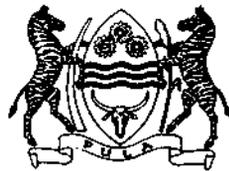


MOTOR VEHICLE INSURANCE ACT, 1974

No. 26



of 1974

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. Registration of insurance companies
4. Registered companies obliged to insure
5. Insurance tokens
6. Insurance of certain motor vehicles belonging to motor dealers
7. Stamp duty
8. Circumstances justifying refusal to insure
9. Application for magisterial order to compel a registered company to insure
10. Appeals against magistrate's decision
11. Liability arising from insurance
12. Demand and summons in respect of claim for compensation
13. Direct payment and recovery of certain incidental expenses
14. Claim for compensation lies against insurance company only
15. Right of recourse by insurer
16. Use of insured motor vehicle in manner not contemplated when insurance was effected
17. Unauthorized insurer bound by undertaking
18. Termination of insurance
19. Agreements as to supplementary payments of premiums or refunds
20. Prohibition against driving uninsured motor vehicles
21. Means of identifying insured vehicles
22. Security in lieu of insurance
23. Giving information of accident to insurer and third party
24. Certain provisions of motor vehicle laws to apply in connexion with insurance
25. Regulations
26. Repeal of Cap. 170 and saving

An Act to provide for compensation for certain loss or damage caused unlawfully by means of motor vehicles and for matters incidental thereto

Date of Assent: 9.12.74

Date of Commencement: On Notice 1.1.75. 55/12/74

ENACTED by the Parliament of Botswana.

Short title
and com-
mencement

1. This Act may be cited as the Motor Vehicle Insurance Act, 1974, and shall come into operation on such date as the Minister may, by order published in the Gazette, appoint.

Inter-
pretation

2. (1) In this Act, unless the context otherwise requires —
“insurance company” means a person who or an association of persons which is entitled to carry on insurance business in Botswana and which has established domicilium citandi et executandi in Botswana;

“insurance period” means the period from the 1st January in any year to the 31st December next following;

“insurance token” means a token of insurance issued under the provisions of section 5;

“insured motor vehicle” means a motor vehicle insured by means of a declaration of insurance issued in terms of section 4 or 6 relating to that particular vehicle;

“magistrate” means any person empowered to preside over a subordinate court of the first class;

“motor dealer” means a person who, as a business or trade, manufactures, assembles, repairs or deals in motor vehicles;

“motor vehicle” means any vehicle designed or adapted for propulsion or haulage on a road by means of any power (not being exclusively human or animal power) without the aid of rails, and includes any trailer of such a vehicle, but does not include a vehicle weighing not more than 230 kg. which is specially constructed for the use of a person who suffers from a physical defect or disability, and which is designed to carry only one person;

“owner”, in relation to —

(a) a motor vehicle which a motor dealer has in his possession during the course of his business and which may, in terms of any law relating to the licensing of motor vehicles, not be driven or used on a public road except under the authority of a motor dealer’s licence of which the motor dealer concerned is the holder, means that motor dealer;

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

- (c) a motor vehicle leased under an agreement of lease for a period of at least 12 months, means the lessee concerned;
- “registered company” means, subject to the provisions of section 3 (4), an insurance company which has been named by the Minister in a notice under section 3 (1) as an insurance company which is willing to undertake the insurance of motor vehicles under this Act and which has not notified the Minister in terms of section 3 (2) that it will no longer undertake such insurance and is not the subject of a notice under section 3 (3);
- “reward”, with reference to the conveyance of any person in or upon a motor vehicle, does not include any reward rendering such conveyance illegal in terms of any provision of the Road Traffic Act, 1972;
- “specifically insured”, in relation to a motor vehicle, means insured by means of a declaration of insurance issued in terms of section 4, which relates to that particular motor vehicle;
- “tariff”, in relation to a registered company, means that company’s tariff of insurance premiums submitted to the Minister and published in the Gazette in accordance with the provisions of section 3;
- “trailer” does not include an agricultural implement not designed or adapted for the conveyance of persons or goods.

43 of 1972

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

(3) For the purposes of this Act a person who has placed or left a motor vehicle at any spot shall be deemed to be driving that motor vehicle while it moves from that spot as a result of gravity, or while it is stationary at that spot or at a spot to which it moved from the first-mentioned spot as a result of gravity.

(4) Whenever any motor vehicle has been placed or left at any spot, it shall, for the purposes of this Act, be presumed, until the contrary is proved, that such vehicle was placed or left at such spot by the owner thereof.

3. (1) If during the month of October in any year an insurance company has notified the Minister in writing that it is willing to undertake the insurance under this Act of all classes of motor vehicles and has submitted with that notification a tariff of its premiums for such insurance the Minister shall, subject to the provisions of subsection (4), in the month of November in the said year, publish in the Gazette a notice of the fact that the said company is willing to undertake such insurance as aforesaid, and in that notice set forth the company’s aforesaid tariff of premiums.

Registration
of insurance
companies

(2) An insurance company which has notified the Minister in any year in terms of subsection (1) may in the month of October in any subsequent year notify the Minister in writing that it will no longer undertake the insurance of motor vehicles under this Act and the Minister shall thereupon in the month of November in the said year publish in the Gazette a notice that the said company will no longer insure motor vehicles under this Act.

(3) If a registered company becomes incompetent to carry on the insurance of motor vehicles under this Act the Minister shall as soon as possible publish in the Gazette a notice of that fact, and upon publication of such notice any motor vehicles insured with that company under this Act shall cease to be so insured with effect from the day following the date of publication of such notice.

(4) If a registered company has failed to comply with any provision of this Act or with any condition or direction imposed or given by or under this Act or any regulations made hereunder the Minister may, after notice in writing to such company, publish in the Gazette a notice that such company is no longer entitled to undertake the insurance of motor vehicles under this Act as a registered company and, from the date of the publication of such notice in the Gazette, the company in question shall cease to be a registered company except for the purposes of any insurance undertaken by it before that date.

