

6 August 2013

Mr Ismail Momoniat  
Deputy Director General  
Tax and Financial Sector Policy  
National Treasury

Per email : [ismail.Momoniat@treasury.gov.za](mailto:ismail.Momoniat@treasury.gov.za)

Dear Mr Momoniat

**RE: FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012 –  
PARLIAMENTARY PROCESS 7 – 8 AUGUST 2013**

1. Further to the letter we simultaneously sent to you to formally record Discovery's submissions on the amendment dealing with the definition of "Business of a Medical Scheme" ("the definition") and further to our meeting on Friday, 2 August 2013, it appeared to us that the National Treasury may be constrained in the Parliamentary process that is scheduled for 7 – 8 August 2013.
2. From our assessment, given the time that has elapsed since the publishing of the Financial Services Laws General Amendment Bill, 2012 ("the Bill"), and the need for the abovementioned Bill to be passed to enable the Treasury to give effect to its powers in terms of the Insurance Laws Amendment Act, 27 of 2008 (ILAA) to deem certain policies to be "accident and health policies" in terms of the Short-term Insurance Act (STIA), it seems that at this stage, the National Treasury is unlikely to be able to review the amended definition in accordance with the proposal forwarded by Discovery even if persuaded by its merits.
3. If this assessment is indeed correct, we request that you consider –
  - 3.1. amending the proposed definition in the Bill as follows:

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**Secretary:** M J Botha

Discovery Health (Pty) Ltd. registration number: 1997/013480/07  
An authorised financial services provider

**Definition of “business of a medical scheme” in the MSA**

A business which undertakes liability to perform one\* or more of the activities listed in paragraphs a) – c) below in return for a premium or contribution-

- a) makes provision for the obtaining of a relevant health service;
- b) grants assistance in defraying expenditure incurred in connection with the rendering of any relevant services; or
- c) renders a relevant health service either by itself or by any supplier or group of suppliers of a relevant health service or by any person, in association with or in terms of an agreement with a medical scheme.

***\*(or two depending on how the amendment in the Bill is interpreted – see paragraph 6 – 8 of Discovery’s formal submissions)***

- 3.2. making provision for the amendment of the definition to be brought into operation on a date when the Treasury is in a position to simultaneously or substantially contemporaneously formally issue its regulations in terms of ILAA regarding which genre of insurance policies it determines ought to be deemed to be an “accident and health policy”.
4. We believe that taking this course of action would enable -
  - 4.1. the relevant government departments (viz National Treasury and Health) and Registrars (ie Financial Services Board and Medical Schemes) to properly consult and present a consistent and clear view on Government’s stand point on gap and supplementary health insurance products;
  - 4.2. avoiding a situation of businesses marketing and selling new insurance products only for these to be “shut down” within a short period of time or conversely, hampering product innovation due to regulatory uncertainty only to discover at some later date that such products would have been deemed to be acceptable for marketing and selling; and
  - 4.3. obviating the possibility of legal challenge to the amended definition by businesses who as a result of the amendment, are of the view that the amendment is either invalid, unenforceable or requires a pronouncement from the Courts regarding its true meaning given the overlapping of statutory instruments that regulate the issue.
5. In our view, the period required to take the steps contemplated in paragraph 3.2 above is a function purely of the availability on the part of the relevant stakeholders to expeditiously find a solution. It therefore need not take more than a few months after Parliament assents to the Bill being processed through Parliament this week.

6. We are willing to meet with you to discuss this proposal as well as render whatever assistance we can to draft, amend or comment on any proposals or regulations that the National Treasury intends to issue in terms of ILAA. Please do not hesitate to contact us in this regard.

Yours faithfully



**Khalik Mayet**

Head: Legal Services