over two weeks after NMRA approval for the said vaccine, a Cabinet decision was made to grant approval to the proposal tabled by the Ministry of Health to purchase **14 million** doses of the Sinopharm vaccine.

37. We are instructed that no Cabinet Appointed Negotiating Committee was appointed to negotiate the price of a dose of the Sinopharm vaccine. We are instructed that this lacuna directly resulted in the inability of the Government of Sri Lanka to secure cost-effective pricing for the said vaccine.

38. We are further instructed that Bangladesh, for instance, secured the said vaccine at US$ 10 per dose, whereas Sri Lanka only succeeded in securing the said vaccine at US$ 15 per dose. **We are accordingly instructed that the price differential has resulted in a virtual loss to the Sri Lankan people amounting to US$ 70 million.**

**E. General**

39. As of 25 May 2021, it was reported that a total of **32 million** vaccines had been ordered, i.e. **13 million** doses of the Sputnik V vaccine, **5 million** doses of the Pfizer-BioNTech vaccine, and **14 million** doses of the Sinopharm vaccine.

40. Apart from an initial shipment of 500,000 doses of the Covishield vaccine, no further procurement of the said vaccine has been completed.

Based on the above instructions, and subject to any discrepancies therein, our opinion is as follows:

**APPLICABLE LAW**

1. The Supreme Court, in ***SmithKline Beecham Biologicals S.A and another v. State Pharmaceutical Corporation of Sri Lanka and others*** **(1997) 3 SLR 20** considered the legal enforceability of procurement guidelines. It held that law 'includes regulations, rules, directions, instructions, guidelines and schemes that are designed to guide public authorities', thereby opining that procurement guidelines have the force of law, and compliance therewith is mandatory.

2. We are therefore of the view that any material breach and/or deviation of any law, including relevant procurement guidelines, gives rise to a cause of action for which a remedy may be sought under law.

## A. Sri Lanka State Pharmaceuticals Corporation

3. The Sri Lanka State Pharmaceuticals Corporation (SPC) was established by Gazette No. 14976/8 dated 22 September 1971 issued under section 2 of the State Industrial Corporations Act, No. 40 of 1957. It is the procurement agency for government health institutions.

4. It is noted that the First Schedule in Gazette No. 14976/8 does not authorise SPC to seize control over the importation of pharmaceuticals already being procured by any local agent in Sri Lanka. **SPC does not possess any regulatory authority with respect to the importation of pharmaceuticals to Sri Lanka.**

## B. National Medicines Regulatory Authority

5. The National Medicines Regulatory Authority (NMRA) is established under the National Medicines Regulatory Authority Act, No. 5 of 2015.

6. In January 2021, the NMRA adopted the 'Guidelines on Procedure for Expedited Marketing Authorisation for Emergency Use Permission, Registration/Licensing of COVID-19 Vaccines in Sri Lanka'. The Guidelines set out to:

    a. To grant Emergency Use Permission for vaccines to be imported and supplied during emergency situations such as global pandemics for specified quantities or a specified period of time without the need for registration. Such permission will be granted after carefully considering the need of the product in the country.

    b. To expedite marketing authorization/licensing of COVID-19 vaccines.

7. Emergency use of a COVID-19 vaccine may be approved by the NMRA if such approval is requested by the Ministry of Health (MOH), or by an individual or an organisation recommended by the MOH.

## C. Procurement Guidelines

***Procurement Guidelines of 2006***

8. **Guideline 9.4** of the Procurement Guidelines of 2006 states that procurement of pharmaceuticals is a 'complex and a unique process which requires special attention'. Therefore, while producing a separate body of guidelines on the procurement of pharmaceuticals and medical devices, these guidelines note that 'the broad principles of procurement outlined in these guidelines will…continue to be applicable to the extent possible'. It further notes that, in 'the event of a conflict between these guidelines and the guidelines for the procurement of pharmaceuticals, the **latter shall prevail**' (emphasis added).

