



National Treasury

Date 2 May 2012

E-mail:

By e-mail LTdemarcation@treasury.gov.za

Dear Madam,

SUBMISSION OF COMMENTS IN RESPECT OF THE DRAFT REGULATIONS

1. We, the One Group, conduct the business of, *inter alia*, a short term insurance brokerage and an administrator, which business is registered in terms of the Financial Advisory and Intermediary Services Act¹.
2. It has only recently come to our attention that draft regulations to the Short Term Insurance Act² ("the demarcation regulations") were circulated for public comment. It furthermore appears that the initial submission date has been extended to the 2nd of May 2012 from the initial date of the 23rd of April 2012.
3. It is clear that the demarcation regulations in their present form will have a direct and material impact on the way in which we conduct our business and deliver the service to approximately 32 000 individuals who presently enjoy the cover offered by our Oneplan product.
4. The demarcation regulations are complex and will require a detailed analysis of both the STI Act as well as the Medical Schemes Act³, given the "knock on effect" that the proposed amendment to the definition of a "*business of a Medical Scheme*" will have on our business.
5. In the circumstances, we do not believe that the time frames allowed for comments to be submitted are reasonable bearing the amount of time, resources and skills available to us. Furthermore, we believe that submitting comments within the stringent time limits that have been imposed on us by National Treasury ("*Treasury*") will only result in undue prejudice to our business and ultimately our clients with whom we have had no opportunity to communicate regarding the proposed changes.

¹ The Financial Advisory and Intermediary Services Act 37 of 2002

² The Short Term Insurance Act 53 of 1988

³ The Medical Schemes Act 131 of 1998

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6. While we will endeavour to set out with sufficient clarity, our comments to the demarcation regulations we emphasize that the time frames unilaterally prescribed by Treasury are wholly inadequate and we reserve our rights to amplify our comments in the future and in the appropriate forum, if need be.

7. **PREMATURE PROMULGATION**

- 7.1 It appears that the Legislature's intention is to amend the definition of "*business of a medical scheme*" which is currently used in section 1(1) of the MSA.
- 7.2 We submit that the Legislature's intention of attempting to promulgate the demarcation regulations prior to the amendment of the definition of "*business of a medical scheme*" is placing the proverbial "*cart before the horse*".
- 7.3 It is an undisputable fact that an amendment to the definition of "*business of a medical scheme*" will have a profound impact on the application of the STI and in turn the demarcation regulations.
- 7.4 The demarcation regulations in its present form do not make mention of the MSA or the definition of "*business of a medical scheme*" even though the intention is for the amended definition to apply to the demarcation regulations.
- 7.5 We submit that it would be procedurally correct for the "issue" of the definition of "*business of a medical scheme*" to be properly ventilated and only thereafter for the inclusion and application of this definition into the STI to be considered thereafter.

8. **INTEGRITY OF DATA**

- 8.1 It appears that the very foundation of the demarcation regulations is based on data and assumptions, which are in our view unsubstantiated and in fact incorrect. We invite the Treasury to provide the necessary substantiation for the data, which we do not believe is supported by any proven facts.
- 8.2 We have conducted an analysis of our business with reference to the assumptions that have been made in the demarcation regulations and we are confident in saying that the assumptions bear no resemblance whatsoever with the data that we have gleaned from our business and our clients.
- 8.3 Notwithstanding the above, we believe that the prudent approach would be for Treasury, in conjunction with the relevant role players in the industry and particularly with the support of the South African Insurance Association ("SAIA"), to commission a study to determine the veracity of the assumptions that have been made such as, for instance, whether:

