



CIRCULAR

Reference: Brokers/Broker Commission
Contact person: Florence Maphanga
Tel: 0861 123 267
E-mail: accreditenquiries@medicalschemes.com
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Circular 39 of 2020: Payment of Commission to Brokers and Brokerages

The Council for Medical Schemes (CMS) has received requests for exemption in terms of Section 8(h) of the Medical Schemes Act (131 of 1998) (MSA), from the provisions of Regulation 28(5) for medical schemes, brokers and broker organisations.

On 10 April 2020, the CMS published [Circular 28 of 2020](#) unpacking measures within the ambit of the MSA to assist medical schemes to adapt to the adverse effect of the coronavirus pandemic. Amongst the measures articulated, was room for medical schemes to apply for a Section 8 (h) exemption, and allow their members to use their medical savings account to offset contributions.

Section 8 of the MSA provides that the Council shall, in the exercise of its powers, be entitled to-

(h) 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 provisions of this Act:

The Circular also proposed that Small, Medium and Micro Enterprises (SMMEs) with employees of >200 put forward a case to their medical schemes to defer contributions for a certain period to protect their employees' medical cover. The concession to SMMEs for deferred contributions due to COVID-19 has had a negative impact on the commission payable to brokers and broker organisations in terms of Regulation 28(5) of the Act which articulates that:

- (5) Payment by a medical scheme to a broker in terms of subregulation (2) shall be made on a monthly basis and upon receipt by the scheme of the relevant monthly contribution in respect of that member.*
- (6) The ongoing payment by a medical scheme to a broker in terms of this regulation is conditional upon the broker -*
 - (a) continuing to meet the service levels agreed to between the broker and the medical scheme in terms of the written agreement between them;*
 - (b) receiving no other direct or indirect compensation in respect of broker services from any source, other than a possible direct payment to the broker of a negotiated professional fee from the member himself or herself (or the relevant employer, in the case of an employer group).*

This Regulation prohibits medical schemes from paying commission to brokers and broker organisations, for providing broker services, if the relevant monthly contribution for that member is not received. Many of these brokers and broker organisations are SMMEs who are in financial distress due to the impact of COVID-19 and the lockdown. It may therefore be difficult for them to sustain their businesses without receiving income for the period of the contribution deferment.

As such, the CMS is open to exemption applications for Regulation 28(5) exemption in terms of section 8(h) of the Act. Each application will be assessed on its own merits.

APPROACH AND CRITERIA FOR REGULATION 28(5) EXEMPTION CONSIDERATION

- No blanket exemption application will be considered;
- Medical schemes and brokers must prove exceptional circumstances;
- Only medical schemes who were granted exemption in terms of Section 26 (7) are eligible to apply;
- Brokers and broker organisations who are in financial distress due to COVID-19 must present their case to their respective medical schemes;
- Applicants must ensure that the respective brokers and broker organisations are SMME's with employees of >200, and the list of the said employer groups must accompany the exemption application.

CONDITIONS FOR GRANTING EXEMPTION

- Commission is paid to brokers for SMMEs or members who qualified for contribution concession for that period;
- Medical schemes must ensure that commission paid to brokers and broker organisations, for providing broker services does not exceed the maximum commission prescribed in Regulation 28(2) of the Act;
- Brokers and broker organisations must have been appointed by these SMMEs or members through broker notes prior to the lockdown;
- Medical schemes must have an existing written contract with brokers or broker organisations, concluded and signed prior to the lockdown;
- Brokers and broker organisations must be accredited and licenced in terms of the MSA and the FAIS Act, 2002 respectively;
- No commission will be paid to brokers when arrear contributions are recouped from employer groups or members to avoid duplicate payment of commission;
- Medical schemes must ensure that brokers and broker organisations sign acknowledgement of debt contracts prior to paying commission;
- The commission will be reversed and clawed back from respective brokers and broker organisations should there be non-recovery of such arrear contributions, and in the event of unlawful payment.

Applications for exemption can be submitted to Ms Florence Maphanga on email: accreditenquiries@medicalschemes.com by 15 June 2020.

Yours sincerely,



Dr Siphon Kabane
Chief Executive and Registrar
Council for Medical Schemes