*Guidelines for the Procurement of Pharmaceuticals and Medical Devices (2006)*

9. According to **Guideline 6.6** of the Guidelines for the Procurement of Pharmaceuticals and Medical Devices, where there is a 'sudden outbreak of a disease as declared by the Government/Ministry of Health', the procurement entity may procure the required quantities of pharmaceuticals 'without resorting to any of the procurement methods stipulated in Guideline 6 from State Organisations or UN Agencies where appropriate, established list of pre-qualified suppliers/ manufacturers, and where appropriate suppliers/manufacturers registered by the Medical Supplies Division/Sri Lanka State Pharmaceuticals Corporation'.

*Procurement Guidelines of 2019*

10. The National Procurement Commission (NPC) published the 'Procurement Guidelines 2019 for the procurement of goods, works, services and information systems and selection and employment of consultants by government institutions and to provide for matters connected therewith and incidental thereto' in Extraordinary Gazette No. 2144/68 dated 12 October 2019.

11. However, we are instructed that these new Guidelines have not been adopted in practice, and that the Procurement Guidelines of 2006 are still in operation.

*Procurement of COVID-19 Vaccines*

12. The process through which vaccines may be procured in Sri Lanka begins with a request made by the Epidemiology Unit of the MOH. Such a request is then communicated to the Medical Supplies Division (MSD) of the MOH. The Epidemiology Unit consists of the Secretary of Health, Director General of Health Services, the Deputy Director General (Public Health Services), and medical experts. Once a request is made by the Epidemiology Unit, the MSD will make a request to SPC to commence the procurement process as the Procuring Entity (PE).

13. We are of the opinion that these procurement guidelines **do not authorise SPC to assume the responsibility to procure vaccines**. It can only be requested by an authorised entity such as the MSD, or the Cabinet of Ministers, to be a PE.

14. The approval process set out through **Supplement 35 to the Procurement Manual** (effective from 25 March 2020), which is used along with the 2006 Procurement Guidelines, identifies the Standing Cabinet Appointed Procurement Committee (SCAPC) as the authority for contract award recommendation/determination for any procurement the value of which is above **Rs. 500 million**.

15. The authority limits as per the Procurement Manual is as follows:

a. For value of Rs. 200 million or below, the Department Procurement Committee (DPC)/Project Procurement Committee (PPC) is the authority.

   For instance, for such procurement, SPC, as the PE, will call the tenders, carry out the scheduling, and award the tender after obtaining authorisation for the approval by the Secretary to the MOH.

b. For value up to Rs.500 million, the Ministry Procurement Committee (MPC) is the relevant authority. The Tender Board of MOH will call the tenders and will be responsible to award the tender as approved by the Secretary to the MOH.

c. **For values above Rs. 500 million, the SCAPC will call the tenders and the tender will be approved by the Cabinet of Ministers**.

16. On 9 April 2020, the Ministry of Finance, Economy and Policy Development issued a circular titled '**Further relaxation of provisions under Supplement 35 issued to the Procurement Manual 2006 (Goods and Works) to facilitate expeditious handling of COVID-19 related Emergency Procurements**' bearing the reference No. PFD/PMD/149/000/2020-02. According to this Circular:

    a. When a procurement falls under the provision of Guideline 3.8, 'Emergency Procurement', the relevant Procurement Committee (PC) in consultation with the PE, may decide to use the guidelines 'appropriately with necessary changes, strictly subjected to the recording of justifications for such relaxation by the PC and PE'.

    b. Both the PC and PE are entrusted to 'make every effort to implement [a] **fair, justifiable, transparent, competitive and cost effective procurement process** when servicing the urgent procurement requirements with the relaxation of the… guidelines' (emphasis added).

    c. When deviating from tender procedures 'in very urgent and exceptional circumstances' the Circular identifies **the Cabinet of Ministers as the authority for tender values above Rs. 25 million**. It also states that the respective SCAPC should 'handle these urgent procurements' and in the absence of such SCAPC, a suitable committee appointed by the Secretary (as Chairman) and two other suitable Secretaries as members should be appointed as decided by the respective Secretary.

