



# Office of the Registrar of Medical Schemes

**OCTOBER 2008**

PROPOSED FIT AND PROPER STANDARDS FOR  
PRINCIPAL OFFICERS AND TRUSTEES

DISCUSSION DOCUMENT

To provide comments by no later than **6 February 2009**, email:

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## Introduction

1. Trustees and principal officers of medical schemes are responsible for the governance and management of medical schemes.
2. To ensure that they have the skills and qualities to ensure the proper discharge of these responsibilities, the Medical Schemes Act, 131 of 1998 (“MSA”) requires trustees and principal officer to be “fit and proper” to hold such offices.<sup>1</sup>
3. The Medical Schemes Amendment Bill, 2008, makes provision for the Minister of Health (“the Minister”), after consultation with the Council for Medical Schemes (“the Council”) to make regulations relating to “requirements and criteria for the determination of the fit and proper status of a trustee, principal officer and any other person required to be fit and proper to perform any function or duty in terms of this Act.”
4. The Council recognises the importance of these intended regulations to its role in ensuring sound governance of medical schemes – a matter which is highlighted by the current turbulence in world financial markets.
5. It is therefore developing advice to the Minister on appropriate fit and proper standards for trustees and principal officers, which may inform the development of regulations once the Medical Schemes Amendment Bill is passed. This is consistent with the function of the Council to advise the Minister on any matter concerning medical schemes.<sup>2</sup>
6. This document therefore contains a draft set of requirements and criteria for the determination of the fit and proper status of trustees and principal officers. It is intended as a consultation document to elicit stakeholder comment which will inform the Council in the development of its final recommendations to the Minister.
7. In developing these proposals, regard has been had to: the relevant provisions of the MSA; fit and proper standards for financial institutions and functionaries applied by other financial regulators in South Africa<sup>3</sup> and in thirteen other countries;<sup>4</sup> written inputs by various medical schemes;<sup>5</sup> and relevant case-law from South Africa and elsewhere.
8. Please use this opportunity to make submissions on these proposals. Tell us what you think of them, and why. If you find some of the ideas particularly good, please say so. If you find them problematic, let us know this as well. If you have even better suggestions, by all means make them.

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<sup>1</sup> Section 57(1) and 57(4)(a) of MSA

<sup>2</sup> Section 7(g) of MSA

<sup>3</sup> Financial Services Board; South African Reserve Bank

<sup>4</sup> Australia; Guyana; Hong Kong; Ireland; Isle of Man; Liberia; Mauritius; New Zealand; Pakistan; Scotland; Singapore; Trinidad & Tobago; United Kingdom

<sup>5</sup> Fedhealth Medical Scheme; Medicovert Medical Scheme; Hosmed Medical Scheme; and Telemed Medical Scheme.

9. We would be grateful to receive your submissions by no later than **6 February 2009**. They can be emailed to [fitandproper\\_comments@medicalschemes.com](mailto:fitandproper_comments@medicalschemes.com).

### **What is “fit and proper”?**

10. “Fit and proper” refers to the regulatory eligibility of a person to hold an important position of trust in an entity such as a company or financial institution. “Fit” relates to a person’s competence and ability to do the job. “Proper” relates to the character and integrity of the person.
11. Quite simply, a fit and proper person means someone who is: financially sound; honest, reputable and reliable; and competent to perform the role in question.
12. Criteria for assessing fitness and propriety of a person are typically organised in three categories:
  - 12.1. honesty, integrity, and reputation;
  - 12.2. competence and capability; and
  - 12.3. financial soundness.

### **Proposed fit and proper criteria**

13. In the Annexure, we propose “fit and proper” standards and criteria for principal officers and trustees of medical schemes, taking into account local and international best practice. Unless otherwise stated, the criteria will apply to both trustees and principal officers (collectively referred to in these criteria as “responsible persons”).
14. Within each category, there is a “fitness and propriety standard”; “disqualification criteria”; and “evaluation criteria”.
  - 14.1. The fitness and propriety standard is the overall standard which the responsible person is required to meet.
  - 14.2. Disqualification criteria are criteria which, if applicable, automatically results in the relevant fitness and propriety standard not being met.
  - 14.3. Even if a person is not automatically disqualified in terms of the disqualification criterion, she or he may still not meet the overall standard, cumulatively taking into account a range of other criteria (the “evaluation criteria”).
  - 14.4. Non-compliance with a single evaluation criterion will not necessarily result in a determination that a person is not fit and proper, but may have that effect depending on the circumstances, including the time since the event, the seriousness of the event, the relevance of the event to the role or proposed role of the responsible person, the explanation offered by the

responsible person, and evidence of the person's rehabilitation, where applicable.

- 14.5. The disqualification and evaluation criteria do not constitute a definitive list of all the matters which may be relevant to a determination of whether or not a person has met the relevant fitness and propriety standard.
15. In considering the fitness and propriety of a responsible person, regard may be had to both current and all previous conduct and activities in business of financial matters of the person in question – and irrespective of whether or not they occurred in South Africa or elsewhere.

