



PRESS RELEASE

Reference: Implications of Concourt judgement on MSA
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Press release 12 of 2017: Implications of the Constitutional Court judgement on medical schemes members' savings accounts

Following receipt of numerous requests from the public to provide clarity on the implications of the recent Constitutional Court judgment regarding the correct accounting treatment of medical schemes members' personal savings accounts (MSA); the Council for Medical Schemes (CMS) would hereby like to provide an explanation on how scheme members with a medical personal savings account are affected by the ruling.

Background on the court case

In 2007 the Pretoria High Court heard a matter relating to the liquidation of a medical scheme, Omnihealth. The court had to consider whether or not the funds in a member's personal medical savings account should be included or excluded from the assets of the scheme. The conclusion was that the funds are trust property in terms of the Financial Institutions Act (FI Act) and should therefore be administered separately. These funds could therefore not be included in the assets of the scheme that had to be divided between its creditors. Following the judgment, the CMS issued two Circulars, 38 of 2011 and 5 of 2012 which directed medical schemes to ring fence savings accounts in their annual financial statements (AFS) so that it is clear that the savings portion belong to members and not to the scheme.

A dispute subsequently arose between the Genesis Medical Scheme and the CMS regarding the correct accounting treatment of members' personal saving accounts after their AFS were rejected by the Registrar of Medical Schemes in terms of section 38 of the Medical Schemes Act, No. 131 of 1998 (the Act). In terms of section 35(9)(c) of the Act, the liabilities of a medical scheme shall include the amount standing to the credit of a member's personal savings account. The contention of the scheme was that in order for savings accounts to be accounted for as a liability there should also be a corresponding asset on the balance sheet of the scheme. In order for the scheme to meet the solvency

requirements, the balance in a member's savings account should accordingly be considered as an asset of the scheme and should not be ring fenced.

The scheme lodged review proceedings in the Cape High Court against the Registrar's rejection of their AFS and the above mentioned circulars. Justice Davis, found that the Omnihealth case had been wrongly decided and did not make financial sense from an accounting point of view. On appeal to the Supreme Court of Appeal (SCA), the court overturned Justice Davis' judgment and confirmed the view of the CMS in a majority judgment which stated that these funds must be separately accounted for. The scheme was aggrieved by the SCA judgment and appealed to the Constitutional Court (CC), where the matter was heard on 14 February 2017. The CC rendered its judgement, per Justice Cameron J, on 6 June 2017 and set aside the SCA's judgment on the basis that savings account liabilities do not need to be treated separately or differently from any other liabilities of the scheme and that the scheme is the right holder of the funds.

The effect of the CC judgement

The judgment affects the technical accounting treatment of medical schemes members' personal savings accounts in terms of section 35(9)(c) of the Act, going forward. The judgment of the CC was rendered on 6 June 2017 and does not apply retrospectively.

Effect of the CC judgement on the CMS

- a. From 6 June 2017 medical schemes will no longer have to meet the requirements as set out in Circulars 38 of 2011 and 5 of 2012 in as far as the accounting treatment of medical schemes members' personal savings funds is concerned.
- b. The CMS will amend the relevant portions in these circulars on its website so that it is clear which sections have been repealed.
- c. A Circular with more comprehensive details will be issued by the CMS in due course.
- d. The CMS will also send out a notification to the Guardians Fund of the changes.

Effect on medical schemes and administrators

- e. Medical schemes members' personal savings funds need not be accounted for separately in the AFS and must be considered as an asset of the scheme in the submission of the AFS.

- f. The judgment does not have an influence on the calculation of the solvency levels of medical schemes.
- g. Previously savings monies were excluded from Annexure B as schemes were directed to invest these monies separately from scheme funds. Following the judgment these monies will now fall within the ambit of Annexure B.
- h. Schemes no longer have to allocate the interest earned on medical scheme members' personal savings balances to the individual savings accounts of members and may retain the income with other scheme assets.
- i. Schemes that wish to amend their registered rules accordingly may do so during the October rule submissions for incorporation from 1 January 2018.
- j. The Prescription Act will apply to unclaimed members' savings accounts and if these claims prescribe the amounts will be written back to the scheme.

Effect on members with savings accounts

- k. It is emphasised that while the CC judgment has a significant impact on the manner in which personal medical savings accounts are accounted for, the judgment does not affect the entitlement of members to access these funds, other than in the case of liquidation.
- l. In terms of section 30(e) of the Act, medical schemes are allowed to allocate personal medical savings accounts to members within the limit and the manner prescribed in Regulation 10, and such amounts may then be used for the payment of any relevant healthcare service.
- m. Regulation 10 provides further details regarding this provision and states the following:
 - i) Funds deposited in a member's savings account shall be available for the exclusive benefit of the member and his or her dependants but may not be used to offset contributions, provided that the medical scheme may use the funds to offset debt owed by the member to the scheme following the member's termination of membership of the scheme (sub-regulation 3).
 - ii) Credit balances in a member's savings account shall be transferred to another medical scheme or benefit option with a savings account, as the case may be, when such member changes medical schemes or benefit options (sub-regulation 4).
 - iii) Credit balances in a member's savings account must be taken as a cash benefit, subject to applicable taxation laws, when the member terminates his or her membership of a medical scheme or benefit option and then enrolls in another benefit option or medical scheme without a savings account; or does not enroll in another medical scheme (sub-regulation 5).

- iv) The funds in a member's savings account shall not be used to pay for the costs of a prescribed minimum benefit (sub-regulation 6).
- n. All of the above provisions are unaffected by the judgment and the *status quo* remains. Therefore, when a member leaves a scheme the money in his or her savings account will continue to follow the member.
- o. Members must ensure that their banking details and contact details are updated with the scheme.
- p. Members are only affected if a scheme is liquidated in which instance, their savings moneys will be divided amongst the creditors of the scheme with the other assets of the scheme.
- q. Finally, medical schemes are no longer required to accrue interest on these accounts which means that members will not be entitled to investment income.

The CMS will issue circulars with more specific details on the above changes in due course.

End.

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