

Namibia

## Medical Aid Funds Act, 1995

Legislation as at 2016-11-25.

FRBR URI: /akn/na/act/1995/23/eng@2016-11-25

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Republic of Namibia  
Annotated Statutes

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## Medical Aid Funds Act, 1995

### Act 23 of 1995

Published in [Government Gazette no. 1226](#) on 28 December 1995

Assented to on 15 December 1995

**There are multiple commencements:**

*Unknown provisions* commenced on 1 February 1996 by [Government Notice 25 of 1996](#).

*Unknown provisions* commenced on 11 February 1997 by [Government Notice 11 of 1997](#).

*[Up to date as at 14 July 2020]*

*[Amended by [Namibia Financial Institutions Supervisory Authority Act, 2001 \(Act 3 of 2001\)](#) on 14 May 2001]*

*[Amended by [Medical Aid Funds Amendment Act, 2016 \(Act 11 of 2016\)](#) on 25 November 2016]*

*[Part III brought into force on 1 February 1996 by GN 25/1996 (GG 1255)]*

ACT

**To provide for the control and promotion of medical aid funds; to establish the Namibian Association of Medical Funds; and to provide for matters incidental thereto.**

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

### Part I – INTRODUCTORY PROVISIONS

#### 1. Definitions

In this Act, unless the context otherwise indicates -

“**Association**” means the Namibian Association of Medical Aid Funds established by section 10;

“**auditor**” means a person registered as an auditor under the Public Accountants’ and Auditors’ Act, 1951 ([Act 51 of 1951](#));

“**board of appeal**” means the board of appeal established by section 19 of the Namibia Financial Institutions Supervisory Authority Act, 2001 ([Act No. 3 of 2001](#));

*[definition of "board of appeal" inserted by Act 11 of 2016]*

**"dependant"**, in relation to a member of a registered fund, means -

- (a) the spouse of such member;
- (b) any minor child (including any stepchild or adopted child) of such member who is not self-supporting; and
- (c) any other person who, under the rules of the fund, is recognized as a dependant of such member and is entitled to receive benefits under the fund by virtue of such member's membership,

and who is not a member of that fund or any other registered fund;

**"financial year"** means the financial year of a registered fund referred to in section 19;

**"fund"** means any business carried on under a scheme established with the object of providing financial or other assistance to members of the fund and their dependants in defraying expenditure incurred by them in connection with the rendering of any medical service, but does not include any such scheme which has been established in terms of an insurance policy;

**"management"** means the management of the Association referred to in section 13;

**"medical service"** means any health care treatment of any person, by a person registered in terms of any law, which treatment has as its object -

- (a) the physical or mental examination of that person;
- (b) the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency;
- (c) the giving of advice in relation to any such defect, illness or deficiency;
- (d) the giving of advice in relation to or treatment of any condition arising out of a pregnancy;
- (e) the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness or deficiency or a pregnancy;
- (f) nursing or midwifery;
- (g) the supply of accommodation in a hospital or health facility referred to in section 1 of the Hospitals and Health Facilities Act, 1994 (Act 36 of 1994), or any other institution where surgical or other medical activities are performed, if such accommodation is necessitated by any physical or mental defect, illness or deficiency or by a pregnancy; and
- (h) any other matter as may be determined by the Registrar on the recommendation of the Association;

**"member"**, in relation to a registered fund, means any person who is, under its rules, a member of the fund;

*[The word "it's" should be "its" to be grammatically correct.]*

**"Minister"** means the Minister responsible for finance;

*[definition of "Minister" amended by Act 11 of 2016]*

**"officer"**, in relation to a registered fund, means any trustee or the principal officer or any other employee of the fund, but does not include the auditor of the fund;

**"prescribed"** means prescribed by regulation;

**"principal officer"** means the principal officer of a registered fund referred to in section 32, or any other employee of the fund designated to act as principal officer under that section;

**"registered fund"** means a fund registered or reregistered under the provisions of this Act;

**"registrar"** means the registrar of medical aid funds referred to in section 3;

*[definition of "registrar" substituted by Act 3 of 2001]*

“**regulation**” means any regulation made under this Act;

“**rules**”, in relation to a registered fund, means the rules of the fund referred to in section 30;

“**staff member**” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act 13 of 1995), who is attached to the Ministry of Health and Social Services;

“**the repealed Act**” means the Medical Schemes Act, 1967 (Act 72 of 1967);

“**this Act**” includes, except for the purposes of section 45, any regulations made or in force thereunder;

“**trustee**” means any person managing a registered fund.

## 2. Exemptions

The provisions of this Act shall not apply to -

- (a) a fund established and managed by the Government;
- (b) the provision to employees of financial or other assistance contemplated in the definition of “fund” in section 1 by a fund established and managed outside Namibia by an employer who mainly carries on his or her business outside Namibia.

## Part II – ADMINISTRATION

### 3. Registrar of medical aid funds

The person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as the chief executive officer of the Namibia Financial Institutions Supervisory Authority shall be the registrar of medical aid funds.

*[section 3 substituted by Act 3 of 2001]*

### 4. Registrar may require production of books and documents from funds

- (1) A registered fund shall, at the request of the Registrar or any person authorized in writing by the Registrar, produce at any place where it carries on business, its books, documents and annual financial statements in order to enable the Registrar or such person to obtain any information relating to the fund and required by the Registrar in connection with the administration of this Act.
- (2) In addition to the powers and duties conferred or imposed upon the Registrar by this Act, the Registrar or a staff member nominated by him or her for that purpose shall have all the powers and duties conferred or imposed upon him or her by the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984).
- (3) The Registrar may, notwithstanding the provisions of section 33, at any time by notice in writing direct a registered fund to furnish to him or her within a period specified in the notice, or within such further period as the Registrar may allow -
  - (a) a statement of its assets and liabilities, including contingent liabilities; and
  - (b) any other document or information specified in the notice, relating to the financial or other affairs of the fund over a period like wise specified.
- (4) The Registrar may direct that any statement furnished to him or her under subsection (3), or any document so furnished and which relates to the financial affairs of the fund, shall be accompanied by a report thereon by the auditor of the fund, and in which the auditor shall state -
  - (a) in what manner and to what extent he or she has satisfied himself or herself as to the amount of the liabilities and contingent liabilities shown in the statement;
  - (b) in what manner and to what extent he or she has satisfied himself or herself as to the existence of the assets shown in the statement;

- (c) to what extent he or she has satisfied himself or herself that the particulars of such assets which are shown in the statement are correct;
  - (d) whether or not in his or her opinion the basis of valuation of each of the various kinds of assets adopted by the fund is financially sound;
  - (e) whether or not, in his or her opinion, the fund is in a sound financial condition;
  - (f) if he or she is of the opinion that the fund is not in a sound financial condition -
    - (i) in what respect the condition of the scheme is in his or her opinion unsound; and
    - (ii) the causes or probable causes of such unsound condition;
  - (g) such other particulars as he or she deems relevant for the purposes of this Act; and
  - (h) such other particulars as the Registrar may deem necessary.
- (5) If the Registrar, on account of any statement, document or information furnished to him or her under subsection (3) deems it necessary in the interest of the members of the fund concerned, he or she may by notice in writing direct the fund to furnish him or her with a report compiled by an actuary, in the form and relating to the matters specified by the Registrar in the notice.
- (6) If the Registrar, on account of an inspection or investigation in terms of this Act or on account of any report, document, statement or information furnished to him or her under this section, is of the opinion that a registered fund is not financially sound, the Registrar may -
- (a) by notice in writing direct the fund to take such steps as may be specified in the notice which are, in the opinion of the Registrar necessary -
 