## **Implementation**

16. The regulations under the MSA should prescribe that boards of trustees should have the responsibility of ensuring that all trustees and principal officers meet the required fit and proper standards.
17. In practice, it is recommended that the regulations should require every serving and prospective trustee and principal officer to complete a standard declaration, the contents and format of which will be prescribed.
18. The declaration should include information pertaining to the person's qualifications and professional experience, as well as statements providing information corresponding to each of the disqualification and evaluation criteria in the fit and proper standards.<sup>6</sup>
19. In the case of serving trustees and principal officers, they should be required to amend the declarations in the case of any material information changing, and also to review the information on an annual basis to certify that the information contained therein remains correct.
20. It is also recommended that a certificate obtained from the South African Police Services should be provided to the scheme by prospective and serving trustees, which provides details of the criminal history of the individual. Fingerprints should also be provided with written permission granted by the individual to allow the scheme and/or the Registrar of Medical Schemes to verify the criminal record of the individual.
21. Boards of trustees would be responsible for evaluating the information provided in the declarations and police certificates, with a view to making a determination of whether or not the person is fit and proper to serve in office.
  - 21.1. In the case of prospective trustees (who have been nominated for an election), the declaration and assessment thereof should precede the

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<sup>6</sup> The statement would be in a format similar to the "Statement By Individuals Who Are Holding, Or Are Proposing To Hold, The Office Of A Director Or Executive Officer Or A Bank Or Controlling Company", prescribed in terms of the Banks Act No. 94 of 1990.

elections and will be determinative of the person's eligibility to stand for elections.

- 21.2. In the case of prospective principal officers, the declaration and assessment thereof should precede their appointment and will be determinative of the person's eligibility to hold that office.
  - 21.3. In the case of serving trustees and principal officers, the Board would be responsible for making an initial assessment of the fit and proper status of the individuals concerned, as well as periodic reassessments based on updated declarations. These assessments would be determinative of the individuals' eligibility to continue in office.
22. Any individual aggrieved by a determination made by a Board of Trustees in relation to their fit and proper status should be able to appeal the decision to the Council for Medical Schemes – and the operation of the determination by the Board should be suspended pending the decision on appeal.
  23. Medical schemes should be made responsible for keeping records of all declarations made, and police certificates supplied, by serving and prospective trustees and principal officers.
  24. These declarations and certificates should be made available to the Registrar of Medical Schemes on request, together with all records of decisions taken by Boards of Trustees in relation to the fit and proper status of individuals. Information supplied in this manner may also be used by the Council for purposes of institution of its own processes for removal of trustees in terms of section 46 of the MSA.
  25. The Board of a medical scheme should be permitted, in terms of its own governance policies, to reasonably supplement the fit and proper standards and criteria – taking into account the specific needs and requirements of their own scheme (for example by specifying specific educational and experience standards for principal officers).
  26. In addition, it would be expected of every medical scheme to have in place –
    - 26.1. a documented policy for proper induction and training, as well as ongoing training, for both principal officers and trustees; and
    - 26.2. a code of conduct for trustees and employees of the scheme.

### **Process Forward**

27. Once comments have been received they will be evaluated and an assessment with recommendations will be placed before the Council for its consideration.
28. The Council, in its discretion, may then make recommendations to the Minister of Health regarding the proposed regulatory framework.

## ANNEXURE

### PROPOSED FIT AND PROPER STANDARDS

Note: in these criteria, “responsible person” means a trustee or principal officer of a medical scheme.

#### ***1. Honesty, integrity and reputation***

##### A. Fitness and propriety standard

**The responsible person must possess the character, diligence, honesty, integrity and judgment to perform the duties of trustee or principal officer.**

##### B. Disqualification criteria

A person shall be disqualified from serving as a responsible person if that person –

- a) in the 10 years prior to his or her appointment or intended appointment as a responsible person, has been convicted of any offence –
  - i) involving dishonesty, fraud, money laundering, theft or financial misconduct; or
  - ii) in terms of any tax legislation; or
  - iii) punishable by imprisonment for one year or longer; or
  - iv) in terms of the Medical Schemes Act; or
- b) is disqualified or prohibited from being a director of a company under the Companies Act or similar legislation in another country.

##### C. Evaluation criteria

In evaluating compliance with this standard, consideration will be given to whether the responsible person –

- a) is of bad repute in any business or financial community or any market;
- b) has breached a fiduciary obligation or other obligation involving trust;
- c) has or had a conflict of interest which may have influenced his or her ability to carry out his or her role and functions with the degree of probity and independence required, or has failed to deal appropriately with such conflicts;
- d) has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices, or has contravened any of the requirements

