



## PRESS RELEASE

Reference: CMS notes CONCOURT judgement on Genesis  
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### **Press release 9 of 2017: CMS has noted Constitutional Court judgement on Genesis**

The Council for Medical Schemes (CMS) has noted the Constitutional Court judgement on the appeal matter brought by Genesis Medical Scheme against the Registrar of Medical Schemes and the CMS. The Constitutional Court's ruling in favor of Genesis Medical Scheme that funds in medical scheme members' personal medical savings accounts (PMSA) can be treated as assets of a medical scheme, has huge implications for members of schemes who have benefit options that include a savings account.

For the CMS, the significance of this judgement lies in the fact that members of medical schemes are not entitled to earn interest on the portion of the money in the PMSA, which according to the judgement, belongs to the medical scheme once such funds are deposited into the scheme's account. An equally noteworthy implication is the huge bearing on what happens to members' contributions in a situation where a scheme is declared insolvent. The implication of the judgement is that the members' PMSA cannot be ring-fenced from being accessed by creditors should a scheme become liquidated.

"We will continue to be vigilant as we exercise our regulatory oversight. It is important for us that members of medical schemes affected by the judgement still be protected and at this stage would like members to be aware of the impact of the judgement on any monies they may have in savings accounts with their particular scheme", says Acting Registrar for the CMS, Dr Siphon Kabane.

The Constitutional Court judgement is the culmination of a matter which has been ongoing since 2013 when the CMS rejected the Genesis Medical Scheme's annual financial statements, on the basis that the accounting treatment of these funds by Genesis was incorrect and that the financial statements did not correctly reflect the revenue and expenditure, and therefore, the financial position of the scheme. The CMS indicated that the scheme had understated its liability by the exclusion of the members' PMSA, which in the CMS' view, was money that did not belong to the scheme, but to the members. Genesis took the

matter to the High Court for a review of the Registrar's decision. The High Court ruled in Genesis' favor and the CMS took the matter to the Supreme Court of Appeal, which in a majority judgment ruled in the CMS' favor, overturning the decision of the High Court. Genesis was granted leave to appeal and took the matter to the Constitutional Court. The Constitutional Court set aside the order of the Supreme Court of Appeal with costs.

"Our focus is clear as the regulator of the medical schemes industry – and we will continue to give effect to the Medical Schemes Act, No. 131 of 1998. We have a duty to protect the interests of members of medical schemes, and to ensure that the industry is stable", Kabane concluded.

End

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