

**GUIDELINE: FRAMEWORK FOR EXEMPTION OF PROVIDERS OF
INDEMNITY PRODUCTS THAT CONDUCT BUSINESS OF A MEDICAL
SCHEME FROM PROVISIONS OF THE MEDICAL SCHEMES ACT, 131 OF
1998**



Prepared in consultation with:
Department of National Treasury
Department of Health
Financial Services Board

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This Exemption Framework comes into operation on 01 April 2017, and is subject to amendment from time to time.

AMENDMENT RECORD

Version	Date of Issue	Remarks
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CHAPTER 1 INTRODUCTORY MATTERS

1. Title

This is the Council for Medical Schemes' (CMS) Framework for exemption of providers of indemnity products that conduct business of a medical scheme from provisions of the Medical Schemes Act, 131 of 1998 (MS Act) ("the Exemption Framework").

2. Commencement

This Exemption Framework comes into operation on day of publication, and may be amended from time to time.

3. Approval

This Exemption Framework is made in terms of section 8(h) of the MS Act. Section 8(h) provides that:

"The Council shall, in the exercise of its powers, be entitled to-...exempt, in exceptional cases and subject to such terms and conditions and for such period as the Council may determine, a medical scheme or other person upon written application from complying with any provision of this Act;"

The Exemption Framework is approved by the Council, in consultation with the Department of Health, the Financial Services Board (FSB) and National Treasury. Both, Part 7 of the Long-term Insurance (LTI) Regulations and Part 7 of the Short-term Insurance (STI) Regulations are collectively referred to as the Demarcation Regulations in this Exemption Framework.

4. Purpose

4.1

The purpose of this Exemption Framework is to provide for an exemption for insurers¹ and their respective and financial service providers that are providers of indemnity products that meet the definition of "business of a medical scheme" from the MS Act while a Low Cost Benefit Option (LCBO) Guideline is developed.² Such exemption shall be in terms of section 8(h) of the MS Act and shall be subject to certain conditions.

5. Application

5.1

This Exemption Framework applies to any insurers and their respective and financial service providers that offers indemnity products that conduct business of a medical scheme.

¹ An insurer registered under the LTI Act to provide health policies or under the STI Act to provide accident and health policies.

² Media Statement Health Insurance Policies To Complement Medical Schemes Through An Enabling Regulatory Framework Release Of Final Demarcation Regulations:

<http://www.treasury.gov.za/legislation/regulations/FinalDemarc2016/2016122301%20-%20Demarcation%20press%20statement.pdf>

5.2

This Exemption Framework does not apply to providers of indemnity products that conduct business of a medical scheme that are not insurers or financial service providers.

6. Statutory Framework

6.1

The definition of a “business of a medical scheme” in section 1 of the Medical Schemes Act, 131 of 1998 (“the MS Act”) has - in terms of section 264 and the schedule to the Financial Service Laws General Amendment Act, 2013 (“the General Amendment Act”) - been amended. The amended definition provides as follows:

“business of a medical scheme” means the business of undertaking, in return for a premium or contribution, the liability associated with one or more of the following activities:

- (a) Providing for the obtaining of any relevant health service;*
- (b) granting assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; or*
- (c) rendering a relevant health service, either by the medical scheme itself, or by any supplier or group of suppliers of a relevant health service or by any person, in association with or in terms of an agreement with a medical scheme.”*

6.2

The operation of the amendment to the definition of a business of a medical scheme was delayed in order to allow for the Demarcation Regulations to be finalised.³ On 23 December 2016, the Minister of Finance – in consultation with the Minister of Health - published amendments to the -

6.2.1 Long-term Insurance Act, 1998 (Act No. 52 of 1998) (“the LTI Act”) regulations made under section 72 of the LTIA under GN 1585 in GG 40515 of 23 December 2016 (“the LTI Regulations”);

6.2.2 Short-term Insurance Act, 1998 (Act No.53 of 1998) (“the STI Act”) regulations made under section 70 of the STIA Act under GN 1582 in GG 40515 of 23 December 2016 (“the STI Regulations”).

The amendments to the STI and LTI Regulations are collectively referred to as Demarcation Regulations. The finalisation of the Demarcation Regulations has duly paved the way for giving effect to the definition of “business of a medical scheme” as amended by section 264 of the General Amendment Act.

