

**[Motor Vehicles (Third Party Insurance) Act (Chapter 295)
consolidated to No 9 of 2002]**

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER No. 295.

Motor Vehicles (Third Party Insurance) Act.

Being an Act—

(a) . . . [Repealed]

(b) . . . [Repealed]

(c) to require that owners and drivers of motor vehicles be insured against liability in respect of the death of or bodily injury to persons caused by or arising out of the use of motor vehicles,

and for related purposes.

PART I.—PRELIMINARY.

1A. Compliance with Constitutional requirements.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

(a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and

(b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and

(c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and

(d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and

(e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and

(f) the right to reasonable privacy in respect of private and family life, communications with other persons and personal papers and effects conferred by Section 49 of the *Constitution*; and

- (g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*)—

- (h) taking account of the National Goals and Directive Principles (including in particular, the goal that Papua New Guinea should, among other things, be economically independent and its economy basically self reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organization) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, and the development of underprivileged or less advanced groups or areas; and
- (i) in order to protect the exercise of the rights and freedom of others; and
- (j) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution*—

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be—
 - (i) to facilitate and maintain the efficient and economical provision of compulsory third party motor vehicles insurance services (including provision of third party insurance coverage, claims assessment and determination and payment of basic protection compensation in appropriate circumstances); and
 - (ii) to maintain the peace and good order in Papua New Guinea, and each of those purposes and reasons is hereby also declared and described as—
 - (iii) a public purpose; and
 - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and
- (b) for the purposes of Section 53(2) of the *Constitution*, just compensation will be made on just terms for the compulsory taking of possession of property or the compulsory acquisition of an interest in or right over property in accordance with the terms set out in

Section 27A below and such terms will constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

1. Interpretation.

In this Act, unless the contrary intention appears—

"accident insurance business" means the business of undertaking liability under policies of insurance in respect of the happening of personal accidents (whether fatal or not), disease or sickness, or of any class of personal accidents, disease or sickness;

"annual pool account" . . . [Repealed]

"the Commissioner" means the Insurance Commissioner appointed under Section 5(1) of the *Insurance Act 1995*;

"the Committee" . . . [Repealed]

"driver" includes the rider of a motor cycle and a person for the time being in charge of a motor vehicle;

"fiscal year", in relation to the successor company, means a period of 12 months commencing on 1 January and ending on 31 December;

"the Fund" . . . [Repealed]

"former Fund" means the Motor Vehicles Insurance Fund in existence immediately prior to the commencement of the *Compulsory Third Party Motor Vehicles Insurance Industry Act 2002* and referred to in Section 32(1);

"ICCC" means the Independent Consumer and Competition Commission established under the *Independent Consumer and Competition Commission Act 2002*;

"insurance business" means the business of undertaking liability by way of insurance, including liability to pay damages or compensation contingent on the happening of a specified event, and includes any business incidental to insurance business, but does not include—

- (a) life insurance business; or
- (b) accident insurance business undertaken solely in connexion with life insurance business; or

- (c) pecuniary loss insurance business carried on solely in the course of carrying on banking business, and for the purposes of that business, by a bank within the meaning of the *Banks and Financial Institutions Act 2000*;

"insured motor vehicle" means a motor vehicle in relation to which there is in existence at all material times a third-party insurance cover;

"licensed insurer" . . . [Repealed]

"motor vehicle" means a motor car, motor carriage, motor cycle, motor truck, motor omnibus, motor tractor or other vehicle propelled wholly or partly by a volatile spirit or by steam, gas, oil or electricity, or by means other than human or animal power, and includes a trailer, but does not include a vehicle used on a railway or tramway;

"Motor Vehicles Insurance Ltd" means the company of that name (or any changed name) under the *Companies Act 1997* with company registration number 1-29221 or any amalgamated company resulting from an amalgamation of the company with one or more companies under the *Companies Act 1997*;