*[The phrase "in the opinion of the Registrar" should be followed by a comma.]*

    - (i) to ensure the financial stability of the fund;
    - (ii) in the interests of members of the fund;
  - (b) subject to the provisions of this Act, take such other steps as may in his her opinion be necessary to ensure the financial stability of the fund.
- (7) Subject to the powers of the Registrar under paragraph (a) of subsection (6), the Registrar may for the purposes of that paragraph by notice in writing direct the fund concerned -
- (a) to amend, within a period specified in the notice, the rules of the fund in the manner indicated in the notice;
  - (b) to conduct, within a period or for a period specified in the notice, the business of the fund in a manner determined by the Registrar and specified in the notice.
- (8) If a fund fails to amend its rules as directed by the Registrar under paragraph (a) of subsection (7) within the period specified in the notice concerned, the Registrar may himself or herself amend such rules, and such amendment shall be deemed to be an amendment within the meaning of section 31.
- (9) The Registrar may in writing notify a registered fund that a specified practice or method of carrying on business is an "irregular or undesirable practice" or an "undesirable method of carrying on business" and may by notice in the Gazette declare a specified practice or method of carrying on business an "irregular or undesirable practice" or an "undesirable method of carrying on business" for all registered funds.
- (10) For the purposes of subsection (5), "actuary" means any person who is a fellow of the Institute of Actuaries of England or of the Faculty of Actuaries in Scotland or of any like institute, faculty, society or other association regulating the admission to, the qualification or registration for, and the practise of, the profession of actuaries which is recognized by the Registrar for the purposes of this Act.

## 5. Powers of Registrar in relation to unregistered funds

The Registrar shall, in relation to any person who is not registered as a fund under the provisions of this Act and whom the Registrar has reason to suspect that such person is carrying on the business of a fund, have the same powers conferred upon the Registrar by section 4(1), (2) and (3).

## 6. Registrar may extend certain periods

- (1) Any person who is required to submit to the Registrar or furnish the Registrar with any book, document, statement or information within a period determined by or under this Act, may before or after the expiry of that period apply to the Registrar in writing for an extension of that period.
- (2) The Registrar may, after consideration of an application referred to in subsection (1) -
  - (a) grant the application and extend the period within which the book, document, statement or information had to be submitted or furnished; or
  - (b) refuse the application,and shall in writing notify the applicant of his or her decision.

## 7. Appeal against decisions of Registrar

A person aggrieved by a decision of the Registrar may appeal against the decision to the board of appeal in terms of section 24 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

*[section 7 substituted by Act 11 of 2016]*

## 8. Annual report by Registrar

- (1) The Registrar shall annually submit to the Minister a report on his or her activities under the provisions of this Act during the year under review.
- (2) The Minister shall table a copy of the report referred to in subsection (1) in the National Assembly within 14 days after receipt of such report, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

## Part III – NAMIBIAN ASSOCIATION OF MEDICAL AID FUNDS

### 9. Abolition of Namibian Association of Medical Schemes

On the date of commencement of this Act -

- (a) the juristic person known as the Namibian Association of Medical Schemes, shall cease to exist;
- (b) the assets, liabilities, rights and obligations of that juristic person shall vest in the Namibian Association of Medical Aid Funds;
- (c) any reference in any document to the Namibian Association of Medical Schemes shall be construed as a reference to the Namibian Association of Medical Aid Funds.

### 10. Establishment of Namibian Association of Medical Aid Funds

- (1) There is hereby established an association to be known as the Namibian Association of Medical Aid Funds.
- (2) The Association shall be a juristic person.
- (3) The object of the Association shall be to control, promote, encourage and co-ordinate the establishment, development and functioning of funds in Namibia.



## 11. Constitution of Association

The Association shall consist of all registered funds in Namibia.

## 12. Powers of Association

For the purposes of achieving its objects, the Association may -

- (a) consider any matter affecting medical aid funds or the members of such funds and make representations or take such action in connection therewith as the Association may deem advisable;
- (b) purchase, hire or otherwise acquire any property, whether movable or immovable, keep or sell or let or hypothecate or otherwise dispose of, or deal in any other manner with property acquired by it;
- (c) determine the subscription payable by registered funds to the Association;
- (d) raise or borrow money on such terms and conditions as may be agreed upon;
- (e) accept donations and receive moneys offered or due to it;
- (f) apply its funds to the establishment of a reserve fund, or invest at its discretion any funds not immediately required for its affairs;
- (g) appoint an executive officer for the performance of the functions of the Association and other employees and determine their duties and conditions of service;
- (h) conclude any agreement with any person for the rendering of any particular services;
- (i) determine the allowances which may be paid to the members of the management when engaged in the affairs of the Association;
- (j) arrange with any insurer for the provision of insurance cover for the members of the management and for the said executive officer and employees, in respect of bodily injury, disability or death resulting solely and directly from an accident occurring in the course of the performance of their duties;
- (k) pay the expenses incurred in connection with its administration,

and may generally, do anything that is conducive to the achievement of its objects and the exercise of its powers, whether or not it relates to any matter expressly mentioned in this section.

## 13. Management of Association

- (1) The affairs of the Association shall be controlled by the management of the Association, which shall exercise and perform the powers, duties and functions of the Association with due regard to the provisions of this Act.
- (2) The management shall consist of seven members elected by the authorized representatives of registered funds from amongst themselves: Provided that not more than two such members shall be representatives of the same fund.
- (3) For the purposes of the election contemplated in subsection (2), each registered fund shall be represented by one authorized representative who shall have one vote in respect of each vacancy: Provided that a fund which has more than 2 000 members shall be entitled to an additional authorized representative, who shall also have one such vote.
- (4) The meeting for the first election of members of the management shall be presided over by the Minister or any person designated by the Minister for that purpose, who shall determine the procedures to be followed at such meeting, including the time, date and place of such meeting, the giving of notice of such meeting to the registered funds concerned, the quorum for such meeting, the nomination of candidates, the manner in which the election shall be conducted and any other matter incidental to such election.
- (5) A member of the management shall hold office for a period of three years, and shall after expiration of his

or her term of office be eligible for re-election.

- (6) A member of the management shall vacate his or her office if -
  - (a) the registered fund of which he or she is an authorized representative, has discontinued its business;
  - (b) such member is absent from more than two consecutive meetings of the management without its leave;
  - (c) such member is convicted of a criminal offence, whether in Namibia or elsewhere, in respect whereof a sentence to imprisonment without the option of a fine is imposed;
  - (d) such member is of unsound mind and has been so declared by a competent court; or
  - (e) such member submits a written notice to the management indicating his or her resignation as a member of the management.

