



Reference: AGM, SGM & Trustee Election notification
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Circular 20 of 2021: Notice to medical schemes regarding Annual General members' meetings and trustee elections

Background

One of the functions of the Council for Medical Schemes (CMS) is to protect the interests of the beneficiaries at all times. To this end CMS is enjoined to monitor whether or not medical schemes comply with their rules and/ or the provisions of the Medical Schemes Act, 131 of 1998 (MSA) and/ or other legislation relating to medical schemes.

Section 29(1)(m) of the MSA determines that no medical scheme shall carry on any business unless provision is made in its rules regarding the manner of calling the annual general meeting (AGM) and special general meetings of members, the quorum necessary for the transaction of business at such meetings and the manner of voting.

Section 32 of the MSA determines that "the rules of a medical scheme and any amendment thereof shall be binding on the medical scheme concerned, its members, officers and on any person who claims a benefit under the rules or whose claim is derived from a person claiming."

In this regard, the CMS is preparing to monitor medical schemes' annual general meetings (AGMs) and special general meetings (SGMs) for 2021, fully cognisant of the prevailing COVID-19 restrictions.

Purpose

The CMS wishes to encourage medical schemes to comply with their scheme rules on the requirement of holding AGMs on or a before a particular date.

Medical schemes are requested to notify the CMS in writing-

- a) of the dates on which they intend to hold their AGMs and/or SGMs; as well as
- b) the dates on which they intend to hold trustee elections, where applicable.

AGMs - the binding force of the scheme rules

On 18 March 2020, the CMS issued [Circular 23 of 2020](#) wherein medical schemes were duly advised to utilise CMS' exemption application process to postpone their AGMs until the impact of the COVID-19 pandemic had been brought under control.

In May 2020, the CMS issued [Circular 36 of 2020](#) as a follow up to [Circular 23 of 2020](#). It served to encourage medical schemes to consider applying for exemption to convene virtual AGMs for the 2020 financial year given the uncertainty surrounding the lockdown restrictions and the fact that the risks associated with the pandemic were likely to remain for much longer than previously anticipated.

Consistent with the requests above, the CMS received and processed over 70 exemption applications. As things stand, nearly 60% of all medical schemes managed to convene and finalise their AGMs for the 2020 financial year.

Going into the 2021 AGMs season, the CMS has noted that the absence of AGMs is not in the best interests of members and medical schemes. AGMs serve as an important platform for members to exercise their right to participate in scheme affairs and to monitor its activities. It is also gives the scheme and opportunity to interact with its members.

It is critical to note that all medical schemes have a duty to ensure that they hold their AGMs and where it is not possible, to find alternatives with CMS' guidance.

Virtual Members' Meetings

It is widely accepted that most scheme rules do not prescribe that AGMs and of SGMs should or can be conducted virtually given that the virtual meetings only became the standard recently in light of the COVID-19 pandemic. Most scheme rules provide that the quorum for the AGMs must be determined based on a particular number of members attending in-person.

As such, all medical schemes that were granted exemption to host virtual AGMs for 2020 are therefore encouraged to review their scheme rules and make the necessary amendments where the rules of the scheme do not cater for virtual AGMs. This will do away with the need to apply for exemption for the 2021 AGM.

Combined AGMs for 2020 and 2021

Some schemes that could not conclude their AGMs in 2020, are duly advised to combine the business of the AGM for 2020 and 2021 as a joint event. This will mitigate against wasteful expenditure associated with the costs of holding multiple AGMs.

Exemption process for 2021

The lockdown regulations published in terms of the Disaster Management Act 57 of 2002 in March 2020 and as amended thereafter, have had an adverse impact on medical schemes' ability to comply with the requirement to convene their AGMs for 2020 and gave rise to exemptions from complying with scheme rules where necessary.

The CMS has resolved that for the 2021 financial year, merely referencing the lockdown regulations and/or the restrictions pertaining to the gathering of persons as the reason(s) for applying for exemption to postpone the 2021 AGM will not suffice as a justifiable ground to postpone AGMs.

All medical schemes are duly requested to plan accordingly for the for 2021 AGMs and where necessary, provide CMS with concrete exceptional reasons for applying for exemption.

Failure to comply with the MSA and the scheme rules (pertaining to the requirement to hold an AGM by a particular date) as a result of lack of planning and/or careless conduct of the Board of Trustees will attract penalties.

Process for convening AGMs, SGMs and Trustee Elections

All medical schemes are duly requested to notify the CMS, in writing, of the date and venue of their AGMs and/or SGMs for the 2021 financial year. Where trustee elections will be held, schemes are required to also notify the CMS of the date and venue of such.

1. Information required by the CMS

- 1.1. All medical schemes are required to give written notice to the CMS pertaining to information on convening the scheme meeting in terms of the rules, of a date on which they intend to hold an AGM, SGM or trustee election meeting. The notification must be submitted to the CMS on or before 31 May 2021. The notification shall contain the following:
 - 1.1.1. The date on which the meeting will be held;
 - 1.1.2. The venue or geographical area in which the scheme intends to hold its meeting; and
 - 1.1.3. Whether or not the scheme will be holding elections for the 2021 financial period.
- 1.2. All medical schemes are required to provide the CMS (20 days before AGM and /or SGM) with a full meeting pack. The meeting pack shall contain the following, amongst others:
 - 1.2.1. The date, time and venue of the meeting and/or elections to be held;
 - 1.2.2. The standard procedures that shall be followed by the medical scheme to convene and hold such a meeting and/or election as well as confirmation that the scheme’s procedures are consistent with the registered rules of the scheme;
 - 1.2.3. The measures that the scheme intends to put in place to protect and secure the venue on the day of the meeting and/or elections;
 - 1.2.4. A detailed budget on the estimated cost of the AGM and/or SGM and/or Elections. Including but not limited to:
 - a. the cost of preparing and distributing the notice/meeting pack to members,
 - b. the cost of the venue (including food and security),
 - c. the travelling and accommodation costs (e.g., travelling cost for scheme officers),
 - d. meeting attendance fees for scheme officers and/or service providers, and
 - e. the costs associated with the elections process (if applicable).

2. Information after the AGM/SGM/Election Process

All medical schemes are requested to provide the Office with the following information after the AGM/SGM/Trustee election meeting:

- 2.1 The Attendance register(s) as well as confirmation that the quorum (per the rules of the scheme) was achieved for the meeting, within 30 days of the conclusion of the AGM or the SGM or the election process.
- 2.2 A detailed report on the election process with the full CVs of the elected persons within 30 days of the conclusion of the AGM or the SGM or the election process.
- 2.3 The actual cost of the AGM and/or SGM and/or Election Process within 30 days of the conclusion of the AGM or the SGM or the election process.

3. Submission Process

SUBMISSION TIMELINE	
Task Description	Due date

1.	Submission of scheme rule amendments in terms of section 31(4) of the Medical Schemes Act 131 of 1998 to accommodate virtual meetings.	16 April 2021
2.	Submission of a written notice to the CMS pertaining to a date and geographical area in which the scheme intends to hold a scheme meeting.	31 May 2021
3.	Submission of AGM, SGM or trustee election meeting pack to the CMS prior to convening the scheme meeting. (<i>see requirement above</i>)	20 days before meeting is convened
4.	Submission of Attendance register, Election report and actual expenditure of AGM/SGM or trustee meeting post the scheme meeting. (<i>see requirement above</i>)	30 days after meeting has been convened

Kindly submit all the information requested above electronically to agm@medicalschemes.co.za

This Circular is effective on the date of release.



Dr Siphon Kabane
Chief Executive & Registrar
Council for Medical Schemes