

MOTOR VEHICLE ACCIDENT FUND ACT, 2007

No. 15



of 2007

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An Act to provide for the establishment, management and administration of the Motor Vehicle Accident Fund; to provide for the compensation, care, benefits, medical management and rehabilitation of victims of motor vehicle accidents; to provide third party insurance cover to drivers and owners of motor vehicles and for matters incidental thereto and connected therewith.

Date of Assent: 16/11/07

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

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| Short title | 1. This Act may be cited as the Motor Vehicle Accident Fund Act, 2007 and shall come into force on such date as the Minister may, by order determine. |
| Interpretation | 2. In this Act, unless the context otherwise requires —
“Board” means the Board of the Motor Vehicle Accident Fund established under section 5;
“Chief Executive Officer” and “Deputy Chief Executive Officer” mean the head of the Fund and his or her deputy respectively appointed in accordance with subsections (1) and (6) of section 15;
“claimant” means any person who has suffered loss as a result of personal injury or death caused by a vehicle accident, and who makes a claim to the Fund in respect of that loss;
“conveyed”, in relation to the conveyance of a person in a vehicle, includes being in the act of entering or mounting the vehicle for the purpose of being so conveyed, or being in the act of alighting therefrom after having been so conveyed; |

“defect”, in relation to a vehicle, means any remediable fault in the tyre or in the steering, braking or seat belt mechanism or any part thereof, and “defective” shall have a corresponding meaning;

“dependant”, in relation to a person involved in a vehicle accident, means any person being a spouse or minor child of such person, or a person with disabilities or indigent person, who is entitled upon proof of dependency, to monetary maintenance from such person;

“Fund” means the Motor Vehicle Accident Fund established under section 3;

“hospital” includes a nursing home, clinic and any other institution offering medical, rehabilitative, therapeutic or physiotherapy care or treatment;

“health practitioner” means a medical practitioner and an allied or health professional as defined in the Health Professions Act, and any other person concerned with the restoration of the physical or mental function of any person and registered in Botswana in terms of the said Act;

“Minister” means the Minister of Finance and Development Planning;

“minor” means a person below the age of 21 years;

“motor vehicle” means any vehicle, designed or adapted for propulsion or haulage on a road by means of power, excluding exclusively human or animal power, without the aid of rails, and includes any trailer designed to be drawn by a vehicle; and, notwithstanding the foregoing, includes an animal drawn cart where a vehicle accident involves a collision between such cart and another vehicle as defined by the first part of this definition;

“offer” includes an offer made without prejudice to rights reserved;

“owner” in relation to —

(a) a vehicle which a dealer has in his or her possession in the course of business, means that dealer;

(b) a vehicle which is the subject of a hire-purchase agreement, means the purchaser under the agreement in question; and

(c) a vehicle which is leased under an agreement of lease for a period of at least six months, means the lessee concerned;

“public office” and “public officer” have the meanings assigned to them under the Constitution;

“seat belt” includes the mechanism by which the seat belt operates;

“special circumstances” shall not include any element of neglect, negligence, omission or ignorance;

“vehicle” means a motor vehicle;

“vehicle accident” means any occurrence in which a vehicle is involved resulting in injury to or the death of any person.

PART II – *Establishment of Fund*

3. (1) The Motor Vehicle Accident Fund, established in terms of section 3 of the Act repealed under section 33, shall continue to exist as if established under this Act.

(2) The Motor Vehicle Accident Fund is a body corporate with full capacity to sue or be sued in its own name, and to do all such things as bodies corporate may, by law, do and as may be necessary or incidental to the exercise of its powers and the performance of its functions under this Act.

Purpose of Fund

4. (1) The purpose for which the Fund is established is —
- (a) to provide compensation in the form of benefits as defined in section 20;
 - (b) to provide third party insurance cover to drivers and owners of motor vehicles in accordance with the provisions of section 20;
 - (c) to promote road safety and accident prevention; and
 - (d) to deal with all matters incidental to the carrying out of paragraphs (a), (b) and (c).
- (2) For the purposes of this section, “third party insurance cover” means indemnity against bodily injury, or death, arising out of a motor vehicle accident, including claimant’s costs, emergency treatment and hospital expenses.

Establishment of Board of Fund

5. There shall be a Board of the Motor Vehicle Accident Fund, constituted in accordance with section 6, in which, subject to the provisions of section 16, the powers and functions of the Fund shall be vested.

Membership of Board

6. (1) The Board shall consist of the following eight members who shall be appointed by the Minister, and three of whom shall not be public officers —

- (a) one person who is a health practitioner;
- (b) one person who possesses investment skills;
- (c) one person who possesses road accident reconstruction or prevention skills or comes from the motor vehicle accident compensation industry;
- (d) one attorney or advocate;
- (e) one person who shall be a member of the Road Safety Committee, provided that such a person shall not be an employee of the Fund; and
- (f) three other persons holding such qualifications and possessing such skills and experience as the Minister considers appropriate for the proper functioning of the Board.

