

13 July 2018

TO: Principal Officers of all registered Medical Aid Funds
The Board of Trustees of every registered Medical Aid Fund

CC: Namibian Association of Medical Aid Funds (NAMAF)
Administrators of all registered Medical Aid Funds

DIRECTIVE: PI/MAF/DIR/01/2018

EFFECTIVE DATE: 13 July 2018

SUBJECT: Provision of savings accounts by medical aid funds to members

1 Introduction

- 1.1 This Directive is issued by virtue of the Namibia Financial Institutions Supervisory Authority's ("NAMFISA") functions and powers and those of its Chief Executive Officer in his capacity as the Registrar of Medical Aid Funds ("Registrar") in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001) ("NAMFISA Act"), and is applicable to all medical aid funds ("Funds") registered under the Medical Aid Funds Act, 1995 (Act No. 23 of 1995) ("the MAF Act").
- 1.2 The purpose of this Directive is to require all medical aid funds that engage in the practice of maintaining savings accounts on behalf of members to cease the said practice in light of the fact that such practice is not only in contravention of the MAF Act, but also the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended ("the Banking Institutions Act") as outlined below. A further purpose of this Directive is to inform all Funds that the said practice is impermissible in terms of the MAF Act and the Banking Institutions Act.



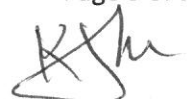
2 The current practice

- 2.1 It came to the attention of the Registrar that some Funds engage in the practice of providing savings options to their members. This practice is characterised by Funds creating and maintaining separate savings accounts on behalf of their members, with the balances in such accounts belonging to the members and not to the Funds. Provision is further made for interest to accumulate on the savings accounts at a specified rate. Some Funds provide for this practice in their rules.
- 2.2 The amount owing to members in respect of the savings accounts is reflected as a liability in the financial statements of the Funds. In the income statement, the monies received in respect of the savings accounts are shown separately from the risk contributions received by the Funds. Similarly, the benefits paid from the savings accounts are shown separately from risk claims and interest paid on the savings accounts is recorded as an expenditure in the income statement.
- 2.3 Further, credit balances on members' savings accounts are paid out to the members when membership is terminated or when members move to benefit options that do not have savings components.

3 The law

- 3.1 In terms of section 1 of the MAF Act, *"fund" means 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*".

- 3.2 In terms of section 1 of the MAF Act, *"medical service" means any health care treatment of any person, by a person registered in terms of any law, which treatment has as its object-*
- (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".*
- 3.3 In terms of section 29 of the MAF Act, a medical aid fund is not permitted to conduct any business other than the business of a fund, as defined, unless the Registrar has granted approval to a medical aid fund to carry on such other business as contemplated in section 29 of the MAF Act.
- 3.4 Section 30(1)(d) of the MAF Act stipulates that every registered fund shall have rules in which provision shall be made that *"no portion of any surplus realised by the fund in any financial year may be distributed to its members or any other persons"*.
- 3.5 In terms of section 45(1)(a) of the MAF Act, *"any person who contravenes any provision of the MAF Act or fails to comply with any request or requirement made thereunder shall, subject to the provisions of subsection (2), be guilty of*



an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment".

3.6 Section 4(2)(h) of the NAMFISA Act provides that NAMFISA may do anything which is necessary or expedient to perform its functions which are stipulated under section 3 of the same Act.

3.7 In terms of section 1 of the Banking Institutions Act, the terms "*banking business*", "*deposit*" and "*receiving funds from the public*" are defined as follows:

3.7.1 "*banking business*" means the business that consists of-

- (a) *the regular receiving of funds from the public; and*
- (b) *the using of funds referred to in paragraph (a), either in whole, in part or together with other funds, for the account and at the risk of the person conducting the business-*
 - (i) *for loans or investments;*
 - (ii) *for any other purpose or activity authorised by law or by customary banking practice in terms of this Act; or*
 - (iii) *for such activities that the Minister, in consultation with the Bank has, by notice in the Gazette, determined to be an authorised manner of using funds for the purpose of conducting banking business;"*;

