

Tshiamiso TRUST



TSHIAMISO TRUST DEED SUMMARY

Please note that this summary of the Tshiamiso Trust Deed is designed to assist claimants and other interested parties with a shorter overview of the legal mandate of the Trust. This summary is not a legally binding document.



History

The silicosis and tuberculosis class action settlement and Trust Deed was agreed between six mining companies and the attorneys representing miners wanting to claim damages against those companies.

The companies involved are African Rainbow Minerals, Anglo American SA, AngloGold Ashanti, Gold Fields, Harmony and Sibanye-Stillwater. The claimants' attorneys are Richard Spoor Inc, Abraham Kiewit Inc and the Legal Resources Centre.

The object of the Trust is defined as **“to give effect to the Settlement Agreement and provide Benefits to Eligible Claimants (being the beneficiaries of the Trust) in the amounts and upon the terms set out in this Trust Deed (Trust Object). The activities of the Trust shall be directed at, and the Trust Fund shall be used for the pursuit of, the Trust Object.”**



To whom the Trust settlement applies

The settlement agreement applies to almost all gold miners who carried out risk work at one of the 82 gold mines owned by these six companies. Risk work is defined in the Trust Deed like Section 13 of the Occupational Diseases in Mines and Works Act (ODMWA), which defines a person as doing risk work if he or she is exposed to dust of which the composition or concentration is harmful or potentially harmful, or to gases, vapours, chemical substances, factors or working conditions that are harmful or potentially harmful.

Certain of the 82 mines have changed ownership over time. The agreement applies to these qualifying mines only for those periods that they were part of the six companies party to the settlement agreement.

It applies to those employees who carried out risk work and who worked at those mines for a time between 12 March 1965 and 10 December 2019 (the effective date), and those who contracted silicosis in the past or who are diagnosed with silicosis before December 2031, or who contracted TB while working at those mines or within a year of leaving the mine.

However, it does not apply to those who were part of any other silicosis settlement, including the Qhubeka Trust settlement, nor to those few who chose to opt out of the settlement during the opt-out period in late 2019.



Trustees

Three trustees were nominated by the participating companies, two by the claimants' attorneys and one by the government. The first chair of the Trust was nominated jointly by the companies and the claimants' attorneys.



Trust Advisory Committee

The Trust is mandated to ensure the appointment of a Trust Advisory Committee comprising representatives of government, trade unions, community leaders and NGOs and others who trustees consider could provide a helpful advisory role to the Trust.



Settlement classes and benefit modifiers

The ten classes are to the right. The amounts specified are the maximum a claimant can receive through the Tshiamiso Trust if they meet all the criteria.

The qualifying criteria and the changes or modifiers that the Tshiamiso Trust needs to apply are required by the Trust Deed.

Where a claimant has worked at both one or more of the 83 qualifying mines and has also worked at other non-qualifying mines and has contracted silicosis or work-related TB, he or she may be eligible to receive only a pro-rata proportion of the full amount of the claim. However, anyone who worked at a qualifying mine for at least 30 years will not have their benefit modified in this manner. The same applies to the dependant of such a deceased claimant.

Where an eligible claimant has undertaken risk work at a qualifying mine but not during a qualifying period, the benefit payable to him shall be reduced pro-rata for that period.

An eligible claimant may receive only one class of benefit, even where he or she has contracted both silicosis and TB. This also applies in cases where the claimant's condition may advance into a further stage of a disease after a benefit has been already been paid. Once paid, such claimants will not be able to claim again in terms of their worsened condition.

Where the ODMWA benefit for silicosis or TB is increased by promulgation in the Government Gazette after 10 December 2019, and the eligible claimant becomes entitled to receive this increased amount from the Compensation Commissioner for Occupational Diseases (CCOD), the benefit paid through the Tshiamiso Trust will be reduced by that additional amount.

Under certain circumstances a benefit payment may be reduced by an amount determined by the South African Revenue Service (SARS), and that amount paid to SARS.

Where there is more than one dependant claimant, the total amount payable to such claimants in aggregate will not exceed the total benefit payable for that condition.