(2) The Minister shall appoint the Chairperson of the Board from amongst the eight members.

(3) Each member shall be appointed for a term not exceeding three years, as the Minister may decide, and shall be eligible for reappointment.

Disqualification for appointment as Board member

7. A person shall be ineligible for appointment to the Board if he or she —

- (a) has, in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged,
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has been convicted —
 - (i) in Botswana, of a criminal offence for which he or she has not received a free pardon, or
 - (ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment, with or without the option of a fine whether that sentence has been suspended or not, and for which he or she has not received a free pardon;

- (c) has been found guilty of unprofessional conduct by a competent tribunal, board or body legally constituted for the purpose of adjudicating on matters of discipline and conduct;
- (d) is a member of Parliament;
- (e) is a member of Council;
- (f) has been certified as being mentally disordered;
- (g) is a minor or other person under a legal disability; or
- (h) has been dismissed from employment in the public service following a conviction for an offence involving moral turpitude.

8. A member of the Board shall vacate his or her office and such office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 7 to hold office as a member of the Board;
- (b) he or she is adjudged bankrupt or insolvent;
- (c) he or she is absent from two consecutive meetings of the Board without reasonable cause;
- (d) upon his or her death;
- (e) is a member of Council;
- (f) upon the expiry of one month's notice, given in writing to the Minister, of his or her intention to resign his or her office;
- (g) upon the expiry of such time as the Minister may specify in writing, notifying him or her of his or her removal from office by the Minister;
- (h) if he or she becomes mentally or physically incapable of performing his or her duties as a member of the Board;
- (i) if he or she is convicted in Botswana, of a criminal offence under this Act or under any other Act for which he or she is sentenced to a term of imprisonment with or without the option of a fine, whether that term is suspended or not, or if he or she is convicted outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence the prescribed punishment for which would be imprisonment, with or without the option of a fine, and whether that sentence has been suspended or not.

9. (1) The Minister may, if he or she is satisfied that a member of the Board has acted improperly as such member, or is mentally or physically incapable of performing his or her duties efficiently, require that member, in writing, to vacate his or her office within such time as the Minister may specify.

(2) The Minister shall, in writing, suspend from office, a member of the Board against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

10. On the death of, or the vacating of office by, a member of the Board, the Minister shall, as soon as possible, appoint a person, in accordance with the provisions of section 6, for the remaining period of office of such deceased or vacating member.

Vacation of office by Board members

Removal and suspension of member from office

Filling of vacancies of Board

Payment of
Board
members

11. A member of the Board shall be paid such remuneration, allowances and travelling expenses, incurred in connection with his or her service on the Board, as the Minister may determine.

PART III – *Meetings and Proceedings of Board*

Meetings of
Board

12. (1) The Board shall meet as often as the business of the Fund may require, but not less frequently than once in each quarter of the year.

(2) Subject to the provisions of this Act, the Board may regulate its own procedure.

(3) The Chairperson of the Board shall convene ordinary meetings of the Board as often as the business of the Fund may require.

(4) Upon giving notice in writing of not less than seven days, a meeting of the Board may be called by the Chairperson:

Provided that if the urgency of any matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(5) There shall preside, at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) The conduct of business at Board meetings shall be minuted, and such minutes, when passed as correct by the Board, shall then be kept by the Fund as a permanent record.

(7) All decisions of the Board shall be passed by a simple majority of the members present thereat, on open ballot, with the Chairperson having a casting vote.

(8) A quorum at any meeting shall consist of any four members of the Board.

Declaration of
interest by
Board
Members

13. (1) Where a member of the Board is present at a meeting of the Board or any committee or subcommittee of the Board at which any matter being discussed thereat is one in which the member is directly or indirectly interested in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question concerning such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) A member who contravenes the provisions of this section may be removed from the Board by the Minister, in which case the Minister shall appoint another person to the Board in accordance with the provisions of section 6 for the remaining period of the removed member's term of office.

(4) Any member who fails to comply with the provisions of this section shall be guilty of an offence and shall be liable to a fine of not exceeding P10, 000 or to imprisonment for a term not exceeding 10 years.

14. All documents made by, and all decisions of, the Board, may be signified under the hand of the Chairperson of the Board or any member of the Board or senior officer of the Fund generally or specially authorised in that behalf.

Signification
of documents

PART IV — *Officers and Staff of Fund*

15. (1) The Fund shall have a Chief Executive Officer who shall be appointed by the Minister on the recommendation of the Board upon such terms and conditions and for such period as may be determined by the Minister.

Appointment
of Chief
Executive
Officer and
other staff

(2) In advising the Minister in terms of this section the Board shall not recommend a person as Chief Executive Officer unless such person has the training, experience, and skills relevant to the Fund's needs, and is a person of integrity.

(3) The Chief Executive Officer shall, subject to such directions on matters of policy as may be given by the Board, be charged with the administration of the Fund, and of the supervision of the employees of the Fund.