"owner", in relation to a motor vehicle means—

- (a) where a trader's plate is placed on the vehicle under Part VI. of the *Motor Traffic Regulation*—the person, firm or company to whom or to which the plate was issued; and
- (b) subject to Paragraph (c), where the vehicle is registered—the person registered as the owner of the vehicle; and
- (c) where a vehicle referred to in Paragraph (b) is sold or otherwise disposed of by the person registered as the owner of the vehicle, and he has given notice in accordance with Section 23(2) of the *Motor Traffic Regulation*—the purchaser; and
- (d) where the vehicle is not registered—the person who is entitled to the immediate possession of the vehicle, whether solely or jointly or in common with some other person;

"pecuniary loss insurance business" means the business of undertaking liability by way or insurance against—

- (a) risks of loss to the persons insured arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of their debtors to pay their debts when due; or
- (b) risks of loss to the persons insured arising from their having to perform contracts of guarantee; or
- (c) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them; or
- (d) risks of loss to the persons insured attributable to their incurring

unforeseen expenses;

"premium" means the amount received by the successor company or an agent of the successor company as consideration for the undertaking of a liability in the nature of insurance business in the country, whether—

- (a) the contract of insurance is entered into; or
 - (b) the certificate of insurance is issued; or
 - (c) the premium is paid or received,
- in the country or elsewhere;

"public street" means a street, road, lane, thoroughfare, footpath, bridge or place that is open to the public, or to which the public has or is permitted to have access, whether on payment of a fee or otherwise;

"registered" means registered under the *Motor Traffic Act*;

"the regulations" means any regulations made under this Act;

"regulatory contract" has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

"successor company" means—

- (a) in Part XII, the successor company nominated under Section 65; and
- (b) elsewhere in this Act (other than this definition)—
 - (i) for the period from 14 January to 31 December 1998 inclusive, the successor company nominated under Section 65; and
 - (ii) on and from 1 January 1999, Motor Vehicles Insurance Ltd or such other company as may be nominated under Section 72;

"the Superintendent" means the Superintendent of Motor Traffic appointed by the *Motor Traffic Act*;

"third-party insurance cover" means an insurance cover issued by the successor company or an agent of the successor company under this Act;

"the Trust" . . .

"this Act" includes the regulations;

"uninsured motor vehicle" means a motor vehicle (including a trailer) that is not an insured motor vehicle, but does not include a motor vehicle that is—

- (a) the property of the State or of any authority of the Government;

or

- (b) . . . [Repealed]
- (c) in respect of which persons are exempted by or under this Act from the provisions of Section 48.

2. Application.

(1) For the purposes of this Act, a motor vehicle in relation to which a permit under Section 11 of the *Motor Traffic Act* has been granted and is in force shall be deemed to be registered under that Act, when it is driven or drawn in accordance with that section and the permit.

(2) This Act does not apply to or in relation to a vehicle referred to in Subsection (1) when it is driven or drawn otherwise than in accordance with Section 11 of the *Motor Traffic Act* or the permit granted under that section in relation to it.

PART II.—MOTOR VEHICLES INSURANCE (P.N.G.) TRUST [Repealed]

3. Establishment of the Trust. [Repealed]

4. Constitution of the Trust. [Repealed]

5. Alternate directors of the Trust. [Repealed]

6. Chairman of the Trust. [Repealed]

7. Calling of meetings. [Repealed]

8. Procedure at meetings. [Repealed]

9. Disclosure of interest. [Repealed]

10. Vacation of office. [Repealed]

11. Powers of the Trust to deal with property. [Repealed]

12. Oath and affirmation of office. [Repealed]

13. **Functions of the Trust. [Repealed]**
14. **Powers of the Trust. [Repealed]**
15. **Delegation. [Repealed]**
16. **Provisions relating to secrecy. [Repealed]**
17. **Annual report. [Repealed]**
18. **Agents of the Trust. [Repealed]**
19. **Terms and conditions of Directors, etc. [Repealed]**

PART III.—THE GENERAL MANAGER [Repealed]

20. **Appointment, etc., of General Manager. [Repealed]**
21. **Vacation of office of General Manager. [Repealed]**
22. **Public Service rights of General Manager. [Repealed]**
23. **Functions of General Manager. [Repealed]**

PART IV.—THE SERVICE OF THE TRUST [Repealed]

24. **Appointment of officers. [Repealed]**
25. **Temporary and casual employees. [Repealed]**

PART V.—ROLE OF THE ICC.

