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15 June 2012

To:

The Honourable Minister of Finance

The Ministry of Finance

C/o The Permanent Secretary: Ms Ericah Shafudah

By Hand

And To:

The Honourable Minister of Health and Social Services

The Ministry of Health and Social Services

C/o The Permanent Secretary: Mr Andrew Ndishishi

By Hand

Dear Honourable Ministers

**THE INFLUENCE OF THE HEALTHCARE FUNDING INDUSTRY ON THE
SUSTAINABILITY OF THE HEALTHCARE INDUSTRY IN NAMIBIA**

The Namibia Private Practitioners Forum [NPPF] is an Association [not for gain] in the process of being registered as a Section 21 company. The NPPF currently has 195 members consisting solely of healthcare professionals representing all healthcare disciplines in private practice in Namibia. Road shows are currently underway and the membership of the NPPF is increasing daily. *The main objective of the NPPF is to promote an ethical, transparent and sustainable healthcare industry in Namibia.*

Concerns of the NPPF

The NPPF is concerned about numerous factors that are proving to be obstacles in the establishment of an ethical, transparent and sustainable private healthcare industry in Namibia. ***This communication intends to highlight some of these concerns as they adversely affect the healthcare service providers and their patients*** and through this we then also wish to ***request your assistance in addressing these concerns.***

From the beginning we must emphasise that we are sensitive to the fact that ***some healthcare professionals from our own ranks might be abusing the system*** and may be acting in unethical and fraudulent ways. This is under no circumstances acceptable to the NPPF and for that reason the NPPF has put in place, as part of its constitution, ***a stringent four tier peer review disciplinary process to deal with such individuals.***

On the funding side of the healthcare industry in Namibia, the NPPF is concerned about several obstacles standing in the way of an ethical and transparent industry which is driven by open market forces so that members can enjoy the benefits of price competition. ***For that reason the NPPF commissioned an enquiry into the functioning of the four open medical aid funds and their administrators.*** It was conducted by the firm ISG Risk Services [ISG]. A report was provided to the NPPF on February 14, 2012.

Background

Private healthcare professionals have for decades been labelled as the culprits driving the cost of private healthcare in Namibia and thereby also the cost [for the public] of membership to a medical aid fund. Although not invited, representatives of the NPPF, MAN [Medical Association of Namibia] and NDA [Namibia Dental Association] attended recently held consultations on regulatory reform in the medical aid fund industry [FIM-BILL consultations]. Our [NPPF, MAN, NDA] right to attend and provide input was seriously questioned by NAMAFA [Namibian Association of Medical Aid Funds]. ***NAMAFA is an association created by statute whose legal practitioner boldly stated that NAMAFA is indeed the sum total and ultimate representative of the medical aid industry in Namibia.*** The NPPF, with the support of MAN and NDA ***submitted that the***

statutory status of NAMAFA, for reasons to be explained more fully hereunder, is undesirable and its actions and prescriptions on medical aid funds are tantamount to ant-competitive behaviour. Anti-competitive behaviour is generally regarded as an obstacle to free competition and therefore the driver of costs to be paid by the consumer. By labelling instead the healthcare providers, who, according to newspaper reports on recent studies, are already emigrating from Southern Africa *en masse*, attention is neatly diverted away from the real cost drivers in the industry. ***As it will become clear from the content of this memorandum, urgent intervention into the current legislative structure, is needed.***

The Report by ISG Risk Services

ISG Risk Services was instructed by the NPPF to make certain enquiries into the functioning of the private medical aid fund industry, focussing on the concerns of the NPPF as explained in more detail hereunder. It was decided upon ISG because it [ISG] provided the necessary expertise in regulation of provident institutions [including medical aid funds], in consulting for and in actuarial services on provident institutions, in legal practice, financial management and in forensic investigation. The experts at ISG dispose of very relevant qualifications such as B.Comm [Law], B. Econ[Hons], LLB, MBA and post graduate studies in financial planning [including advisory services on medical aid fund membership and insurance] and also the professional designations of Certified Fraud Examiner [CFE], Certified Financial Planner® and Legal Practitioner of the High Court.

At the time when ISG was instructed to make these enquiries, the NPPF was concerned about and requested ISG to focus on, *inter alia*, the following matters:

- Is the reporting to members of medical aid funds, on the financial affairs of their funds, done in a fair and transparent way?
- By comparing financial statements, are the cost and income models employed by medical aid funds desirable and transparent?
- Are the dealings and legal relationships between medical aid funds and their administrators transparent, sufficiently regulated and in the interest of the members of those funds?

