



Ref: Status update on Demarcation Regulations and  
Low-Cost Benefit Package  
Enq: Grace Khoza  
t: (012) 431 0414  
f: 0865017552  
e: [g.khoza@medicalschemes.com](mailto:g.khoza@medicalschemes.com)  
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## Circular 18 of 2019: Status update on the Demarcation Regulations and the development of a Low-Cost Benefit Package

The purpose of this circular is to provide a status update on the Demarcation Regulations, and the development of a Low-Cost Benefit Package.

### Demarcation Regulations

In December 2016, the Minister of Finance in consultation with the Minister of Health promulgated regulations in terms of section 72 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (the LTI Act), and in terms of section 70 of the Short-term Insurance Act, 1998 (Act No.53 of 1998) (the STI Act). These regulations, are collectively referred to as the Demarcation Regulations.

The Demarcations Regulations came into effect on 01 April 2017 and identified for the first time categories of health and accident policy contracts that may conduct the business of a medical scheme and remain insurance contracts outside the regulatory provisions of the Medical Schemes Act, 1998 (Act 131 of 1998) (the MS Act).

### Definition of the business of a medical scheme

The Demarcation Regulations came into effect on 01 April 2017, at the same time that the amendment of the definition of a business of a medical scheme came into effect. Any person who conducts any of the three business defined activities, namely: provide for obtaining health service, assist in defraying health expenses, or rendering relevant health service as a medical scheme or as a contracted service provider to a medical scheme; is doing the business of a medical scheme.

The cumulative effect of these changes in the law is that after 1 April 2017 any person who conducts any of the defined activities under the definition of a business of a medical scheme, must either be a medical scheme, or the activity must be identified in terms of 72(2A) or 70(2A) of the LTI Act and STI Act respectively.

#### Health and accident policy contracts falling outside the identified categories

Transitional provisions in the Demarcation Regulations allowed time until January 2018 or upon renewal, for amendment of health and accident policy contracts to become compliant with the Insurance Act. However, the Minister of Health and the Minister of Finance realising that some health and accident policies could not be amended without regressing access to healthcare services from private health care providers for part of the population that relies on these policies; agreed to a two-year exemption period while a Low-Cost Benefit Package is developed.

#### Low-Cost Benefit Package

The Low-Cost Benefit Package (LCBP) is envisaged to be provided as part of medical schemes offering for the population that is not able to afford medical scheme contributions. Consistent with the principles of cross-subsidisation and social solidarity; the benefits are expected to be decent, and the contributions affordable.

In order to ensure that the delivery of the LCBP is successful, all affected parties in the medical scheme industry need to be consulted. The initially specified two-year period has proved to be insufficient. On the other hand, health and accident policy contracts that fall outside the identified categories and therefore contravene provisions of the MS Act, remain the only entities that provide coverage to a sector of the population that cannot afford medical scheme contributions; under exemption.

#### Exemption Framework

Pursuant to the Demarcation Regulations promulgation, and prior to their coming into effect, the Council for Medical Schemes in consultation with the Department of Health and Treasury approved an Exemption Framework, that was approved in March 2017.

This Exemption Framework does not apply to medical schemes. However, that 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 preclude anyone from applying for an exemption. There are no detailed provisions governing the class of persons who fall under "other person". It is, therefore, in accordance with the provisions of section 8(h) of the MS Act, for the Council to have power to consider exemption applications from an open class of persons from time to time as required. Notwithstanding, this Exemption Framework only applies to insurers and their respective financial service providers that provide indemnity products that falls within the category of conducting the business of a medical scheme.

In 2017 the Council for Medical Schemes received more than 40 applications for exemption under the Exemption Framework. Only 23 exemptions were granted in 2017. Two unsuccessful applicants appealed the decision of Council not to grant exemption. The Appeals Board that heard the appeals upheld the decision of the Council. One of the two unsuccessful applicants has given notice of intent to refer the Appeals Board's decision to the High Court for review. The other unsuccessful applicant resubmitted an application in July 2018 under the category of an insurer, and has been granted exemption.

Attention is drawn to the fact that all granted exemptions are for products that were developed prior to 1 April 2017. No exemption has been granted for products developed after 1 April 2017.

The current exemption of indemnity products that are doing the business of a medical scheme expires on 31<sup>st</sup> March 2019. Entities that were granted exemption on their indemnity products in 2017, should submit renewal applications, which will be evaluated on merit, to extend the exemption period to 31 March 2021.

Details regarding the due date for submission as well as information that must accompany the renewal applications will be communicated in due course.



Dr Siphon Kabane  
Chief Executive & Registrar  
Council for Medical Schemes