(4) The Chief Executive Officer may resign from office by giving notice in writing to the Minister in terms of his or her contract of employment.

(5) The Chief Executive Officer may be removed from office by the Minister in terms of his or her contract of employment.

(6) The Board may, upon such terms and conditions and for such period as may be determined by the Board, appoint the Deputy Chief Executive Officer and any other senior officer as may be necessary for the proper discharge of the functions of the Fund.

(7) The Board shall not appoint a person as Deputy Chief Executive Officer or as a senior officer unless such person has the experience and skills relevant to the Fund's special needs.

(8) The dismissal of the Deputy Chief Executive Officer and other senior officers of the Fund shall be carried out by the Board on the recommendation of the Chief Executive Officer, and the dismissal of all other officers shall be carried out by the Chief Executive Officer or such senior officer as he or she may delegate to perform that function.

(9) The terms and conditions of employment of the staff of the Fund shall be as may be directed by the Board.

PART V — *Powers, functions and duties of Fund*

16. (1) Subject to the provisions of this Act, the Fund shall be responsible for the formulation of the policy and management of the financial and administrative affairs concerning the Fund.

Powers of
Fund

(2) Without derogation from the generality of the powers conferred by sections 4, 5, and subsection (1) the Fund shall have the power to —

(a) utilise its funds for the purposes connected with or resulting from the exercise of its powers or the performance of the Fund's duties under this Act, including the setting up of appropriate reserves for funding relevant endeavours for the said purposes;

- (b) purchase or otherwise acquire goods, equipment, land, buildings, shares, debentures, stocks, securities and any other kinds or classes of movable or immovable property;
 - (c) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments;
 - (d) sell, lease, mortgage, encumber, dispose of, exchange, work, develop, build upon, improve or in any other way deal with property;
 - (e) invest any monies, not immediately required for the conduct of its business, in such manner as may be for the benefit of the Fund, and to realise, alter, reinvest such investment or otherwise deal with such monies or investments as may be to the benefit of the Fund;
 - (f) borrow or lend money and secure repayment thereof in such manner as it considers necessary or advisable;
 - (g) make such donations as it considers appropriate in connection with any matter relating to promotion of road safety;
 - (h) reimburse the Government for services rendered to the Fund by persons in the employ of service of the Government;
 - (i) negotiate agreements in terms of which it may accept liability in respect of vehicle accidents involving vehicles registered or licensed in a territory other than Botswana; and
 - (j) do all such things as are incidental or conducive to the exercise of the Fund's powers or the performance of the Fund's duties under this Act.
- (3) The Fund may impose civil penalties on any person liable for failing to comply with the provisions of section 17.

(4) A civil penalty imposed as provided in subsection (3) is recoverable as a fine imposed by a court under section 303 (1) to (4) (inclusive) of the Criminal Procedure and Evidence Act, and an affidavit sworn by a member of the Board or an authorised employee of the Fund is sufficient proof of the lawful imposition of the monetary penalty to enable a court to issue a warrant under that section.

(5) The Board may, in consultation with the Minister in writing, and having due regard to principles of corporate governance, delegate any of the powers and functions of the Fund to the Chief Executive Officer or any other officer of the Fund.

(6) The Board may appoint committees and subcommittees to consider such matters or to perform such duties as it may direct.

(7) Every committee and subcommittee appointed under this section shall consist of the members of the Board and such other persons as the Board, or the committee or subcommittee concerned, with the approval of the Board, may co-opt.

PART VI – *Financial provisions*

17. (1) The monies of the Fund shall consist of such sums as —
- (a) shall be raised and paid into the Fund in terms of subsection (2) hereof;
 - (b) may be paid into the Fund by the Government;
 - (c) the Fund may receive from its investments; and
 - (d) the Fund may acquire, or earn or borrow in accordance with the provisions of this Act.

(2) The Minister shall, by regulations, prescribe the amount of levy to be retained by the seller on every litre of petroleum product sold by such seller, or by the importer on every litre of petroleum product imported by such importer other than for resale, such levy to be paid over to the Fund by the twenty fifth day of the month following the date of sale or importation, as the case may be:

Provided that the Minister may exempt, or partially exempt, from such levy, petroleum products purchased for consumption by such organisation, persons or classes of vehicles as he or she may prescribe, and such regulations may prescribe the rate at which, the manner in which, and the period of time within which any rebate in respect of such exemption or partial exemption shall be claimable.

(3) In this section —
“seller” means the organisation, person or body of persons involved in the importation or sale of petroleum products; and
“petroleum products” means petrol and diesel fuels.

(4) The seller shall, at its own expense, cause its books to be examined bi-annually by an auditor who shall be a person duly qualified as such in terms of section 194 of the Companies Act, which auditor shall then issue a certificate that such examination has been performed and that, on the evidence presented in the seller’s books of account, the payments made accord with the rate prescribed.

(5) The seller shall furnish the Fund with such certificate within seven working days of the audit being completed.

(6) Every seller who contravenes the provisions of subsection (4) or (5) shall be liable to a civil penalty not exceeding P10, 000.