6.3

The Minister of Finance will determine in a Government Notice to be published in Government Gazette before 1 April 2017 that the provisions of section 264 of this Act come into operation on 01 April 2017. This determination is made in consultation with the Minister of Health and is in accordance with section 266(2) of the General Amendment Act.

³ [Note 2 above] Commencement of Financial Services Laws General Amendment Act, 2013 (Act No. 45 of 2013).

6.4

The definition of the business of a medical scheme shall, with effect from 01 April 2017, be as set out in paragraph 6.1 above.

6.5

The said amendment to the definition of the "business of a medical scheme" in the MS Act is complemented by amendments to the LTI Act and to the STI Act.

6.6

The revised definition of an accident and health policy in section 1(1) of the STI Act provides that:

"accident and health policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if a disability, health or death event contemplated in the contract as a risk event occurs, and includes a reinsurance policy in respect of such a contract—

(a) excluding any contract—

(i) that provides for the conduct of the business of a medical scheme referred to in section 1 (1) of the Medical Schemes Act; or

(ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act and which contract—

(aa) relates to a particular member of the scheme or to the beneficiaries of such member; and

(bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but

(b) specifically including, despite paragraph (a) (i), any category of contracts identified by the Minister by regulation under section 70 (2A) as an accident and health policy;" [added emphasis]

the revised definition of health policy in section 1(1) of the LTI Act provides that:

"health policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, and includes a reinsurance policy in respect of such a contract—

(a) excluding any contract—

(i) that provides for the conducting of the business of a medical scheme referred to in section 1 (1) of the Medical Schemes Act; or

(ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act, and which contract—

(aa) relates to a particular member of the scheme or to the beneficiaries of that member; and

(bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but

(b) specifically including, notwithstanding paragraph (a) (i), any contracts identified by the Minister by regulation under section 72 (2A) as a health policy; [added emphasis]

6.7

In terms of respective provisions of section 72(2A) (c) of the LTI Act and section 70(2A) (c) of the STI Act-

"Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as a health policy in the regulations, is subject to this Act [LTI or STI Act] and not the Medical Schemes Act."

6.8

The cumulative effect of the above amendments is that the prohibition, in section 20(1) of the MS Act, does not apply to insurers and their respective and financial service providers that provide health policies or health policies identified as such in the Regulations made under section 70(2A)(a) of the STI Act and 72(2A)(a) of the LTI Act. Section 20(1) of the MS Act stipulates that-

"No person shall carry on the business of a medical scheme unless that person is registered as a medical scheme under section 24."

6.9

In terms of section 45(1) and (2) of the MS Act any person who is suspected of carrying on business of a medical scheme while not registered in terms of section 24 of the MS Act is subject to statutory powers of the Registrar of Medical Schemes (the Registrar) in that -

-
- (1) *The Registrar may, by notice in writing, require any person who he or she has reason to suspect is carrying on the business of a medical scheme which is not registered, to transmit to him or her, within a period stated in such notice, a copy of the rules, if any, under which such person is operating and such other information as he or she may require.*
- (2) *The Registrar may, if the person referred to in subsection (1) fails to comply with his or her requirements to his or her satisfaction, require such person to produce at any place where that person carries the business in question, the records, documents, statements or accounts relating to that business in order to enable the Registrar to ascertain whether that business constitutes the business of a medical scheme."*
-

6.10

The Registrar, in accordance with provisions of section 45(1) and (2) of the MS Act, may require any person who is carrying on the business of a medical scheme, which will include persons (including insurers and their respective and financial service providers) providing indemnity products that conduct business of a medical scheme, to submit information required by the Registrar - this could include details of the benefits, terms and conditions and marketing material of such a product.

6.11

All insurers and their respective and financial service providers who provide indemnity products that conduct business of a medical scheme, shall after 1 April 2017, be exempted from the provisions of section 20(1) of the MS Act and be allowed to continue providing these products for a period of two years under conditions set out by the Council.