- Are governance structures employed by medical aid funds and their administrators transparent, ethical and in the interest of members of funds?
- Are policies with regard to the appointment and commissions/fees payable to administrators appropriate and in the interest of members?
- ***Is it desirable and in the interest of members of medical aid funds that NAMAFA continues to exist as a creature of statute, with specific reference to its statutory power to “control” medical aid funds, impose claim procedures on healthcare professionals and issue the “NAMAFA Benchmark of Tariffs” to which all funds must subscribe? The latter was regarded as anti-competitive and NPPF instituted a complaint in this regard with the Competition Commission. The complaint is still being investigated.***¹

As indicated above, the final report by ISG was delivered on February 14, 2012. Practical action on the results of the report was further delayed by the process of granting the four open medical aid funds the opportunity to provide input should any statement in the report be based on erroneous information. Strongly worded threats of legal action should the report be disseminated further, were received from two of the administrators of the four open funds. This did not deter the NPPF as our enquiry was in the public interest. Furthermore, because the results of the report confirmed some of the worst suspicions of the NPPF, legal action by these administrators was considered to be the ultimate opportunity to explain to the public what the real state of affairs is and why it ***[NPPF] feels that urgent and highest level intervention has become necessary.*** To date no legal action was however taken against the NPPF.

Summary of the most pressing findings of the ISG Report

Refusal of Public Information

From the start of the enquiry both the four open funds and NAMFISA, refused to provide information. This included audited financial statements of the four open

¹ The NPPF was recently requested to comment on the opinion of NAMAFA that NAMAFA, and medical aid funds “are not businesses carried on for gain or reward and therefore fall short of the definition of ‘undertaking’ as envisaged [by the Act]”. ***This and other arguments are used in an apparent attempt not to have NAMAFA or medical aid funds subject to the law that promotes competition in the interest of consumers.***

funds for the years preceding 2010. NAMFISA argued that, although once public information, these statements did not fall in the public domain any longer and may therefore not be provided. The funds argued that the NPPF had no legal standing to make any enquiries on them. The statements were even refused after powers of attorney were provided to each fund by at least one member of each respective fund. One fund further argued that NAMFISA could provide the statements, which NAMFISA of course refused.

The concern of the NPPF ***that there is a deplorable lack of transparency in the medical aid fund industry was confirmed.*** Several consultations with experts in the South African medical aid fund industry, drew shock and awe as the situation in South Africa is substantially different. Not only are financial statements freely available in South Africa, they are also substantially more detailed than financial statements on medical aid funds in Namibia. ***In South Africa, but not so in Namibia, there is a statutory right to information so that stakeholders [members of medical aid funds] in South Africa have substantially more access to information.***

Of grave concern to the NPPF, and this should be to all consumers in the financial services industry, ***is NAMFISA's interpretation of its own laws*** namely that it [NAMFISA] is prohibited from providing certain information to, *inter alia*, complainants. The result of this interpretation is that no other party [save NAMFISA] may receive even the minimum of information needed to protect its own interests in a provident institution. It must be kept in mind that provident institutions, such as medical aid funds, are regarded public interest organizations. Although NAMFISA's interpretation in this regard is likely an erroneous one, the ***laws enabling it to come to this conclusion are in fact in place and need urgent revision. New laws should be instituted that would allow consumers access to minimum information to enable them to protect their own interests.***

Information so refused by NAMFISA, makes it [NAMFISA] the only responsible party and in the present scenario, ***it should therefore be prepared to take full responsibility, accountability and legal liability for all past and future damages***

suffered by consumers in the financial services industry. This would even include those damages suffered when trustees of medical aid funds make decisions that are not in the best interest of the fund or its members.

Conflicted Interests

Several instances of conflicted interests were reported. So for instance one administrator [of one of the medical aid funds] finds itself in a position where it is also a service provider. This means an entity that must, in its capacity as administrator, scrutinise claims submitted by service providers, must now scrutinise its own claims.

In another instance, the chairperson of a fund is an employee of the majority shareholder in the company providing administrative services to that fund.²

Another conflict of interest highlighted by ISG is the position of the CEO of NAMAF³. This particular individual is also the chairperson of one of the open funds.⁴

Yet another instance is the Principal Officer of one of the open funds who is also serving as President of NAMAF.