#### **14. President, vice-president and treasurer**

- (1) The members of every newly constituted management shall at the first meeting of that management elect from amongst themselves a president, vice-president and treasurer.
- (2) A person who holds office as president, vice-president or treasurer shall hold office during the term of office of a member of the management, unless he or she ceases to be a member of the management sooner.
- (3) The vice-president may, when the president is absent or is for any reason unable to act as president, perform all the functions and duties and exercise all the powers of the president.
- (4) If both the president and the vice-president are absent from a meeting of the management, the members present shall elect one from amongst themselves to preside at that meeting and the member so presiding may at the meeting perform all the functions and duties and exercise all the powers of the president.

#### **15. Committees of management**

- (1) The management may establish committees to assist it in the performance of its functions and appoint any person with his or her consent as a member of any such committee, whether or not such person is an authorized representative of a registered fund and may delegate any of its powers to any such committee.
- (2) The Registrar may attend any meeting of the management or any committee contemplated in subsection (1).

#### **16. Meetings of management**

- (1) Subject to subsection (2), meetings of the management shall be held at the times and places determined by the management, but not less than four times in every year reckoned from the date of commencement of this Act and at intervals of not more than three months.
- (2) Subject to section 13, any meeting for the election of a new management contemplated in that section shall be held at the time and place determined by the executive officer being a date not later than 30 days after the date on which the term of office of the serving members of the management expires.
- (3) The decision of a majority of the members of the management present at any meeting shall be the decision of the management: Provided that in the event of an equality of votes the member presiding at that meeting shall have a casting vote in addition to his or her deliberative vote.
- (4) The management may make rules in connection with the convening and holding of, procedure at, and quorum for, meetings of the management and the procedure to be followed in the filling of any vacancy which occurs in the office of the president, vice-president or treasurer, as the case may be.

## 17. Meetings of Association

- (1) There shall be at least one meeting of the Association in every year at such time and place as may be determined by the management: Provided that the management may at any time convene a special meeting of the Association and it shall convene a special meeting on a reasoned request in writing submitted by the authorized representatives of at least one quarter of all registered funds and such meeting shall be held at the time and place determined by the management.
- (2) The decision of the majority of the authorized representatives of registered funds, being entitled to vote mutatis mutandis in accordance with section 13(3), and who are present at a meeting of the Association, shall be the decision of the Association.
- (3) The Association may make rules in connection with the convening and holding of, procedure at, and quorum for, meetings of the Association and the procedure to be followed in the filling of any vacancy which occurs in the management.

## 18. Rules and disciplinary inquiries

- (1) The Association shall from time to time make rules specifying the acts or omissions in respect of which the management may, in terms of this section, take disciplinary steps against any registered fund.
- (2) No rule made in terms of subsection (1) or any amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published in the Gazette.
- (3) The management shall have power to institute an inquiry into any charge or allegation that any registered fund is guilty of any act or omission specified in terms of subsection (1) and, on finding the fund guilty of such act or omission, to impose any of the penalties prescribed in subsection (4).
- (4) Every registered fund which, after an inquiry held by the management, is found guilty of an act or omission contemplated in subsection (1), shall be liable to one or other of the following penalties:
  - (a) A caution or a reprimand or a caution and reprimand; or
  - (b) a fine not exceeding N\$2 000.
- (5) Every registered fund of which an act or omission is the subject of an inquiry under this section, shall be afforded an opportunity, by itself or through its legal representative, of answering the charge and of being heard in its defence.
- (6) Any penalty imposed by the management under subsection (4) shall be reduced to writing and made known to the fund concerned.
- (7)
  - (a) For the purposes of an inquiry held in terms of this section, the management may -
    - (i) take evidence;
    - (ii) summon witnesses and require the production of any book, record, document or thing;
    - (iii) through the president, administer an oath to any witness or accept an affirmation from him or her;
    - (iv) examine any book, record, document or thing which any witness had been required to produce.
  - (b) A summons to appear before the management as a witness or to produce to it any book, record, document or thing shall be served either by registered letter sent through the post or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.
  - (c) Every person summoned in terms of this subsection shall be bound to obey the summons and any person who, having duly been summoned -
    - (i) refuses, or without sufficient cause fails, to attend and give evidence relevant to the inquiry at the time and place specified in the summons;

- (ii) refuses to take the oath or to make an affirmation when required by the president to do so;
- (iii) refuses to produce any book, record, document or thing which he or she has in terms of the summons been required to produce; or
- (iv) appears before the management but refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, any question lawfully put to him or her,

shall be guilty of an offence and on conviction liable to a fine not exceeding N\$2 000: Provided that every person so summoned shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court of Namibia is entitled.

- (8) The president, where the management itself holds an inquiry in terms of this section, or the chairperson of a committee of the management, where such committee holds an inquiry under powers delegated to it by the management, may appoint a person with adequate experience in the administration of justice to be present as an assessor at such an inquiry and to advise the management or such committee, as the case may be, on matters of law, procedure or evidence.
- (9) Any person aggrieved by a finding of or penalty imposed by the management in terms of this section, may, after notice to the management and within a period of two months after the date of such finding or the imposition of the penalty, appeal to the High Court of Namibia against such finding or penalty and the court may dismiss such appeal or set aside or vary the finding of the management or the penalty imposed by it or make such other order, including an order as to costs, as it may deem appropriate: Provided that no finding of, or penalty imposed by, the management shall be set aside by reason only of an irregularity which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his or her defence.
- (10) For the purposes of this section, "president" means the president of the Association referred to in section 14.

## **19. Accounting responsibility**

- (1) The executive officer shall be the accounting officer of the Association, and as such shall be charged with the responsibility of accounting for all moneys received, the utilization thereof and the use and care of the property of the Association.
- (2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the Association, and to explain the transactions and financial position of the Association.
- (3) The financial year of the Association shall end on 31 December in each year.

## **20. Auditing, furnishing of information and reports**

- (1) The records of account referred to in section 19(2) shall be audited by an auditor appointed by the management.
- (2) The auditor referred to in subsection (1) shall as soon as possible after the end of every financial year, compile the annual financial statements of the Association and forthwith submit it together with his or her report thereon to the management.
- (3) The management shall furnish the Minister with such information as the Minister may call for from time to time in connection with the activities and financial position of the management and shall as soon as practicable after the end of each financial year, submit to the Minister in respect of the financial year concerned, copies of the statements and report referred to in subsection (2).

## **21. Special Powers of Minister**

- (1) The Minister may, until such time as the management has been properly constituted under section 13,

exercise any power and perform any duty or function conferred or imposed under the provisions of this Act or any other law upon the Association or the management.

- (2) Any power exercised and any duty or function performed by the Minister by virtue of subsection (1) shall be deemed to have been so exercised or performed by the Association or the management, as the case may be.

## Part IV – REGISTRATION OF FUNDS

### 22. Unregistered funds

- (1) No person shall -
- (a) carry on the business of a fund which is in existence at the commencement of this Act -
    - (i) for a period of more than two months after such commencement unless application has been duly made under section 23 for the registration of that fund;
    - (ii) for a further period of one month after he or she has been advised by the Registrar that such application has been refused or, if he or she elects to appeal against such refusal under section 7, a period calculated from the day on which he or she so appeals, until the day on which the Minister makes a final order on the appeal;
  - (b) carry on business of a fund established after such commencement unless the fund has been duly registered under section 24.
- (2) Any business referred to in paragraph (a) of subsection (1) shall, during the periods referred to in that paragraph, be deemed to be a registered fund for the purposes of the other provisions of this Act.

