



Reference: PMSA monies
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Circular 56 of 2017: Personal medical savings accounts

Background

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 Council for Medical Schemes (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.

Effective date

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.

Relevance of previous circulars issued

Circular 41 of 2006:

- The paragraph relating to the prescription of unclaimed savings balances no longer applies.

Circular 38 of 2011:

- Page 2 of this Circular (Implementation) no longer applies.
- Similarly, the disclosure requirements paragraphs relating to the AFS on page 3 of this Circular are no longer applicable. It should be noted that there is no change in the solvency ratio calculation.
- References to the personal medical savings accounts (PMSA) monies being trust monies, or being held in trust in Annexure A to this Circular have been removed. The separate disclosure of the monies invested on behalf of members is no longer necessary.

Circular 5 of 2012:

The following paragraphs no longer apply:

- Page 1: Exemption requests in terms of section 8(h) of the Medical Schemes Act 131 of 1998
- Page 2: The Trust Property Control Act 57 of 1998 does not apply to the savings funds
- Page 3: The last three paragraphs relating to the Financial Institutions (Protection of Funds) Act 28 of 2001
- Page 3: Scheme rules
- Page 4: Contributions and benefit tables for 2012
- Page 4: Transfers between scheme and trust bank accounts
- Page 4 (and Page 5): Costs incurred in respect of savings plan balances
- Page 5: Financial statements and disclosure requirements (including Prior period error)
- Page 6: Audit of trust accounts
- Page 6: Guardian's fund
- References to the PMSA monies being trust monies, or being held in trust in Annexure A to this Circular have been removed. The separate disclosure of the monies invested on behalf of members is no longer necessary.

Circular 41 of 2012:

- The reference to Circulars 38 of 2011 and Circular 5 of 2012 has been removed from pages 1 and 2 of this Circular.
- References to the PMSA monies being trust monies, or being held in trust in Annexure B to this Circular have been removed. The separate disclosure of the monies invested on behalf of members is no longer necessary.

The above mentioned Circulars are still in effect and will still appear on the CMS website. Only the sections mentioned above, which are no longer applicable, will be blacked out.

Relevant legislation still applicable to personal medical savings accounts

The Medical Schemes Act 131 of 1998 still applies to personal medical scheme savings accounts:

- Section 30(e)
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.
- Regulation 10
 - 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 a 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 enrol in another medical scheme (sub-regulation 5).
 - 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).
- Regulation 29
The judgment does not have an influence on the calculation of the solvency levels of medical schemes.
- Annexure B to Regulation 30
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.

The Prescription Act 68 of 1969 applies to unclaimed members' savings accounts and when these claims prescribe after 3 years, the amounts will be written back to the scheme. Subsequently these funds no longer have to be paid over to the Guardians Fund.

Compliance to the relevant legislation and scheme rules

Should schemes be non-compliant to the limitations imposed by Annexure B due to the inclusion of PMSA monies from 6 June 2017 onwards, such schemes will be able to apply for exemption in terms of Section 8(h). The exemption request must include a timeframe during which compliance would be ensured.

Medical schemes are no longer required in terms of the legislation to invest these monies separately and to accrue interest on the PMSA accounts. Schemes should however still adhere to the scheme rules. Schemes that wish to amend their registered rules accordingly may do so during the October rule submissions for incorporation from 1 January 2018.

Effect on medical schemes and its members

The judgment does not affect the entitlement of members to access these funds, other than in the case of liquidation where members' savings monies will be divided amongst the creditors of the scheme with the other assets of the scheme.

Savings advances are still funded from scheme assets. From this follows that no impairments may still be charged or recovered from PMSA monies.

Unclaimed monies are now written back to the scheme after the expiry of the required period in terms of the Prescription Act.

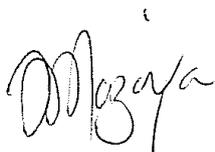
Accounting treatment

Medical schemes members' personal savings funds are no longer disclosed separately as a trust investment in the statement of financial position and will be considered as an asset of the scheme in the compilation of the AFS in terms of the judgement.

It should be noted that in terms of International Accounting Standard (IAS 1) paragraph 77: "An entity shall disclose, either in the statement of financial position or in the notes, further sub-classifications of the line items presented, classified in a manner appropriate to the entity's operations." The continued disclosure of separately invested PMSA monies is therefore not precluded in terms of International Financial Reporting Standards (IFRS), as long as it is clear that these monies represent scheme assets.

The liability component will still need to be disclosed separately in the statement of financial position.

Should a scheme no longer allocate interest to the PMSA, this will represent a change in the terms and conditions of the liability, and not a change in the accounting policy as envisaged by IAS 8.



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