



# Office of the Registrar of Medical Schemes

**OCTOBER 2008**

PROPOSED CORPORATE GOVERNANCE  
GUIDELINES FOR MEDICAL SCHEMES

DISCUSSION DOCUMENT

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

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## INTRODUCTION

1. The term “medical scheme governance” focuses primarily on the manner by which medical schemes are directed and managed. It encompasses a variety of activities such as strategic development, risk management and performance evaluation. This document seeks to provide guidance to medical schemes, on the structures and processes that a medical scheme should have in place for effective oversight and management of its affairs.
2. There exists a need for effective governance structures and internal control systems to identify monitor and control potential risks. Medical schemes’ governance is essential not only to the wellbeing of the individual medical scheme, but also as a critical ingredient in maintaining a financially sound and robust private health care industry.
3. The Medical Schemes Amendment Bill, 2008 (“MSAB”), makes provision for the Council, from time to time, to publish guidelines for good corporate governance to assist the trustees and principal officers (“POs”) of medical schemes to establish and maintain adequate and effective processes of corporate governance.<sup>1</sup>
4. The Bill contemplates requirements for the periodic disclosure by boards of trustees (“BOT”) of medical schemes to the Registrar and the members of the medical scheme of the extent to which those guidelines have been met, together with reasons for failure to comply with those guidelines.
5. Although the Bill has not yet passed into law, the Office of the Registrar would like to begin a process of consultation of good corporate governance guidelines, which can be published in terms of the Bill once it is enacted.
6. In the interim, this process of publishing a discussion document and generating feedback and interaction will hopefully also provide assistance to BOT in relation to best practices of corporate governance in medical schemes.
7. 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 or that there are significant omissions, let us know this as well. If you have better suggestions, by all means make them.
8. We would be grateful to receive your submissions by no later than **6 February 2009**. They can be emailed to:

**[governance\\_comments@medicalschemes.com](mailto:governance_comments@medicalschemes.com)**.

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<sup>1</sup> See proposed section 57E, to be inserted by section 22 of the MSAB.

## **PRINCIPLES OF GOOD GOVERNANCE**

9. The following guiding principles should feature prominently as the BOT executes their responsibilities: independence, discipline, transparency and accountability.<sup>2</sup>
10. The first principle to be embraced by the BOT is *discipline*. BOT members must be committed to conduct that is generally recognised and accepted to be correct and proper.
11. The second principle is *transparency*. The BOT shall conduct itself in a manner that enables members of schemes and other interested parties to make meaningful analysis of the scheme's actions, its economic fundamentals and other non-financial issues that are relevant to the schemes.
12. The third principle is *independence*. The BOT should act independently in order that conflict of interest may be minimised or avoided. The independence shall extend to such aspects as the composition of the BOT, appointment of committees of the BOT and other related parties such as managed care entities, administrators, auditors, etc. The decisions made and internal processes established shall be objective and not allow for undue influences or conflict of interest.
13. The fourth principle is *accountability*. BOT shall be accountable for the decisions they make, and actions they take on any specific issue pertaining to the affairs of the scheme. The BOT shall also hold related parties accountable for conducting themselves in the best interest of beneficiaries.

## **ROLES AND RESPONSIBILITIES**

14. The BOT are the representatives of the medical scheme beneficiaries and are legally responsible for the direction of the scheme on the beneficiaries' behalf. The BOT must at all times in their dealing with medical scheme issues act in the interests of beneficiaries. The BOT's responsibilities can be met through a sound medical scheme governance philosophy and through policies and practices that maximize the BOT's overall focus, effectiveness, efficiency and performance.
15. The BOT must have a clear and common understanding of its roles and responsibilities in order to function effectively. Its primary role is an oversight one and also to direct the management of scheme activities either by a third party administrator or internally. This is accomplished through developing appropriate policies, appointing a sound management team, and reviewing BOT's actions diligently.
16. The statutory duties of the BOT are provided for in section 57 of the Medical Schemes Act, 131 of 1998 ("MSA"). Important amendments to this section have been proposed in the MSAB to distinguish the role of the BOT in providing strategic

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<sup>2</sup> King II report, Institute of Directors, 2002

direction and oversight, from the role of the PO and executive management structure in managing the day-to-day operations of the scheme.<sup>3</sup>

17. The MSAB seeks to clarify that the PO is responsible under the authority of the BOT for the executive management of the business of the medical scheme, to be performed in terms of delegations of responsibility by the BOT.<sup>4</sup> The MSAB contemplates that greater specificity to the role of the PO will be provided through regulation.<sup>5</sup>
18. In our view, it would be appropriate from a corporate governance perspective for the BOT to delegate the following functions to the PO (obviously subject to oversight by the BOT):
  - 18.1. effectively manage the investments, other assets and liabilities of the medical scheme;
  - 18.2. keep proper registers, books and records of all operations of the medical scheme;
  - 18.3. keep proper minutes of all resolutions passed by the BOT;
  - 18.4. maintain effective, efficient and transparent systems of financial and risk management and internal control;
  - 18.5. maintain a system of internal audit under the control and direction of an audit committee appointed in terms of section 36(10) of the MSA;
  - 18.6. maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
  - 18.7. prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct and, on discovery of any unauthorized, irregular or fruitless and wasteful expenditure, immediately report, in writing, particulars of the expenditure to the BOT;
  - 18.8. prepare the budgets of the medical scheme for consideration and approval by the BOT;
  - 18.9. develop recommendations for consideration by the BOT in relation to amendments of the rules of the scheme affecting contributions, benefits and other matters;
  - 18.10. ensure the timeous collection of all contributions and other money due to the medical scheme;

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<sup>3</sup> See proposed sections 57B to 57D, to be inserted by sections 21 and 22 of the MSAB.

<sup>4</sup> See proposed section 57D, to be inserted by section 22 of the MSAB.

<sup>5</sup> See proposed section 67(1)(oA), to be inserted by section 26 of the MSAB.

