

# SAXUM

INSURANCE  
(IN LIQUIDATION)

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21 November 2017

**TO ALL KNOWN POLICYHOLDERS, BROKERS AND STAKEHOLDERS OF  
SAXUM INSURANCE LIMITED (in liquidation)  
(MASTER'S REFERENCE NUMBER G1076/2016)**

**CIRCULAR NUMBER 19**

**The liquidation process**

1. SaXum Insurance Limited (**SaXum**) was placed into liquidation on 20 October 2016 by way of an order granted in the High Court, Johannesburg. SaXum is still in liquidation.
2. The joint liquidators issued circulars throughout the liquidation proceedings reporting to stakeholders on, and dealing with, various aspects relating to and arising from the liquidation proceedings of SaXum.
3. This circular is intended to provide a brief overview of the process of liquidation in terms of the Insolvency Act, 1936.
4. **Please note that this circular is not intended to provide advice to creditors on how to enforce their legal rights in this regard we suggest that creditors seek their own independent legal advice.**
5. **The law of insolvency and its impact on SaXum**
  - 5.1 A company is insolvent when its liabilities exceed its assets. This means a company is not able to pay its debts. Any interested party of the insolvent company can apply to court to have the company put into liquidation. SaXum was no longer able to pay its debts, and was therefore placed into liquidation by the Financial Services Board.
  - 5.2 When a company is placed into liquidation, the concept of *concursum creditorum* arises.
  - 5.3 The effect of the *concursum creditorum* is that the position of the estate is "frozen" as at the time the company was placed into liquidation. This means that creditors cannot enforce their individual rights to full payment of the moneys owed to them by the company.

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**saXum Insurance Limited (In Liquidation)**  
[www.saxuminsurance.com](http://www.saxuminsurance.com)

- 5.4 When a company is placed into liquidation no single creditor can be preferred, nor can any creditor do anything which will prejudice the rights of other creditors. Everything that is done during liquidation must be to the benefit of the full body of creditors.
6. The law of insolvency specifies the categories of creditors that exist. It is this categorisation that determines how creditors will be paid out from the insolvent estate.
- 6.1 The categories of creditors are:
- (1) **Secured creditors:** these are creditors who hold some sort of security, for example a mortgage bond. These creditors get paid out of the proceeds of the specific asset over which they hold the security. If they do not rely solely on their security, they also get paid from the proceeds of any assets which were not secured, namely free residue assets.
  - (2) **Preferent creditors:** these creditors are paid first from the surplus (if any) available from the proceeds of the secured assets after secured creditors were paid in full. They are also paid first from the proceeds of any free residue assets after secured creditors, who did not rely on their security, is paid in full. Examples of these are employees and SARS; and
  - (3) **Concurrent creditors:** these creditors enjoy no preference in law and share in whatever is left in the proceeds of any free residue after secured and preferent creditors have been paid. SaXum's policyholders fall into this category.
- 6.2 The total amount of money left in the bank account after secured and preferent creditors have been paid is divided between the concurrent creditors on a pro rata basis based on the amount of the individual claims. This means that concurrent creditors will only get a portion of their claim, or, in some cases, nothing at all. Policyholder's should not expect to get the full amount of their claim, as SaXum does not have enough money to pay all of its creditors, which is why it went into liquidation.
- 6.3 By way of an example if at the time there is a distribution needs to be made out of the insolvent estate this is how it be made:

Distribution amount is R2 million from secured assets and R 8 million from the free residue assets

Secured creditor (one in total) = R2 million (full amount), paid from the proceeds of the secured assets

Preferent creditors (three in total) = R5 million (full amount), paid on a pro rata basis from the proceeds of the free residue assets

Concurrent creditors (1000 in total) = balance of R 3 million paid on a pro rata basis from the proceeds of the free residue assets

This will leave the balance of R3 million to be paid to the concurrent creditors. If for example there are 1000 concurrent creditors (500 with a claim of R5 000.00 and 500 with a claim of R10 000.00, with a total amount of claims of R7,7 million) then R 3 million is divided amongst the 1000 creditors on a pro rata basis. This would mean that each creditor:

- (1) with a claim of a R5 000.00 would get R2 000.00 ( $R5\ 000.00 / R7,5\ \text{million} \times R3\ \text{million}$ ); and
- (2) with a claim of R10 000.00 would get R4 000.00 ( $R10\ 000.00 / R7,5\ \text{million} \times R3\ \text{million}$ ).

## 7. **What the liquidators of the insolvent estate do**

- 7.1 When a company is placed into liquidation, liquidators are appointed to manage the insolvency process. This involves valuing all the assets of the company, finding out all of the liabilities, collecting any outstanding amounts owed to the company and then drawing up a liquidation and distribution account which shows what money was collected, and how the money will be paid out.
- 7.2 During the course of liquidation proceedings, the liquidators hold meetings for the creditors. The purpose of these meetings is for creditors to prove their claims against the estate, and to find out further information about the liquidation of the company.
- 7.3 The liquidators are exploring various options to get the best return for creditors. One of these options is a compromise arrangement in terms of the *Companies Act, 2008*.
- 7.4 The purpose of the compromise is for an agreement to be reached which will allow creditors to get a better return than they would in liquidation.
- 7.5 Different classes of creditors can be compromised in different ways. If such an arrangement is implemented, a meeting of creditors will be convened in order for the creditors to vote on the compromise arrangement. In order for it to be passed, 75% of creditors must agree to this proposal.
- 7.6 The compromise must also be approved by the Financial Services Board, and sanctioned by an order of court.

## 8. **When there is a compromise**

- 8.1 Should the liquidators convene a meeting of creditors to vote on a potential compromise arrangement, we encourage all creditors to attend, or to send a proxy to vote on their behalf, as it is important for the plan to have the support of as many creditors as possible. Should this meeting be convened, proxy forms will be made available on the website [www.saxuminsurance.com](http://www.saxuminsurance.com).
  - 8.2 This is important because even if the compromise means that the concurrent creditors will benefit more than if the company is liquidated, the compromise cannot be made an order of court because the required thresholds (75% votes in favour of the compromise) have not been met.
  - 8.3 If a compromise arrangement is not reached, then the process of liquidation will be finalised in accordance with the laws of insolvency.
9. Liquidation is a long process. The liquidation of SaXum is complicated by the fact that it is an insurance company; this means that the liquidators are also required to consider the regulatory requirements under the Short-term Insurance Act, 1998.
  10. We understand that there are many creditors that are frustrated that they have not had payment made by SaXum but we request creditors and affected parties to please be patient, as the liquidators are working hard to finalise the process.
  11. We would like to point out, however, that very few insurance companies have ever gone into liquidation in South Africa. This is due to the robust regulatory framework that exists.
  12. We therefore encourage people not to be discouraged from insuring their assets. Insurance is an important tool to protect and safeguard your assets.
  13. The liquidators are consistently updating the Financial Services Board, on the progress of the liquidation. The liquidators are committed to ensuring that the best interests of the creditors are upheld.

Yours faithfully,

**PER: H. KAPLAN N.O.**

**N.A.G. OMAR N.O.**

**W.N. JACOBS N.O.**

**B.B. MAHLATSI N.O.**

*(sent electronically without signature)*