Registered
companies
obliged to
insure

4. (1) Subject to the provisions of section 8, a registered company shall be obliged to insure under this Act any particular motor vehicle whose owner applies in a prescribed form to the company for the insurance of that motor vehicle over the whole of an insurance period for that motor vehicle or over the remaining part of such an insurance period reckoned as from a date specified in the application not being earlier than the date on which such application is actually made to the registered company, and who pays or tenders to the company the premium for such insurance in accordance with the company's tariff:

Provided that a registered company shall not be obliged to effect such insurance if the application therefor is made earlier than a date 30 days before the commencement of the period over which the insurance is to extend.

(2) Such insurance shall be effected by means of a written declaration of insurance which the registered company shall issue to the applicant.

(3) Such a declaration shall set forth —

- (a) such particulars of the insured motor vehicle as may be necessary to identify it;
- (b) a statement that the registered company has insured the said vehicle; and
- (c) the duration of the insurance, which shall extend from the date on which the insurance is to take effect to the end of the insurance period for the motor vehicle in question, but subject to the provisions of sections 18 and 20.

(4) If an applicant for the insurance of a motor vehicle under this Act makes a false statement in respect of any material particular in his application, which he knows to be false, he shall be guilty of an offence and liable to a fine of R100.

(5) If a registered company fails to fulfil any obligation imposed upon it by this section it shall be guilty of an offence and liable to a fine of R100.

5. (1) When a registered company issues to the owner of a motor vehicle a declaration of insurance in terms of section 4, it shall issue to him together with that declaration an insurance token, in the prescribed form for each insurance period, and any such declaration or insurance token issued by a registered company shall be *prima facie* proof that the motor vehicle to which it relates has been duly insured by that company under this Act.

(2) A registered company shall, together with any declaration of insurance issued to a motor dealer as provided in section 6, issue to him, in respect of every motor vehicle licence held by him in connexion with his motor dealer's licence referred to in that section, a duly completed insurance token, in the prescribed form, for the relevant insurance period, and any such declaration or insurance token issued by a registered company shall be *prima facie* proof that the motor vehicle to which it relates has been duly insured by that company under this Act.

(3) The Minister shall cause forms for such tokens to be printed and to be issued to any registered company at its request.

(4) If it is proved that any insurance token or token of identity issued in connexion with any motor vehicle in accordance with the provisions of this Act or any regulations made hereunder has been lost or destroyed, or if any such token which has been defaced or of which the text has become illegible, is surrendered, a duplicate thereof may be issued.

6. The provisions of section 4 shall *mutatis mutandis* apply in connexion with an application made by a motor dealer for the insurance of all motor vehicles of which he is the owner in connexion with his business as a motor dealer and which under any law relating to the licensing of motor vehicles may under the authority of a motor dealer's licence be driven or operated on a road or street or in any other place to which the public has access, and when so driven or operated may display dealers' identification plates:

Provided that the declaration of insurance issued by the registered company concerned to the applicant in respect of such motor vehicles as aforesaid shall not refer to any particular motor vehicle but to all such motor vehicles, and upon the issue of such a declaration of insurance the registered company shall be deemed to have insured under this Act every such motor vehicle which is not insured by means of a declaration of insurance relating specifically to that motor vehicle.

Stamp duty

7. Notwithstanding anything to the contrary contained in any law relating to stamp duties, the stamp duty on every declaration of insurance issued in terms of section 4 or section 6 shall be 10 cents.

Circumstances justifying refusal to insure

8. (1) When the owner of a motor vehicle has applied to a registered company for the insurance of that motor vehicle under this Act, or when a motor dealer has applied to a registered company for the insurance under this Act of all motor vehicles referred to in section 6 of which the dealer is the owner in connexion with his business as a motor dealer, and in either case the company has reasonable grounds to believe that the applicant, while driving any motor vehicle, or any person, while driving any motor vehicle belonging to the applicant, has unduly endangered the safety of the public, or that the applicant or any member of his household or any person in his employ is likely to endanger unduly the safety of the public if he drives a motor vehicle, the registered company concerned may refuse to insure the motor vehicle in question, or the motor vehicles in question, which the applicant owns in connexion with his business as a motor dealer, as the case may be, unless the applicant gives the company an undertaking in writing, that he will not, during the period for which the insurance is to be effected, drive any motor vehicle to which the desired insurance is to relate (if the applicant himself is alleged to have endangered or to be likely to endanger the safety of the public, as aforesaid), or permit any other named person who is alleged to have endangered the safety of the public or to be likely to endanger the safety of the public as aforesaid, to drive any motor vehicle to which the desired insurance is to relate.

(2) If such an applicant as is mentioned in subsection (1) who has given such an undertaking as aforesaid, drives a motor vehicle or permits any person to drive a motor vehicle in breach of his undertaking he shall be guilty of an offence and liable to a fine of R100.

(3) When the owner of a particular motor vehicle has applied to a registered company for the insurance under this Act of that motor vehicle, the company may refuse to insure that vehicle if the company has reasonable grounds to believe that the motor vehicle is not roadworthy, or, if the company doubts its roadworthiness, the company may demand that the applicant submit the motor vehicle for examination and test to a person indicated by the company at any place upon which the parties may agree, or, failing such agreement, any place indicated by the company in the town or village in which the applicant resides, or, if he resides outside a town or village, at any place indicated by the company in the principal town of the district in which the applicant resides.

(4) If the applicant has failed to comply with the company's demand, the company may refuse to insure the motor vehicle in question (irrespective of whether it is or is not roadworthy) until the applicant has complied with that demand.