- 18.11. settle all contractual obligations and pay all money owing, including claims-related payments, within the period agreed upon, provided for in the rules of the scheme, or prescribed by this Act or any other law;
- 18.12. communicate appropriate information to the members regarding their rights, benefits, contributions and duties in terms of the rules of the medical scheme;
- 18.13. take out and maintain an appropriate level of professional indemnity insurance and fidelity guarantee insurance;
- 18.14. obtain expert advice on legal, accounting and business matters as required;
- 18.15. take all reasonable steps to protect the confidentiality of medical records concerning a beneficiary's state of health;
- 18.16. subject to the direction of the BOT, negotiate and enter into such contractual arrangements with third parties as may be necessary for the effective conduct of the business of the medical scheme;
- 18.17. ensure the proper performance by the medical scheme and third parties, including third-party administrators, brokers and managed health care organisations, of their respective obligations in terms of those contracts;
- 18.18. appoint such additional employees as are necessary to assist the PO in the performance of his or her functions; and
- 18.19. generally take responsibility for the functioning and performance of any such staff.

## **FIT AND PROPER STATUS OF TRUSTEES**

19. In terms of section 57 of the MSA, trustees and POs must be "fit and proper" to hold those positions. The MSAB also makes provision for the Minister to prescribe requirements and criteria for the determinations of the fit and proper status of these persons.
20. A separate discussion document has been published by the Registrar in relation to such criteria – and readers are referred to that document for more detail on this issue, which may be obtained on our website, [www.medicalschemes.com](http://www.medicalschemes.com).
21. Essentially, a fit and proper person means someone who is: financially sound; honest, reputable and reliable; and competent to perform the role in question. The draft discussion document accordingly provides fit and proper criteria in the following categories: honesty, integrity, and reputation; competence and capability; and financial soundness.

22. The BOT should ensure that the scheme's processes for identifying, recruiting, nominating, appointing, and orienting new trustees, and for assessing existing trustees, is consistent with these fit and proper standards and criteria. This is central to ensuring the effectiveness of the BOT.

### **CONFLICT OF INTEREST**

23. One of the most important obligations of the trustees and the PO is to maintain a high degree of integrity. One such act is to avoid conflict of interest.
24. The term "conflict of interest" refers to a situation where someone, such as a member of the BOT, has competing professional, personal or financial obligations or interests that would make it difficult to fulfil his or her duties fairly.
25. It is advisable that the BOT should develop its own "conflict of interest policy and procedure," which shall cover at least the following areas:
- 25.1. the definition of conflict of interest and some common situations in the medical scheme's environment which constitutes conflict of interest;
  - 25.2. guiding principles for the policy;
  - 25.3. the disclosure procedure for potential and actual conflicts of interest;
  - 25.4. the management of disclosed and non-disclosed conflicts of interest;
  - 25.5. enforcement plans; and
  - 25.6. the sanctions for non-compliance.

### **DISCLOSURES AND COMMUNICATION**

26. Members of the BOT and POs should avoid receipt of gifts or benefits that may create undue influence or even the perception of undue influence or impropriety. To the extent that any gifts or benefits are received by trustees and POs, the BOT must have in place strict policies to ensure full disclosure.
27. In this regard, it is to be noted that the MSAB requires that the members of the BOT and PO disclose annually in the annual financial statement of the medical scheme detail of any payments, gifts of considerations made to them in that particular year by:
- 27.1. the medical scheme concerned;

- 27.2. any person contracted by the medical scheme to provide administrative, marketing, brokerage, managed care or other services, or the holding company, subsidiary, joint venture or associate of such person; and
  - 27.3. any other person if such payments, gifts or consideration were made by virtue of their holding office within the medical scheme.<sup>6</sup>
28. In terms of the MSAB, such disclosures shall include: the identity of the source of the payment, gift or consideration; the reason for the payment, gift of consideration; the date on which the payment, gift or consideration was given; and the quantum of money or otherwise the value of the payment gift consideration.
29. More generally, in relation to all communications by the scheme, the BOT has the responsibility to furnish information that is honest, intelligible, meaningful, timeous and that could be disseminated to all relevant stakeholders.

### **BOT LEADERSHIP**

30. The chairperson of the BOT is elected by the BOT from its members. The Chairperson chairs the BOT and should have the following responsibilities:
- 30.1. providing direction to the PO on the preparation, with input from other members, of agendas and materials for all BOT and committee meetings that cover all matters necessary for the BOT to exercise its duties properly;
  - 30.2. presiding at all full meetings of the BOT in a manner that utilises the BOT effectively and takes full advantage of the expertise and experience of each trustee;
  - 30.3. providing leadership to the BOT in formulating positions for the BOT to consider for adoption in terms of governance, regulatory and other appropriate matters;
  - 30.4. providing input and support to the chairpersons of the committees on matters within the scope of those committees;
  - 30.5. ensures the BOT is fully informed about the material and financial condition of the scheme, its business, and the environment in which they operate;
  - 30.6. engaging the BOT in assessing and improving its performance as well as overseeing the induction and development of trustees; and
  - 30.7. supporting the PO as well as taking a leading role in his/her performance evaluation.

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<sup>6</sup> Proposed section 57G, to be inserted by section 22 of the MSAB.



31. It is important that the chairperson should remain organised and follow all rules, regulations and other agreements in order to ensure the effectiveness of all meetings.

## **LEADERSHIP DEVELOPMENT**

32. It is also understood that not all new trustees will already be experts in the field of medical scheme governance when they assume their positions. This places a responsibility on the BOT to ensure that there are adequate orientation processes for new trustees, including reviewing and workshopping background material, participating in appropriate training activities, meeting with all the relevant parties and visiting the scheme premises or the premises of the related parties, and feedback and evaluation processes.
33. The induction program must familiarise trustees with, among other things: the medical scheme's business environment; strategic plans; significant financial, accounting and risk management issues; regulatory compliance programmes; conflict of interest policy; code of conduct and ethics; medical schemes governance guidelines; internal management structures; and functions of internal and external auditors.
34. The BOT should encourage all trustees on an ongoing basis to attend educational opportunities enabling them to better perform their duties and recognize and deal with various issues that may arise during their tenure as trustees. This shall include ongoing medical scheme governance and other educational programmes related to their service on the BOT. The training will be done at medical scheme expense.
35. Orderly succession planning is also essential for the medical scheme to function effectively and maximize its performance. The BOT shall in particular develop and adopt a plan of succession for the chairperson and PO in the event of either resignation, removal, retirement, death or disability.

