

SAXUM

INSURANCE
(IN LIQUIDATION)

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22 JULY 2022

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

CIRCULAR NUMBER 38

UPDATE ON THE LIQUIDATION PROCEEDINGS

- 1 SaXum was placed into liquidation on 20 October 2016 by way of an order granted in the High Court, Johannesburg. SaXum remains in liquidation.
- 2 You are referred to previous circulars and communications issued by the liquidators on various aspects of the liquidation proceedings of SaXum, which can be accessed on www.saxuminsurance.com.
- 3 The purpose of this circular is to provide you with an update in relation to various outstanding recoveries on behalf of the insolvent estate of SaXum. These recoveries are in relation to guarantees issued by SaXum and reinsurance claims against two reinsurers of SaXum. Other reinsurance claims have been successfully recovered and settled by the liquidators. We further wish to provide you with an update as to the claims proved against the SaXum estate.
- 4 **Guarantee related recovery**

We confirm that SaXum is still in the process of recovering the amount of approximately R55,000.00 as referred to in paragraph 4 of Circular No. 36.
- 5 **Reinsurance recoveries**
 - 5.1 You will recall that it was previously reported that:
 - (a) reinsurance claims were successfully recovered from four reinsurers and paid to the insolvent estate of SaXum; and
 - (b) there are pending proceedings against two reinsurers in respect of reinsurance claims, one in the process of going to mediation.

Directors: Dr. J.A.J. Schalch (Chairman)* R.W. Killops* K.I. Vennell* M. Hankins*
*Non-Executive "Swiss"

Liquidators:

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- 5.2 The mediation proceedings with one of the re-insurers as referred to in paragraph 5.3 of Circular 36, have been finalized. Kindly refer to the attached circular (report) by the liquidators' legal representatives in this regard, the contents of which are self-explanatory.
- 5.9 We confirm that there are therefore pending proceedings against one final re-insurer in respect of the re-insurers claims and the liquidators' legal team is working towards the resolution of this matter.
- 6 **Claims proved against SaXum**
- 6.1 We urge all stakeholders to peruse the Distribution Account to the Second Liquidation and Distribution Account which has been uploaded on the SaXum Insurance website and to confirm that their claim was in fact included in this Distribution Account. In the event that your claim was not included, we request you to send an urgent notice to the liquidators' representatives at sune@honeyinc.co.za. A claim document will then be provided, which claim must be completed and the original claim document together with supporting documents must be forwarded to the offices Honey Corporate Recovery & Insolvency in Johannesburg at: 222 Rivonia Road, Entrance: 1 Michelle Street, Block A, Ground Floor, Morningside Close, Morningside, 2196. We confirm that the liquidators will then proceed to convene a Special Meeting of Creditors in order to prove the outstanding claims.
- 6.2 The liquidators are in the process of finalizing their investigations into the claims already proved in terms of the Insolvency Act and once these investigations are finalized, and any further claims are proved at a Special Meeting of Creditors, we will immediately proceed to draft a Third Liquidation and Distribution Account, in order to reflect the further funds collected from the re-insurers, which have not yet been reflected in the Second Liquidation and Distribution Account.
- 7 All stakeholders of the SaXum insolvent estate are requested to take the above into account as the liquidators and their legal team work towards finalizing the outstanding recoveries from the remaining reinsurer.
- 8 Stakeholders are further requested to kindly visit the SaXum Insurance website periodically, in order to ascertain whether further Circulars or information or documents have been uploaded for the stakeholders' attention.
- 9 We will keep you apprised of any material developments by way of further Circulars uploaded onto the SaXum Insurance website.

Yours faithfully,

PER: N.A.G. OMAR N.O.

W.N. JACOBS N.O.

(electronically sent without signature)

**CIRCULAR TO CREDITORS ON OUTCOME OF ARBITRATION PROCEEDINGS
BETWEEN SAXUM INSURANCE LIMITED (in liquidation) (Master's Reference
Number G1076/2016) (SaXum) AND R+V VERSICHERUNG AG (R+V)**