These are the ten settlement classes:

1	Silicosis Class 1: Up to R70 000; This is an early stage of silicosis (lung function impairment of up to 10%) which is not compensable in terms of ODMWA;
2	Silicosis Class 2: Up to R150 000; This is the equivalent of 1st degree silicosis in ODMWA;
3	Silicosis Class 3: Up to R250 000; This is the equivalent of 2nd degree silicosis in ODMWA;
4	Special award of up to R500 000. This category provides relief to a small number of eligible claimants who are suffering from extraordinary disease conditions which exceed most other silicotic claimants. There is no equivalent ODMWA compensation category;
5	Dependant of a deceased eligible silicosis claimant who died between 12 March 1965 and 10 December 2019: Up to R100 000 , where silicosis is deemed to be the primary cause of death;
6	Dependant of a deceased eligible silicosis claimant who died between 1 January 2008 and 10 December 2019, where the deceased had the condition referred to in 2 or 3 above: Up to R70 000 ;
7	First degree tuberculosis. An eligible claimant must: (i) have worked underground at a qualifying mine for two years; and (ii) have been diagnosed with first degree tuberculosis within a year of working at least one shift at a qualifying mine: Up to R50 000 ;
8	Second degree tuberculosis (same conditions as 7 above save for second degree diagnosis): Up to R100 000. The tuberculosis diagnoses are in line with MBOD definitions;
9	“Historical” tuberculosis (in absence of medical report determining degree of tuberculosis): An eligible claimant must: (i) have worked at a qualifying mine for 2 years between 12 March 1965 and 28 February 1994; and (ii) have been issued with a tuberculosis certificate (without indicating degree of tuberculosis) within a year of working at least one shift at a qualifying mine: Up to R10 000; and for same condition a (i) and (ii) above but with proof of first degree tuberculosis: Up to R50 000 or second degree tuberculosis: Up to R100 000 ;
10	Dependant of a deceased eligible tuberculosis claimant where: (i) the deceased worked underground at a qualifying mine for two years; (ii) the deceased died within a year of working at least one shift at a qualifying mine; and (iii) tuberculosis was the primary cause of the deceased's death: Up to R100 000 .

From the third year in the life of the trust (February 2023), compensation levels will be adjusted for inflation in line with the Consumer Price Index to ensure that the value of the compensation amounts is not eroded by inflation.



Locating claimants

It is the task of the Trust to locate as many eligible claimants as it can over the first ten years of the life of the Trust.

To assist that process:

1	The claimants' attorneys are required to supply to the Trust details of all those claimants on whose behalf they acted to the class action litigation;	3	While not a requirement of the Trust Deed, the founding companies also acquired from TEBA relevant information about employees recruited by them;
2	The participating companies are required to supply to the Trust all available employment records of employees who carried out risk work at qualifying mines during qualifying periods;	4	The Trust also co-operates with the Medical Bureau for Occupational Diseases (MBOD) to acquire information on individuals who have lodged claims for compensation with them, and to the extent feasible seeks to avoid duplication of work in respect of individuals entitled to benefits from both the Trust and the MBOD.

CLAIMS LODGEMENT

All claims must be lodged by claimants through a Claims Lodgement Officer.

If the Claims Lodgement Officer is not satisfied that a claimant has furnished the documents necessary to substantiate his or her claim, the Lodgement Officer shall inform the claimant which documents are outstanding and, where appropriate, assist the claimant with obtaining such documentation.

Certain the documents, including employment records, may take time to verify mainly as a result of the nature of inadequate record-keeping in particularly the earlier years.

If the Claims Lodgement Officer is satisfied that the required documents have been furnished by the claimant, should he or she be the mineworker, rather than a dependant of the mineworker, the claimant will be referred to an accredited medical practitioner for a medical examination. This medical examination will not be needed if the claimant falls into any of the following categories:

1	If the claimant already has a medical report, it and other lodgement documents must be submitted to the Medical Certification Panel;
2	If the claimant has an approved ODMWA certificate issued after 10 December 2019, it must be submitted to the Trust Certification Committee;
3	If the claimant has an approved ODMWA certificate issued before 10 December 2019, that claimant must be offered the choice of having the certificate submitted to the Trust Certification Committee, or the claimant may instead at his or her choice be referred for a further medical examination comprising a lung function test, to assess whether the claimant's condition has deteriorated in the interim.