6.12

This Exemption Framework does not apply to medical schemes. However, this does not preclude medical schemes from submitting applications for exemption in their normal course of business. According to section 8(h) of the MS Act the only other class eligible to seek exemption is referred to as "other person", without providing definition of this phrase. The present statutory context thus does not place a high value on certainty. There are no detailed provisions governing the class of persons who fall under "other person". It is, therefore, congruous with provisions of section 8(h) of the MS Act for the Council to have a power to consider exemption applications from an open class of persons from time to time as occasion requires. Notwithstanding, this Exemption Framework only applies to insurers and their respective and financial service providers that provide indemnity products that conduct business of a medical scheme.

CHAPTER 2 EXEMPTION APPLICATION

PART 1 SUBMISSION OF INFORMATION

7. General

The application for exemption is a two-stage process. First, an exemption applicant is required to submit basic application information before **31 March 2017**. The Council may grant an exemption on application to insurers and their respective and financial service providers that provide indemnity products that conduct business of a medical scheme. This exemption shall be on condition that the applicant for exemption complies with the second stage requirements within **30 days** from date of this exemption.

In the second stage of the process, exemption applicants are required to submit extensive application information. The extensive application information should, in addition to information enumerated in paragraph 7.2 below, provide information indicating fair treatment and best interests of product-holder, and set out a case for exceptional circumstances to justify a need for exemption.

7.1

▪ Stage 1: Basic Application Information

An insurer and their respective and financial service providers will be required to submit, under cover of a letter applying for exemption from the MS Act-

- 7.1.1 Particulars of registration in terms of section 9 as a short-term insurer or section 9 as a long-term- insurer of either STI Act or the LTI Act respectively with the Financial Services Board.
- 7.1.2 Particulars of registration as a financial services provider in terms of the FAIS Act.
- 7.1.3 Information on compliance status of registration as referred to above in terms of either the STI or LTI Act.
- 7.1.4 Full contact details of the insurer and their respective and financial service providers, including the registered address.
- 7.1.5 List of all indemnity products that conduct business of a medical scheme that are in existence.
- 7.1.6 Names of all brokers and administrators, or other persons, with whom the insurer has contracted, who provides marketing and/or ongoing services to clients.

7.2

■ **Stage 2: Extensive Application Information**

An insurer and their respective and financial service providers will be required to submit the following information within 30 days from date of granting exemption under stage 1-

- 7.2.1 Application form for exemption;
- 7.2.2 Particulars and nationality of director(s) of the insurer and their respective and financial service providers.
- 7.2.3 Details of shareholding or any other financial interest that the insurer and their respective and financial service providers hold in any of the following:
 - 7.2.3.1 An administrator;
 - 7.2.3.2 A broker organisation;
 - 7.2.3.3 A managed care organisation;
 - 7.2.3.4 A group of health service providers;
 - 7.2.3.5 Any other organisation which provides services to medical schemes.
- 7.2.4 Audited Financial Statements of the insurer and their respective and financial service providers for the past 3 years;
- 7.2.5 The number and names of indemnity products that conduct business of a medical scheme offered.
- 7.2.6 A brief description of the products (objective of each individual product) and the target market (e.g. low cost).
- 7.2.7 Summary of the membership profile per product line, for example:
 - 7.2.7.1 Number of members.
 - 7.2.7.2 Number of beneficiaries.
 - 7.2.7.3 Average age of beneficiaries.
 - 7.2.7.4 Pensioner ratio (65+ years).
 - 7.2.7.5 Number of chronic patients.
 - 7.2.7.6 Membership mix on different income bands.
 - 7.2.7.7 Family size.

