



COUNCIL FOR MEDICAL SCHEMES

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## PRESS RELEASE

### PRESS RELEASE 4 of 2008

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#### **GUARDRISK: COUNCIL FOR MEDICAL SCHEMES FILES APPLICATION FOR LEAVE TO APPEAL TO CONSTITUTIONAL COURT**

On Friday 18 April 2008, the Registrar of Medical Schemes ("the Registrar") and the Council for Medical Schemes ("the Council") filed application for leave to appeal to the Constitutional Court, in the matter of Guardrisk Insurance Company Limited ("Guardrisk") and the Registrar and the Council.

The matter concerns two of Guardrisk's policies, named AdmedGap and AdmedPulse. The Council and the Registrar contend that these products do the business of a medical scheme, which requires Guardrisk to be registered as a medical scheme and to comply with the requirements of the Medical Schemes Act ("the Act").

The Johannesburg High Court agreed with the Council and Registrar, interdicting Guardrisk from selling and marketing these products as it is not registered in terms of the Act. However, Guardrisk appealed to the Supreme Court of Appeal (SCA) which, on 28 March 2008, overturned the judgment of the Johannesburg High Court.

Legally, the matter turns on a technical point of whether paragraphs (a), (b) and (c) of the definition of "business of a medical scheme" in the Act should be read disjunctively [(a) OR (b) OR (c)] or conjunctively [(a) AND (b) AND (c)]. The High Court agreed with the Registrar and Council's contention that the former applies, whereas the SCA agreed with Guardrisk that a conjunctive interpretation should be applied.

Although the legal dispute is technical, the matter has major practical and policy implications. The Registrar and Council contend that on the SCA's interpretation, about two-thirds of medical schemes currently registered under the Act would be excluded from its ambit. It would also create an enormous hole in the regulatory regime created by the Act which would be rapidly exploited by everybody keen to carry on the business of a medical scheme but free of regulation under the Act.



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Young and healthy lives will be attracted out of the medical schemes environment (or to less comprehensive medical scheme products), resulting in rapidly increasing costs for the older and less healthy who remain dependent on registered medical schemes for their cover – but now with significantly reduced cross-subsidisation from the young and healthy.

The Registrar and Council contend that the Constitutional function of the Act to promote access to health care services in terms of section 27 of the Constitution of the Republic of South Africa, and to promote non-discrimination and equality in terms of section 9 of the Constitution, will be seriously compromised if the SCA's interpretation is allowed to stand.

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