## **STRATEGIC PLANNING**

36. Strategic management is one of the most important roles of the BOT. It has two main components: strategy development, and implementation of strategy. The former deals with how to develop fresh concepts that make long-term business sense, while the latter deals with how to turn those concepts into working reality in the form of strategic decisions.
37. In short, strategic management seeks to determine: where the medical scheme should be going over the next year or more; how it is going to get there; and how it will be determined whether or not it got there.

38. The strategic decision-making process should flow through to every aspect of running the medical scheme business, informing the organisational structure and impacting on the way the work is performed at every level.
39. The BOT could use the following checklist for evaluating its strategic management performance:
- 39.1. Does the medical scheme have clear "Organisational Strategies"?
  - 39.2. Are specific "Strategic Goals" established from the "Organisation Strategies"?
  - 39.3. Are "Organisational Strategies" translated into clear "Business Plans"?
  - 39.4. Are "Business Plans" translated into "Operational Plans"?
  - 39.5. Are the different management systems and organisational structures supporting the "Operational Plans"?
  - 39.6. Are the "Measures and Performance Indicators" established from "Strategic Goals"?
  - 39.7. Are the BOT reporting systems and requirements established?

## **STRUCTURE OF THE BOT**

40. According to section 57(2) of the MSA, at least 50% of the members of the BOT shall be elected from amongst members of the scheme. The MSAB provides that remaining members must be appointed in terms of the rules of the medical scheme (in the case of restricted schemes), or should be appointed by the elected members (in the case of open medical schemes).
41. The appointment of the remaining members should be used as an opportunity to supplement the BOT membership to achieve diversity and equity in the make-up of the BOT, and to acquire specific desired skills and qualifications, taking into account the attributes of elected members.

## **TERM OF OFFICE – DURATION OF TRUSTEESHIP**

42. It is recommended that BOT members be limited to a term of office of 3 years, with the possibility of a renewal for an additional term.
43. The MSAB provides that a person shall not serve as a trustee for more than a total of six years in any one medical scheme.<sup>7</sup>

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<sup>7</sup> See proposed section 57A(4), to be inserted by section 21 of the MSAB.

44. This would allow trustees who develop skills in scheme governance to be used for an indefinite duration by multiple schemes in the market, but would avoid a situation where trustees entrench individual “power-bases” in the scheme with potential detriment to the interests of beneficiaries.

## **SIZE OF BOT**

45. Trustees are elected to promote and protect the medical scheme members’ interests. A BOT that is too large will reduce the effectiveness, while a BOT that is too small may not be able to adequately discharge its responsibilities thus impacting negatively on the overall medical scheme performance.
46. There must be a sufficient number of BOT members to enable the BOT to function efficiently and effectively. The key areas that must be examined in conjunction with the size of the BOT in order to ensure BOT effectiveness are:
  - 46.1. the quality of advice and counsel available when a BOT has a diverse composition;
  - 46.2. diversity in experience, education, attitudes, background and so on;
  - 46.3. the composition of committees and the specialty required for committee duties; and
  - 46.4. the ability to secure critical resources for the medical scheme through networking and other means.
47. The BOT must be large enough to allow it to adequately discharge its responsibilities, without being too large that it becomes cumbersome. Poor communication and decision-making will overwhelm BOTs where the composition is too large.
48. As a guide, it is recommended that a BOT shall consist of no fewer than 5 and no more than 16 members depending on the individual medical scheme circumstances.

## **BOT MEETINGS**

49. The BOT shall meet in full complement at regular BOT meetings each year. The regularity of the meetings shall be determined by the BOT and shall ensure that the schedule is sufficient and appropriate to the fulfilment of its responsibilities.
50. The PO shall convene special meetings of the BOT (or appropriate committees) as circumstances warrant or as the PO desires guidance from the BOT.
51. The BOT shall require that written minutes be kept of each of its meetings and that those minutes be maintained with books and records of the scheme.

52. A quorum is constituted by a number of members of the BOT physically present at the meeting of that BOT, which number shall be not less than half of the members of the BOT plus one. Members of the BOT will, for the purpose of constituting a quorum, not include suspended BOT members.

## **AGENDA AND BOT MATERIALS**

53. The chairperson of the BOT, in consultation with the PO, should annually prepare a "BOT Master Agenda". This Master Agenda should set forth a general agenda of items to be considered by the BOT at each of its meetings during the year. Thereafter, the chairperson of the BOT in consultation with the PO may adjust the agenda to include special items not contemplated during the initial preparation of the annual Master Agenda. Upon completion, a copy of the Master Agenda shall be provided to the BOT members.

54. Some of the items which could feature in the Master Agenda include:

- 54.1. completion of the attendance register;
- 54.2. additional items to the agenda;
- 54.3. declaration of conflict of interests;
- 54.4. approval of the last meeting minutes;
- 54.5. issues arising from the minutes;
- 54.6. regular reporting information;
- 54.7. statutory returns and other regulatory compliance matters.

55. Each BOT member should be free to suggest inclusion of items on the agenda.

56. Information and materials that are important to the BOT member's understanding of the agenda items and other topics to be considered at a BOT meeting shall, to the extent practicable, be distributed sufficiently in advance of the meeting to permit prior review by the trustees.

## **BOT COMMITTEES**

### **Establishment of committees**

57. It is standard practice in many organisations, including medical schemes, that the BOT delegates certain areas of oversight to its committees, including the executive

committee. The six typical standing committees of the BOT recommended for medical schemes are:

- 57.1. investment committees;
- 57.2. risk management committees;
- 57.3. remuneration committees
- 57.4. clinical governance committees;
- 57.5. audit committees; and
- 57.6. disputes committees.

58. Sample charters / terms of reference for most of these types of committees are included as Annexures.

59. There are certain pre-requisites for effective committees. These include:

- 59.1. the appointment of qualified and independent committee members;
- 59.2. a clearly defined committee charter;
- 59.3. regular and carefully planned meetings;
- 59.4. allocation of adequate resources (including access to independent professional advice);
- 59.5. adequate orientation and training for members; and
- 59.6. striking a balance between continuity and renewal.