### 23. Application for registration

- (1) Any person who wishes to conduct the business of a fund may apply to the Registrar for registration under this Act.
- (2) An application under subsection (1) shall -
- (a) be made in the prescribed manner and on the prescribed form;
  - (b) be accompanied by -
    - (i) the draft rules of the proposed fund;
    - (ii) a written statement in which is set out -
      - (aa) the full and the abbreviated name of the proposed fund (if any);
      - (bb) the address of its proposed main place of business as well as its postal address;
      - (cc) full particulars of the business the applicant intends to carry on and the manner in which it intends to carry on such business;
      - (dd) the full names and address of every person who intends to establish the proposed fund;
      - (ee) a report by an auditor or any other knowledgeable person approved by the Registrar, on such aspects relating to the application in question as the Registrar may deem necessary.
- (3) The Registrar may require an applicant contemplated in subsection (1) to furnish him or her with such information or documents, in addition to the information and documents furnished by the applicant under subsection (2), as the Registrar may deem necessary.

## 24. Granting or refusal of application for registration

- (1) Subject to subsection (2), the Registrar may, after considering all information, documents and reports furnished to the Registrar for the purposes of an application under section 23, grant or refuse the relevant application or grant the application subject to such conditions as he or she may determine, which may include the demand of such financial guarantees as may in the opinion of the Registrar ensure the financial stability of the proposed fund.
- (2) The Registrar shall not grant an application made under section 23 unless he or she is satisfied that -
  - (a) the establishment of the proposed fund will be in the public interest;
  - (b) the business the applicant proposes to carry on, is that of a fund;
  - (c) the applicant will be able to establish the proposed fund successfully as a fund;
  - (d) the business of the proposed fund will be conducted in a prudent manner;
  - (e) the organisation and management of the fund will be appropriate for carrying on the business of the proposed fund in accordance with its rules and the provisions of this Act;
  - (f) the name of the proposed fund -
    - (i) is not identical with a name under which an existing fund has already been registered;
    - (ii) does not closely resemble the name of a registered fund that the one is likely to be mistaken for the other;
    - (iii) is not likely to mislead the public;
  - (g) the application complies with the requirements of this Act.
- (3) If the Registrar grants an application as contemplated in subsection (1) he or she shall register the fund and issue to the applicant a certificate of registration in the prescribed form together with a copy of the rules of the fund and date of registration endorsed thereon.
- (4) If the Registrar refuses such application, he or she shall notify the applicant accordingly in writing and indicate in what respect the proposed fund does not comply with the provisions of this Act.
- (5) The Registrar shall by notice in the Gazette make known the name, address and date of registration of every fund registered by him or her.

## 25. Use of name of fund

- (1) Subject to subsection (2), a registered fund shall not use, or refer to itself by, a name other than the name under which it is registered.
- (2) A registered fund may, with the consent of the Registrar, in conjunction with its registered name, use, or refer to itself by, the name of another registered fund with which it has amalgamated or all the assets or the business of which have, as contemplated in section 34, been transferred to it.
- (3)
  - (a) A registered fund shall not change its name without the written consent of the Registrar.
  - (b) The provisions of section 24(2)(f) shall apply mutatis mutandis to a change of the name of a registered fund.
- (4) When a registered fund has changed its name, it shall forthwith notify the Registrar in writing thereof and the Registrar shall -
  - (a) change the name of the fund in his or her registers;
  - (b) issue to the fund a certificate of such change;
  - (c) by notice in the Gazette make known such change and the date thereof.

- (5) No person shall, without the consent of the Registrar, apply to his or her business a name which includes the words “medical aid”, “medical fund” or “medical scheme” or any other name or description indicating or calculated to lead persons to believe that such person carries on the business of a fund, or is entitled to carry on such business, unless such business is registered as a fund under this Act.

## **26. Effect of registration of fund**

- (1) Upon the registration under this Act of a fund -
- (a) the fund shall, under the name by which it is so registered, be come a juristic person capable of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its duties or functions in terms of its rules;
  - (b) all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything contained in any law or in the memorandum, articles of association, constitution or rules of any juristic person or unincorporated body having control of the business of the fund, be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;
  - (c) the assets, rights, liabilities and obligations of the fund (including any assets held in trust for the fund by any person) as existing immediately prior to its registration, shall vest in and devolve upon the registered fund, without any formal transfer or cession.
- (2) The Registrar of Deeds shall, upon production to him or her by the fund of its certificate of registration and of the deed or other document aforesaid, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his or her registers that are necessary by reason of such vesting or devolution.
- (3) Process in any legal proceedings against any registered fund may be served by leaving it at the fund’s main place of business, and in the event of such place having ceased to exist, service upon the Registrar shall be deemed to be service upon the fund.

## **27. Reregistration of existing medical schemes**

- (1) Every scheme registered under the provisions of the repealed Act which carries on the business of a fund at the commencement of this Act, shall be registered, with effect from such commencement, as a fund by the Registrar under the provisions of this Act.
- (2) Every fund contemplated in subsection (1) shall submit a copy of its rules to the Registrar within 60 days from the commencement of this Act.
- (3) The Registrar shall issue to each such fund a certificate of reregistration in the prescribed form together with a copy of the rules of the fund with the date of commencement of this Act endorsed thereon.

## **Part V – CONDUCT OF THE BUSINESS OF A FUND**

### **28. Method of carrying on business**

Every registered fund shall -

- (a) carry on its business in accordance with sound business principles; and
- (b) comply with the provisions of any notice issued under section 4(9).

### **29. Limitation on business which may be carried on by a fund**

No registered fund shall carry on any business other than the business of a fund: Provided that the Registrar may approve of a registered fund carrying on such other business on such conditions and for such period as he or she may determine if the Registrar is satisfied that it is necessary in order to safeguard an investment made by the fund.

### 30. Rules of funds

- (1) Every registered fund shall have rules in which provision shall be made -
- (a) subject to the provisions of this Act, for the appointment, vacation of office, powers and remuneration of trustees, and auditor, a principal officer and other employees of the fund;
  - (b) for the power to invest funds;
  - (c) for the recovery of administrative expenses;
  - (d) that no portion of any surplus realized by the fund in any financial year may be distributed to its members or any other persons;
  - (e) for the manner in which contracts and other documents binding the fund shall be executed;
  - (f) for the custody of the securities, books, papers and other effects of the fund;
  - (g) for the convening and holding of, and the procedure at, any general or special meeting of members of the fund;
  - (h) for the amendment of rules in accordance with section 31;
  - (i) for the settlement by a person or persons not forming part of the management of the fund, designated for the purpose under the rules, of any dispute arising out of the administration of the fund between a member or former member or prospective member or any person deriving his or her claim from a member or former member or prospective member and the fund;
  - (j) subject to the provisions of this Act, for the manner in which and the circumstances under which the fund shall be terminated or dissolved;
  - (k) for the appointment of a liquidator in the case of a voluntary dissolution;
  - (l) for the minimum and maximum benefits to which its members and their dependants and, if applicable, different categories of such members or dependants are entitled;
  - (m) for the payment of such benefits according to a scale or specific directives, set out in the rules;
  - (n) if any membership fee is payable, the amount thereof or the basis on which it is to be calculated;
  - (o) that the dependants of a member are entitled to the same benefits as the member;
  - (p) for the continuation, subject to the prescribed conditions, of the membership of a member who retires from the service of his or her employer or whose employment is terminated by his or her employer on account of age, ill health or other disability;
  - (q) that a dependant of a member shall, subject to the prescribed conditions, after the death of that member be entitled to membership until he or she becomes entitled to membership, or is accepted as a dependant of a member, of another registered fund;
  - (r) for the terms and conditions applicable to the admission of new members and dependants of members: Provided that no person shall, merely by virtue of -
    - (i) his or her employment by a particular employer, be compelled to become a member of the fund;
    - (ii) his or her marriage to a person who is a member of the fund, be excluded from becoming such a member;