9. (1) When a registered company has refused an application for insurance under this Act, otherwise than under section 8 (4), the applicant may apply in writing to the magistrate of the district in which the applicant resides (if he applied for the insurance of a particular motor vehicle) or in which the applicant carries on business as a motor dealer (if he applied for the insurance of all motor vehicles which he owns in connexion with that business) for an order to compel the company concerned to effect the insurance in question.

Application
for magisterial
order to
compel
a registered
company to
insure

(2) The application shall be supported by an affidavit or affidavits in which the facts upon which the application is based are set forth.

(3) If the magistrate is of the opinion that the application is *prima facie* well founded, he shall forthwith cause to be delivered or to be sent by registered post to the registered company concerned (which is hereinafter in this section called "the respondent") a copy of the application and of every affidavit submitted in support thereof, and a notice calling upon the respondent to show cause, at a time stated in the notice, which shall be not earlier than 7 days after the date upon which the respondent received the notice, and at a place mentioned in the notice, why he shall not be ordered to effect the insurance in question. The magistrate shall, immediately after the delivery or despatch of the notice to the respondent, cause a copy of the notice to be delivered or to be sent by registered post to the applicant or to a person whom he has indicated as his representative.

(4) At the time and place mentioned in the notice the magistrate shall enquire into the allegations of the applicant, and at the enquiry (at which either party to the proceedings shall be entitled to representation by his attorney or counsel) the magistrate shall hear such relevant evidence and arguments as either party may submit and he shall record all such evidence.

(5) The law relating to the summoning, swearing, examination and cross-examination of witnesses shall *mutatis mutandis* apply in connexion with any person whose testimony either party to the aforesaid enquiry desires to submit to the magistrate, and the law relating to contempt of a subordinate court shall apply as if the enquiry were a civil trial in a subordinate court, and for the purposes of the law relating to perjury such an enquiry shall be deemed to be proceedings in a court of law.

(6) If, at the conclusion of the enquiry, the magistrate is not satisfied that the respondent was justified under section 8 in refusing the applicant's application for insurance, he shall order the respondent, with a period defined in the order, to effect the insurance in question on payment, by the applicant, of the premium payable for such insurance and if the respondent fails to comply with that order he shall be guilty of an offence and liable to a fine of R100.

(7) If, at the conclusion of the enquiry, the magistrate is satisfied that the respondent was justified under section 8 in refusing the applicant's application for insurance, he shall refuse the application.

(8) The magistrate may order either party to the proceedings to pay any costs incurred by the other party in connexion with the enquiry and those costs shall be taxable as if they were costs incurred in connexion with civil proceedings in a subordinate court.

Appeals
against
magistrate's
decision

10. (1) When a magistrate has made an order under section 9, the respondent, or when a magistrate has refused an application under the said section, the applicant, may appeal against the order or refusal, as the case may be, to the High Court, *mutatis mutandis* in the same manner as if the enquiry in question had been a civil suit between the parties concerned in the subordinate court of the district in which the enquiry in question was held, and the High Court shall have jurisdiction to hear the appeal and in so doing it shall have the powers which it has in hearing an appeal against a decision of the subordinate court in a civil suit.

(2) An appeal under subsection (1) shall not suspend any order of a magistrate against which the appeal is brought, and if the High Court has set aside an order under section 9 (6) a declaration of insurance mentioned in section 4, which was issued by the appellant in terms of that order, shall remain in force for a period of 3 days as from the end of the day on which the said order was set aside (unless it expired by effluxion of time within the said period) and at the end of the said period the said declaration of insurance shall lapse, unless it has been confirmed during the said period by the former appellant.

(3) The former respondent in such appeal shall, within the said period of 3 days, return to the former appellant the declaration of insurance and the insurance token issued to him as a result of an order under section 9 (unless the former appellant has confirmed the declaration of insurance as aforesaid) and if he fails to comply with the provisions of this subsection he shall be guilty of an offence and liable to a fine of R50.

Liability
arising from
insurance

11. (1) A registered company which has insured or is deemed to have insured a motor vehicle in terms of section 4 or 6 shall be obliged to compensate any person whatsoever (in this section called "the third party") for any loss or damage which the third party has suffered as a result of —

(a) any bodily injury to himself;

(b) the death of or any bodily injury to any person,

in either case caused by or arising out of the driving of the insured motor vehicle by any person whatsoever at any place in Botswana during the period over which the insurance extends, if the injury or death is due to the negligence or other unlawful act of the person who drove the motor vehicle (hereinafter in this section called "the driver") or of the owner of the motor vehicle or his servant in the execution of his duty:

Provided that —

(i) the registered company shall not be obliged to make good under this section any loss or damage for which

neither the driver of the motor vehicle nor the owner thereof would have been liable if section 14 had not been enacted;

- (ii) where the loss or damage is suffered as a result of bodily injury to or the death of an employee of the driver or owner of the motor vehicle and the third party is entitled to compensation under the Workmen's Compensation Proclamation in respect of such injury or death — Cap. 149
- (aa) the liability of the registered company to that third party shall, subject to the provisions of subparagraph (bb), be limited to the sum representing the difference between the amount which that third party could, but for the provisions of this subparagraph, have claimed from the company or the amount of R8 000 (whichever is the lesser) and any lesser amount to which that third party is entitled by way of compensation under the said Proclamation;
- (bb) the total liability of the registered company in connexion with any one occurrence to pay compensation in terms of subparagraph (aa) to third parties so entitled shall be limited to the sum of R40 000 irrespective of the number of such employees whose bodily injuries or deaths were caused by or arose out of that occurrence;
- (cc) the registered company shall not be liable under the said Proclamation for the amount of the compensation to which any such third party is entitled thereunder, without, however, any liability of the company to pay costs awarded against it in any legal proceedings being affected by anything in this paragraph contained;
- (iii) the registered company shall not be obliged to compensate as aforesaid any person who has suffered any loss or damage as a result of bodily injury to or the death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed otherwise than for reward and otherwise than in the course of the business of the driver or owner of the motor vehicle in question and otherwise than in the course of his employment as servant of the driver or owner, in or upon that motor vehicle, or was in the act of entering or mounting that vehicle for the purpose of being so conveyed, or was in the act of alighting from that vehicle after having been so conveyed;