### **Delegation of authority to committees**

60. It is important to note that delegation of functions does not relieve the BOT from its fiduciary responsibilities, and that the BOT remains accountable for the decisions of its committees.

61. Nevertheless, delegating specific BOT responsibilities to committees can be an effective way of managing the workload of the BOT. The primary reason for having committees is to enhance the strategic planning and monitoring functions of the BOT and its accountability to members and other stakeholders.

62. BOT committees can allow trustees to deliberate and make concrete recommendations in different areas where there may be conflict of interests. This is especially so in matters dealing with outsourcing, financial reporting, internal control, remuneration, and the appointment or removal of trustees. However, the BOT

should guard against forming committees without sufficient consideration of the structure and processes needed for enhancing the effectiveness of these committees.

63. There should be a formal procedure for the delegation process which includes at least the following elements:

63.1. the terms of reference of the committee;

63.2. its life span;

63.3. the scope of its mandate;

63.4. its size and composition;

63.5. the reporting mechanism; and

63.6. procedure for regular evaluation by the BOT to ascertain performance and effectiveness.

64. Subject to any resolution of the BOT, a committee shall be delegated sufficient authority to perform its duties and fulfill its purpose, including the authority to approve principles, policies, strategies, processes and control frameworks for the management of the issues under its control.

65. Committees should be authorised by the BOT to:

65.1. seek any information that it reasonably requires to perform its functions from any employee of the scheme or the administrator and all employees should be directed to cooperate with any such requests made by the committee;

65.2. investigate any activity within its terms of reference; and

65.3. obtain outside legal or independent professional advice and request such advisors' attendance at meetings when the committee deems it necessary.

### **Membership and attendance at meetings**

66. The committee shall be appointed by the BOT. The committee shall be constituted of at least five members, of whom the chairperson. The PO and the financial manager of the scheme or the administrator may be *ex officio* members of the committee.

67. A majority of the total number of the members of the committee shall constitute a quorum at any meeting of the committee.

68. The chairperson of the BOT and other BOT members may attend sub committee meetings if they deem it is necessary to do so.

69. All committee members are supposed to attend all committee meetings.

#### **Assignment and rotation of committee members**

70. The BOT has the responsibility to assign trustees to the various committees and chair positions. A majority of the BOT is required to appoint trustees to fill vacancies on the committees. Members of the committees shall be rotated based upon the needs and factors existing at the time rotation is considered.

#### **Frequency and length of committee meetings**

71. As a guide, there shall be at least four scheduled BOT meetings annually. The frequency of the meetings of each committee shall be specified in each individual committee charter. Meetings of the committee can however, be held as frequently as the committee considers appropriate. The BOT or any member thereof, including members of the Committee, may request a meeting if they consider that one is necessary.

72. The length of each meeting is a function of the agenda items and the wishes of the committee members. The Chairperson of the committee, in consultation with appropriate members will develop the agenda.

#### **Performance evaluation**

73. The committee shall conduct an annual review of its work and its terms of reference and make recommendations to the BOT. The BOT shall annually review the committee's effectiveness.

74. The committee shall provide periodic reports to the BOT on the committee's activities. It shall however, not make binding decisions. The BOT will take decisions after consideration of the recommendations of the committee.

#### **BOT ACCESS TO MANAGEMENT AND INDEPENDENT ADVISORS**

75. The BOT shall have access to the scheme's management, administration and, where appropriate, to outside advisors or experts, but this should at all times be coordinated through the PO. This is to ensure that the executive management role of the PO is not undermined and that the normal operations of the scheme are not impeded.

#### **EVALUATION OF BOT PERFORMANCE**

76. The BOT of a medical scheme shall review periodically the performance of related parties with whom it has contracted such as, the administrator, brokers or managed care organisations.

77. The BOT itself needs a similar performance evaluation of individual members as well as the BOT as a whole. An effective BOT of trustee is recognised as one of the principal factors in a successful medical scheme. Without an evaluation process it is not possible for a medical scheme to know whether its BOT is operating in the most effective way.
78. The BOT's self-evaluation process must evaluate whether the BOT and its committees have the necessary framework, policies and procedures in place within which to make decisions, and whether it is acting in accordance with the,. It therefore needs to concentrate on the key elements of the BOT and committee functions, structure, development and operations.
79. BOT evaluation could result in the achievement of some or all of the following objectives:
- 79.1. the identification of annual and long-term goals for the BOT;
  - 79.2. improvement in the BOT's overall performance;
  - 79.3. a renewed dedication to the BOT member role;
  - 79.4. increased knowledge of roles and responsibilities; and
  - 79.5. strengthened relationship between BOT members and the medical schemes' members.
80. The BOT has to create a culture of frankness that encourages constructive evaluation. There needs to be full disclosure to all BOT members of the procedures and criteria to be used for the evaluation. It is particularly important for the evaluation to be carried out in a way that is supportive of the BOT. Furthermore, the evaluation process has to be seen as objective and fair and in which the BOT can place confidence.
81. It is recommended that every BOT should have a self-evaluation policy outlining procedures and criteria to be used in the evaluation process. The BOT should review these procedures and criteria at a meeting immediately after each strategic planning and targets/goals setting session to ensure alignment of the document and procedures to the scheme's strategic and operational plans. In addition, it is recommended that –
- 81.1. each BOT member will independently complete a self-evaluation document and the BOT will meet in executive session to complete a composite BOT self-evaluation;
  - 81.2. the BOT will use the results of the self-evaluation to develop specific steps to strengthen and improve its performance;



- 81.3. these self-evaluation steps should be followed on an annual or even quarterly basis if deemed necessary.