If it is clear from the documents lodged that a claimant would not under any circumstances be able to be certified as an eligible claimant, the Claims Lodgement Officer will create an internal record of ineligibility and shall issue a Notice of Ineligibility to the claimant stating the reasons for the decision.

A claimant may request a review of a Notice of Ineligibility within 30 days of it being issued to the claimant.

STRUCTURES AND PROCEDURES



MEDICAL EXAMINATION FACILITIES

The Trust is mandated to put in place medical examination facilities to perform reliable examinations, including post-mortem examinations where applicable. The Trustees shall compile and maintain a registry of approved medical facilities, bodies and practitioners.

MEDICAL CERTIFICATION PANEL

A Medical Certification Panel comprising two to three occupational lung disease experts needs to be established to assess each medical report submitted in support of compensation claims.

TRUST CERTIFICATION COMMITTEE

A Trust Certification Committee comprising qualified individuals is required to assess documents in respect of every claim submitted through a claims lodgement officer and from the Medical Certification Panel in order to determine whether each claim is valid.

PAYMENT ADMINISTRATOR

The Payment Administrator has the duty to properly ensure that every person to whom a benefit is paid is properly and accurately identified, to ensure no fraudulent claims are paid.

CLAIMS OF INDIVIDUALS WHO MAY HAVE DIED AFTER THE "EFFECTIVE DATE"

If a claimant was living as at 10 December 2019 but passed away before being able to lodge a claim, the executor of his or her estate may lodge the claim.

MEDICAL EXAMINATION

Where a claimant undergoes a medical examination, should the claimant have done risk work at one or more qualifying mines for more than five years, the Trust will bear the costs of the medical examination. Where a claimant undergoes a medical examination but has done risk work for fewer than five years at one or more qualifying mines, the claimant will bear the cost of the examination, but will be reimbursed for those costs if and when he or she is certified as an eligible claimant and is paid a benefit.

Following the examination, the accredited practitioner (with the assistance of the Claims Lodgement Officer) shall submit a medical report together with the lodgement documents to the Medical Certification Panel. A medical report may include x-rays and other diagnostic images, and the results of lung function tests.

The Medical Certification Panel shall review the medical report and, if satisfied, issue a Certificate of Medical Finding. Unless the Certificate of Medical Finding concludes that a claimant is medically ineligible, or the deceased mineworker in respect of whom a dependant is claiming is medically ineligible, the Medical Certification Panel shall submit the Certificate of Medical Finding together with the other lodgement documents to the Trust Certification Committee.

Should a Certificate of Medical Finding reflect that a claimant (who is not a dependant) is medically ineligible, he or she may lodge one (1) - and only one - further claim and be entitled to an additional Certificate of Medical Finding based on a further medical report. The claimant will bear the cost of the examination but will be reimbursed for those costs if and when he or she is certified as an eligible claimant and is paid a benefit.

CERTIFICATION

Unless the Trust Certification Committee concludes that the claimant is not entitled to benefits and issues a Notice of Ineligibility, the Trust Certification Committee shall submit its Certification to the Agent representing founding companies to confirm whether the service information related to the mineworker in respect of whom the claim is being made is complete. The review by the Agent can take up to 90 days for each application and will depend to some extent on the ready availability of certain records.

PAYMENT ADMINISTRATOR TO FACILITATE PAYMENT OF THE BENEFIT

Once reviewed by the Agent, who has up to 90 days to complete this task, all positively certified Trust Certification Committee decisions are submitted to the Payment Administrator who will validate the successful claimant's bank account and make the approved payment to that bank account.

The Payment Administrator will maintain detailed accounts of payments of benefits.

FORM OF RELEASE

A claimant will be required to sign a form of release where he or she makes various acknowledgments regarding the future liability of the Trust, the companies and the claimants' attorneys to him or her, and the right of the Trust to collect, process and make certain disclosures of personally identifiable information.

FINANCIAL LITERACY PROGRAMME

The Trustees shall, where reasonable and practicable, establish a financial literacy programme which shall support claimants who receive benefits through the Trust in order that they be provided with financial literacy information, including, where practicable, attendance of financial literacy information workshops.