(7) Where the seller fails to comply with the provisions of subsection (4) or (5), the Fund shall carry out the audit of the seller’s books and secure the audit certificate at the seller’s expense, which expense shall be paid by the seller immediately upon the delivery of the audit certificate to the seller.

(8) The format for the audit shall be as prescribed by regulations.

(9) Where monies are due in terms of subsection (2), but have not been paid into the Fund within the period of time stipulated therein, interest at three per cent per month or part thereof shall accrue thereon and shall become immediately payable to the Fund.

(10) Every person who is not resident in Botswana who drives a motor vehicle into Botswana shall pay, to the Fund, in such manner as may be prescribed, such motor vehicle third party cover as may be prescribed.

(11) Every person who contravenes the provisions of subsection (10) or makes any false representation in relation to any matter in respect of such levy shall be liable to a civil penalty not exceeding P5, 000.

18. (1) The Board shall cause to be kept proper books of account and records of all financial transactions, assets and liabilities of the Fund in respect of each financial year.

(2) The accounts of the Fund in respect of each financial year shall, within three months or such extended period after the end thereof as the Minister may direct, be audited annually by an independent auditor appointed for that purpose by the Board.

Act No. 32
of 2004

Accounts and
audit

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he or she considers it pertinent to comment, whether or not —

- (a) he or she has received all the information and explanations which, to the best of his or her knowledge and belief, were necessary for the performance of his or her duty as auditor;
- (b) the accounts and related records of the Fund have been properly kept;
- (c) the Fund has complied with all the financial provisions of this Act with which it is the duty of the Fund to comply; and
- (d) the statement of accounts prepared by the Fund was prepared on a consistent basis and represents a true and fair view of the transactions and financial affairs of the Fund.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the Fund by the auditor.

Annual report

19. (1) The Fund shall, within six months of the financial year, or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report on its operations during such year, together with the auditors' report and the audited accounts as provided for in section 18.

(2) The Minister shall lay, before the National Assembly, a copy of the report submitted to him or her in terms of subsection (1), within three months of its receipt by him or her, or, if the National Assembly is not then in session, as soon as possible after the commencement of the next session.

PART VII – *Liability of Fund*

Liability of Fund

20. (1) A claimant who has suffered loss as a result of injury to himself or herself, or as a result of the death or injury of any person, in either case caused by or arising out of the driving of a motor vehicle by any person, including the person who has suffered the said loss, shall, subject to the conditions, limitations and exclusions imposed by this Act, be entitled to claim the benefits prescribed by this Act from the Fund.

(2) Subject to the conditions, limitations and exclusions imposed by this Act, the benefits to be provided by the Fund shall be confined to a monetary award comprising one or more of the following —

- (a) the payment of income lost as a result of inability to work on account of injuries sustained in an accident, limited to such amount as may be prescribed, which sum shall be payable by instalments where the benefit is to pay for future income loss;
- (b) the payment of financial support lost by dependants as a result of the death of a person caused by an accident;
- (c) where the benefit paid is to pay for future loss of financial support under paragraph (b), such benefit shall be payable by such instalments, and be limited to such amount, as may be prescribed;
- (d) such assistance as may be necessary to enhance the quality of the post accident life of a claimant, which assistance shall be as determined by a health practitioner;

- (e) the payment of the cost of treatment rendered by any health practitioner, including consultation, treatment and hospitalisation costs;
 - (f) medical treatment or management by any health practitioner, including consultation and hospitalisation;
 - (g) rehabilitation by any health practitioner, including consultation, treatment and hospitalisation;
 - (h) payment of incidental expenses which shall include accommodation, transport and subsistence costs incurred or to be incurred during the treatment or rehabilitation of the claimant;
 - (i) payment of funeral expenses; and
 - (j) such other benefits as the Minister may, in consultation with the Board, prescribe.
- (3) Where medical treatment, management or rehabilitation is provided as an award —
- (a) it must be carried out on such terms and conditions as may be stipulated by the Fund in the award;
 - (b) where a claimant accepts such medical treatment, medical management or rehabilitation but requires reasonable changes thereto in terms of advice by a health practitioner then the Fund shall accordingly vary the offer of benefits even if it involves further expense.
- (4) Where a claimant is entitled to benefits in terms of this section, and has incurred costs in respect of accommodation for himself or herself the injured or deceased party in a hospital, or has incurred the costs of treatment, the rendering of a service, or goods supplied, the person providing such accommodation, treatment, service or goods may claim the amount due therefor directly from the Fund on such form as may be prescribed, and any such claim shall be subject to the provisions applicable to any claim in terms of this Act.

21. (1) All monies set aside by the Fund for the payment of future benefits as set out in subsection (3) shall be held in trust by the Fund in an interest bearing account or shall be otherwise invested until such monies are required for any purpose set out in this section.