26. **Compulsory Third Party Motor Vehicles Insurance is a regulated industry.**

The compulsory third party motor vehicles insurance industry is declared to be a regulated industry for the purposes of the *Independent Consumer and Competition Commission Act 2002*.

27. Functions of the ICCC.

The ICCC has (in addition to the functions it has under the *Independent Consumer and Competition Commission Act 2002*) the following functions:—

- (a) any functions that a regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002*, being a regulatory contract which relates to the compulsory third party motor vehicles insurance industry, contemplates will be performed by the ICCC for the purposes of that regulatory contract;
- (b) in consultation with the Commissioner, providing economic monitoring, control, inspection and regulation of the compulsory third party motor vehicles insurance industry;
- (c) in consultation with the Commissioner, ensuring that this Act is implemented with due regard to the public interest;
- (d) consulting, where appropriate, commercial, industrial and consumer organizations about any matter relating to the supply of compulsory third party motor vehicles insurance services.

27A. Powers of the ICCC.

The ICCC has (in addition to the powers it has under the *Independent Consumer and Competition Commission Act 2002*) the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions under this Act.

27B. ICCC's power to take over operations.

- (1) If—
 - (a) the successor company contravenes a condition of its licence issued under the *Insurance Act 1995* or any requirement of this Act or the *Insurance Act 1995*, or the successor company's licence ceases, or is to cease, to be in force; and
 - (b) it is necessary, in the ICCC's opinion, to take over the successor company's operations (or some of them) to ensure an adequate supply of compulsory third party motor vehicles insurance to owners and drivers of motor vehicles,

the Head of State, acting on advice, may make an order under this section.

- (2) Before an order is made under this section, the ICCC—
 - (a) shall give at least 30 days' notice of its intention to do so to the successor company, stating the grounds on which it intends to make

- the order; and
- (b) shall give the successor company an opportunity to make such written representations as the successor company thinks fit within such period (not being less than 14 days) as is specified in the notice.
- (3) The successor company may, within 30 days after notice of the order is given to it, appeal to the National Court whose decision is final.
- (4) The order under this section takes effect—
- (a) where no appeal is lodged against the order—on the date specified by the ICCC in the notice of the order; or
 - (b) where an appeal is lodged against the order and the appeal is dismissed—on the date specified by the National Court in the notice or order dismissing the appeal.
- (5) A notice of the order made under this section shall be published in the National Gazette.
- (6) An order under this section—
- (a) authorises the ICCC to take over the successor company's operations or a specified part of the successor company's operations; and
 - (b) may contain ancillary directions (and may, in particular, contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with).
- (7) A direction under Subsection (6)(b) operates to the exclusion of rights that are inconsistent with it.

27C. Appointment of operator.

- (1) If an order is made under Section 27B, the ICCC shall appoint a suitable person to take over the relevant operations on agreed terms and conditions.
- (2) A person appointed to take over the successor company's operations is referred to in this section as the "operator".
- (3) The successor company shall facilitate the take over of the relevant operations by the operator.
- (4) The operator may have access to the facilities and other property of the successor company for the purposes of carrying on the relevant operations.
- (5) A person, shall not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Part.

Penalty: A fine not exceeding K100,000.00.

- (6) A person, shall comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.

Penalty: A fine not exceeding K100,000.00.

(7) The ICCC may, in its absolute discretion and by instrument in writing, terminate the appointment of the operator and appoint such other suitable operator, on agreed terms and conditions, to take over such relevant operations or allow the successor company to resume control of such relevant operations.

28. ICCC is the principal regulator.

The ICCC, established under the *Independent Consumer and Competition Commission Act 2002*, is the principal regulatory agency in respect of the provisions of this Act, except those provisions relating to technical regulation, in the case of which the Commissioner is designated under the *Insurance Act 1995* to be the principal regulatory agency.

29. The ICCC and the Commissioner.

(1) Where the ICCC and the Commissioner are given concurrent functions or powers under this Act, the *Insurance Act 1995* or the *Independent Consumer and Competition Commission Act 2002*, the ICCC and the Commissioner shall carry out those functions and exercise those powers in consultation with each other.