3.7.2 "*deposit*", when used as a noun, means an amount of money paid by one person to any other person, or by a customer to a banking institution, subject to an agreement in terms of which the full amount of money, or any part thereof, will, conditionally or unconditionally, and with or without interest or a premium, be repaid to such person or to the customer on demand or at a specified or unspecified date, or after a predetermined period of time, or after a predetermined period of notice of withdrawal, or



subject to an agreement entered into by the parties concerned, notwithstanding that such payment is limited to a fixed amount or that a transferable or non-transferable certificate or other instrument providing for the repayment of the amount is issued in respect of such amount [...];”; and

3.7.3 the relevant portion of the definition of “receiving funds from the public” reads as follows: “for the purpose of ascertaining if a person is conducting banking business, means that the person-

- (a) *accepts deposits or similar funds from the public, including from employees, members, shareholders or partners of the person, as a regular feature of his or her business;*
- (b) *solicits or advertises for deposits or similar funds;*
- (c) *obtains, as a regular feature of his or her business, money through the sale of an asset to a person other than to a banking institution or a statutory body or other institution referred to in section 2(2), subject to an agreement in terms of which the seller undertakes to repurchase from the buyer at a future date the asset sold, or any other asset;*
- (d) *conducts any other activity which the Bank, by notice in the Gazette, has declared to be the acceptance of deposits from the public; [...].”*

3.8 Section 5 of the Banking Institutions Act prohibits the conducting of banking business by unauthorised persons and it includes the receipt, acceptance or taking of a deposit, as defined.

3.9 In terms of section 7(1) of the Banking Institutions Act, “if the Bank is satisfied that a person has obtained any monies in contravention of section 5 or section 55A, the Bank must in writing direct the person to repay all the monies so obtained by him or her, including any interest or other amounts which may be owing by the person in respect of such monies-



- (a) *to the respective persons from whom such person has obtained the monies as verified;*
- (b) *in the manner and in accordance with the requirements imposed; and*
- (c) *within the period of time imposed,*

by the Bank and specified in the direction".

4 Conclusion

- 4.1 The payment by Funds of a cash benefit to a member when such member terminates membership or moves to a benefit option that does not have the savings component, does not constitute the provision of financial assistance in defraying expenditure incurred by the member in connection with the rendering of any medical service, as contemplated in the definition of "*fund*" in the MAF Act. The payment of a cash benefit to a member would thus fall outside the ambit of the business which a medical aid fund is permitted to conduct in terms of the MAF Act.
- 4.2 Providing for a savings account which does not form part of the assets of the Fund is tantamount to conducting business other than that of a fund, as defined. Furthermore, a Fund is not permitted to distribute any portion of a surplus realised by the Fund in any financial year, to its members or any other persons.
- 4.3 As such, the provision of savings accounts which do not form part of the assets of Funds, coupled with the practice of making cash payments to members upon termination of membership or upon moving to a benefit option with no savings component, does not fall within the ambit of the business of a medical aid fund as contemplated in the definition of "*fund*" in section 1 of the MAF Act.
- 4.4 The practice of paying any credit balance on a member's savings account to such member when he/she terminates membership or moves to a benefit option that does not have the savings component further places the said practice by Funds squarely within the ambit of the definition of "*deposit*", read with the definitions of "*banking business*" and "*receiving funds from the public*" of the



Banking Institutions Act. The abovementioned practice by Funds is consequently in contravention of section 5 of the Banking Institutions Act.

5 The Directive

- 5.1 All Funds that engage in the practice of providing for savings options, by maintaining separate savings accounts on behalf of members, as discussed above, are hereby directed to cease the said practice with immediate effect. Failure to comply with this Directive will result in the necessary enforcement action being taken in terms of the MAF Act and the Banking Institutions Act.
- 5.2 All Funds that provide for the aforesaid practice in their rules are further directed to amend their rules accordingly, in order to align same with the provisions of the MAF Act and the Banking Institutions Act.

The Registrar therefore requires full cooperation and support in this process by all Funds and stakeholders at large.

Should you require more clarity on this Directive, kindly contact the Manager of the Medical Aid Funds Department at telephone number 061-290 5167 or via e-mail at: ltjiueza@namfisa.com.na.

A handwritten signature in black ink, appearing to read 'K. Matomola', is written over a horizontal line.

Kenneth S. Matomola
Registrar of Medical Aid Funds