(iv) the liability of the registered company in connexion with any one occurrence to pay compensation to a third party for any loss or damage which is the result of any bodily injury to, or the death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed for reward or in the course of the business of the driver or owner of the motor vehicle in question, or in the case of an employee of such driver or owner in respect of whom subparagraph (ii) does not apply, in the course of his employment, in or upon that motor vehicle or was in the act of entering or mounting that vehicle for the purpose of being so conveyed or was in the act of alighting from that vehicle after having been so conveyed, shall be limited to the sum of R8 000 in respect of any bodily injury to, or the death of, any one such person or to a sum of R40 000 in all in respect of any bodily injury to, or the death of, any number of such persons (but in either case exclusive of the cost of recovering the said compensation).

(2) (a) The right to claim compensation under subsection (1) from a registered company shall become prescribed upon the expiration of a period of two years as from the date upon which that claim arose:

Provided that prescription shall be suspended during the period of 60 days referred to in section 12 (2).

(b) Notwithstanding the provisions of section 25 of the Workmen's Compensation Proclamation, no action under subsection (1) of that section for the recovery of any amount which under that Proclamation is required to be paid to the third party in connexion with the occurrence in question shall after the expiration of the said period of 2 years referred to in paragraph (a) be instituted against the registered company:

Provided that if the recovery of any such amount has been debarred under this paragraph, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount in question.

(3) Any action to enforce any such claim may be brought in any court of otherwise competent jurisdiction within whose area of jurisdiction the occurrence which caused the injury or death took place.

Demand and summons in respect of claim for compensation

12. (1) A claim for compensation under section 11 shall be set out on the prescribed form and in the prescribed manner and shall, accompanied by such medical report or reports as may be prescribed, be sent by registered post or delivered by hand to the registered

company at its registered office or local branch office, and the registered company shall, in the case of delivery by hand, at the time of the delivery acknowledge receipt thereof and of the date of such receipt in writing.

(2) No such claim shall be enforceable by legal proceedings commenced by a summons served on the registered company before the expiration of a period of 60 days from the date on which the claim was sent or delivered, as the case may be, to the registered company as provided in subsection (1).

13. (1) Where the obligation of a registered company to compensate any third party under section 11 includes a liability for costs which have been incurred in respect of the accommodation of any person in a hospital or nursing home or of any treatment or service rendered or goods supplied to any person —

Direct
payment and
recovery of
certain
incidental
expenses

- (a) the registered company shall, if the amount of the compensation payable by it has been determined in any manner, pay such part of that amount as represents such costs due to the person who provided the accommodation or treatment or rendered the service or supplied the goods (in this section referred to as "the supplier"), direct to the supplier who shall be entitled to recover the said part from the company without any cession of action;
- (b) the supplier shall, if the said amount has not been determined and the registered company has not in terms of any agreement been released from its obligation to compensate the third party in respect of such costs, be entitled without any cession of action to recover from the registered company so much of the said costs so due as the third party is entitled to recover from it.

(2) The right of action conferred by subsection (1) (b) may be exercised by the supplier by intervening in any legal proceedings instituted by the third party or, if no such proceedings have been instituted and subject *mutatis mutandis* to the provisions of section 12, by instituting legal proceedings at any time at which such proceedings may be instituted by the third party, and shall not, after it has been so exercised, be affected by any agreement whereby the registered company is released from its obligation to compensate the third party in respect of such costs.

(5) Where —

- (a) any person has claimed compensation under section 11 from a registered company; and
- (b) the compensation claimed could, if the company were liable for the payment thereof, have included any costs referred to in subsection (1); and

- (c) the company has, without admitting any obligation to compensate such person under that section, entered into an agreement to make any payment in respect of such claim whereby it has been released from any such obligation; and
- (d) the supplier has not, at the date of such agreement, exercised his right in respect of such costs in the manner prescribed by subsection (2),

the registered company shall, subject to the provisions of subsections (4) and (5), pay to the supplier the amount of such costs incurred prior to the said date and due to the supplier or the amount of R200, whichever is the lesser.

(4) If the registered company has in such manner as may be prescribed given notice that it has entered into the agreement referred to in subsection (3), it shall not in terms of that subsection be obliged to pay any amount in respect of such costs to any supplier who has not lodged a claim in writing with the registered company prior to the expiration of a period of 60 days after the date of the notice.

(5) If claims whereof the amounts are not in dispute and exceed in the aggregate the sum of R200, have been lodged with the company as contemplated in subsection (4) by two or more suppliers, the company shall pay to each claimant an amount which bears the same ratio to the sum of R200 as the amount of his claim bears to the amount representing the aggregate of the amounts of all such claims.

Claim for
compensation
lies against
insurance
company only

14. When a person is entitled under section 11 to claim from a registered company any compensation in respect of any loss or damage resulting from any bodily injury to or the death of any person caused by or arising out of the driving of a motor vehicle insured under this Act by the owner thereof or by any other person with the consent of the owner, the first-mentioned person shall not be entitled to claim compensation in respect of that loss or damage from the owner or from the person who drove the vehicle as aforesaid, or if that person drove the vehicle as a servant in the execution of his duty, from his employer unless the registered company concerned is unable to pay the compensation.

