



PRESS RELEASE

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Contact : CMS Customer Care Centre
Telephone : 0861 123 267
E-mail : information@medicalschemes.com
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Press release 3 of 2011: Bonitas under curatorship

The Registrar of Medical Schemes and the Council for Medical Schemes were successful in their application to have Bonitas Medical Fund placed under curatorship last week.

The South Gauteng High Court appointed Mr Joseph Maluleke as the curator of South Africa's third-largest medical scheme on 27 May 2011.

Mr Maluleke is the chairperson of a well-established law firm and has a proven track record of stabilising organisations experiencing governance problems.

"This is a victory for the regulator but more importantly, for the hundreds of thousands of Bonitas beneficiaries and their families," Dr Monwabisi Gantsho, Registrar and Chief Executive of the CMS, said today. "We can all rest assured that the problems which had been plaguing the medical scheme are being addressed in a concrete way. After many months of interaction and litigation we are delighted that this protracted case has finally made satisfactory progress and we look forward to the outcome of the curatorship. I congratulate all the parties who negotiated the settlement order and I agree with the judge when he called for 'commercial statesmanship' in resolving this matter."

At the end of 2009 Bonitas had more than 650 000 beneficiaries and a solvency of 35.7% which remains stable at above the 25% required by law. The audited figures for the year ending in December 2010 will be published in our Annual Report 2010-2011 later in the year.

What the ruling means

The court ruling means that the scheme's Board of Trustees and acting Principal Officer have been removed from office and replaced by the curator – two years after the regulator first raised concerns over

their fitness and propriety. What is more, they are not allowed to take office as trustees or Principal Officers ever again.

Mr Maluleke is expected to manage the scheme in accordance with the Medical Schemes Act and the registered rules of the scheme. He must also ensure that a new Board of Trustees is elected to restore proper governance structures at the scheme.

Mr Maluleke served as Compliance Officer at Bonitas when the Board was removed and the scheme was run by the then acting Principal Officer, Gerhard van Emmenis.

The settlement agreement

Following protracted litigation between the CMS and Bonitas that failed to adequately address the governance issues at the medical scheme, the CMS finally put forward a settlement agreement on 14 February 2011 to try and resolve the deadlock which had arisen. This settlement agreement became the court order on 27 May 2011.

The parties involved – namely Bonitas Medical Fund, the trustees who had been divested of their powers, the acting Principal Officer, Medscheme Holdings (Pty) Ltd, Bonitas Marketing Company (Pty) Ltd, the Registrar of Medical Schemes, and the Council for Medical Schemes – have agreed to the following:

1. The application under case number 2011/4206 – where the trustees wanted to be re-vested with their powers – is withdrawn.
2. The application under case number 2010/02947 is withdrawn.
3. The application under case number 2010/48594 is withdrawn.
4. Bonitas Marketing Company (Pty) Ltd withdrew its appeal against the inspection.
5. Members of Bonitas Mr Sipho Mjwara, Mr France Mabelebele, Mr Lucky Mbageni and Mr William Modisha, together with the National Union of Metalworkers of South Africa (NUMSA) which represents 15% of the scheme's members, had opposed the appointment of Mr Maluleke as the curator of the scheme, citing his alleged lack of experience among their reasons. They were granted leave to intervene as applicants in this case but they were denied the relief they sought.
6. All the parties to the agreement withdrew all their legal processes against one another but the CMS has reserved the right to resume its application to remove any of the trustees from office should they ever be elected or appointed as Board members of any medical scheme under the regulatory authority of the CMS.

Advice to members

Members of Bonitas and other interested parties are reminded that the need for a curator is not in any way a reflection on the financial stability of the scheme or on its ability to honour claims. Bonitas remains one of the biggest and healthiest medical schemes in South Africa.

The job of the curator is to take control of the scheme and manage its business in accordance with the provisions of the Medical Schemes Act and the rules of the scheme. He must report to the Registrar and members of the scheme within two months of being appointed, and to the Registrar every two weeks during the two months. His final report must include findings and recommendations on the affairs of the

scheme and the possible continuation of the curatorship. The curator must convene a special general meeting of the scheme at which a new Board of Trustees must be elected; this meeting must take place within 90 calendar days from the date on which the curatorship was granted.

Advice to brokers

Brokers are advised to act with restraint. Any advice they give must accord with the principles of best advice, have the best interests of their clients at heart, and be based on a proper assessment of the situation.

As financial advisors, brokers are also reminded of the Financial Services Board (FSB) legislation which clearly stipulates that consumers are entitled to best – independent – advice at all times.

For more information

Should you wish to obtain more detail, the case number for the curatorship is 2010/33573 and the papers can be obtained from the South Gauteng High Court in Johannesburg.

You can also speak with one of our consultants should you wish to obtain more information.

Customer Care Centre
Council for Medical Schemes
0861 123 267
information@medicalschemes.com

Media enquiries
Aleksandra Serwa
Communications Manager
Council for Medical Schemes
012 431 0512
a.serwa@medicalschemes.com