(2) If the ICCC and the Commissioner, in carrying out their concurrent functions or exercising their concurrent powers are, after consultation, unable to agree, the views of the ICCC shall prevail.

(3) Any action taken by the ICCC shall not be open to challenge by reason that any consultation required by Subsection (1) had not taken place or was in any way defective.

30. ICCC subject to regulatory contract.

The ICCC shall not exercise any power in a manner that is inconsistent with the requirements of a regulatory contract that is in effect, where that regulatory contract relates to the provision of compulsory third party motor vehicles insurance coverage, and any exercise of a power that is inconsistent with such a regulatory contract is of no effect to the extent of the inconsistency.

31. Delegation.

(1) The ICCC may, by unanimous decision of all members of the ICCC and subject to any regulations made under this Section, delegate to any member, officer or committee of the ICCC or to any other person any of its functions and powers (except this power of delegation) under this Act.

(2) A delegation under Subsection (1)—

- (a) shall be in writing; and
- (b) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and
- (c) is revocable at will by resolution of the ICCC in writing; and
- (d) does not affect or prevent the performance of a function or the exercise of a power by the ICCC.

PART VI.—THE MOTOR VEHICLES INSURANCE FUND.

~~32. Establishment of the Fund.~~

32. Vesting of the former Fund in Motor Vehicles Insurance Ltd.

(1) For the purposes of this section, "former Fund" means the "Motor Vehicles Insurance Fund" established by Section 32, repealed and replaced by this section.

(2) The former Fund is, as of 1 January 2002, transferred to and absolutely vested in Motor Vehicles Insurance Ltd.

(3) For the avoidance of doubt, the vesting of the former Fund in Motor Vehicles Insurance Ltd pursuant to Subsection (2) shall not affect the rights of any person entitled to bring a claim under this Act against the successor company (including any claim against the successor company under Section 67).

33. Participation in the Fund. [Repealed]

34. Payments into the Fund. [Repealed]

35. Payments out of the Fund. [Repealed]

36. Remission of amounts to the successor company.

An agent of the successor company shall, on the last day of each month or at such other times as are agreed on between the successor company and the agent, remit to the successor company all amounts collected by it on behalf of the successor company.

37. Investment of former Fund and net premium income.

The former Fund vested in Motor Vehicles Insurance Limited pursuant to Section 32(2) and the net premium income of the successor company (exclusive of Government statutory charges and value added tax) may be invested—

- (a) in any securities or class of securities approved by the Minister for the purpose; or

- (b) on deposit with a licensed bank; or
- (c) in any manner authorized by Section 57 of the *Public Finances (Management) Act 1995*.

38. Distribution of excess and payment of deficiency. [Repealed]

39. Winding-up of the Trust. [Repealed]

PART VII.—FINANCE, ETC.

40. Percentage interest of licensed insurer in the Fund. [Repealed]

41. Bank accounts.

- (1) The successor company shall—
 - (a) open and maintain an account or accounts with a licensed bank; and
 - (b) maintain at all times at least one such account.

- (2) The successor company shall pay all its money into an account referred to in Subsection (1).

42. Minimum prudential standards.

- (1) Each of the successor company and any other company nominated under Section 72 to provide compulsory third party motor vehicles insurance coverage shall, at all times during the currency of a licence issued to it under the *Insurance Act 1995*—
 - (a) maintain a minimum amount of K4,000,000.00 in cash with a licensed bank in Papua New Guinea to meet its obligation to pay claims under this Act or the *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act* (Chapter 296); and
 - (b) maintain with the Bank of Papua New Guinea a deposit of money which amounts to not less than—
 - (i) K100,000.00; or
 - (ii) 10 per centum of its net premium income (exclusive of Government statutory charges and value added tax) of the previous financial year,whichever is the greater.

- (2) Any moneys deposited under Subsection (1) remain the property of the successor company or the nominated company (as the case requires) on whose

behalf the monies have been deposited and the successor company or the nominated company (as the case requires) is entitled to receive interest on the moneys so deposited.