Right of
recourse
by insurer

15. (1) When a registered company has paid any compensation under section 11 or 12 it may, subject to the provisions of subsections (2) and (3), without having obtained a formal cession of the right of action, recover from the owner of the insured motor vehicle in question, or from any person whose negligence or other unlawful act caused the loss or damage in question, so much of the amount paid by way of compensation as the third party mentioned in section 11 could, but for the provisions of section 14, have recovered from the owner or from the person whose negligence or other unlawful act caused the loss or damage, as the case may be, if the registered company had not paid any such compensation.

(2) The registered company shall not have any such right of recourse against the owner of the insured motor vehicle —

(a) in any case in which, at the time of the occurrence which gave rise to the payment of the compensation, the motor vehicle was being driven by a person other than the owner, unless —

(i) the said person was under the influence of intoxicating liquor or of a drug to such a degree that his condition was the sole cause of the said occurrence, and the owner allowed him to drive the motor vehicle knowing that he was under the influence of intoxicating liquor or of a drug;

(ii) the said person was driving the motor vehicle contrary to an undertaking given under section 8 (1), and the owner allowed him to drive the motor vehicle knowing of the undertaking or order;

(iii) the said person was driving the motor vehicle without holding a licence issued under the written law relating to the licensing of drivers of motor vehicles, which he was required to hold, or the said person, being the holder of a learner's licence issued under such law, failed, while he was driving the motor vehicle, to comply with the requirements or conditions of such learner's licence, and the owner allowed him to drive the motor vehicle knowing that he did not hold such a licence or that he failed to comply with the requirements or conditions of such learner's licence, as the case may be;

(iv) the owner or his representative, in the application for the declaration of insurance under which the compensation was paid, knowingly made a false statement in respect of any particular which would have justified the company in refusing to issue the declaration of insurance without an undertaking referred to in section 8 (1) in regard to a named person therein referred to, and the loss or damage has been caused by the negligence or other unlawful act of the said person while he was driving the motor vehicle with the consent of the owner;

(b) in any case in which, at the time of the said occurrence, the said motor vehicle was being driven by the owner, unless —

(i) he was under the influence of intoxicating liquor or of a drug to such a degree that his condition was the sole cause of the said occurrence;

(ii) he was driving the motor vehicle contrary to an undertaking given under section 8 (1);

- (iii) he was driving the motor vehicle without holding a licence issued under the written law relating to the licensing of drivers of motor vehicles or, being the holder of a learner's licence issued under such law, failed while he was driving the motor vehicle to comply with the requirements or conditions of such learner's licence;
 - (iv) he or his representative, in the application for the declaration of insurance under which the compensation was paid, knowingly made a false statement in respect of any particular which would have justified the company in refusing to issue the declaration of insurance without an undertaking referred to in section 8 (1) in regard to the owner himself; or
- (c) in any case in which neither paragraph (a) nor paragraph (b) applies, unless —
- (i) the owner or his representative, in the said application, knowingly made a false statement in respect of any particular which would have justified the company in refusing, on any ground referred to in subsection (3) or (4) of section 8, to issue the declaration of insurance, and the unroadworthiness of the motor vehicle was the sole cause of the said occurrence; or
 - (ii) the owner has failed to comply with any requirement of section 23 (1) with reference to the said occurrence (the onus of proving that the registered company concerned could not reasonably within 14 days after the occurrence have been informed of the occurrence and of the place and time thereof, shall be on the owner concerned), or has knowingly furnished the said registered company with false information relating to the said occurrence.

(3) The provisions of subparagraphs (i), (ii) and (iii) of paragraph (b) and of subparagraph (ii) of paragraph (c) of subsection (2) shall apply *mutatis mutandis* in respect of any right of recourse by the said registered company under subsection (1) against any person who, at the time of the occurrence which gave rise to the payment of the compensation, was driving the insured motor vehicle with the consent of its owner.

(4) When any person, state, government or body of persons referred to in section 20 (3) has paid compensation under section 11 or 13, he or it may, without having obtained a formal cession of the right of action, recover the amount of compensation so paid from any person whose negligence or other unlawful act caused the loss or damage in question.

(5) The provisions of subsection (4) shall not apply in respect of any right of recourse against any person who at the time of the occurrence which gave rise to the payment of compensation was driving the motor vehicle in the circumstances described in subparagraph (i) or (iii) of paragraph (a) of subsection (2).

16. (1) Before the owner of a specifically insured motor vehicle, during the period covered by the insurance, uses that vehicle or permits it to be used in such a manner or for such a purpose or in such circumstances or after it was altered in such a manner that as a result of such use or alteration it would fall into a class of motor vehicles for which a higher insurance premium than the premium which the owner paid for the insurance is provided in the tariff of the registered company concerned, the said owner shall give notice in writing to the registered company concerned of the proposed change of use or alteration.

Use of insured motor vehicle in manner not contemplated when insurance was effected

(2) Before a motor dealer, whose motor vehicles which he owns in connexion with his business as a motor dealer are insured under this Act, during the period covered by the insurance, increases the number of those vehicles or increases the volume or alters the nature of his business in such a manner that, if he has insured those vehicles after the said increase or alteration, he would have had to pay a higher insurance premium under the tariff of the registered company concerned, that the premium which he paid; or drives or permits to be driven on a road or street or in any other place to which the public has access any number of such motor vehicles in excess of the number stated in his application referred to in section 6, he shall give notice in writing to that company of the proposed increase, alteration or excess.

(3) When the owner of a motor vehicle has notified a registered company in terms of subsection (1) with reference to a motor vehicle which will, after the proposed change of use or alteration, fall into a class of motor vehicles for which a higher insurance premium is provided or when a motor dealer has notified a registered company in terms of subsection (2), he shall, subject to the provisions of section 21, be liable to pay to the company the difference between the premium actually paid and the aforesaid higher premium in respect of the remainder of the insurance period in question reckoned as from the date upon which the occurrence, of which notice was given, takes place.