Trusts

(2) A balance that remains from the money forming part of the trust shall accrue and revert to the Fund together with any interest thereon where the trust is for —

- (a) a future medical intervention and the beneficiary medically no longer requires the same undertaking or dies before utilising it; or
 - (b) loss of income or loss of support and the beneficiary dies before the end of the projected period of loss.
- (3) Where a claim for benefits under this Act —
- (a) includes a claim, in relation to an injured party, for the costs of —
 - (i) any future operation;
 - (ii) care;
 - (iii) treatment;
 - (iv) accommodation in a hospital; or

(v) the rendering of a service or the costs of goods to be supplied, the Fund shall furnish the claimant concerned with a written undertaking to pay for such costs as claimed, proved or agreed prior to such undertaking, and shall directly pay the assisting health practitioner after they have been incurred, and upon proof thereof or reimburse the claimant after they have been incurred, and upon proof thereof; or

(b) includes a claim for future loss of support projected over the anticipated period of loss, the Fund shall furnish the claimant concerned with a written undertaking to pay such amount as claimed, proved or agreed prior to such undertaking and shall thereafter pay the amount due in respect thereof by instalments payable monthly or yearly (whichever is more convenient for administration by the Fund) in accordance with such projection.

(4) Any person who, being a guardian, curator or caretaker, receives any monies on behalf of a claimant who has suffered loss in accordance with the provisions of section 20, commits an offence, if he or she fraudulently misapplies such monies for purposes other than those intended by this Act.

(5) Any person who contravenes the provisions of this section or who commits an offence under subsection (4) shall —

(a) be guilty of an offence and liable to a fine not exceeding P10, 000 or to imprisonment for a term not exceeding seven years, or to both;

(b) reimburse the beneficiary all monies misused by him or her; and

(c) be divested of his or her control over such trust funds.

Limitations of liability

22. (1) Notwithstanding the provisions of this Act, the total benefits payable by the Fund shall be limited —

(a) in respect of a claim by any one injured party, to such sum as may be prescribed by regulations; and

(b) in respect of a claim by any dependant of a person killed in a vehicle accident, to such sum as may be prescribed by regulations.

(2) Where the person injured is a minor below the age of seven, the limitations and exclusions pertaining to capacity or culpability shall not apply:

Provided that in the case of minors between the ages of seven and 14 years, the common law rules as to capacity or culpability shall apply.

(3) The medical and rehabilitation benefits shall only be payable upon production of a report from a qualified medical practitioner or other relevant expert indicating the requirement for medical treatment or rehabilitation.

(4) The benefits for loss of income otherwise payable by the Fund in respect of the driver of a vehicle involved in a vehicle accident shall be reduced by 50 per cent where it is proved that the blood alcohol level of such driver exceeded the limit prescribed in the Road Traffic Act.

(5) The benefits for loss of income otherwise payable by the Fund shall be reduced by 50 per cent where it is proved that the driver of a vehicle involved in a vehicle accident was under the influence of intoxicating liquor or drugs to the extent of being incapable of having proper control of such vehicle, in respect of any loss to such driver, or in respect of any loss to any passenger of such vehicle, where such passenger, was aware of, the condition of the driver.

(6) The benefits for loss of income otherwise payable by the Fund in respect of a person injured or killed in a vehicle accident shall be reduced by 25 per cent, where such person was —

- (a) at the time of the accident, not utilising a seat belt fitted to the vehicle;
- (b) not seated in or on a seat specifically designed for, and affixed permanently to, the vehicle; or
- (c) at the time of the accident, riding or being conveyed on a motor cycle and not wearing a safety helmet.

(7) Subsection (6) shall not apply where there is proof that —

- (a) the vehicle was not fitted with a seat belt and that the person injured had no alternative means of transport;
- (b) the vehicle was not fitted with a seat designed specifically for it, or that the seat in which the person injured was seated was not permanently affixed to the vehicle and the person injured had no alternative means of transport; or
- (c) the person injured was riding or being conveyed on a motor cycle on account of the fact that that person had no alternative means of transport, and that there was no helmet available for his or her use at the time in question.

(8) The benefits for loss of income payable by the Fund to the driver of a vehicle involved in a vehicle accident, shall be reduced by 50 per cent where the said driver was in unlawful possession or use of the vehicle, or where the vehicle was defective irrespective of whether or not such possession, use or defect contributed to the cause of the vehicle accident in question, and the same reduction shall apply to any passenger, in the vehicle, if it is proved that he or she knew of such unlawful possession or such defect or unlawful use.

(9) The benefits payable by the Fund in respect of medical expenses shall not exceed such sum, or sums, as may be prescribed or generally chargeable in terms of an accepted formal or informal tariff used in the medical profession in Botswana or such other country at which treatment or rehabilitation is received.

(10) The benefits for loss of income or loss of support payable by the Fund to any person, including a dependant, in respect of any vehicle accident shall, where such person is entitled to be compensated or paid in terms of any worker's compensation, industrial law, employment contract, monetary benefits or payments under any social security scheme, be limited to such sum as represents the difference, if any, between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act:

Provided that notwithstanding the provisions of any other law, where the Fund has paid the claimant such benefit without the necessary deduction the Fund shall be entitled to be reimbursed by such other authority or body, such sums as ought to have been paid to the claimant by such authority or body and where such sums were paid by such authority or body to the claimant the Fund shall be entitled to be reimbursed such sums by the claimant.