- (s) for the admission, as from the date of receipt of the application for membership, to the fund as a member thereof, subject to the terms and conditions applicable to the admission of other members, but without a waiting period or the imposition of new restrictions on account of the state of his or her health or the health of any of his or her dependants, of any person who -
    - (i) has been a member of any other registered fund for a continuous period of at least two years and whose application for membership of the first-mentioned scheme is necessitated by his or her changing of employment; or
    - (ii) has, for a continuous period of not less than two years, been a dependant of a person who, during that period, has been a member of that fund or any other fund, and who applies within three months after the date on which he or she ceased to be a member of such other fund or a dependant of a member of that fund or such other fund, as the case may be, to become a member;
  - (t) that a minor may be a member, and any such member may, with out assistance if he or she has attained the age of 16 years, or assisted by his or her parent or guardian if he or she is under that age, execute all necessary documents and give all necessary ac quittances, but he or she shall not manage the affairs or be the principal officer of such fund;
  - (u) for such other matters as may be prescribed.
- (2) If the members of a registered fund who are members of that fund by virtue of their employment by a particular employer terminate their member ship of the said fund with the object of obtaining membership of another fund or of establishing a new fund, such other or new fund shall, if so requested by such first-mentioned fund, admit as a member, without a waiting period or the imposition of new restrictions on account of the state of his or her health or the health of any of his or her dependants, any member of such first-mentioned fund who -
- (a) is a pensioner;
  - (b) is the widow or widower of a member of such fund; or
  - (c) had been a dependant of a member of such fund,
- and who obtained membership of such first-mentioned fund by virtue of such member or the person from whom such member derived his or her membership having been in the employ of the said employer.
- (3) The rules of a registered fund and any amendment thereof shall be binding on the fund as well as the members and their dependants and the trustees, principal officer and other employees of the fund.

### 31. Amendment of rules

- (1) Subject to the provisions of this section, a registered fund may, in the manner directed by its rules, amend or rescind any of such rules or make any additional rule but, notwithstanding the provisions of any other law, no such alteration, rescission or addition shall be valid unless it has been approved by the Registrar and registered under subsection (2).
- (2) On receipt of a written notice from a registered fund setting out the particulars of an alteration or rescission of a rule or an addition to the rules thereof, and a certificate signed by the principal officer, that such alteration, rescission or addition has been adopted in accordance with the provisions of the rules of the fund, the Registrar shall -
  - (a) if he or she is satisfied that the alteration, rescission or addition will not render the rules of the fund inconsistent with this Act, register the alteration, rescission or addition and return to the fund a copy of the notice with the date of registration endorsed thereon;
  - (b) if he or she is not so satisfied, in writing notify the fund accordingly and indicate the reasons for his or her rejection of the alteration, rescission or addition.
- (3) The Registrar may order a registered fund to -

- (a) within a period of 30 days as from the date on which the Registrar addressed the request to the fund, amend in the manner indicated by the Registrar; or
  - (b) apply in the manner indicated by the Registrar,
- any rule of the fund which is, in the opinion of the Registrar, being applied in a manner inconsistent with the provisions of this Act.

### 32. Principal officer

- (1) The principal officer shall be resident in Namibia, and if he or she is, for a period exceeding 30 days, absent from Namibia or for any reason unable to discharge any duty imposed upon him or her by any provision of this Act, the registered fund shall forthwith, in the manner directed by its rules, appoint another employee to act, for the duration of such principal officer's absence or inability, in the stead of such principal officer.
- (2) Within 30 days of the registration of a fund under this Act, the trustees shall notify the Registrar of the name, the residential address and the postal address of the principal officer of the fund, and the Registrar shall be similarly notified of every subsequent change of address of the principal officer.
- (3) Whenever a registered fund has appointed a new principal officer, the trustees shall within 30 days from such appointment notify the Registrar thereof in writing.
- (4) Any notice required or permitted to be given to a registered fund in terms of this Act shall, if given to the principal officer, be deemed to have been duly given to the fund.

### 33. Annual financial statements

- (1) Every registered fund shall in respect of each financial year referred to in subsection (6) cause to be prepared annual financial statements and shall within six months after the end of a financial year furnish a copy of the statements concerned together with a report by the principal officer to the Registrar.
- (2) The annual financial statements referred to in subsection (1) shall consist of -
  - (a) a balance sheet dealing with the state of affairs of the fund;
  - (b) an income statement;
  - (c) a cash-flow statement;
  - (d) a prescribed report by the auditor of the fund; and
  - (e) such other returns as the Registrar may require.
- (3) Except where the annual financial statements of a registered fund are to be audited by the Auditor-General in terms of any law, such statements shall, subject to the provisions of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), be audited by the auditor of the fund.
- (4) The annual financial statements shall -
  - (a) be prepared in accordance with generally accepted accounting practice;
  - (b) fairly present the state of affairs and the business of the fund and the results thereof at the end of the financial year concerned and the surplus or deficiency of the fund for that financial year;
  - (c) by means of figures and a descriptive report, set out and explain any matter of information material to the affairs of the fund.
- (5) The principal officer's report referred to in subsection (1) shall -
  - (a) deal with every matter which is material for the appreciation by members of the fund of the state of affairs and the business of the fund and the results thereof;

- (b) contain relevant information indicating whether or not the resources of the fund have been applied economically, efficiently and effectively.
- (6) For the purposes of subsections (1) and (4), “ financial year” means the financial year of a registered fund which shall end on 31 December in each year.

## Part VI – TERMINATION OF THE BUSINESS OF A FUND

### 34. Amalgamations and transfers

- (1) The provisions of this section shall apply to every transaction involving the amalgamation of the business of a registered fund with any business of any other person (irrespective of whether that other person is or is not a registered fund) or the transfer of any business from a registered fund to any other person or the transfer of any business from any other person to a registered fund.
- (2) The registered fund shall deposit with the Registrar a copy of the exposition of the proposed transaction, including a copy of every actuarial or other statement taken into account for the purposes of the proposed transaction, and shall furnish the Registrar with particulars of the voting at any meeting of its members or shareholders at which the proposed transaction was considered and with such additional information as the Registrar may require: Provided that if two or more registered funds are concerned in the proposed transaction, only one such fund need furnish a copy of the exposition as aforesaid.
- (3) If any party to the proposed transaction is not a registered fund, but carries on insurance business in Namibia within the meaning of the Insurance Act, 1943 (Act 27 of 1943), the Registrar shall deposit with the Registrar of Insurance the copy of the exposition, particulars and information referred to in subsection (2), and subsections (5) to (10), inclusive, shall not apply, but section 25 of that Act shall apply as if the fund were an insurer registered under that Act and as if the members of the fund were the owners of policies of insurance issued by the fund.