(4) If any person whose duty it is to comply with any provision of subsection (1) or (2) fails to comply therewith, he shall be guilty of an offence and liable to a fine of R100 and to imprisonment for 3 months, and he shall be liable to pay to the registered company concerned an amount equal to three times the difference between the insurance premium which he actually paid and any higher premium for the payment whereof he would have been liable if he had complied with the said provision.

(5) If a motor dealer whose motor vehicles which he owns in connexion with his business as a motor dealer are insured under this Act and who owns a motor vehicle which is not specifically insured, uses that vehicle or allows it to be used otherwise than in accordance with the provisions of any law relating to the use of motor vehicles under a motor dealer's licence, he shall be guilty of an offence and liable to a fine of R.100 and shall be liable to pay to the registered company with whom his motor vehicles are insured as aforesaid, a sum equal to three times the amount which is payable under the company's tariff for a full year's insurance under this Act in respect of the class of motor vehicle in question.

(6) When a specifically insured motor vehicle has, during the period covered by the insurance, been altered in such a manner or is, during that period, to be used in such a manner or for such a purpose or in such circumstances that, as a result of that alteration or use, it has fallen or will fall into a class of motor vehicles in respect whereof a lower insurance premium is provided in the tariff of the registered company concerned, than the premium which was paid for the insurance of that vehicle, the company shall, subject to the provisions of section 19, refund to the owner of that vehicle at his request an amount equal to the difference between the premium actually paid and the aforesaid lower premium, in respect of the remainder of the insurance period for the said motor vehicle reckoned as from the date upon which that vehicle has fallen or will fall into the said lower-rated class of motor vehicles.

Unauthorized insurer bound by undertaking

17. When any person who is not a registered company has issued to the owner of a motor vehicle a declaration of insurance relating to that vehicle in terms of section 4 or 6, that person shall be deemed, for the purposes of sections 11, 13 and 15, to be a registered company and to have insured that motor vehicle under this Act.

Termination of insurance

18. (1) The insurance of a motor vehicle which is insured under this Act shall terminate —

- (a) on the expiration of the current insurance period for that motor vehicle;
- (b) in the circumstances mentioned in section 16 (4);
- (c) when the insured motor vehicle ceases permanently to be capable of being driven;
- (d) when the owner transfers his ownership in the motor vehicle to another person.

(2) When the owner of a specifically insured motor vehicle transfers his ownership therein to another person, he shall, before delivering the vehicle, remove therefrom the insurance token which was attached thereto in accordance with the provisions of section 21 and return that token to the registered company from whom he obtained it and inform the company of the name and address of the transferee.

(3) When the insurance of a specifically insured motor vehicle terminates otherwise than in terms of subsection (1) (a) the registered company concerned shall, subject to the provisions of section 19, refund to the owner of the motor vehicle an amount which bears the same ratio to the amount of the insurance premium paid, as the period reckoned from the date on which the insurance token is returned to that registered company to the termination of the insurance period in question bears to the whole insurance period:

Provided that, of the amount to be so refunded, not more than 25 cents may be retained by way of an office fee.

19. The owner of a motor vehicle and a registered company may by agreement validly supersede or vary the provisions of subsections (3) and (7) of section 16 and of section 18 (3) insofar as those provisions apply or may become applicable in connexion with any transaction between the parties concerned.

Agreements
as to supplementary
payments of
premiums or
refunds

20. (1) Subject to the provisions of subsection (2), no person shall, after a date to be fixed by the Minister by notice published in the Gazette, drive or permit any other person to drive a motor vehicle on a road or street or in any other place to which the public has access unless that motor vehicle is insured as provided in section 4 or 6

Prohibition
against
driving
uninsured
motor vehicles

(2) The provisions of subsection (1) shall not apply in connexion with a motor vehicle —

- (a) of which Government or the officially accredited representative of any government is the owner;
- (b) which is registered at a place outside Botswana in terms of a law in force at that place, if the person who drives or permits another person to drive the said vehicle has made such provision as may have been prescribed, to ensure that compensation will be paid for any such loss or damage as is mentioned in section 11 (1), which may have been caused by, or which may have arisen out of the driving of the said motor vehicle in Botswana by the owner thereof or by his servant or agent;
- (c) whose owner is the holder of a valid certificate of exemption mentioned in section 22 (1) in respect of the said motor vehicle; or
- (d) the owner of which the Minister has, by notice published in the Gazette, exempted from the provisions of that subsection.

(3) Any person who or any state, government or body of persons which is the owner of a motor vehicle (other than a motor vehicle mentioned in subsection (2) (b) to which the provisions of subsection (1) do not apply) which is not insured under this Act shall be liable *mutatis mutandis* in accordance with the provisions of sections

11, 12 and 13 for any loss or damage caused by or arising out of the driving of that motor vehicle by any person whatsoever at any place in Botswana, as if that person, state, government or body of persons were a registered company which has issued a declaration of insurance under section 4 with reference to that motor vehicle, but the foregoing provision of this subsection shall not detract from any right to recover compensation from any person for any such loss or damage which any person may have under any other law.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall, subject to the provisions of subsection (5), be liable to a fine of R100 and if he was, within a period of 3 years immediately preceding the date on which the offence was committed, convicted of contravening subsection (1) or the provision of any law in force before the commencement of this Act, which prescribed the effecting of insurance against claims for compensation in respect of any loss or damage caused by means of a motor vehicle, the court convicting him may suspend, for a period not exceeding 2 years, his licence to drive a motor vehicle or, if he does not hold such a licence, declare him to be disqualified for a period not exceeding 2 years from acquiring such a licence.

(5) If a person who has twice been convicted of an offence mentioned in subsection (4) or who has been convicted of both offences mentioned in subsection (4) is again convicted of contravening subsection (1) he shall be liable to a fine of R200 and to imprisonment for 6 months, and, if he holds a licence to drive a motor vehicle, it shall become void, and whether he does or does not hold such a licence he shall be disqualified for a period of 4 years from acquiring such a licence.