17. We are instructed that no SCAPC or other suitable PC was appointed to handle these urgent procurements, and that Cabinet approval was directly sought for the relevant procurements pursuant to proposals submitted by MOH.

## RESPONSE TO QUESTIONS

18. We reiterate that the following questions were presented to us in response to which our opinion is provided:

    a. Did the SPC or any other party violate any applicable law with respect to procurement in the process of attempting to procure COVID-19 vaccines in Sri Lanka, and if so, does such violation constitute a cause of action?

    b. Did the SPC or any other party violate any applicable law with respect to procurement in obtaining no objection letters from relevant local agents of the relevant vaccine manufacturers, and if so, does such conduct constitute a cause of action?

    c. Did the conduct of SPC or any other party result in delay in procurement of vaccines, and if so, does such delay constitute a cause of action?

### A. Procurement Process

19. We are of the opinion that the proper procedure with respect to procurement of vaccines in Sri Lanka should have entailed the following compliance measures:

    a. Request by the Epidemiology Unit of the MOH, and referral of such request to the MSD;
    b. MSD to refer the said request to SPC, where it is the relevant PE;
    c. SPC to then refer the matter to the SCAPC, or in the absence of such a Committee, a suitable committee appointed by the Secretary (as Chairman) and two other suitable Secretaries as members; and
    d. The PE and the SCAPC or relevant PC to then make every effort to implement a **fair, justifiable, transparent, competitive and cost effective procurement process** when servicing the urgent procurement requirements.

20. Accordingly, we are of the opinion that:

    a. SPC, according to its statutory remit, has **no jurisdiction** to generate any request for the purchase of vaccines without a request for the same being referred to it by the MSD. In this context, it has acted *ultra vires* in intervening to obtain no objection letters from existing local agents of vaccine manufacturers. **We note that significant delay was caused to the procurement of the Covishield vaccine due to SPC's decision to seize control of the local agency for the said vaccine, which was held by another entity at the time of NMRA approval on 22 January 2021 (see Section B below).**

    b. Without prejudice to the opinion above, SPC, upon securing the local agency for the Covishield vaccine on or about 3 February 2021 purported to act as the

relevant PE for the procurement of the said vaccine. Upon becoming the relevant PE, SPC failed to make every effort to implement a **fair, justifiable, transparent, competitive, and cost effective procurement process**, as it failed to expeditiously refer the procurement of the Covishield vaccine to the SCAPC and/or other suitable committee immediately upon receiving NMRA approval for the procurement of the said vaccine on 22 January 2021, and obtaining a no objection letter from the relevant local agency thereafter.

21. We are accordingly of the opinion that a cause of action has arisen with respect to the abovementioned conduct of SPC. An affected or interested party may seek redress before an appropriate court of law. For example, the illegal, arbitrary, unreasonable, and capricious action by a statutory body constitutes executive and administrative action in violation of the fundamental rights to equality and equal protection of the law guaranteed by article 12(1) of the Sri Lankan Constitution.

22. We would be pleased to discuss possible litigation options in this respect in consultation with senior counsel nominated by us.

**B. No Objection Letters**

23. According to our instructions, SPC intervened to seize control of the entire process through which vaccines were to be procured for Sri Lanka. We reiterate that the First Schedule to Gazette No. 14976/8 **does not grant SPC any regulatory authority with respect to the importation of pharmaceuticals to Sri Lanka**.

24. In any event, according to the Circular titled 'Further relaxation of provisions under Supplement 35 issued to the Procurement Manual 2006 (Goods and Works) to facilitate expeditious handling of COVID-19 related Emergency Procurements', tender procedures 'in very urgent and exceptional circumstances' contemplates the **Cabinet of Ministers as the sole authority for tender values above Rs. 25 million**.

25. Therefore, we are of the opinion that **only a Cabinet decision could have authorised SPC to seek no objection letters from relevant local agents** with respect to the procurement of vaccines.