*[The Insurance Act 27 of 1943 has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]*

- (4) If any party to the proposed transaction is not a registered fund and does not carry on insurance business in Namibia within the meaning of the said Insurance Act, 1943, the Registrar may require that party to furnish him or her with any information which is in possession of that party and which the Registrar may specify.
- (5) The Registrar may, in his or her discretion, require any or all of the following provisions to be complied with, namely:
  - (a) A report on the proposed transaction to be drawn up by an independent valuator or other competent person nominated by the Registrar at the expense of the parties and furnished to the Registrar who shall send a copy thereof to each of the parties to the proposed transaction;
  - (b) each of the said parties to send a copy of the exposition of the proposed transaction and of the report (if any) referred to in paragraph (a) to every member, shareholder and creditor of that party;
  - (c) the parties to the proposed transaction to publish particulars thereof, in a form approved by the Registrar, in the Gazette and in such newspaper or newspapers as the Registrar may direct.
- (6) Copies of the exposition of the proposed transaction and of the report (if any) referred to in paragraph (a) of subsection (5) shall, for such period of not less than 21 days as the Registrar may specify, be made available for the inspection of any member, shareholder or creditor of any party to the proposed transaction or of any other person or body having an interest therein -
  - (a) at the principal place of business of any registered fund concerned; and
  - (b) at the principal place of business in Namibia of any other party.
- (7) When the requirements of subsection (6) have been complied with, the Registrar shall consider the exposition of the proposed transaction and there after the Registrar may -

- (a) confirm it; or
  - (b) propose that the parties to the proposed transaction modify the exposition in certain respects, and if they so modify the exposition the Registrar may confirm the exposition as modified; or
  - (c) decline to confirm it.
- (8) The Registrar shall not confirm the exposition unless he or she is satisfied that the transaction concerned -
- (a) would not be detrimental to the interests of the majority of the members of any registered fund concerned; and
  - (b) would not render any registered fund concerned which will continue to exist if the proposed transaction is completed, unable to meet the requirements of this Act or to remain in a sound financial condition, or, in the case of a fund which is not in a sound financial condition, to attain such a condition within a reasonable period of time determined by the Registrar to be satisfactory.
- (9) An exposition confirmed by the Registrar in accordance with this section shall be binding on all persons concerned, and shall have effect notwithstanding any conflicting provision contained in the rules of any registered fund concerned or in the memorandum or other document under which any other party to the transaction is constituted, or in the articles of association or other rules of such party.
- (10) When the exposition of the proposed transaction has been confirmed by the Registrar, the person controlling the amalgamated business or the person to whom any business has been transferred in terms of the transaction, as the case may be, shall within 14 days after such confirmation deposit with the Registrar a declaration by each of the parties to the transaction, that to the best of their belief every payment made or to be made or other valuable consideration given or to be given to any person on account of the amalgamation or transfer is fully set forth in the exposition of the proposed transaction.
- (11) Whenever the exposition of a proposed transaction is confirmed in accordance with the provisions of this section, the relevant assets and liabilities of the parties to the amalgamation shall vest in and become binding upon the amalgamated body or, as the case may be, the relevant assets and liabilities of the party effecting the transfer shall vest in and become binding upon the party to which transfer is effected.
- (12) The Registrar of Deeds shall, upon production to him or her by the person concerned of a deed or other document relating to any asset transferred in accordance with subsection ( 11) and of a certificate by the Registrar of the confirmation of the transaction of amalgamation or of transfer, as the case may be, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his or her registers necessitated by the amalgamation or transfer.
- (13) A transaction in terms of this section shall not deprive any creditor of a party thereto (other than in his or her capacity as a member or a shareholder of such party) of any right or remedy which he or she had immediately prior to the date of the transaction against any party to the transaction or against any member or shareholder or officer of such party.

### 35. Applications to court

- (1) The Registrar may, in regard to any registered fund, apply to the court for an order under paragraph (c), (d) or (e) of subsection (3), and a registered fund may, in regard to itself, apply to the court for an order under paragraph (b), (d) or (e) of that subsection, if the Registrar or the fund is of the opinion that it is desirable, because the fund is not in a sound financial condition or for any other reason, that such an order be made in regard to the fund: Provided that a fund shall not make such an application except by leave of the court, and the court shall not grant such leave unless the fund has given security to an amount specified by the court for the payment of the costs of the application and of any opposition thereto, and has established prima facie the desirability of the order for which it wishes to apply.
- (2) Any creditor of a registered fund who is unable to obtain payment of his or her claim after recourse to the ordinary process of law may, in regard to such fund, make an application to the court for an order under

paragraph (b), (d) or (e) of subsection (3), and the proviso to subsection (1) shall apply mutatis mutandis in regard to such application.

- (3) Upon any application in terms of either of the preceding subsections, the court may -
  - (a) refuse the application;
  - (b) order that an investigation be made and may issue such directions regarding such investigation as the court may deem desirable;
  - (c) order that the rules of the fund relating to the appointment, powers, remuneration and removal from office of the trustees of the fund, or relating to such other matter as the court may regard appropriate, be altered in a manner to be specified in such order;
  - (d) order that the fund be placed under judicial management under section 36;
  - (e) order that the whole or any part of the business of the fund be wound up under section 37.
- (4) In exercising its discretion under subsection (3), the court shall consider the equitable interests of the members of the fund and of any other person who has rendered or who intends to render financial assistance to the fund, and shall make such order as it deems most advantageous to the members of the fund.
- (5) When a court has made an order in terms of paragraph (b) of subsection (3) in regard to a registered fund, it may at any time thereafter make an order under paragraph (c), (d) or (e) of that subsection in regard to the fund, and when a court has made an order under paragraph (d) of subsection (3) in regard to a fund, it may at any time thereafter make an order under paragraph (e) of that subsection in regard to that fund.
- (6) Notwithstanding anything to the contrary contained in the rules of the fund, an order of the court made under paragraph (c) of subsection (3) shall take effect as from any date specified for that purpose in the order or if no date has been so specified, as from the date of the order and thereupon the said rules shall be deemed to have been amended in the manner specified by the court.
- (7) Unless the court otherwise orders, the costs of the Registrar in or in connection with an application under this section, shall be paid by the fund and shall be a first charge upon the assets of such fund.

### 36. Judicial management

- (1) An order of the court under paragraph (d) of section 35(3) shall be subject to the provisions of this section.
- (2) The court shall appoint a judicial manager, who shall receive such remuneration as the court may direct, and the court may at any time cancel the appointment and appoint some other person as judicial manager.
- (3) The judicial manager appointed to a registered fund shall exercise all the powers of the management of the fund, but, except with the leave of the court, he or she shall not admit any more members.
- (4) The court shall issue such directions to the judicial manager as to his or her powers and duties as it deems desirable in the circumstances.
- (5) Sections 427 to 440, inclusive, of the Companies Act, 1973 (Act 61 of 1973), shall apply mutatis mutandis in connection with the judicial management of a registered fund, except in so far as those sections are inconsistent with any provision of this Act or with any direction issued by the court under this section.  
*[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]*
- (6) The judicial manager shall act under the control of the court, and he or she may apply to the court at any time for instructions as to the manner in which he or she shall manage the fund.
- (7) The judicial manager shall give the Registrar such information as the latter may require from time to time, and shall, whenever he or she intends to apply to the court for instructions, report accordingly to the Registrar who shall be entitled to be heard personally or through a representative at any such application,

and may himself or herself apply to the court in respect of any matter regarding the judicial management.