(6) If a court has, under subsection (4), suspended a licence to drive a motor vehicle or has convicted a person who has been disqualified under subsection (5) as a result of that conviction, the court shall direct the person concerned to produce that licence and shall cause the suspension or disqualification to be endorsed thereon, and if the said person without reasonable excuse fails to comply with that direction he shall be guilty of contempt of court:

Provided that, if a licence which has been suspended or whereof the holder has been disqualified as aforesaid, was issued at a place outside Botswana, the court shall cause to be endorsed thereon that it has become invalid in Botswana.

(7) When a court has taken any action under subsection (6) with reference to a licence issued in Botswana, the court shall cause notice of the suspension or disqualification to be given to the authority which issued the licence.

(8) If a licence to drive a motor vehicle has been suspended or the holder thereof has been disqualified under this section, such licence

shall, for the purposes of the provision of any written law relating to the licensing of owners or drivers of motor vehicles, be deemed to have been suspended or cancelled, as the case may be, under the said law and a disqualification under subsection (5) from acquiring a licence to drive a motor vehicle shall, for the purposes of that written law, be deemed to be a disqualification under that law from obtaining or holding any such licence.

21. (1) The owner of a motor vehicle to whom an insurance token relating to that vehicle has been issued in terms of section 5 (1), shall attach the token to the vehicle in the prescribed manner and shall keep it attached thereto throughout the duration of the insurance in connexion wherewith the token was issued, and the owner of a motor vehicle to whom an insurance token in respect thereof has been issued in terms of section 5 shall attach the token to such vehicle in the prescribed manner and keep it attached thereto while such vehicle is driven or operated on a road or street or in any other place to which the public has access, during the period of insurance in connexion wherewith the token was issued. If any owner fails to comply with any requirement of the preceding provisions of this subsection he shall be guilty of an offence and liable to a fine of R50.

Means of
identifying
insured
vehicles

(2) If it is proved that at a particular time a motor vehicle did not bear, in the prescribed manner, such an insurance token as aforesaid which relates to that motor vehicle, that motor vehicle shall, for the purposes of section 20 (1), be deemed not to have been insured under this Act at that time, unless it is proved that the vehicle was in fact so insured at that time.

22. (1) For the purpose of being exempted from the provisions of section 20 (1), any person may deposit with the Minister —

Security
in lieu of
insurance

(a) a sum of R100 000 if he is to be exempted in respect of a motor vehicle designed for the conveyance of more than 8 persons, including the driver, which is used for the conveyance of persons for reward or in respect of two or more such vehicles; or

(b) a sum of R50 000 if he is to be exempted in respect of any other motor vehicle or two or more other motor vehicles,

or any security approved of by the Minister which is, in the opinion of the Minister, of a value of not less than R100 000 or R50 000, as the case may be, or any sum of money and such security which together are, in the opinion of the Minister, of a value of not less than R100 000 or R50 000, as the case may be, and thereupon the Minister shall, upon payment by the said person of the sum of R2, issue to him a certificate of exemption from the said provisions in respect of the class of vehicles in question. A person who has made such a deposit of a value of R100 000 shall be exempt in respect of all motor vehicles of which he is the owner.

(2) At the request of the holder of a valid certificate of exemption mentioned in subsection (1) (who is hereinafter in this section referred to as "a depositor") the Minister shall furnish him with a token of exemption from section 20 (1) for every motor vehicle which the depositor owns or proposes to acquire, on payment by the depositor of a fee of 25 cents for each such token.

(3) The said token shall be in the prescribed form and the person issuing it on behalf of the Minister shall inscribe thereon the particulars for which provision is made thereon.

(4) A depositor shall affix, in the prescribed manner, to every motor vehicle of which he is the owner and which is in use, a token mentioned in subsection (2) and shall keep it affixed thereto, and, before alienating or abandoning a motor vehicle bearing such a token, he shall remove the token and, as soon as may be thereafter, return it to the officer from whom he received it.

(5) A depositor who fails to comply with any requirement of subsection (4) shall be guilty of an offence and liable to a fine of R50.

(6) If, in the opinion of the Minister, the value of a deposit made in terms of subsection (1) has fallen below R100 000 or R50 000, as the case may be, the Minister shall direct the depositor concerned, by a letter delivered to him or by a registered letter sent through the post, to deposit a sum of money or further security to make up the deficiency and if the depositor fails to comply with that direction within a period of 10 days as from the date upon which the said letter was delivered or posted to him, his certificate of exemption mentioned in subsection (1) and every token of exemption mentioned in subsection (2) which was issued to him shall become void.

(7) If, in the opinion of the Minister, the value of any such deposit exceeds R100 000 or R50 000, as the case may be, the Minister shall, at the request of the depositor concerned, return to him so much of the deposit as exceeds the said sum.

(8) A depositor may substitute for any security which he has deposited in terms of subsection (1) or for any part thereof, any other security approved of by the Minister:

Provided that the total value of the deposit after the substitution is, in the opinion of the Minister, not less than R100 000 or R50 000, as the case may be.

(9) At the request of a depositor and upon the return by him of the certificate of exemption mentioned in subsection (1) and of every token of exemption furnished to him in terms of subsection (2), which he has in his possession, the Minister shall return his deposit to him, unless the Minister has reason to believe that any person has preferred against the depositor a *bona fide* claim for compensation for any loss or damage which the claimant may have suffered as a result of any bodily injury to himself or the death of or bodily injury

to any other person, which was caused by or arose out of the driving of a motor vehicle of which the depositor was the owner and that the said claim has not been satisfied, or unless the Minister has reason to believe that any person intends to prefer such a claim against the depositor. Upon the return of the deposit to the depositor, his exemption from the provisions of section 20 (1) shall cease and every token of exemption mentioned in subsection (2) which was issued to him shall become void.