26. We are instructed that SPC's decision to seize control of all importation of COVID-19 vaccines was not pursuant to a decision of the Cabinet of Ministers.

27. In the absence of such a Cabinet decision, we are of the opinion that SPC's intervention to seek no objection letters from local agents was *ultra vires*, and violated relevant procurement guidelines, and a cause of action has arisen in that respect.

28. An affected or interested party may seek redress before an appropriate court of law. For example, the illegal, arbitrary, unreasonable, and capricious action by a statutory body constitutes executive and administrative action in violation of the fundamental rights to

equality and equal protection of the law guaranteed by article 12(1) of the Sri Lankan Constitution.

29. We would be pleased to discuss possible litigation options in this respect in consultation with senior counsel nominated by us.

## C. Delay in Procurement

30. Our instructions indicate that the first vaccine to receive NMRA approval in Sri Lanka was Covishield, and that such approval was obtained on **22 January 2021**, pursuant to an application by Citihealth Imports (Private) Limited, which was the local agent for Serum Institute. According to the NMRA evaluation report, Serum Institute submitted relevant documents through the Indian High Commission in Colombo on 19 January 2021.

31. The process outlined in the said evaluation report indicates that Serum Institute and the Indian Government were prepared to export the Covishield vaccine in January 2021, and that NMRA approval was given to the said vaccine upon an application made by the said local agent.

32. We are of the opinion that, given that a local agent was already in place at the time of such NMRA approval, the proper procedure would have been for the SCAPC, or a suitable Cabinet-appointed committee, **to authorise the procurement of the said Covishield vaccine through the existing local agent upon a relevant proposal submitted by MOH. This course of action would have ensured the expeditious shipment of Covishield vaccines to Sri Lanka**.

33. Moreover, according to our instructions, the relevant vaccine manufacturer was **prepared to export the relevant vaccine at cost**, which would have enabled the SCAPC, or suitable committee, to authorise the existing local agent to carry out the procurement provided that the said vaccines were procured at cost. The applicable procurement guidelines authorised such deviation in the standard procedure for procurement given the 'urgent procurement requirement'. **The unilateral intervention of SPC in this process was unnecessary given that the procurement was to be at cost. Such intervention directly caused undue delay between 22 January 2021 and the actual placement of an order for the procurement of the Covishield vaccine**.

34. SPC's rationale in deciding to take control over the procurement process by becoming the sole importer of the Covishield vaccine remains unclear, as the NMRA approval was initiated and obtained by the relevant local agent.

35. We observe that, given the intervening circumstances in India (the country of origin for the Covishield vaccine) SPC was thereafter unable to complete the procurement of the said vaccine. We are of the opinion that, notwithstanding the fact that the said intervening circumstances were beyond the control of SPC, **the delay in placing an**

**order for the procurement of the said vaccine immediately after 22 January 2021 was entirely avoidable.**

36. In the foregoing circumstances, **we are of the opinion that the conduct of SPC caused an undue and avoidable delay in the procurement of the Covishield vaccine, and that such conduct directly resulted in Sri Lanka's inability to expeditiously secure adequate shipments of the said vaccine.**

37. We are of the opinion that a cause of action has arisen with respect to the said delay. An affected or interested party may seek redress before an appropriate court of law. For instance, the arbitrary, unreasonable, and capricious action of a statutory body constitutes executive and administrative action in violation of the fundamental rights to equality and equal protection of the law guaranteed by article 12(1) of the Sri Lankan Constitution.

38. We would be pleased to discuss possible litigation options in this respect in consultation with senior counsel nominated by us.

39. We separately note that a competitive and cost effective procurement process with respect to the Sinopharm vaccine was not secured. We are of the opinion that an impartial inquiry ought to be held into the process through which the price of a dose of the Sinopharm vaccine was negotiated. Such an inquiry would be required to determine whether or not a cause of action has arisen with respect to the conduct of the relevant authorities.

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**Ranil Angunawela**
**Partner**