(3) A deposit under Subsection (1) is security for the discharge firstly of the liabilities (including contingent liabilities) of the successor company or the nominated company (as the case requires) to meet claim payment obligations under this Act or the *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act* (Chapter 296) and is not applicable in the discharge of other liabilities of the successor company or the nominated company (as the case requires) until those first mentioned liabilities have been discharged or otherwise provided for to the satisfaction of the Commissioner.

(4) A deposit under Subsection (1) shall not be returned to the successor company or the nominated company (as the case requires) after the date on which it ceases to be licensed under the *Insurance Act 1995* to provide compulsory third party motor vehicles insurance unless the Commissioner is satisfied that the liabilities (including contingent liabilities) of the successor company or the nominated company (as the case requires) have been discharged or otherwise provided for to the satisfaction of the Commissioner.

43. Private treaty loans. [Repealed]

44. Accounts and records.

The successor company shall—

- (a) cause to be kept proper accounts and records of its transactions and affairs to recognized international standards; and
- (b) do all things necessary to ensure that—
 - (i) all payments out of its money are properly authorized and correctly made; and
 - (ii) adequate control is maintained over its assets and other assets in its custody, and over the incurring of liabilities by it.

45. Annual pool accounts. [Repealed]

46. Audit.

(1) The successor company shall arrange for an inspection and audit of the accounts and records of the successor company by a qualified company auditor at least once in each year.

(2) Section 176 of the *Companies Act*, with the necessary modifications, applies to the successor company and the auditor of the successor company.

47. Reports to participating licensed insurers. [Repealed]

PART VIII.—THIRD-PARTY INSURANCE COVER.

48. Insurance by owners of motor vehicles.

(1) Subject to this Act, the owner of a motor vehicle must at all times during the registration and renewal of registration of the motor vehicle indemnify himself and keep himself indemnified with the successor company against the sums specified in Section 49(2)(a) for which he or his estate may become liable by way of damages for the death of or bodily injury to a person caused by, or arising out of the use of, the motor vehicle.

Penalty: A fine not exceeding K200.00.

(2) The third-party insurance cover shall not be revoked during the period of registration of the insured motor vehicle unless the registration or renewal of registration, as the case may be, is sooner cancelled or surrendered.

49. Manner of effecting third-party insurance.

(1) In order to comply with the requirements of this Act, a third-party insurance cover shall—

(a) in the area of the Central Traffic Registry—be issued by the successor company to the owner of a motor vehicle on the owner lodging with the Superintendent—

- (i) an application for registration or re-registration, as the case may be; and
- (ii) the appropriate amount of insurance premium in respect of the motor vehicle; and

(b) in any other area—be issued by the successor company to the owner of a motor vehicle on the owner obtaining from an agent of the successor company a certificate in a form approved by the successor company stating that the appropriate amount of insurance premium in respect of the motor vehicle has been paid.

(2) A third-party insurance cover issued under Subsection (1)—

(a) where it is issued in relation to a particular motor vehicle, insures the owner of the motor vehicle and any other person who at any time drives the motor vehicle, whether with or without the authority of the

owner, jointly and each of them severally against all liability incurred by the owner and the other person jointly or by either of them severally in respect of the death of or bodily injury to a person caused by, or arising out of the use of, the motor vehicle, to an amount not exceeding—

- (i) K150,000.00 in respect of the death of or bodily injury to any one person in any one case; and
 - (ii) K750,000.00 in the case of any one accident or series of accidents arising out of the one event; and
- (b) becomes effective on the date of registration or re-registration, as the case may be, of the motor vehicle in respect of which it is issued; and
- (c) continues in force—
- (i) where the registration is renewed within 15 days after the expiry of the preceding period of registration—until the date of renewal; and
 - (ii) in any other case—until 15 days after the date on which the registration expires.

50. Payment of third-party premiums.

The Superintendent shall not register or re-register a motor vehicle unless—

- (a) in the case of a motor vehicle situated in the area of the Central Traffic Registry—he has received the amount of third-party insurance premium payable in respect of the motor vehicle; and
- (b) in any other case—he has received a certificate issued under Section 49(1)(b) in respect of the motor vehicle.