## **EVALUATION OF PO**

82. The BOT shall periodically (but at least annually) formally review the performance of the PO.
83. The purpose of evaluating the PO is to provide oversight and assurance that the scheme's strategy and policies are being effectively implemented. Another critical purpose is to provide input and feedback to the PO in order for continuous performance improvement to occur. The evaluation process is also used to make critical decisions about contract extension, as well as the payment of the performance incentives.
84. It is recommended that the following steps should be followed in the evaluation of the PO:
  - 84.1. The PO will develop a written self-evaluation at the end of each financial year and provide this to the BOT as soon as practicable.
  - 84.2. With this information, each BOT member will provide his or her assessment of the PO's performance in writing to the chairperson. These assessments shall include the trustee's appraisal of –
    - 84.2.1. the scheme's performance and the PO's contribution to it, both compared to competitors and the scheme's own strategic goals;
    - 84.2.2. achievement of personal goals set by the PO for the year, as part of his or her self-evaluation; and
    - 84.2.3. any other aspects of the PO's performance which the BOT deem relevant.
  - 84.3. The chairperson of the BOT shall synthesize this information and, thereafter, meet with the PO to review her or his performance.
  - 84.4. The chairperson will report to the BOT in the next regularly scheduled meeting on her or his synthesis of the views of the trustees, as well as on the meeting with the PO.
  - 84.5. The BOT will thereafter finalize the results of the evaluation and make necessary recommendations.
  - 84.6. The PO shall have the opportunity to respond to the BOT's evaluation at the conclusion of the executive session.

## **MEMBER PARTICIPATION IN SCHEME ACTIVITIES**

### **Annual general meetings**

85. The annual general meeting of members must be held as per the scheme's rules, each year, on a date which may be shown to permit reasonable attendance by members.
86. The notice convening the annual general meeting, containing the agenda, the annual financial statements, auditor's report and annual report, must be furnished to members at least 21 days before the date of the meeting. The non-receipt of such notice by a member does not invalidate the proceedings at such meeting provided that the notice procedure followed by the BOT was fair and reasonable.
87. A quorum will be determined by the scheme rules and as a guide, 50 members could constitute a quorum. If a quorum is not present after a lapse of 30 minutes from the time fixed for the commencement of the meeting, the meeting must be postponed to a date determined by the BOT, with notice of such postponement being reissued in terms of scheme rules, and members then present constituting a quorum.
88. Notices of motions to be placed before the annual general meeting should reach the PO not later than seven days prior to the date of the meeting.

### **Special general meetings**

89. The BOT may also call a special general meeting of members if it is deemed necessary. In addition, on the requisition of a predetermined number of members as per scheme rules, the BOT must cause a special general meeting to be called within 30 days of the deposit of the requisition. The requisition must state the objects of the meeting and must be signed by all the individuals who initiated the requisition and deposited at the registered office of the Scheme. Only those matters forming the objects of the meeting may be discussed.
90. The notice convening the special general meeting, containing the agenda, must be furnished to members at least 14 days before the date of the meeting. The non-receipt of such notice by a member does not invalidate the proceedings at such a meeting provided that the notice procedure followed by the BOT was reasonable.
91. If a quorum, as per scheme rules is not present at a special general meeting after a lapse of 30 minutes from the time fixed for the commencement of the meeting, the meeting is regarded as cancelled.

### **Voting at meetings**

92. Every member who is present at a general meeting of the Scheme has the right to vote, or may, subject to this rule, appoint another member of the Scheme as proxy to attend, speak and vote in his/her stead.

93. The instrument appointing the proxy must be in writing, in a form determined by the BOT and must be signed by the member and the person appointed as the proxy.
94. The chairperson must determine whether the voting must be by ballot or by a show of hands. In the event of the votes being equal, the chairperson, if he is a member, has a casting vote in addition to his/her deliberative vote.

### **CONFIDENTIALITY PROTECTION**

95. The BOT should ensure that the scheme has an adequate information management policy, including precise procedures for dealing with issues of confidentiality and respecting the right to privacy of beneficiaries. These measures should include at least the following:
  - 95.1. a clear policy of a confidentiality-driven method of record keeping;
  - 95.2. adoption of an express-consent approach, which conveys the concept that the individual has agreed to have information about him/herself made available to certain persons or institutions, which also includes the medical scheme itself;
  - 95.3. measures to ensure that when disclosing information for research, the necessary controls to protect members' confidentiality shall be put in place; and
  - 95.4. measures to protect the security of electronic records from unauthorised access.
96. For additional information on confidentiality please refer to: ICD-10 Patient Confidentiality Sub-Committee Meeting (2006) by National Task Team on ICD-10 Implementation which is available on the Council's website on [www.medicalschemes.com](http://www.medicalschemes.com).

### **RECORD RETENTION**

97. The information management policy shall also ensure that necessary records and documents are adequately protected and maintained and at the same time, to ensure that records that are retained for as long as they may reasonably and lawfully be required by the scheme, its suppliers and current or former beneficiaries. This applies to all records generated in the course of the scheme's operation, including both original documents and reproductions. It also applies to records stored on computer and microform as well as paper records.
98. The BOT shall task the PO and his or her management team with the development and implementation of a record retention and disposal programme that:

- 98.1. identifies and evaluates which records shall be retained;
  - 98.2. develops and publish a retention and disposal schedule that is in compliance with all legal and best practices requirements;
  - 98.3. monitors all laws affecting record retention;
  - 98.4. annually reviews the record retention and disposal programme;
  - 98.5. develops and implements a training program for personnel responsible for record storage and maintenance; and
  - 98.6. monitors the performance of the scheme and other contracted parties for compliance with the record retention and disposal program.
99. The BOT shall approve and monitor the implementation of the records retention and disposal programme.