(11) The benefits payable by the Fund to any person in respect of any medical expenses or costs shall, where such person is entitled to be compensated or paid in terms of any medical aid scheme or contract or any workman's compensation, industrial law, employment contract, monetary benefits or payments under any social security scheme, be limited to such sum as represents the difference, if any, between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act:

Provided that notwithstanding the provisions of any other law, where the Fund has paid the claimant such benefit without the necessary deduction the Fund shall be entitled to be reimbursed by such other authority or body, such sums as ought to have been paid to the claimant by such authority or body and where such sums were paid by such authority or body to the claimant the Fund shall be entitled to be reimbursed such sums by the claimant.

(12) The benefits payable by the Fund in respect of any funeral, including burial, shall be limited to such sum as may be prescribed.

(13) Subject to the limitations and exclusions set out in this Act, every victim of a road traffic accident shall be entitled to be compensated by way of medical attention and rehabilitation, whilst any negligent party, irrespective of their contribution to the accident will similarly be entitled to medical attention and rehabilitative compensation but subject to a limit of P300, 000 or such amount as the Minister may by regulations prescribe until stabilization is achieved, whichever occurs first.

(14) The benefits for loss of income otherwise payable to a negligent party shall be reduced in direct proportion to their contribution to the occurrence of the accident:

Provided that a negligent driver or owner of a vehicle who is the subject of the right of recovery in terms of section 30 shall not be entitled to any benefit for loss of income.

(15) Subject to any limit prescribed, a maximum monthly income of P6, 000 shall apply to computation of loss of support or income.

(16) Where the claimant making a claim for loss of support or income cannot produce adequate proof of the income or lack thereof of the injured or deceased person, then the prevailing national minimum wage, as prescribed under the Employment Act, shall be used to assess the loss of support or income.

(17) Where the person injured or killed in a vehicle accident was a director of a private company or the beneficial owner of any other private enterprise, a tax certificate authenticated by the relevant tax authority shall be submitted to the Fund by the claimant, and if he or she fails to do so, subsection (16) shall apply.

(18) The limitations specified in this Act shall be exclusive of the costs incurred by the Fund associated with the making of the award of benefits.

23. (1) Notwithstanding the provisions sections of 20 and 21 and of any other law, the Fund shall not be obliged to pay any benefits —

Exclusions of liability

- (a) to any person, unless the claim has been instituted or prosecuted by such person personally, or on his or her behalf by —
 - (i) a person entitled to practise as an attorney in Botswana,
 - (ii) a person who is in the service of, or is a representative of, the Government of Botswana or a local authority by virtue of his or her office, or
 - (iii) his or her curator or legal guardian;
- (b) in respect of any loss in consequence of shock or other nervous or physical trauma induced in any person by virtue of that person witnessing, hearing of or becoming aware of any vehicle accident;
- (c) in respect of any loss comprising or involving loss of profits, outlay, or investment or comprising expense, including expense involving the recruitment, hiring or replacement of any member of staff or any employee in any company, organisation, enterprise or venture;
- (d) in respect of any claim by a driver of a vehicle, or by a dependant of such driver, in the absence of satisfactory proof that the vehicle accident in question was reported to the police within the period prescribed in the Road Traffic Act for the reporting of vehicle accidents, or was reported in terms of section 25, unless it is proved that the failure to so report was due to incapacity on the part of the driver as a result of the accident;
- (e) where the Fund has reasonable grounds to believe that a claim or the information and particulars concerning the vehicle accident, injury or death giving rise to the claim is false or misleading;
- (f) where the accident occurred in an area whose entry is restricted to the employees of a particular organization or body even if specific members of the public are on occasion allowed access to such areas in the course of business with or of such organization or body:
Provided that such restricted areas shall include —
 - (i) the confines of, or bordering on the confines of, an aerodrome, airfield or airstrip;
 - (ii) mining areas, including quarries in terms of the Mines, Quarries, Works and Machinery Act;
- (g) in respect of claims, for compensation, arising from a vehicle accident involving an unidentified vehicle, where the claimant fails to prove all the following additional conditions —

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- (i) proof, involving physical evidence, of a collision between the unidentified vehicle and the injured party or the deceased, or the vehicle in which either was travelling or being conveyed at the time of the accident,
- (ii) proof of reasonable steps taken to identify the vehicle in question, and
- (iii) proof that the collision in question was reported to the police as soon as was reasonably possible.

(2) A visitor to Botswana who, whilst in Botswana, suffers loss as a result of personal injury caused by a vehicle accident, shall, subject to the limitations and exclusions, be entitled to only medical and rehabilitation benefits set out in this Act only whilst he or she is in Botswana.