NAMAF

The relevant statute [Act 23 of 1995] ***states that the Board of NAMAF must comprise of seven representatives of medical aid funds.*** NAMAF is by the same Act empowered ***to “control”*** medical aid funds.⁵ It may make rules to so control funds and to also enforce discipline when funds do not comply with such rules. Fund members [patients] from whom it is expected to approach NAMAF when they find no satisfaction with their funds, therefore find the very same persons this time sitting in the “NAMAF chair”, listening to their complaints. This can clearly not be in the interest of fund members.

² At the time when the enquiry was made.

³ NAMAF must be without a doubt (and in terms of its creating statute) a regulatory body of medical aid funds.

⁴ At the time when the enquiry was made.

⁵ See Section 10 of the Medical Aid Funds Act (23 of 1995)

When enquiries were made with regard to NAMAFA's policies on regulating the funds, with specific reference to several matters ISG has identified as problematic, ***NAMAFA simply denied being a regulator of medical aid funds. This obviously begs the question then as to how and why NAMAFA should exist at all.***

Levies

Levies paid by the four open funds [and therefore by the members of the four open funds] to NAMFISA during 2010 amounted to ***N\$412,000***. During the same year, [members of] the same funds contributed ***N\$2,638,000 to NAMAFA***. This was after an 11.1% increase from 2008 to 2009 and a 21.7% increase from 2009 to 2010. It is no wonder that this extraordinary amount of money to NAMAFA [compared to NAMFISA] would be granted by the management of the funds because ***the NAMAFA management in fact is made up of the managers of funds.***

Administrators and Administration Fees

The NPPF's concern with administration fees paid by funds to administrators arises from the ***fact that administrators of medical aid funds are profit driven entities currently under no regulation in Namibia.*** This stands in contrast to the medical aid funds they serve which are non-profit provident institutions.

From an analysis of the financial statements that could be obtained by different means for the open funds [2008 to 2010 financial years] the following conclusions were made:

- During 2010 the average [for the four open funds combined] monthly administration fees paid per principle member amounted to N\$199.91. The highest was N\$237.51 and the lowest N\$185.45. This was despite a NAMFISA circular that limits these fees to N\$80 per month. When put to ***NAMFISA, its only reply was that although the circular remains applicable, it is outdated and that it [NAMFISA] does not have an official stance on if and how administration must be regulated.***⁶

⁶ This was shared by NAMFISA representatives at a consultation with one of the open funds after the ISG report was made available.

Even if the N\$80 per principal member per month [as is prescribed by NAMFISA] would be adjusted in line with CPI⁷ up to and including 2010, it would still amount to only N\$128.59.

- From 2008 to 2010 expenses in respect of administration costs, including managed healthcare, increased by a 100% more than that of healthcare claims and operational costs [excluding administration fees and managed care] increased 400% more than that of healthcare claims.
- From 2008 to 2010, for the four open funds combined, average annual administration fees [including managed health care] per beneficiary increased by 22% which increase is 15% higher than the increase in total beneficiaries during the same period.
- From 2008 to 2010, for the four open funds combined, non-healthcare costs, [excluding administration fees and managed care] per beneficiary increased by 32% which is 25% higher than the increase in total beneficiaries during the same period.
- From 2008 to 2010, for the four open funds combined, relevant healthcare expenditure per beneficiary increased by 17% which is 10% higher than the increase in total beneficiaries.
- For the two years 2008 to 2009 and 2009 to 2010 combined, the effective rate of CPI was 13.7%. The average annual administration fees [including managed healthcare] per beneficiary therefore increased 8.3% more than CPI over the same period, while non-healthcare costs [excluding administration fees and managed care] per beneficiary increased 18.4% more than CPI over the same period. Relevant healthcare expenditure per beneficiary increased by only 3.3% more than CPI. Apart from the “administration fee” expense vote, medical aid funds further report other expenses which in all probability should be included into the “administration fee” vote, separately. These include Advertising [N\$4 million], Bank charges [N\$914,000], Postage [N\$2,1 million], Printing [N\$1,2 million], Sundry charges [N\$2,6 million] and Local travel [N\$1,2 million].⁸

⁷ Consumer Price Index as per the official figures received from the Reserve Bank of Namibia.

⁸ Amounts are for all four open funds combined.

If reported correctly, it would have driven administration costs even higher than indicated above.