## ANNEXURE A

### SAMPLE RISK MANAGEMENT COMMITTEE CHARTER

#### Objective

- (i) The risk management committee is the group responsible for the development and oversight of the scheme's risk management program and is responsible for ensuring that all significant risk management concerns are properly considered and communicated.
- (ii) The BOT has the overall responsibility for risk management and internal control within the medical scheme. This means that they should ensure that risks to the scheme are properly identified, evaluated, and managed on an ongoing basis. They should report to the members of the scheme at least once a year.
- (iii) The trustees should therefore have an understanding of the major risks the scheme faces and should satisfy themselves that scheme management and/or related parties such as the administrator, managed care, brokers, etc, have adequately discharged their responsibilities for designing, implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the scheme. A dedicated risk management committee should assume oversight responsibility and support it in the discharge of its responsibilities in this respect.
- (iv) All trustees remain legally responsible for the oversight and management of the scheme. The risk management committee, like other BOT committees to which particular responsibilities are delegated, remains a sub-committee of the BOT. Any disagreement within the BOT, including disagreement between the risk management committee's members and the rest of the BOT, should be resolved at BOT level.
- (v) Risk management and internal control procedures should be focused on:
  - Efficiency and effectiveness of operations
  - Safeguarding of organizational assets
  - Legal and regulatory compliance
  - Business sustainability
  - Reliable reporting
  - Responsible behavior towards stakeholders
  - Confidentiality of member information

#### Purpose

- (vi) Risk management is the identification and evaluation of actual and potential areas of risk, followed by a procedure of termination, transfer acceptance, or mitigation of each risk. It is therefore a process that utilizes internal controls as a measure to mitigate and control risk.

- (vii) The internal risk function should be used to provide independent assurance in relation to the trustees responsibilities for effective risk management and internal control processes and systems.

### **Membership**

- (viii) The risk management committee is appointed as a committee of the BOT and its composition should be documented in the BOT minutes of meetings.
- (ix) The BOT should appoint the members of the risk management committee on such terms and conditions as it might determine. The term of office of the members shall not exceed three years unless re-appointed.
- (x) Upon the expiration of a member's term of office, he or she may be eligible for re-appointment for a further term of office provided that no risk management committee member may be appointed for more than two consecutive terms.
- (xi) A vacancy, which occurs in the risk management committee, should be filled by a person appointed by the BOT, which person should hold office for the unexpired portion of the period of office of his or her predecessor, and may on expiry of his or her period of office be re-appointed by the BOT.
- (xii) The PO of the scheme should not be the chairperson of the risk management committee. One key factor in selecting the committee's member is to identify individuals with a range of expertise and first hand knowledge of the scheme's as well as industry risks.
- (xiii) The constitution, terms and conditions and the term of office of the risk management committee and its members should be included in written terms of reference, and where applicable in line with the rules of the scheme.

### **Role and responsibilities**

- (xiv) The risk management committee should recommend a suitable risk management policy for the scheme, and should oversee the implementation of risk management principles and practice throughout the scheme with the objective of eliminating, reducing or controlling these risks.
- (xv) The risk management committee should receive reports from the BOT concerning:
- anticipated macro-environmental and micro environmental changes and other factors considered relevant to future strategy, in order to monitor them in the context of the scheme's projected performance;
  - the risk implications of new and emerging risks, organizational changes and major initiatives, in order to monitor them; and
  - resolution of significant risk exposures and risk events, in order to monitor them and, if deemed thought fit, approve them.

- (xvi) The risk management committee should assist the BOT in the evaluation and acceptance of the fidelity and indemnity insurance contracts.
- (xvii) The risk management committee should take into account new guidance and statutory requirements and help to ensure that the scheme continues to do its best to meet its objectives and properly control risks.
- (xviii) Other important tasks of a risk management committee will include:
- developing an organizational risk management policy that affirms the scheme's commitment to safeguarding its assets and establishing its risk management goals;
  - selecting an insurance advisor and negotiating insurance arrangements;
  - communicating the scheme's risk management plan and loss control procedures to affected parties, including the BOT; and
  - overseeing loss prevention activities.
- (xix) The BOT is responsible for the preparation, presentation, and integrity of information and all matters about which the risk management committee should be informed. The BOT has overall responsibility for implementing and maintaining appropriate risk management principles and policies, internal controls and processes designed to identify the address unacceptable risk, set by the risk management committee.

## **ANNEXURE B**

### **SAMPLE INVESTMENT COMMITTEE CHARTER**

#### **Objective**

- (i) Investment committee arrangements need to be proportionate to the task, and will vary according to the size, complexity, expertise of the BOT as well as the risk profile of the scheme.
- (ii) While all trustees have a duty to act in the interests of the scheme the investment committee has a particular role to ensure that the interests of members are properly protected in relation to investment decisions taken.
- (iii) All trustees remain equally responsible for the scheme's affairs as a matter of law. The investment committee, like other BOT committees to which particular responsibilities are delegated, remains a committee of the BOT. Any disagreement within the BOT, including disagreement between the investment committee's members and the rest of the BOT, should be resolved at BOT level.
- (iv) The guiding principal underpinning the operation of the investment committee is that members should have no direct financial interest (other than as member) in the decisions that they make.
- (v) The investment committee must be prepared to take a robust stand and all staff members of the scheme or the administrator must be prepared to make information freely available to the investment committee, to listen to their requests and to discuss the issues openly.
- (vi) Many of the core functions of investment committees set out in this guide are expressed in terms of 'oversight', 'assessment' and 'review' of a particular function. It is not the duty of an investment committee to carry out functions that are the responsibility of others (executive management of the scheme or the administrator). To do so could undermine the responsibility of the BOT.
- (vii) It should be noted that an investment committee is not a statutory requirement for a medical scheme, but it is a good medical scheme governance practice to have one.

#### **Purpose**

- (viii) The investment committee is established for the purpose of determining and maintaining investment policies and procedures.
- (ix) The investment committee shall advise the BOT on the strategic and operating matters in respect of the investment funds, to ensure that the investments made are in the best interest of the members.



- (x) The investment committee shall assist the BOT to monitor the scheme's compliance with the Medical Schemes Act 131 of 1998 as amended, in respect to the limitations on assets to be held in the republic.

### **Membership**

- (xi) The investment committee is appointed by the BOT as a committee of the BOT and its composition shall be minutes in the BOT minutes of meetings.
- (xii) The BOT shall appoint the members of the investment committee on such terms and conditions as it might determine. The term of office of the members shall not exceed three years unless re-appointed.
- (xiii) Upon the expiration of a member's term of office, he or she shall be eligible for re-appointment for a further term of office provided that no investment committee member may be appointed for more than two consecutive terms.
- (xiv) A vacancy, which occurs in the investment committee, shall be filled by a person appointed by the BOT, which person shall hold office for the unexpired portion of the period of office of his or her predecessor, and may on expiry of his or her period of office be re-appointed by the BOT.
- (xv) At least one of the members of the investment committee shall have knowledge in the investment management field. However, all members of the investment committee shall not have any direct or indirect interest in the investment portfolios, for example by being the investment broker or fund manager.
- (xvi) The constitution, terms and conditions and the term of office of the investment committee and its members shall be included in a written terms of reference, and if applicable in line with the rules of the scheme.