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- 8.3.1 the public is confused by the concepts of health insurance and medical aid cover;
- 8.3.2 certain insurance products undermine the risk pool of medical aids;
- 8.3.3 there exists a risk of possible harm caused by health insurance products.
- 8.4 The above-mentioned list is not exhaustive of the assumptions that have been made by Treasury and we reserve our rights to amplify the list in the future.
- 8.5 An assessment of our business has indicated that none of the assumptions made above are accurate in the slightest.
- 9. **PROVIDING A LOW COST ALTERNATIVE**
- 9.1 We have developed an entry-level health insurance product called the Oneplan. This product seeks to provide affordable entry-level health cover to the greater part of the population that cannot afford medical aid cover.
- 9.2 It is patently clear that the promulgation of the demarcation regulations will limit our ability to provide our clients with the Oneplan which will effectively prevent our clients and other members of the South African population who cannot afford traditional medical aid cover the opportunity to benefit from cover in some form. Accordingly we submit that the demarcation regulations would result in severe prejudice to low-income earners, which presently constitute in excess of 80% of the population.
- 9.3 We are of the view that the Oneplan acts as a mechanism that compliments medical aid cover, not necessarily in the form of GAP cover but rather as a feeder mechanism. In other words, the Oneplan enables individuals to enter the market (the health insurance market) at a stage in their lives which is much sooner than they would ordinarily be able to enter the medical aid market. At that stage these individuals would enjoy cover, which would educate them on the benefits of medical/health cover and would ultimately feed them into a traditional medical aid environment.
- 9.4 It is noteworthy that our product offering, namely the Oneplan, is presently relieving a substantial burden that has been placed on the State by providing an affordable healthcare option to the greater part of the population which limits the use of Government facilities. As our business grows this burden will only be alleviated further.
- 9.5 While it may be so that the proposed National Health Insurance ("NHI") may seek to rectify the public's access to private healthcare in the future it would not be prudent, in our view, for the Legislature to enact legislation in the hope that NHI

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becomes a reality in the distant future. We live in the present and it would be wise for the legislative landscape to mirror the prevailing circumstances and not a possible utopia.

10. UNFAIR MARKET PRACTICE AND LIMITATION OF RIGHTS

- 10.1 On a reading of the demarcation regulations, the press release and the explanatory memorandum it seems that the point of departure is that medical aid cover is the correct approach and health insurance cover is not. However, there is no substantiating evidence to this effect. We have made this point above.
- 10.2 Furthermore, the demarcation regulations are littered with statements that support the allegations made by many that the demarcation regulations appear to have been drafted with an ulterior purpose that seeks to benefit medical aids. These statements can be found on pages 10 and 11 of the demarcation regulations.
- 10.3 The inference that must be drawn is that the demarcation regulations may create a monopoly in the medical aid sector with regard to the choice of medical service provider but more importantly may result in a situation where the cost of medical aid cover is set by the privileged few medical aid administrators who appear to be the primary beneficiaries of the promulgation of the demarcation regulations.
- 10.4 It is also likely that the demarcation regulations will limit a person's constitutional rights including, *inter alia*, a person's right to freedom of choice as well as a person's right to have access to healthcare services.

11. INCREASE IN ADMINISTRATIVE COST

- 11.1 Demarcation regulations seek to make the health insurance environment more regulated which we do not have a difficulty with provided the regulations are implemented to the benefit of policy holders, however, the consequence is that the administrative cost will be significantly increased as a result of this regulated environment.
- 11.2 The unavoidable consequence is that these administrative charges will be passed on the policyholder. For our type of plan, namely the Oneplan, the uplift in administrative costs would be hugely prejudicial to our client base that benefits from low administrative costs and in turn a low cost product.

12. GAP COVER

- 12.1 The benefit of the Oneplan is that it acts as a stand alone health cover policy alternatively a policy that can be used in conjunction with other forms of cover, in which case it will be applied in such a way that would compliment that insured's primary cover.

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12.2 The demarcation regulations seek to prevent individuals from obtaining such GAP cover, which will result in substantial prejudice to the insured due to the fact that the individual will be out of pocket for charges that exceed the medical scheme tariff.

12.3 GAP cover is an example of the flexibility with regard to products that can be offered to clients to ensure that they are adequately covered for unforeseen medical treatment. The demarcation regulations will undoubtedly limit the industries ability to develop new products, which will enable individuals to ensure proper cover for themselves and their families.

13. RETROSPECTIVE APPLICATION

13.1 Our understanding is that the intention is for the demarcation regulations to apply retrospectively. We do not support this approach.

13.2 A vast amount of time, resources and effort has been expended by the industry to develop and implement certain products. At the very least both the industry and its clients should be allowed to enjoy the fruits of the products that have been offered to the market.

14. CONCLUSION

14.1 We repeat that we have not had adequate time and therefore not been afforded a reasonable opportunity to consider and comment on the demarcation regulations in their present form. However, on a plain reading of our submissions it is clear that the demarcation regulations in their present form are not aligned with the Constitution nor do they benefit the greater populous of the country and must accordingly undergo a substantial review or, more appropriately, should be abandoned.

Yours faithfully,

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