NON-PROGRESSION

If a Certificate of Medical Finding shows that a claimant is medically eligible, he or she will not at a later stage be able to submit another medical report showing a different condition, even if it is the case that a claimant's condition has deteriorated. The same applies where a dependant has already lodged one medical report showing a deceased mineworker is medically eligible. No additional medical report showing a different condition in respect of a deceased mineworker may be considered.

If a Certificate of Medical Finding in respect of a deceased person on whose behalf a dependant has lodged a claim reflects that the deceased person was medically ineligible for a benefit, no further medical report will be able to be considered for certification.

As already stated above, should a Certificate of Medical Finding reflect that a claimant (who is not a dependant) is medically ineligible, he or she may lodge one – and only one - further claim and be entitled to an additional Certificate of Medical Finding based on a further medical report. The claimant will bear the cost of the examination but will be reimbursed for those costs if and when he or she is certified as an eligible claimant and is paid a benefit.

FRAUD PROTECTION PROGRAM

The Trustees are required to establish a fraud protection program designed to prevent abuse of the benefits provided by the Trust.

MEDICAL ADVISORY PANEL

The Trustees may appoint a medical panel, consisting of at least two qualified medical practitioners with expertise and experience in the evaluation of respiratory impairment and occupational lung diseases, to advise them on any medically related matters.

REVIEWING AUTHORITY

The Trustees are required to establish and maintain a dispute resolution function, consisting of:

- the Medical Reviewing Authority; and
- the Certification Reviewing Authority.

Should a claimant dispute the Certificate of Medical Finding, the Certification or a Notice of Ineligibility issued to him or her, within thirty days the claimant may refer the dispute to the Reviewing Authority for dispute resolution.

QUALIFYING MINES AND QUALIFYING PERIODS IN RESPECT TO QUALIFYING MINES

The full details of these may be found in Schedule F of the Trust Deed.

FUNCTIONS OF THE TRUST

DUTIES OF THE TRUSTEES

The Trustees are obliged to fulfil the Trust Object, which is to give effect to the Settlement Agreement and, on this basis, provide benefits to eligible claimants. It must do this in the amounts and based on all the processes and requirements set out in the Trust Deed as soon as is reasonably possible.

The Trustees are obliged to develop an annual financial and operational plan to achieve the Trust Object. This plan must include but is not limited to:

- Marketing and information;
- How the priority of locating and conducting of medical examinations of potential claimants will be pursued;
- Establishing and maintaining the capacity for administering medical examinations;
- Establishing and maintaining locations for Claims Lodgement Officers to execute their duties;
- Establishing and maintaining information technology, budgeting and general administration systems

RESOURCES, SYSTEMS AND STAFF

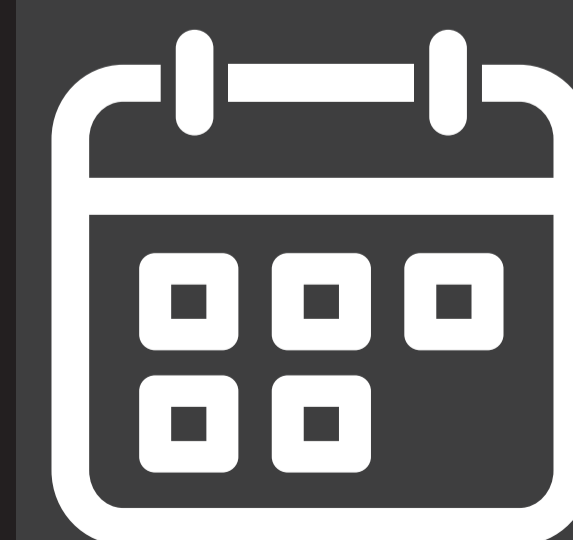
The Trustees are required to establish and maintain the necessary systems and processes, including information technology systems, to enable the Claims Lodgement Officers, Trust Certification Committee and Payment Administrator to discharge their duties in terms of this Trust Deed.

ACCOUNTS AND REPORTS

The Trustees shall ensure that proper financial books and records are kept concerning the affairs of the Trust and the administration of the Trust Fund which reflect truly and accurately their administration of the affairs and business of the Trust and record the transactions and financial position of the Trust.

AGM

The Trustees must convene at least one meeting of the Trustees within six months of the end of each financial year of the Trust.resolution.



TERMINATION OF THE TRUST

The Trust will remain in existence for 12 years