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TO: Principal Officers of all Medical Aid Funds

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The business of a registered Medical Aid Fund in terms of the Medical Aid Funds Act

Introduction

The Registrar of Medical Aid Funds has been requested to resolve the uncertainty around the incorporating of insurance and re-insurance products in the business of Medical Aid Funds via the rules and the premiums.

Purpose

The purpose of this Circular is to bring clarity to the handling of insurance and the compliance of the funds with the Act regarding insurance.

The Law

The definition of the business of a fund forms the framework of operations and compliance, such business is carried on under a systematic plan to provide financial or other assistance to members of the fund and their dependants.

Medical Aid funds are governed by the Medical Aids Funds Act, 23 of 1995 (the Act). The Act makes the following prescriptions in this regard to medical aid funds and the business of medical aid funds.

The Act defines the word “**fund**” as meaning “any business carried on under a scheme established with the object of providing financial or other assistance to members of the fund and their dependants in defraying expenditure incurred by them in connection with the rendering of any medical service, but does not include any such scheme which has been established in terms of an insurance policy”.

Medical service in turn is defined as any health care treatment by any person registered in terms of any law with the aim of:

- “(a) the physical or mental examination of that person;
- (b) the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency;
- (c) the giving of advice in relation to any such defect, illness or deficiency;
- (d) the giving of advice in relation to or treatment of any condition arising out of a pregnancy;
- (e) the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness or deficiency or a pregnancy;
- (f) nursing or midwifery;
- (g) the supply of accommodation in a hospital or health facility referred to in section 1 of the Hospitals and Health Facilities Act, 1994 (Act 36 of 1994), or any other institution where surgical or other medical activities are performed, if such accommodation is necessitated by any physical or mental defect, illness or deficiency or by a pregnancy; and
- (h) any other matter as may be determined by the Registrar on the recommendation of the Association;”

Section 2 of the Act exempts funds established and managed by the Government and financial or other assistance given to employees, of an employer who mainly carries on business outside Namibia, by a fund established and managed outside Namibia from the provisions of the Act.

Section 29 of the Act prohibits funds from carrying on any business other than the business of a fund. The section makes allowance for a fund to carry on any other business for a period determined by the Registrar and under any conditions as he may prescribe. However such approval can only be granted where the Registrar is satisfied that it is necessary in order to safeguard an investment made by the fund.

The Act does not define the term scheme or the word necessary and these words must be given their ordinary grammatical meaning. The Concise Oxford Dictionary defines the two words as follows-

“**Scheme** 1. A systematic plan or arrangement for attaining some particular object or putting a particular idea into effect. A particular ordered system or arrangement. 2. A secret or underhand plan; a plot.”

“**Necessary** 1(necessaries) the basic requirements of life, such as food and warmth. 2 (the necessary) the action or item needed.”

Application of the Law

A medical Aid fund is a business carried on under a systematic plan to provide financial or other assistance to members of the fund and their dependants. The systematic plan provides money to pay expenditure incurred by the members and their dependants in connection with the rendering of medical services. However where such systematic plan is established in terms of an insurance policy it is not a fund.

A fund therefore mainly conducts the business of providing financial or other assistance, in paying for specified medical service expenditure, to its members and their dependants.

The Act in section 29 empowers the Registrar to approve the carrying on of any other business by a fund, but only where such business is *needed to safeguarding an investment made by a*

fund. A fund is prohibited from carrying out any other business for other purposes or reasons and the Registrar is not empowered to approve any such business.

The Act however provides that a business carried on under a systematic plan to provide financial or other assistance to members of such business and their dependants by providing money to pay expenditure incurred in connection with the rendering of medical services established in terms of an insurance policy is not a fund.

An **insurance contract** can be

“an agreement whereby one person takes upon himself the risk of an uncertain danger apprehended by another and the latter in his turn binds himself to pay the former a premium”¹ and

The above definitions identifies two main requirements for an insurance contract i.e.-

- i. The payment of some consideration to secure a benefit upon the happening of some event
- ii. The event should involve a degree of uncertainty

This means that any transaction in connection with the business of assuming the obligations of any insurer to effect and carry out short-term insurance contracts providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risk of loss to the person insured attributable to sickness or infirmity² will not amount to carrying on the business of a fund.

Compliance

The funds are therefore obliged to comply with the following:

¹ Grotius as quoted in Gordon G, (1969) *The South African Law of Insurance*. Cape Town: Juta at 75 foot note 1

² Definition of sickness short-term insurance business

1. A medical Aid fund is a business carried on under a systematic plan to provide financial or other assistance to pay medical expenditure, but excludes insurance business.

The funds therefore are not allowed to use any insurance or re-insurance products under the business of a fund.

2. A fund may carry on any other business, but **only** where such business is needed to safeguard an investment made by the fund and the Registrar has given his approval.

All previous approvals under section 29 referring to anything else but the safeguarding of investments are hereby revoked. A fund is prohibited from carrying out any other business apart from its core business, with one exemption as indicated above.

3. No more insurance or re-insurance products will be allowed under the business of a fund and should it be the case such funds are urged to immediately arrange for change and compliance.

General Offence and Penalties

45 Offences and penalties

(1) Any person who-

- (a) contravenes any provision of this Act or fails to comply with any request or requirement made thereunder;

b.....

shall, subject to the provisions of subsection (2), be guilty of an offence and liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 30 months or to both such fine and such imprisonment.

(2) No contravention or failure to comply with any request or requirement shall be punishable under subsection (1) if the act or omission constituting that contravention or failure to comply with any request or requirement is punishable as an offence under the provisions of any other law.



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REGISTRAR: MEDICAL AID FUNDS