(10) Subject to the provisions of subsection (9), the Minister shall hold a deposit made in terms of subsection (1) as security for the payment of compensation mentioned in section 20 (3) for which the depositor concerned may become liable and for any costs incurred in recovering such compensation, and no claim against the depositor other than a claim for such compensation and such costs shall be paid out of the said deposit, except insofar as its value exceeds R100 000 or R50 000, as the case may be.

(11) The manner in which such a deposit shall be made available for the payment of the compensation and costs mentioned in subsection (10) and the method of apportioning the deposit between different persons entitled to such compensation and costs shall be as prescribed.

(12) If a claim or part of a claim has been paid out of such a deposit in the prescribed manner and the value of the deposit is after such payment less than R100 000 or less than R50 000, as the case may be, the certificate of exemption mentioned in subsection (1) and every token of exemption mentioned in subsection (2) which was issued to the depositor concerned shall become void.

(13) When a certificate of exemption has become void, in terms of subsection (6) or subsection (12), the Minister shall direct the depositor concerned to return to him the said certificate and every token of exemption which is in his possession. If the depositor fails to comply with that direction he shall be guilty of an offence and liable to a fine of R50.

(14) The Minister shall invest any sum of money deposited in terms of subsection (1) or (6) in such manner as the Minister responsible for finance may approve and shall pay over to the depositor concerned the interest derived from such investment and any interest earned by any security other than money which he may have so deposited.

23. (1) When, as the result of the driving of a motor vehicle insured under this Act, any person other than the driver of that motor vehicle is killed or injured, the owner and the driver (if he is not the owner) of the motor vehicle shall, if reasonably possible, within 14 days after the occurrence inform the registered company which insured the vehicle of the occurrence and of the

Giving
information
of accident
to insurer
and third
party

place and time of the occurrence and shall furnish it with the name and address (if known) of any person who was killed or injured and of every person who was upon the vehicle in question at the time of the occurrence, with a description of any other vehicle involved in the occurrence with the name and address (if known) of the driver of every such other vehicle and of any other person who witnessed the occurrence and with any other reasonable information at his disposal in regard to the occurrence which the registered company may from time to time request him to furnish.

(2) When, as a result of the driving of a motor vehicle insured under this Act, any person other than the driver of that motor vehicle is killed or injured, the owner of the motor vehicle shall, at the request of any person or of the agent of any person who has suffered any loss or damage as a result of the death of the person so killed, or at the request of the person so injured (or at the request of his agent) or of any supplier entitled in terms of section 13 (1) (b) recover costs referred to in that section from the registered company or of the agent of such supplier produce to the person making the request the declaration of insurance whereby the motor vehicle was insured at the time of the occurrence in question, and a copy of any information which the said owner furnished to the registered company concerned in terms of subsection (1) (other than such information which the owner was not obliged to furnish except at the request of the registered company concerned) and permit the person who made the request to make a copy of the declaration of insurance and of any such information or take an extract therefrom.

(3) If the owner or driver of an insured motor vehicle which was involved in an occurrence mentioned in subsection (1) or (2) fails to comply, within a reasonable time after having become aware of the occurrence, with any requirement of subsection (1) or (2), he shall be guilty of an offence and liable to a fine of R50 unless he is unable to comply with such requirement and his inability is not due to his own action or default.

Certain provisions of motor vehicle laws to apply in connexion with insurance

24. The provisions of any written law in force in any area which deal with the production to a proper authority or the falsification, fabrication, alteration, defacement or improper use, in any such area, of licences, certificates, tokens or marks relating to motor vehicles shall *mutatis mutandis* apply in that area in connexion with the production, falsification, fabrication, alteration, defacement or improper use of a declaration of insurance, insurance token of exemption issued under this Act or a token issued in terms of any regulations made hereunder and, apart from any such provision, any person who attaches to a motor vehicle or who drives a motor vehicle to which is attached any such token as aforesaid which does not relate to that motor vehicle, or a false or a fabricated or altered

token, shall be guilty of an offence and liable *mutatis mutandis* to the penalties prescribed in subsections (4) and (5) of section 20.

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

- (a) prescribing anything required by this Act to be prescribed, and the manner in which any form so prescribed shall be completed or rendered;
- (b) the manner in which an insurance token shall be attached to and displayed on a motor vehicle;
- (c) prescribing the powers and duties in connexion with the administration of this Act which may be exercised or performed by such persons as the Minister may designate;
- (d) after consultation with the Minister for the time being responsible for health, prescribing the tariff of fees in respect of the accommodation of any person in a hospital or nursing home or of any treatment, services or goods supplied to any person which may be claimed under section 11 (1) or 13 from any registered company obliged under this Act to compensate such person for the costs of such accommodation, treatment, services or goods,

or prescribing or otherwise dealing with any matter which may in terms of any provision of this Act be prescribed or otherwise dealt with by regulation.

(2) Regulation made under subsection (1) may provide for penalties not exceeding a fine of R50 and imprisonment for 3 months for any contravention thereof or failure to comply therewith or with any order or direction given thereunder.

26. (1) The Motor Vehicle Insurance Proclamation is hereby repealed.

Repeal of
Cap. 170
and saving

(2) Notwithstanding the provisions of subsection (1) —

- (a) any declaration of insurance in force at the commencement of this Act which was issued under the Motor Vehicle Insurance Proclamation (hereby repealed) shall have the like effect as a declaration of insurance issued under this Act; and
- (b) any token, notice, agreement, order, direction, approval or document made or given, or anything done or deemed to have been done under the said Proclamation, shall, if still in force at the commencement of this Act, be deemed to have been made, given or done under this Act.

Passed by the National Assembly this 26th day of November, 1974.

I. P. GONTSE,
Clerk of the National Assembly.