(3) Such visitor shall not be entitled to the benefits for loss of earning and neither shall the dependants of that visitor be entitled to any loss of support benefits under this Act nor shall any claimant be paid any funeral costs for the burial of such visitor.

(4) For the purposes of this section a “visitor” has the meaning assigned to it in the Immigration Act.

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Claimant's
other rights
reserved

24. An award of compensation to any person in terms of this Act shall be without prejudice to any other claim which such person may have against any other person arising out of the same occurrence:

Provided that the claim shall first be made against the Fund and any subsequent claim shall not include any compensation already awarded by the Fund.

Responsibility
to report
accidents

25. (1) The owner, and the driver if he or she is not the owner, of a vehicle involved in a vehicle accident shall report, in such form as may be prescribed, such vehicle accident to the Fund as soon as is reasonably possible after such accident, and, in any event, within a period of 14 days after such accident, giving full details of the date, time and place, and the vehicles and persons involved:

Provided that where, due to reasonable cause, such as the incapacitation of the owner or driver of the vehicle as a result of the accident, the report of the accident is made subsequent to the 14 days from the date of the accident, the report shall be accepted if made within a reasonable time after the recovery of the owner or driver.

(2) Any owner or driver who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P500 or, to imprisonment for a term not exceeding 30 days or to both.

Procedure for
making claims

26. (1) A claim for compensation against the Fund shall be made in such form as may be prescribed and shall include all duly completed medical reports and such other relevant information and particulars concerning the vehicle accident, injury or death giving rise to the claim as is required on such form or as may be required in terms of the regulations made under this Act.

(2) Any claim made in terms of subsection (1) shall be delivered by hand or registered post to the offices of the Fund and, where delivery is by hand, the receipt thereof, together with the date of such receipt, shall be duly acknowledged in writing by the person to whom it is delivered.

(3) At any time after receiving a claim for compensation in terms of subsection (1), the Fund shall be entitled to request the claimant or any other person —

- (a) to submit, at the expense of the Fund, to a medical examination or examinations by medical practitioners appointed by the Fund;
- (b) to answer any questions put by a representative of the Fund on any matter raised as an issue in the claim;
- (c) to provide a written sworn statement on any matter raised as an issue in the claim; and
- (d) to furnish copies of any documents, plans, drawings, photographs or X-ray photographs which the claimant relies on in his or her claim for benefits:

Provided that the request shall constitute a notice of the Fund's intention to invoke any or all of its rights in terms of this section upon the lapse of 45 days from the date of the request.

(4) Where any person, being a claimant, refuses, declines, neglects or fails to cooperate with the Fund in respect of any of the matters set out in subsection (3), such person shall be deemed to be in breach of this section and the claim shall stand repudiated without prejudice to the claimant's rights to re-lodge the claim, subject to the rules regarding prescription set out in any enactment.

(5) Where the Fund has requested any person, not being the claimant, to furnish it with such information as is set out in subsection (3), and such person refuses, declines, neglects or fails to cooperate with the Fund, such person shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for term not exceeding 30 days or to both.

(6) Any person who wilfully makes a false claim or produces false or misleading information or particulars concerning the vehicle accident, injury or death giving rise to the claim for compensation shall be guilty of an offence and shall be liable to a fine not exceeding P5,000, or to imprisonment for a period not exceeding 12 months, or to both.

27. (1) Legal proceedings to enforce any claim under this Act may be instituted in a court of competent jurisdiction upon the expiry of a period of six months after completion of the procedures set out in section 26:

Legal
proceedings

Provided that such proceedings may be instituted at any time after the Fund has made a final determination on the claim subject to the limitations and provisions of section 29.

(2) Where the claimant disputes the offer of benefits awarded by the Fund, any such legal proceedings shall be by way of review, and in such event the claimant shall first submit a written statement to the Fund setting out the reasons for dissatisfaction or complaint to which the Fund shall respond within 14 days.

(3) In all other instances legal proceedings shall be by way of action either for an order directing the Fund to make a determination on the claim, or where the Fund has repudiated liability on the claim, for an order declaring the claimant entitled to benefits and directing the Fund to thereafter award benefits in accordance with the provisions of this Act.

(4) In any legal proceedings the Fund itself, as represented by its servants, shall be entitled to act on its own behalf and to appear in any court and to sue out, serve and receive service of process.

(5) For the purposes of this section and section 29, a final determination shall mean either a notice conveying an offer of settlement by the Fund to the claimant or a notification repudiating liability.

Order for
interest or
costs by court

28. Where, in accordance with a claim made in terms of this Act, a court makes an order for compensation against the Fund —

- (a) the court shall not make an award of interest payable on any sum due unless payment in satisfaction of the order is not made by the Fund within a period of 14 days after such order; and
- (b) in making an order for costs the court shall take into consideration any written offer in settlement of the claim made by the Fund prior to the issue of the summons, but evidence of such offer shall not be admissible for such purpose until after judgment on the issue of liability.