Background

1. Prior to its liquidation, SaXum and R+V concluded a number of reinsurance contracts, referred to as reinsurance treaties, regulating all aspects of the reinsurance relationship between them.
2. A dispute arose between SaXum and R+V under the reinsurance treaties, and claims were asserted by one against the other:
 - 2.1 SaXum commenced arbitration proceedings claiming an amount of R76,321,882.20 (seventy six million three hundred and twenty one thousand eight hundred and eighty two rand and twenty cents) in terms of the reinsurance treaties – which will be referred to as the **SaXum arbitration claim**;
 - 2.2 R+V proved a concurrent claim of R8,565,968.72 (eight million five hundred and sixty five thousand nine hundred and sixty eight rand and seventy two cents) in the insolvency proceedings of SaXum – which will be referred to as the **R+V liquidation claim**;
 - 2.3 R+V asserted a further claim of R49,612,208.81 (forty nine million six hundred and twelve thousand two hundred and eight rand and eighty one cents), for unpaid reserves, on an unsecured basis, against SaXum in the arbitration proceedings. This amount, according to R+V, constitutes the aggregate of premium reserve deposits and loss deposits (collectively referred to as **reserves**), which was to be held by SaXum as *trust property* and therefore not forming part of the SaXum insolvent estate – which will be referred to as the **R+V arbitration claim**.
3. The main thrust and real issues involved in the dispute centered around the following:
 - 3.1 firstly, whether the reserves constitute *trust property*;
 - 3.2 secondly, were the reserves were held as such, in a separately identified trust account, at the commencement of liquidation proceedings of SaXum and establishment of the *concursum creditorum*;
 - 3.3 thirdly, if the reserves do not constitute *trust property* or, if they do and were not held as such in a separately identified trust account, do they constitute a security in the SaXum insolvent estate within the parameters of the South African Insolvency Act, 1936;
 - 3.4 fourthly, if the reserves do not constitute *trust property* or security envisaged in terms of South African insolvency law for the benefit of R+V, are the reserves

capable of set-off against amounts owing by R+V to SaXum as envisaged in the reinsurance treaties.

4. After a protracted period of litigation in the arbitration proceedings, the parties agreed, in good faith, to settle the disputes by way of mediation (the **mediation**). The parties agreed to cooperate with the appointed mediator to advance the mediation as expeditiously as possible. A primary reason for the mediation was to establish an independent platform for the resolution of the disputes, have the disputes resolved expeditiously and save the insolvent estate the burden of ongoing legal costs to the detriment of the dividend to creditors.
5. The parties, through their respective legal representatives, submitted representations and a combined bundle of documents relevant to the disputes for mediation.
6. During the mediation process, the records of R+V were compared against the records of SaXum, by insurance accounts experts appearing on behalf of both parties and it was found that:
 - 6.1. R+V in fact owed SaXum the amount of R50,974,225.00. The reason for this reduced claim is because an amount was owed to SaXum prior to the date of liquidation and in terms of the treaties signed by SaXum and R+V, set off could be applied to any amounts owed by R+V to SaXum. Set off was therefore applied for this particular period and as a result the reduced amount was owed to SaXum;
 - 6.2. the total amount in fact owed by SaXum to R+V amounted to R74,799,581.00. The reason for this increased claim relates to an amount that is due and payable by SaXum to R+V for the period after liquidation and in terms of claims assessed after the date of liquidation.
7. The mediation concluded successfully with a settlement between the parties resulting in the following:
 - 7.1 payment by R+V to SaXum of an amount of R18,000,000 (eighteen million rand) in full and final settlement of any claims which SaXum and R+V may have against each other;
 - 7.2 withdrawal by R+V of the R+V liquidation claim and the R+V arbitration claim – the effect of which is to reduce the concurrent claims for participation in the insolvent estate of SaXum by a total of R83,365,549.72 (eighty three million three hundred and sixty five thousand five hundred and forty nine rand and seventy two cents), with the consequential increase and benefit in the dividend to the remaining concurrent creditors. The withdrawal of the R+V liquidation claim and the R+V arbitration claim had the direct result of benefitting the concurrent creditors with a substantially increased dividend accruing to them.
8. The settlement of the disputes was in the best interests of creditors as it:
 - 8.1 avoided a further protraction of litigation and the risk associated with the litigation;
 - 8.2 brought about a resolution in the best interests of the creditors of SaXum;

- 8.3 added the dividend that would otherwise have accrued to R+V for distribution to concurrent creditors, thereby increasing the dividend to concurrent creditors (a direct consequence of the withdrawal by R+V of the R+V liquidation claim and R+V arbitration claim.
9. The liquidators are of the view that the settlement serves the best interests of concurrent creditors.
10. Should you have any questions in regard to the above, please correspond in writing with us at *sune@honeyinc.co.za*.

Yours faithfully,

PER: H LAHER
FASKEN