### **Role and responsibilities**

- (xvii) The investment committee shall make recommendations to the BOT regarding the asset allocation principles of the scheme's investment portfolio and the investment policy.
- (xviii) The investment committee shall review the investment strategies, capital market assumptions performance of the portfolio against established performance benchmarks and fund managers. The investment committee shall report to the BOT quarterly on the performance of the investment portfolio.
- (xix) The investment committee shall monitor the performance of each investment with a view to maximizing the total return, keeping in mind the preservation and enhancement of the future purchasing power of funds.
- (xx) The investment committee shall report to the BOT annually on the overall performance of the fund managers.

- (xxi) The investment committee, shall make recommendations to the BOT on the appointment of fund managers, including the recommendation of any fees payable and other terms on which the appointments are made
- (xxii) The investment committee shall assist the BOT in their decision taking processes, whether to withdraw amounts as required from the investment funds to support daily operations.
- (xxiii) The investment committee shall supervise the safekeeping and handling of the scheme's investments, which are under the investment committee's jurisdiction.
- (xxiv) The investment committee shall monitor all reported investment activities for compliance with the scheme's investment policy as well as the statutory requirements. In instances where there is deviation from the investment policies, the investment committee shall investigate the reasons and put corrective action and report to the BOT.
- (xxv) The investment committee shall assist the BOT in preparing their annual report on investment performance and compliance.

## **ANNEXURE C**

### **REMUNERATION COMMITTEE CHARTER**

#### **Objective**

- (i) While all trustees have a duty to act in the interests of the scheme the remuneration committee has a particular role, acting separately from the BOT, to ensure that the interests of members are properly protected in relation to remuneration decisions taken.
- (ii) It should be noted that a remuneration committee is not a statutory requirement for a medical scheme, but it is a good corporate governance practice to have one.

#### **Purpose**

- (iii) The main purpose of the remuneration committee is to assist the BOT in establishing a formal and transparent procedure for developing and implementing a remuneration policy and procedures for the BOT as well as all senior staff members paid directly by the scheme.
- (iv) The remuneration committee shall lead a formal, rigorous, and transparent process on behalf of the BOT, for appointments of senior staff members directly employed by the scheme.
- (v) It shall also make recommendations to the BOT on succession planning.
- (vi) The guiding principal underpinning the operation of the remuneration committee is that members of the remuneration committee shall have no direct or indirect financial interest (other than as member of the scheme) in the decisions that they make and withdraw from the meetings when their own remuneration is being considered in order to ensure that there is no direct or indirect conflict of interest.

#### **Membership**

- (vii) The remuneration committee is appointed by the BOT as a committee of the BOT, and the composition shall be in the BOT minutes of meetings.
- (viii) The BOT shall appoint the members of the remuneration committee on such terms and conditions as it might determine. The term of office of the members shall not exceed three years unless re-appointed.
- (ix) Upon the expiration of a member's term of office, he or she shall be eligible for re-appointment for a further term of office provided that no remuneration committee member may be appointed for more than two consecutive terms.

- (x) A vacancy, which occurs in the remuneration committee, shall be filled by a person appointed by the BOT, which person shall hold office for the un-expired portion of the period of office of his or her predecessor, and may on expiry of his or her period of office be re-appointed by the BOT.
- (xi) The constitution, terms and conditions, and the term of office of the remuneration committee and its members shall be included a written terms of reference.

### **Role and responsibilities**

- (xii) The remuneration committee is responsible to the BOT for:
- reviewing the ongoing appropriateness and relevance of the remuneration policies and procedures;
  - overseeing the implementation of the remuneration policy within the scheme;
  - setting the overall policy for remuneration packages of the BOT;
  - setting the overall policy for remuneration packages for all senior staff members directly employed by the scheme, in a form and amount which will attract, retain, motivate, and reward high calibre individuals;
  - setting the overall policy and procedures for the retention and recruitment of senior staff directly employed by the scheme;
  - determining and reviewing of the remuneration packages of each of the BOT and senior staff members directly employed by the scheme;
  - reviewing policies for the retention and recruitment of senior staff directly employed by the scheme, on professional and equivalent grades;
  - the annual review of the terms and conditions of early retirements or voluntary redundancy for senior staff; and
  - disclosing any payments or considerations made to them in the particular year.
- (xiii) The remuneration committee shall assist the BOT in compiling the job descriptions of all trustee members and senior staff members directly employed by the scheme, in a standard format, which will be used for independent performance evaluations.
- (xiv) The remuneration committee shall review the performance measures of the trustees and senior staff members directly employed by the scheme annually to ensure that the measures are linked to the priorities of the scheme for the forthcoming year.
- (xv) The remuneration committee shall assist the BOT in developing and implementing a systematic, open and proactive performance evaluation programme for the BOT and senior staff.
- (xvi) The remuneration committee shall recommend the annual remuneration for trustees and for the chairperson of the BOT.

- (xvii) The remuneration committee shall advise on the terms and conditions of contracts or renewal thereof of senior staff directly employed by the scheme.
- (xviii) The remuneration committee shall evaluate the balance of skills, knowledge, and experience on the BOT and prepare a description of the role and capabilities required for a particular appointment for the BOT.
- (xix) The remuneration committee shall be responsible for overseeing the fairness of the trustee election process at annual general meetings, or other special meetings for election called by the BOT.
- (xx) The remuneration committee shall satisfy itself that plans are in place in respect of orderly succession of appointments to the BOT and to senior management directly employed by the scheme to maintain an appropriate balance of skills on the BOT and senior management.