Prescription of
right to claim

29 (1) Notwithstanding the provisions of any other law relating to the prescription of claims, but subject to the provisions of subsections (2) and (3), the right to claim compensation from the Fund shall become prescribed upon the expiration of a period of three years calculated from the date of the vehicle accident giving rise to the claim.

(2) The prescription of a claim under this Act shall not run against any person —

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- (a) whilst such person is a minor;
- (b) whilst such person is detained as a patient in terms of the provisions of the Mental Disorders Act or mentally disordered in terms of the said Act; or
- (c) whilst such person is suffering from a mental disability due to the effects of the injuries sustained in the vehicle accident giving rise to the claim:

Provided that in such event the onus to prove such mental disability shall lie with the person alleging it.

(3) Where a claim has been submitted in accordance with the provisions of section 26, the running of prescription shall be suspended for a period of 180 days calculated from the date of dispatch, by the Fund to the claimant, or claimant's agent, of a notification —

- (a) repudiating liability; or
- (b) conveying an offer of settlement:

Provided that the said 180 day period may be extended by mutual agreement between the Fund and the claimant, or his agent, which agreement shall not take effect unless it is reduced to writing.

(4) Where no claim has been submitted to the Fund within the period of three years referred to in subsection (1), or where the claimant's claim has otherwise prescribed, the court may grant the claimant concerned the right to institute an action for the award of compensation in accordance with the provisions of this Act:

Provided that —

- (i) it is satisfied that special circumstances exist as to the reason for the claim having become prescribed;
- (ii) the application is brought not later than three months after the claim became prescribed; and
- (iii) the claimant provides security for costs to the satisfaction of the court.

(5) The right to institute any action granted in terms of subsection (4) shall be exercised within a period of three months from the date on which such right is granted, failing which such right shall lapse.

30. Notwithstanding the provisions of any other law, where the Fund has paid any sum as compensation in terms of this Act, it shall have the right to recover such sum from the person who caused the vehicle accident giving rise to the claim in question, if at the time of such vehicle accident that person —

Right of recovery

- (a) was under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of a vehicle;
- (b) was driving the vehicle recklessly;
- (c) was driving the vehicle without being the holder of a valid driving licence;
- (d) was driving a defective vehicle and such defect caused or contributed to the cause of the vehicle accident;
- (e) was driving a stolen vehicle knowing, or ought to have known, that it was stolen; or
- (f) being the owner, custodian or lawful possessor of the vehicle, permitted the vehicle to be driven in any of the circumstances set out in paragraphs (a), (b), (c) and (d) hereof.

31. (1) For the purposes of this Act, a vehicle which is propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control or apparent control of the said vehicle or animal.

Evidence and presumptions

(2) For the purposes of this Act, a person who has parked a vehicle at any place shall be deemed to be the driver of that vehicle, and if, as a result of gravity the said vehicle moves from that place, that said person shall be deemed to be the driver of the said vehicle whilst it is so moving, and at the place where it comes to rest.

(3) Whenever a vehicle has been parked or left at any place, it shall, for the purposes of this Act, and until the contrary is proved, be presumed that the said vehicle was so parked or left by the owner thereof.

(4) Whenever it is shown that a vehicle involved in a vehicle accident was equipped with a seat belt it shall be presumed, until the contrary is proved, that such seat belt was in proper and efficient working order.

(5) Whenever it is proved that the blood alcohol level of any person, alive or dead, exceeded such limitation as may be prescribed under the Road Traffic Act or the regulations thereto, it shall be presumed that such person was under the influence of liquor to such an extent as to be incapable of having proper control of a vehicle.

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(6) No agreement or undertaking by the Fund to pay compensation or any sum of money in respect of any claim shall be enforceable in any court unless in addition thereto, liability has accrued to the Fund in terms of this Act and there has been no error in computation of the offer.

PART VIII – *Miscellaneous Provisions*

Regulations

32. The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and in particular but without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters —

- (a) anything required by this Act to be prescribed and the manner in which any form so prescribed shall be completed;
- (b) the powers and duties which may be exercised or performed in connection with the administration of this Act by such person or persons as the Minister may designate;
- (c) after consultation with relevant stakeholders, prescribe a tariff of fees to regulate the medical care, accommodation, treatment, goods or services provided in any hospital.

Repeal of
Cap. 69.02

33. The Motor Vehicle Accident Fund Act (hereafter referred to as “the repealed Act”) is hereby repealed.

Savings

34. (1) All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) All rights, obligations, assets and liabilities which have accrued to the Fund in terms of the repealed Act shall, upon this Act coming into force, simultaneously pass and accrue to the Fund and be dealt with in terms thereof.

Transitional
provisions

35. Notwithstanding the repeal effected under section 33, the provisions of this Act shall not apply to vehicle accidents which occurred prior to this Act coming into force, and any claims in respect of such vehicle accidents shall be dealt with in terms of the repealed Act, which shall continue to have force and effect in respect of such claims.

PASSED by the National Assembly this 24th day of August, 2007.

E. MPOFU,
Clerk of the National Assembly.