- (8) The judicial manager shall as soon as possible report to the court which of the following courses he or she deems most advantageous to members of the fund, namely:
  - (a) The transfer of the whole or of a part of the business of the fund to some other person;
  - (b) the carrying on of the business of the fund with such alterations in benefits, contributions or conditions or in other respects as he or she may deem advisable;
  - (c) the winding-up of the business or of a part of the business of the fund;
  - (d) such other course as he or she may deem advisable.
- (9) The court shall, after considering the report of the judicial manager, decide upon the course it considers most advantageous to members of the fund, and an order containing the decision of the court shall be binding on all persons concerned and shall have effect notwithstanding anything to the contrary contained in the rules of the fund: Provided that if the court orders the winding-up of the business or any part of the business of the fund, section 37 shall apply to such winding-up.

### **37. Winding-up by court**

- (1) An order of the court under paragraph (e) of subsection (3) of section 35, or an order under subsection (9) of section 36 for the winding-up of a scheme, shall be subject to the provisions of this section.
- (2) Sections 337 to 426, inclusive, of the said Companies Act, 1973, shall apply mutatis mutandis to a winding-up under this section in so far as those sections relate to a winding-up by the court in terms of the said Act, and in so far as those sections are applicable and not inconsistent with any provision of this Act or with any direction issued by the court under this section.
- (3) The court may direct that the said sections of the said Companies Act, 1973, may, for the purposes of the winding-up, be suitably modified in any particular case if the court is satisfied that having regard to the circumstances of the fund concerned, it would be impracticable or unnecessarily onerous to comply with those sections in every particular, and that in spite of such modification the interests of the creditors of the fund will be sufficiently safeguarded.
- (4) Without prejudice to the powers of the Master of the High Court of Namibia, the liquidator appointed under subsection (2) shall give the Registrar such information as the latter may require from time to time, and shall, whenever he or she intends to apply to the court for instructions, report accordingly to the Registrar who shall be entitled to be heard personally or through a representative at any such application, and may himself or herself make an application to the court with reference to the winding-up.
- (5) In the winding-up of the whole or any part of the business of a fund, the value of the interests of the members of the fund and the value of any benefits due by the fund to persons other than members, shall be ascertained in such manner as the court may direct.
- (6) If, where the court has ordered that the whole business of the fund be wound up, the Registrar is satisfied that the winding-up of such fund has been completed, he or she shall cancel the registration of the fund and thereupon the fund shall be deemed to be dissolved.

### **38. Voluntary or automatic dissolution of funds**

- (1) If the rules of a registered fund provide for the dissolution or termination of the fund upon the expiry of a period or upon the occurrence of an event, or upon a resolution by the members of the fund that such fund be terminated, then upon the expiry of such period, or the occurrence of such event, or the passing of such resolution, such fund shall, subject to the provisions of this section, be liquidated in the manner provided for by such rules, and the assets of the fund shall, subject to the provisions of this section, be distributed in the manner provided for by the said rules.
- (2) As soon as such period has expired or such event has occurred or such resolution has been passed, a

- person approved by the Registrar shall be appointed as liquidator in the manner directed by the rules, or, if the rules do not contain directions as to such appointment, by the person managing the business of the fund and the liquidation shall be deemed to commence as from the date of such approval.
- (3) During such liquidation the provisions of this Act shall continue to apply to the fund as if the liquidator were a trustee of the fund.
  - (4) The liquidator shall forthwith deposit with the Registrar a preliminary account and a preliminary balance sheet signed and certified by him or her as correct, showing the assets and liabilities of the fund at the commencement of the liquidation and the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members.
  - (5) The Registrar may direct the liquidator to furnish a report, drawn up by an independent valuator or other competent person nominated by the Registrar, upon the preliminary account and preliminary balance sheet.
  - (6) The preliminary account, preliminary balance sheet and report (if any) referred to in subsection (5), shall lie open at the office of the Registrar, and at the principal place of business of the fund, and if such place of business is in any district other than the district in which the office of the Registrar is situated, at the office of the magistrate of the district in which such place of business is situated, for inspection by interested persons for a period of 30 days.
  - (7) The Registrar shall, at the cost of the fund, cause to be published in the Gazette or in a newspaper circulating in the district in which the principal place of business of the fund is situated, or in both the Gazette and such newspaper, a notice stating the period during which and the places at which the preliminary account, preliminary balance sheet and report (if any) shall lie open for inspection under subsection (6), and such notice shall call upon all interested persons who have any objection to the said preliminary account, preliminary balance sheet and report (if any), to lodge their objections in writing with the Registrar within a period stated in the notice, being not less than 14 days as from the last day on which the aforesaid documents lie open for inspection.
  - (8) If no objections are lodged with the Registrar under subsection (7), the Registrar shall direct the liquidator to complete the liquidation.
  - (9) If such objections are lodged with the Registrar, the Registrar may, after considering the objections, direct the liquidator to amend the preliminary account and preliminary balance sheet, or give such other directions relating to the liquidation as he or she thinks fit which are not inconsistent with the rules of the fund, and any such directions shall be binding upon the liquidator.
  - (10) The liquidator shall, within 14 days of the receipt by him or her of any direction of the Registrar under subsection (9), post a copy thereof to every member; shareholder and creditor of the fund, and the liquidator or any person aggrieved by any such direction of the Registrar may apply by motion to the court within 28 days after such direction has been communicated to the liquidator for an order setting aside the Registrar's decision, and the court may confirm the said decision, or make such order as it thinks fit.
  - (11) If the Registrar is satisfied that his or her directions, in so far as they have not been varied or set aside by the court, have been given effect to, he or she shall direct the liquidator to complete the liquidation.
  - (12) The liquidator shall, within 30 days after the completion of the liquidation, lodge with the Registrar a final account and a final balance sheet, signed and certified by him or her as correct, showing the assets and liabilities of the fund at the commencement of the liquidation and the manner in which the assets have been realized and the liabilities, including any liabilities and contingent liabilities to or in respect of members, have been discharged.
  - (13) The provisions of sections 337 to 426, inclusive, of the said Companies Act, 1973, in so far as those provisions relate to a voluntary winding-up in terms of the said Act, shall, in so far as they are not inconsistent with the provisions of this Act, apply mutatis mutandis to the dissolution of a fund under this section.
  - (14) All claims against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit.

- (15) If the Registrar is satisfied that the said account and balance sheet are correct and that the liquidation has been completed, he or she shall cancel the registration of the fund and thereupon such fund shall be deemed to be dissolved.