## **ANNEXURE D**

### **SAMPLE DISPUTES RESOLUTION COMMITTEE CHARTER**

#### **Objective**

- (i) The Act promotes alternative disputes resolution mechanisms that scheme should set up in order to facilitate the resolution of disputes between the members, or potential members and the scheme.
- (ii) Alternative dispute resolution is the process for settling disputes outside the courts. Typically, it includes dispute resolving processes such as negotiation, mediation and arbitration.
- (iii) The advantages of alternative dispute resolution processes are that:
  - disputes are resolved speedily
  - it uses impartial individual with knowledge and expertise in the matter
  - it is conducted in an informal and flexible manner
  - the hearings of dispute are kept private and confidential
  - it eliminates costly legal procedures
- (iv) The Act encourages and promotes the early and inexpensive resolution of disputes through internal disputes resolution processes set up by the scheme.

#### **Purpose**

- (v) This committee is intended to speed up the dispute resolution process without the need to engage in costly legal suit in courts.

#### **Membership**

- (vi) A disputes committee of three persons, who may not be members of the BOT, employees or officers of the Scheme, the administrator, or related parties, must be appointed by the BOT to serve a term of office of 3 years. The skills mix of the dispute resolution committee must include a person with legal expertise and an understanding of the medical schemes environment.

#### **Complaints and Disputes**

##### *Complaints*

- (vii) Members may lodge their complaints, in writing, to the Scheme. The Scheme or its administrators shall provide a dedicated toll free telephone number to be used for dealing with telephonic enquiries and complaints.
- (viii) All complaints received in writing shall be responded to by the Scheme in writing within 30 days of receipt thereof.

### *Disputes*

- (ix) Any dispute, which may arise between a member, prospective member, former member or a person claiming by virtue of such member and the Scheme or an officer of the Scheme, must be referred by the PO to the disputes committee for adjudication.
- (x) On receipt of a request in terms of this rule, the PO must convene a meeting of the disputes committee by giving not less than 21 days notice in writing to the complainant and all the members of the disputes committee, stating the date, time, and venue of the meeting and particulars of the dispute.
- (xi) The disputes committee may determine the procedure to be followed.
- (xii) The parties to any dispute have the right to be heard at the proceedings, either in person or through a representative.
- (xiii) An aggrieved person has the right to appeal to the Council for Medical Schemes against the decision of the disputes committee. Such appeal must be in the form of an affidavit directed to Council and shall be furnished to the Registrar not later than three months after the date on which the decision concerned was made or such further period as the Council may for good cause shown allow, after the date on which the decision concerned was made.
- (xiv) The operation of any decision which is the subject of an appeal under rule 28.8 shall be suspended pending the decision of the Council on such appeal.

### **Confidentiality**

- (xv) Unless otherwise agreed, or required by law, all ADR proceedings, including communications, statements, disclosures and representations made by any party or other participants in the course of such proceedings, shall in all respects, be confidential and shall not be disclosed to anyone not party to the dispute.

## ANNEXURE E

### SAMPLE CLINICAL GOVERNANCE COMMITTEE CHARTER

#### Objective

- (i) This guide is designed to assist the BOT in making suitable arrangements for their Clinical Governance Committee.
- (ii) The business philosophy and strategies of the medical scheme industry have been dominated by funding and administrative priorities. Health management needs to become part of centre stage. For medical schemes to deliver “value for money” for their members, funding and health management principles shall be in harmony.
- (iii) Clinical governance is a framework through which organisations are accountable for continuously improving the quality of their services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish.
- (iv) Clinical governance demands a major shift in the values, culture and leadership of medical schemes to place greater emphasis on the quality of funded clinical care with the objective of making it easier to bring about improvement and change in clinical practice.
- (v) The clinical governance committee will:
  - advise the BOT of key strategic and operating issues pertaining to the quality of clinical care;
  - develop and implement the clinical governance strategy for the medical scheme;
  - monitor and evaluate the execution of the clinical governance strategy and implementation plan;
  - actively communicate clinical governance progress and activity to the BOT;
  - prepare an annual and interim reports as required; and
  - ensure that clinical governance principles are inherent in all relevant contracts and service level agreements with providers and designated service providers.
- (vi) The committee will also plan and undertake baseline assessments and periodic reviews aimed at ensuring that systems, policies and procedures within the scheme are geared towards achieving the highest level of clinical care quality and securing value for money for the medical scheme’s members.



## **Application of Clinical Governance Principles to the Medical Schemes Environment:**

- (vii) As medical schemes move away from the current “funding only” mode to one that focuses on both funding and managing the members’ health, they become more of health care services buyers than funders only.
- (viii) Buying health care services on behalf of their members puts the obligation on the BOT to secure value for money through purchasing health care services that meet the highest standards taking into consideration affordability and appropriateness.
- (ix) Some of the areas where the BOT and its clinical Governance sub-committee could apply the clinical governance principles and mechanisms include:
  - designated service provider networks contracts;
  - the development of protocols, clinical guidelines and formularies;
  - managed care contracts that cover disease management, pre-authorisation, pharmacy benefits management, etc; and
  - inculcating the concept of evidence-based medicine and a caring attitude amongst its staff, and create an awareness by its members and participating providers;
  - clinical and professional ethics.

### **Purpose**

- (x) To oversee and lead the development of clinical governance within the medical scheme environment with the aim of supporting the provision of high standards of health care services that are characterized by being safe, patient centred, effective and efficient.
- (xi) To endorse, promote and support the development of medical scheme services and health care delivery contracts through which the scheme is accountable for continuously improving the quality of services, safeguarding high standards of care and creating an environment in which excellence in clinical care will flourish.

### **Membership**

- (xii) The Committee shall be appointed by the BOT as committee. Nominees to the membership shall, as far as possible, enjoy the following criteria:
  - Knowledge of the medical schemes environment;
  - Experience in clinical care and total quality evaluation and management;
  - Honesty, integrity and diversity in opinion;
  - Ability to make independent analytical inquiries; and
  - Willingness to devote adequate time and effort to Committee’s responsibilities.
- (xiii) The BOT and the Committee shall, as far as possible, avoid conflict of interests and if inevitable, create an appropriate mechanism to manage them.