- and standards of a regulatory body, professional body, government or organ of state, which are of the nature and/or significance that may have affected his or her fitness and propriety;
- e) has been reprimanded, disciplined or disqualified or removed from office, by a court, tribunal or a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct – or has been notified of any impending proceedings or of any investigation, which might lead to such consequences;
  - f) was the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which reflected adversely on the person's competence, diligence, judgment, honesty or integrity;
  - g) has been personally, or has been significantly involved with an entity which has been:
    - i) expelled or excluded from, or refused admission to, a professional or industry body, or a clearing house or an exchange;
    - ii) refused a licence or authorisation relating to a professional or business activity, or had a licence or authorisation suspended or revoked;
  - h) has been terminated, resigned or been asked to resign, from a position as director, partner or manager of or as a professional service provider to, an entity in circumstances which reflected adversely on his or her competence, diligence, judgment, honesty, or integrity in discharging the responsibilities of the position;
  - i) has been disqualified, removed or excluded from, or not admitted to, any management or professional role by a court, tribunal or regulatory agency, or by the operation of a legislative provision;
  - j) has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
  - k) has acted as a director, partner, manager, trustee or professional service provider to an entity when that entity has failed, become insolvent, been liquidated or placed under curatorship or judicial management, or had otherwise failed to meet its financial obligations (or when this has happened within one year of the person's involvement with the entity);
  - l) has contravened any regulatory requirement or professional standard relating to her or his management, commercial or professional activities and responsibilities;
  - m) has been obstructive, misleading or untruthful in dealing with a court, tribunal, regulatory body, official enquiry, complaints handling body, dispute resolution body, or professional or industry body;
  - n) has demonstrated a lack of readiness and willingness to comply with legal obligations, regulatory requirements or professional standards;

- o) has knowingly appointed a person who was not fit and proper to act in a position of trust or authority;
- p) provided false or misleading information to the medical scheme in relation to his or her appointment as a responsible person;
- q) has shown strong opposition or lack of willingness to maintaining effective internal control systems;
- r) has been unfair or untruthful or not forthcoming in his or her dealings with clients, superiors or auditors;
- s) has knowingly or negligently aided or abetted other persons in breach or any laws, regulation or code of conduct;
- t) has been the subject of a justified complaint to a regulatory body; or
- u) otherwise has acted in a manner which is demonstrably contrary to the interests of clients or beneficiaries whose interests he or she should have been serving.

## ***II. Competence and capability***

### A. Fitness and propriety standard

**The responsible person demonstrates the appropriate skill, knowledge and competence in fulfilling the managerial and professional responsibilities in the conduct of the duties of a trustee, in order that she or he can make informed decisions in the best interests of beneficiaries within a sound governance framework.**

- a) Note:
  - i) It is not the intention of these criteria to set specific educational or technical qualifications, levels of knowledge, skills or experience to be demonstrated by trustees or principal officers. It is, however, expected that every scheme will have policies in place which outline these so that they are appropriate to the scale and conduct of the scheme's operations.
  - ii) In relation to trustees –
    - (1) This standard is not intended to prevent individuals serving as a trustee merely because they are not technical experts in a particular field. The requirements of this standard do not prevent trustees from making use of the advice of in-house and/or external service providers to assist in the performance of their duties and responsibilities.
    - (2) However a trustee should be able to demonstrate sufficient knowledge regarding the duties and responsibilities of a medical scheme trustee to



make informed decisions in the interests of beneficiaries based on the advice of technical experts.

(3) Ignorance of the legislative and other obligations placed on trustees is not an acceptable defence should the trustee breach those obligations.

B. Disqualification criteria

A person shall be disqualified from serving as a responsible person if that person –

- a) is mentally incompetent or who has been classified as a State patient in terms of the Criminal Procedure Act;
- b) is under the age of 18; or
- c) is not permanently resident in the Republic of South Africa.

C. Evaluation criteria

In evaluating compliance with this standard, consideration will be given to whether the responsible person fails to demonstrate –

- a) in the case of a principal officer, appropriate qualifications and the necessary technical knowledge, skills and experience to effectively manage a medical scheme; or
- b) in the case of a trustee, a working knowledge of the requirements of the Medical Schemes Act, ability to interpret financial statements, basic investment knowledge and an understanding of the administration and operations of medical schemes.

### ***III. Financial soundness***

A. Fitness and propriety standard

**The responsible person must demonstrate ability to manage his or her own financial affairs properly and prudently, in order to provide confidence in his or her ability to manage the financial affairs of others.**

- a) Note: the fact that a person may be of limited financial means does not, in itself, affect his ability to meet this standard.

B. Disqualification criteria

A person shall be disqualified from serving as a responsible person if that person is an unrehabilitated insolvent or is under liquidation or provisional liquidation.

C. Evaluation criteria

In evaluating compliance with this standard, consideration will be given to whether the responsible person –

- a) has previously been declared insolvent (provisionally or finally), is in the process of being declared insolvent, has filed for bankruptcy or has had a bankruptcy petition served on him or her;
- b) has been personally, or has been a senior officer of a company or shareholder in a position to exercise significant influence in a company that has been:
  - i) the subject of any judgment debt, that remains outstanding or was not satisfied within a reasonable period; or
  - ii) has made any arrangements or entered into a compromise with his or her creditors, has had assets sequestered, or been involved in proceedings related to any of these.

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