

24 August 2017

TO: Principal Officers of all registered Medical Aid Funds

The Board of Trustees of all registered Medical Aid Funds

CC: Namibian Association of Medical Aid Funds (NAMAF)

Administrators of all registered Medical Aid Funds

DIRECTIVE: PI/MAF/DIR/03/2017

EFFECTIVE DATE: 24 August 2017

SUBJECT: Late payment and non-payment of medical aid fund contributions

1 Introduction

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

1.2 The purpose of this Directive is to require the Board of Trustees (hereinafter "Trustees") of all registered Funds to act, at all times, in accordance with the rules of the Fund and to fulfil their fiduciary duties towards registered Funds and members of registered Funds in respect of contributions payable to the said Funds.



2 The current practice

- 2.1 The Registrar has noted, with concern, a significant increase in the late payment and non-payment of contributions that are due to Funds as required in terms of the rules of Funds.
- 2.2 The rules of all registered Funds generally provide for the termination of membership and/or the suspension of membership/benefits if contributions are not paid within a certain period from the date on which the contribution became due and payable to the Fund. Despite the aforesaid, the Registrar noted that the Trustees of some Funds do not consistently apply the provisions of the Fund rules pertaining to arrear contributions.

3 The law

- 3.1 In terms of section 30(1)(n) of the MAF Act, the rules of a registered fund shall make provision for the payment of a membership fee, if any, the amount thereof or the basis on which it is to be calculated.
- 3.2 In terms of section 30(3) of the MAF Act, the rules of a registered fund and any amendment thereof shall be binding on the fund as well as the members and their dependants and the trustees, principal officer and other employees of the fund.
- 3.3 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 NAMFISA Act.
- 3.4 Although the MAF Act does not explicitly provide for the fiduciary duties and responsibilities of the Trustees of registered Funds, the common law does. The main common law fiduciary duties of Trustees are the duty to act with due care, skill and diligence and the duty to act in good faith.



4 Conclusion

- 4.1 The duty to act with due care, skill and diligence includes the duty to act in the best interest of the Fund. The duty to act in the best interest of the Fund in turn requires the Trustees to ensure that contributions that are due to the Fund are paid to the Fund timeously and any arrear contributions (including interest on arrear contributions, if any) are recovered in full on behalf of the Fund.
- 4.2 The duty of good faith necessitates the Trustees to inform members of registered Funds when contributions payable on their behalf have not been paid as provided for in the rules of the Fund.
- 4.3 The fiduciary duties lie with the Trustees and a delegation of any duty or responsibility of Trustees to any person does not divest the Trustees of their fiduciary duties and responsibilities towards the Fund.
- 4.4 As a result, Trustees may ultimately be held personally liable for damages suffered by the Fund or its members if, according to the available evidence, the said Trustees acted in breach of their fiduciary duties and such breach is a cause of the damages suffered by the Fund or its members.

5 The Directive

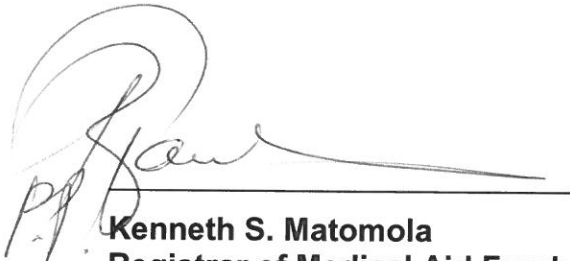
- 5.1 The Trustees of all registered Funds are therefore hereby directed to take all reasonable steps to ensure that contributions that are due to the Fund in terms of the rules of the Fund are paid to the Fund timeously.
- 5.2 The Trustees of all registered Funds are further directed to actively collect arrear contributions (including interest on arrear contributions, if any) and to ensure the strict enforcement of the provisions pertaining to arrear contributions as contained in the rules of the Fund.
- 5.3 The Trustees of all registered Funds are further directed to inform the Registrar on the 15th day of every month commencing 25 August 2017 of any late payment or non-payment of contributions (relating to any period) that are due to the Fund in terms of the rules of the Fund.



- 5.4 The Trustees of all registered Funds are further directed to ensure that all relevant members of registered Funds are properly informed of any late payment or non-payment of their contributions within two months from the date on which the contribution became due and payable in accordance with the rules of the Fund.

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 and Friendly Societies Department at telephone number 061-290 5167 or via e-mail at: ltjiueza@namfisa.com.na.



Kenneth S. Matomola
Registrar of Medical Aid Funds