- From 2008 to 2010 the four open funds spent N\$101 million on risk transfer arrangements. Of this only N\$61 million were recovered in terms of claims. *There appears to be no regulation prohibiting an administrator of a fund from placing a fund's risk transfer arrangements with a holding company or a subsidiary company within its own group of companies.* Through shareholding arrangements it is clear that administrators often have close ties with insurance companies. NAMFISA refuses [and so do medical aid funds] to reveal the persons or entities who promoted the formation of the four open funds.
- During 2010 the four open medical aid funds in Namibia received over N\$1,3 billion in net contributions and spent N\$ 136 million of it on administration and operational expenses of which N\$ 110 million was on the "administration fees " vote alone.

Regulation on the Investment of Assets

Regulation 9 to the Medical Aid Funds Act ⁹ states that: *"Every registered fund shall keep in Namibia, subject to sub-regulation (2), assets of which the value shall not at any time be less than 35% of the total value of the assets of such fund"*. Sub-regulation (2) then goes on to prescribe a handful of extremely low risk asset classes in which these funds may be invested. There is confusion with regard to the interpretation of this regulation. Some of the funds invest over 50% of their Namibian assets in asset classes not prescribed by sub-regulation (2), arguing that they only need to invest as much as 35% in these Namibian prescribed asset classes.

If this is the correct interpretation, medical aid funds could invest as much as 65% of their assets in extremely high-risk investments, which was unlikely the intention of the legislator. The alternative interpretation, which at least one open fund do not agree with, is that although the Namibian assets may never be lower than 35% of total fund assets, **ALL** Namibian assets must be invested in the prescribed asset classes.

⁹ See Government Gazette no 1496 of February 1997.

NAMFISA

A copy of the ISG Report was provided to NAMFISA. NAMFISA advised the NPPF that, with the exception of the issue pertaining to the position of the CEO of NAMAf, which it can do nothing about, *“NAMFISA was satisfied with other issues as raised, and does not see any significant risk that they may pose to the members¹⁰or the industry at large”*.

Conclusion and Request

The members of the NPPF, ***who are the professionals who provide healthcare to their patients who also happen to be members of medical aid funds***, wish to bring under your attention that all is not as well in the private healthcare funding industry as the medical aid funds, their administrators and their regulator want us to believe.

- Patients are told that they have to suffer without treatment during the latter part of the year as their benefits become depleted while in the mean time a disproportionate and ever increasing slice of their contributions goes to ***unregulated, closed book, profit driven administrators***.
- Public interest organizations [medical aid funds] have full discretion to deny information to the persons whose interests they are supposed to protect. Most deplorably so, it is not acceptable that a regulator should have the discretion to deny such information to the consumers it owes a duty to protect. In such a scenario ***the regulator becomes an additional risk in the industry as the regulated funds (and behind them the unregulated administrators) can deflect any and all scrutiny by members, stakeholders and the public through a claim of regulatory compliance***, which, taken into account our archaic laws, means very little or nothing at all. Non-compliance by medical aid funds with a NAMFISA circular prescribing maximum administration fees was reported by ISG but the regulator stood in defence of the funds.
- ***NAMAf is a regulator and professes to protect members of medical aid funds while its management is made up of the senior managers of those very own funds it is supposed to regulate.***

¹⁰ A Specific open fund mentioned.

- There are many instances of conflicted interests in the industry which could very easily be used and abused to the detriment of fund members and which potentially increase the costs to the members of medical aid funds.
- NAMAFA takes the liberty, without any expressed provision in its constituting legislation to that effect, ***to prescribe tariffs to be used by medical aid funds.*** Although technical arguments are being exchanged as to whether the existing competition legislation is applicable to NAMAFA and medical aid funds, ***the mere fact that tariffs are issued and without exception applied poses an obstacle to competition.*** Costs to the members of medical aid funds can most definitely be brought down if healthy competition amongst medical aid funds could be introduced, as is the case in South Africa.
- Given NAMAFA's anti-competitive activities, its inability to independently assist members of medical aid funds and its draconic powers to control medical aid funds and thereby enforce a non-competitive environment, ***the NPPF requests that the continued existence of NAMAFA as statutory body, be amended.***

The NPPF wants to assure you that its members are aware of their responsibility to bring about affordable health care for the people of Namibia. The less people can afford private healthcare, the bigger the burden will be on government. We shall continuously endeavour from our side to bring our own to order and to consult with any and all stakeholders to bring about an ethical, transparent and sustainable healthcare industry.

For reasons summarised above the NPPF request your honourable office to assist us in rectifying these wrongs in the current system through further consultations on solutions and urgent legislative changes.

We shall avail a copy of the ISG report should you require further detail on the issues highlighted herein and please do not hesitate to contact us for further information.

Yours faithfully,

Dr. Dries Coetzee

CEO