### **39. Cancellation and suspension of registration of certain funds**

- (1) The Registrar may cancel or, subject to such conditions as he or she may deem fit to impose, suspend for any period not exceeding three months, the registration of a registered fund which -
- (a) after notice in writing from the Registrar, persists -
    - (i) in violating any provision of this Act or of the rules of the fund;
    - (ii) in any irregular or undesirable practice or undesirable method of carrying on business contemplated in section 4(9);
  - (b) has, in the opinion of the Registrar, discontinued its business.
- (2) The Registrar shall not cancel or suspend the registration of any registered fund unless he or she has afforded the fund or its legal representative a reasonable opportunity of being heard.
- (3) Any decision taken by the Registrar under subsection (1) shall be made known by him or her by means of a notice -
- (a) published in the Gazette; and
  - (b) served upon the fund by registered post,
- and shall come into effect on a date specified in such notice.

## **Part VII – MISCELLANEOUS AND GENERAL**

### **40. Inspection of documents**

- (1) Upon payment of the prescribed fees any person may inspect at the office of the Registrar any document referred to in section 42 and make a copy thereof or take extracts therefrom or obtain from the Registrar a copy thereof or extract therefrom.
- (2) The Registrar may exempt any person from the obligation to pay fees under this section, if he or she is satisfied that the inspection, copy or extract in question is desired for the purpose of furthering some public interest.
- (3) The Registrar shall without charge furnish any person on request with particulars of the address of the principal place of business and the name of the principal officer of any registered fund.

### **41. Effect of Registrar's certificate on documents**

Every document which purports to have been certified by the Registrar to be a document deposited at his or her office under the provisions of this Act, or to be a copy of such a document, shall prima facie be deemed to be such document, or a copy thereof, and every such copy shall be admissible in evidence as if it were the original document.

### **42. Right to obtain copies of or to inspect certain documents**

- (1) Every registered fund shall provide any member, on request and against payment of such sum as may be determined by the rules of the fund, with a copy of -
- (a) the rules of the fund;
  - (b) the last annual financial statements prepared in accordance with section 33.



- (2) Any member shall be entitled to inspect without charge, at the principal place of business of a registered fund, a copy of any of the documents referred to in subsection (1) and to make extracts therefrom.

### **43. Prohibition of membership of more than one fund**

No person shall -

- (a) be admitted as a member of -
- (i) more than one registered fund;
  - (ii) a registered fund if he or she has been admitted as a dependant of a member of any other registered fund;
- (b) claim or accept benefits in respect of himself or herself or any dependant from any registered fund other than the fund of which he or she is a member;
- (c) be admitted as a dependant of -
- (i) more than one member of a particular registered fund;
  - (ii) members of different registered funds;
  - (iii) a member of a registered fund if he or she has been admitted as a member of any other registered fund.

### **44. Regulations**

- (1) The Minister may, after consultation with the Association, make regulations relating to -
- (a) the administration of the affairs of registered funds;
  - (b) the fees to be paid to the Registrar in respect of -
    - (i) an application for the registration of a fund;
    - (ii) the registration of a fund;
    - (iii) an application for permission to change the name of a registered fund;
    - (iv) the change of the name of a registered fund;
    - (v) the registration, in terms of section 31, of an amendment of a rule of a registered fund;
  - (c) the maximum amount which and the extent to which a registered fund may invest -
    - (i) outside Namibia;
    - (ii) in particular assets or in particular kinds or categories of assets, prescribing the basis on which such prescribed maximum amount shall be determined and defining the kinds or categories of assets to which it applies;
  - (d) all other matters which are by this Act required or permitted to be prescribed, and generally relating to all matters which he or she considers it necessary or expedient to prescribe in order that the objects and purposes of this Act may be achieved.
- (2) A regulation made under subsection (1) may in respect of any contravention thereof or a failure to comply therewith prescribe a penalty not exceeding a fine of N\$2 000 or imprisonment for a period not exceeding six months.

### **45. Offences and penalties**

- (1) Any person who -

- (a) contravenes any provision of this Act or fails to comply with any request or requirement made thereunder;
- (b) makes or cause to be made any claim for the payment of any benefit allegedly due in terms of the rules of a registered fund, knowing such claim to be false;
- (c) knowingly makes or causes to be made a false representation of any material fact to a registered fund, for use in determining any right to any benefit allegedly due in terms of the rules of the fund;
- (d) having knowledge of any fact or the occurrence of any event affecting his or her right to receive any benefit in terms of the rules of a registered fund, fails to disclose such fact or event to the fund with the intent to obtain from the fund a benefit to which he or she is not entitled or a larger benefit than that to which he or she is entitled; or
- (e) renders a statement, account or invoice to a member of a registered fund or any other person, knowing that such statement, account or invoice is false and may be used by such member or other person to claim from a registered fund any benefit or a benefit greater than the benefit to which he or she is entitled in terms of the rules of the fund,

shall, subject to the provisions of subsection (2), be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

- (2) No contravention or failure to comply with any request or requirement shall be punishable under subsection (1) if the act or omission constituting that contravention or failure to comply with any request or requirement is punishable as an offence under the provisions of any other law.
- (3) Without derogating from subsection (1), the Registrar may –
  - (a) impose a prescribed administrative penalty on a person who contravenes or fails to comply with any prescribed provision of this Act; and
  - (b) charge interest at the rate as prescribed under section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975) on administrative penalties that are not paid after the due date.
- (4) A penalty and interest thereon payable under this section is a debt due to the Registrar, and in the event that a person fails to pay such penalty and interest after demand, the Registrar may file with the clerk or registrar of a competent court a statement –
  - (a) certified by the Registrar as correct, stating the amount of the penalty and any interest thereon; and
  - (b) which after filing has all the effects of a civil judgment lawfully given in such court against the person concerned in favour of the Registrar for a liquid debt in the amount specified in the statement and may be enforced as such.
- (5) An administrative penalty imposed and paid pursuant to this section does not constitute a previous conviction contemplated in section 271 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

*[section 45 substituted with amendment markings by Act 11 of 2016]*

## 46. Repeal and savings

- (1) The laws specified in Column 2 of the Schedule are hereby repealed to the extent set out in Column 3 of that Schedule.
- (2) Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.
- (3) Notwithstanding the repeal of the Medical Schemes Act, 1967 (Act 72 of 1967), any reference in any law to a medical scheme registered under that Act, shall be construed as a reference to a fund registered under

this Act.

#### 47. Short title and commencement

- (1) This Act shall be called the Medical Aid Funds Act, 1995, and shall come into operation on a date to be fixed by the Minister by notice in the Gazette.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
- (3) A reference in this Act to the date of its commencement shall be construed as a reference to the applicable date fixed under subsection (2).

### Schedule

#### LAWS REPEALED

Column 1	Column 2	Column 3
No. and year of law	Title	Extent of repeal or amendment
Act 72 of 1967	Medical Schemes Act, 1967	The repeal of the whole
Act 95 of 1969	Medical Schemes Amendment Act, 1969	The repeal of the whole
Act 49 of 1972	Medical Schemes Amendment Act, 1972	The repeal of the whole
Act 43 of 1975	Medical Schemes Amendment Act, 1975	The repeal of the whole
Act 13 of 1982	Medical Aid Scheme for the Government Service Extension Act, 1982 <i>[The word "Extension" is misspelt in the Government Gazette, as reproduced above.]</i>	The repeal of section 2