- 7.2.7.8 Developments within the insurer and its respective and financial service providers that have impacted solvency.
- 7.2.7.9 Names of participating employer groups.
- 7.2.8 Financial information of the insurer and its respective and financial service providers in regard to indemnity products that conduct business of a medical scheme, for example:
 - 7.2.8.1 Audited Financial Statements of the insurer and its respective and financial service providers for the past 3 years.
 - 7.2.8.2 A full list of all the guarantees that the insurer and its respective and financial service providers has in place.
 - 7.2.8.3 Average contribution per principal member/beneficiary per month.
 - 7.2.8.4 Detailed calculation of claims costs on the basis of per member/beneficiary per month.
 - 7.2.8.5 Inflation rates where applied. Please explain the use and need where different inflation rates were used. Non-healthcare expenditure per member/beneficiary per month. This should include a detailed breakdown of all non-healthcare expenditure per member/beneficiary.
- 7.2.9 The insurer and its respective and financial service providers should also provide the composition of the current contributions per member/per beneficiary per month per product line and the underlying assumptions, together with the motivation for these assumptions. Information should be provided for at least the following:
 - 7.2.9.1 A description of the data used.
 - 7.2.9.2 Price inflation.
 - 7.2.9.3 Age adjustments.
 - 7.2.9.4 Utilisation adjustments.
 - 7.2.9.5 Benefit changes.
 - 7.2.9.6 Non-healthcare expenditure.
 - 7.2.9.7 Investment return.
 - 7.2.9.8 Reserve loading.
 - 7.2.9.9 Demographic profile of member
 - 7.2.9.10 Average age.
 - 7.2.9.11 Pensioner ratio (65+ years).
 - 7.2.9.12 Average family size.
 - 7.2.9.13 Income profiles.
 - 7.2.9.14 Chronic profile.
 - 7.2.9.15 Buy-ups/downs.
- 7.2.10 All reinsurance assumptions, this should also include all assumptions used for year on year increases.
- 7.2.11 Names of all brokers and administrators, or other persons, with whom the insurer and its respective and financial service providers has contracted, who provide marketing and/ or ongoing services to clients.

7.2.12 A statement on whether or not the insurer and its financial service providers intends to migrate its current healthcare indemnity business into a Low Cost Benefit Option (LCBO).

8. Considerations and Conditions

8.1

The Council shall grant exemptions in such a manner that the interests of existing policyholders/customers are protected.

8.2

Various conditions can be applied to exemptions such as inclusion of consumer warnings on certain products. However, paramount of all are considerations of the objectives and purposes of the MS Act and the principles of community rating; open enrolment; and cross-subsidisation.

8.3

As a condition, levies in respect of the indemnity products that conduct business of a medical scheme underwritten by insurers, which form part of the exemption they are seeking, will be imposed on such insurers and their respective intermediaries and financial service providers that obtain exemption under this Framework. The basis of calculation of such levies will be the same basis used in paragraphs 8, 10, 12 and 19 of Board Notice 81 of 2016 which was issued under section 15A of the Financial Services Board Act, 1998 (Act No. 97 of 1990) as issued from time to time.

8.4

The exempted insurers and their respective and financial service providers must comply with all of the prudential requirements contained in the LTI Act and STI Act (read with the necessary changes) and FAIS Act respectively insofar as it relates to their indemnity products that conduct business of a medical scheme.

8.5

The exempted insurers must comply with certain or all of the requirements contained in the Policyholder Protection Rules ("PPRs") under the LTI Act and STI Act (read with the necessary changes) insofar as it relates to their healthcare indemnity and/or hospital indemnity business. The PPRs impose various conduct of business requirements aimed at protecting policyholders of insurers.

8.6

Complaints of policyholders/members shall be adjudicated by the CMS, in accordance with the MS Act.

8.7

The Council reverses the right to call for any information from time to time.

9. Duration of Exemptions

The exemptions shall be for a period no longer than 2 years from 1 April 2017.

PART 2 EXEMPTION PROCESS

10. Demarcation Adjudicative Committee

10.1

The Council shall establish a registry of all indemnity products that conduct business of a medical scheme with a record of outcome of an exemption application. The registry shall categorise the insurers into either short-term or long-term category, size of the insurer by number of lives covered, extent of cover in revenue limits on benefits, and underwriting among other categories.

10.2

A committee, the Demarcation Adjudicative Committee ("DAC"), shall evaluate all information received under paragraph 7.2 above.

10.3

All conclusions and recommendations, together with received information, shall be submitted to the subcommittee of Council, the Executive Committee ("EXCO") which deals with exemptions for approval.

10.4

Once EXCO has approved a decision, this decision shall be communicated to all relevant parties with reasons for the decision.

11. Financial Services Board

11.1

Relevant information collected by the CMS may be referred to the FSB in order to ensure that the latter is kept informed of all developments appropriate for their consideration.

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Exemption Framework Approved by	The Council: The Chairperson	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<i>Mfana Maswanganyi</i>

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