



needs to be done to stand up for the rights of the GPs without considering financial gain.

In order to avoid bad debts, it is imperative that you assess and action outstanding claims on a regular basis. The late reversal of paid claims can only be avoided by checking your patients' medical aid cards with every visit. If you put your faith in the efficiency of the system however, ensure that your blood pressure is within normal limits and that your sense of humour is firmly in check!

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#### MANAGED CARE

claims.

### IPAS: COMPARING LEGAL ENTITIES

Medical practitioners have over the last few years formed voluntary associations referred to as Independent Practitioner Associations (IPAs). The IPAmovement was initially driven by fear with the emergence of managed care and was perceived as a protective mechanism against the threat of corporate medicine. In many ways their initial role was politically based. Many IPAs however did not achieve their set goals. Their role has recently started to change in order to be more business-focussed.

A key tool used by managed care companies to manage cost and utilisation of services, is the conclusion of written contracts with providers. The main objective of IPAs and similar entities has now become essentially to negotiate with funders (e.g. medical schemes and managed care organisations) for the provision of medical services to members of the funder. It appears however that depending on the objectives of these entities, the structures chosen are not always appropriate for the conclusion of contracts. The reason is mainly legal.

Medical practitioners require an entity that can negotiate and conclude contracts on their behalf. This results in practitioners uniting to form legal entities, other than IPAs, to achieve these objectives. The formation of these entities is mainly for negotiation, contractual and management purposes as medical services can only be rendered by a solus practitioner, a partnership, an incorporated company or in an association. These new entities constitute intermediaries between the funders of health care and the medical practitioners.

#### Voluntary associations

Most IPAs are structured as voluntary associations.

##### Advantages

- Few formalities. It does not require formal registration, is

formed by mutual agreement and governed by a constitution.

- No specific legislation governs their formation but a broad range of legislation impacts on them.

##### Disadvantages

- No controlling legislation.
- No substantial case law.
- Founding documents and list of office bearers and members not available for public inspection which affects credibility.
- Limited flexibility.
- Legal personality not automatic. It depends on the agreement of the members or could be obtained by an association of persons conducting it as a legal person. This creates difficulty for third parties to enter into agreements with IPAs that would bind their members.
- The Companies Act provides that no group of more than 20 persons may join together with a profit motive without being registered as a company in terms of the Act.

#### Partnerships

##### Advantages

- Formalities limited. Only partnership agreement required.
- No specific legislation applicable.
- Substantial case law available.

##### Disadvantages

- No specific legislation applicable.
- No legal personality.
- Partners are held individually liable, but only to the extent that liabilities cannot be met out of partnership assets.
- Limitation on number of partners: 2-20. The Minister of Trade and Industry has exempted the medical profession from this restriction and they are allowed to form partnerships with a maximum of 50 partners, only for purposes of practising medicine.

#### Close corporations

##### Advantages

- Simplicity of management. There is no separate board of directors and management is the responsibility of members.
- Simplicity of decision-making structure. Decisions can be taken informally.
- No prescribed annual general meeting.
- It may under certain conditions acquire the interest of a member.
- No stamp duty payable on the transfer and acquisition of member interest.
- No financial statements need to be submitted to the Registrar of Close Corporations on a regular basis.
- Can hold shares in a company.



- Juristic person distinct from its members.
- Can be easily converted into an entity such as a company.

#### **Disadvantages**

- Simplicity and informality of the corporate structure facilitate fraud and unauthorised or improper actions.
- Every member acts as an agent and can participate in its management and bind for credit purposes, ultimately creating a risk for other members as insolvency of the corporation can give rise to personal liability of members.
- Accounting and disclosure provisions are very sketchy.
- Limitation on membership: 1-10 natural persons.

#### **Business trusts**

##### **Advantages**

- Few formalities and administrative restraints: created by a will or contract.
- It enjoys most of the advantages of legal personality by making use of the trustee and by limiting liability to property.
- Beneficiaries are not limited in number or to natural persons.
- Certain tax advantages.

##### **Disadvantages**

- Control over trustees minimal.
- Limited flexibility.
- Amendment and termination could be problematic.
- Uncertainty about benefits.
- No disclosure requirements.
- No legal personality.
- Companies Act requires registration of a company should more than 20 persons join together for a profit motive.

#### **Co-operatives**

##### **Advantages**

- No number limitation on members (minimum 11).
- Co-operatives Act: Primary Trading Co-operative.
- Formalities limited.
- Shares can be cancelled.
- Membership can be terminated.
- Draft statute available.
- Statute is binding.
- Disciplinary proceedings and expulsion of members.

##### **Disadvantages**

- Can only issue shares of one class.
- Practice not well known.
- Minister of Agriculture is the responsible minister.
- Flexibility limited when main business is profit.
- Treated and taxed as a public company.

- Competition Act considerations.

#### **Private companies**

##### **Advantages**

- Legal personality.
- Voting rights can be regulated freely.
- Personal liability limited.
- Convert into public company.
- Memorandum and Articles constitute a contract between company and members.
- Companies Act and substantial jurisprudence state legal position clearly.
- Not required to lodge financial statements with the Registrar.

##### **Disadvantages**

- Formalities in terms of the Companies Act.
- Competition Act could influence.
- Restriction on free transferability of shares.
- Limitation on the number of members: 1-50.
- Prohibition on invitations to the public to subscribe for shares or debentures.

#### **Public companies limited by shares**

##### **Advantages**

- Capital from public.
- Generally no restriction on transferability of shares.
- No number limit on maximum (minimum of 7).
- Can list on the Stock Exchange.
- Memorandum and Articles constitute a contract between the company and its members.
- Companies Act and substantial jurisprudence state legal position clearly.
- Can convert into another entity.

##### **Disadvantages**

- Formalities in terms of the Companies Act.
- Competition Act considerations.
- Disclosure of financial statements.

#### **Public companies limited by guarantee**

Similar requirements to companies limited by shares, with the main exception that there is no shareholding.

#### **Conclusion**

In the market it appears that companies or co-operatives best meet the needs of groups of health care providers. Recent changes in competition legislation may prove to be prohibitive if the arrangement is collusive. A specific structure should be selected with due consideration of the business and legal implications of and the suitability of that structure to meet the set objectives and with a proper business plan in mind.