

2 June 2017

TO: Principal Officers of all registered Medical Aid Funds

CC: The Board of Trustees of all registered Medical Aid Funds

Namibian Association of Medical Aid Funds (NAMAF)

Administrators of all registered Medical Aid Funds

DIRECTIVE: PI/MAF/DIR/02/2017

EFFECTIVE DATE: 2 June 2017

SUBJECT: Voting by Proxy at Annual General Meetings of
Registered Medical Aid Funds

1. Introduction

1.1. This Directive is issued by virtue of the Namibia Financial Institutions Supervisory Authority's 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) ("MAF Act").

1.2. The purpose of this Directive is to rectify identified malpractices in the medical aid funds industry with regard to proxy voting at the Annual General Meetings ("AGMs") of registered Funds.



2. The current practice

- 2.1. It came to the attention of the Registrar that there are inconsistencies, unfairness, bias and conflicts of interest in the proxy voting processes at the AGMs of some of the Funds. This is mainly attributed to the fact that the rules of Funds do not adequately set out the procedures for proxy voting at the AGMs of Funds.
- 2.2. The Registrar further identified the following malpractices in relation to proxy voting at the AGMs of Funds:
 - 2.2.1. Some Funds distribute “unallocated proxies” to any person including the members of the Board of Trustees and the Principal Officer of the Fund;
 - 2.2.2. Members of some funds are not presented with an option on the instrument appointing a proxy to direct how his/her voting rights must be exercised by his/her chosen proxy; and
 - 2.2.3. Some Funds allow any person (which would include representatives of service providers, including administrators of the Fund) to represent members of the Fund as proxies at AGMs of the Fund. This raises a concern over conflicts of interest where the person casting the vote is a representative of a service provider to the Fund.

3. The law

- 3.1. The MAF Act provides for the conduct of the business of a Fund under Part V. Section 30(1)(g) under Part V of the MAF Act provides as follows:

“Every registered fund shall have rules in which provision shall be made for the convening and holding of, and the procedure at, any general or special meeting of members of the fund.”

(Our emphasis)



Therefore, if the rules of a particular Fund entitles a member who is unable to attend a meeting of the Fund, to appoint a proxy to represent him/her at the meeting, such Fund is required to clearly set out the proxy voting procedure to be followed in its rules as contemplated in section 30(1)(g) of the MAF Act.

- 3.2. Section 4 of the NAMFISA Act provides for the powers of the Authority. Section 4(2)(h) of the NAMFISA Act particularly states that:

“The Authority may do anything which is necessary or expedient to perform its functions.”

The functions of the Authority are specified in section 3 of the NAMFISA Act. One of the functions of the Authority is to exercise supervision, in terms of the NAMFISA Act or any other law, over the business of financial institutions and over financial services.

- 3.3. A proxy is an instrument by which a person appoints an agent (the proxy-holder) to do two things: to act for the said person at the meeting and to vote at the meeting in relation to a particular matter. The word “*proxy*” is defined as “the authority to represent someone else, especially in voting” and “a person authorized to act on behalf of another.” Thus, regard being had to the fact that the purpose of appointing a proxy is to ensure that the rights of the member who is absent from the meeting are exercised through his/her appointed proxy, “unallocated proxies” cannot validly be allocated to any person whom the absent member himself/herself has not appointed as his/her proxy.
- 3.4. To give effect to a member’s right to attend, speak and vote at a meeting of the Fund and, if he/she is unable to attend such meeting, to appoint a proxy to represent him/her at the meeting, as provided for in the rules of the Fund, such member must be given an option to direct how his her voting rights must be exercised by his/her chosen proxy.



- 3.5. It is trite law that, where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not allowed to make a secret profit at the other's expense or place himself in a position where his interests conflict with his duty. In accordance with the general principle that requires conflicts of interest to be avoided, no service provider of a Fund should represent a member of the Fund (or any other person entitled to attend a meeting of the Fund) as a proxy or partake in proceedings thereof during the discussion of any matter in which such service provider has a direct or indirect interest.

4. The Directive

- 4.1. All Funds are hereby directed to make adequate provision for a proxy voting procedure in the rules of the Fund.
- 4.2. In relation to the malpractices specified in paragraph 2.2 above, all Funds are further directed to:
- 4.2.1. Desist from distributing "unallocated proxies" to any person including the members of the Board of Trustees and the Principal Officer of the Fund;
 - 4.2.2. Present members with an option on the instrument appointing a proxy to direct how his/her voting rights must be exercised by his/her chosen proxy; and
 - 4.2.3. Prohibit service providers from representing members of the Fund as proxies at the AGMs of the Fund and partaking in proceedings thereof during the discussion of any matter in which such service providers have a direct or indirect interest.

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



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

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

Kenneth S. Matomola
Registrar of Medical Aid Funds