51. Exclusion of certain liabilities.

A third-party insurance cover issued under this Act does not extend to insure the owner or driver of the motor vehicle against—

- (a) a liability to pay compensation, under a law in relation to workers' compensation, to a worker employed by him; or
- (b) a liability incurred by him under an agreement, unless the liability is one that would have arisen in the absence of the agreement.

52. Change of ownership.

A third-party insurance cover enures in favour of the owner for the time being and the driver of the vehicle, notwithstanding any change in the ownership of the vehicle.

53. Duties of owner and driver.

(1) Where the death of or bodily injury to a person is caused by, or arises out of the use of, a motor vehicle in respect of which a third-party insurance cover is in force—

- (a) the owner must, as soon as practicable after the occurrence that resulted in the death or injury, or if he was not then driving the motor vehicle as soon as practicable after he became aware of the occurrence, give a written notification of the occurrence, with particulars as to the date, nature and circumstances, to the successor company; and
- (b) if, at the time of the occurrence, the driver of the motor vehicle was not the owner of the motor vehicle, the driver must as soon as practicable give a written notification—
 - (i) to the owner of the motor vehicle; or
 - (ii) to the successor company, of the occurrence, with particulars as to the date, nature and circumstances; and
- (c) the owner and the driver, or either of them, must give such information, in addition to the information referred to in Paragraphs (a) and (b), and take such steps, as the successor company reasonably requires, whether or not a claim has been made in respect of the death or bodily injury; and
- (d) the owner or the driver must not, without the written consent of the successor company, make an offer, promise, payment or settlement, or an admission of liability, in respect of the death or bodily injury; and
- (e) the owner or the driver must immediately give to the successor company a written notification of every notice of intention to make a claim given to him, and of every claim made or action brought against him, in respect of the death or bodily injury; and
- (f) where the owner becomes aware that notice of intention to make a claim has been given to, or a claim has been made or an action brought against, the driver in respect of the death or bodily injury, he must immediately give to the successor company a written notification of the notice or claim; and
- (g) the owner or the driver must not, without the written consent of the successor company, enter on, or incur expense in relation to, litigation in respect of any liability against which he is insured under the third-party insurance cover.

Penalty: A fine not exceeding K100.00.

(2) It is a sufficient compliance with a requirement of Subsection (1) as to the giving of a notification by the owner or the driver if the notification is given by a person on his behalf.

(3) A notification given under this section is not subject to discovery and is not admissible in evidence in any proceedings (whether or not for an offence against this or any other Act) except proceedings for failure to comply with this section.

(4) This section does not apply where—

- (a) the person suffering the death or bodily injury was the owner of the motor vehicle; and
- (b) the motor vehicle was at the time of the occurrence being driven by the owner.

PART IX.—CLAIMS AND ACTIONS FOR DAMAGES.

54. Claims for damages.

(1) Subject to Subsection (2), any claim for damages in respect of the death of or bodily injury to any person caused by, or arising out of the use of—

- (a) a motor vehicle insured under this Act; or
- (b) an uninsured motor vehicle in a public street; or
- (c) a motor vehicle on a public street where the identity of the motor vehicle cannot after due inquiry and search be established,

shall be made against the successor company and not against the owner or driver of the motor vehicle and, subject to Subsection (5), any proceedings to enforce any such claim for damages shall be taken against the successor company and not against the owner or driver of the motor vehicle.

(2) Subsection (1) does not apply to a claim for damages made under the *Motor Vehicles (Third Party Insurance) (Basis Protection Compensation) Act*.

(3) A claim under Subsection (1)(a) or (b) may be made, and any proceedings to enforce such a claim may be taken, notwithstanding that the owner or driver of the motor vehicle—

- (a) is dead; or
- (b) cannot be found; or
- (c) is the spouse of the person whose death, or to whom bodily injury, has been caused.

(4) The inquiry and search under Subsection (1)(c) for the purpose of establishing the identity of the motor vehicle may be proved orally or by the affidavit of the person who made the inquiry and search.

(5) Where an award of damages is made by a court in respect of a claim under Subsection (1) that exceeds the amount of liability of the successor company specified in Section 49(2)(a), the court shall, at the time when it makes the award, determine against whom (if anyone) the excess shall be awarded, and an award under this subsection operates as a judgement against that person for all purposes.

(6) No action to enforce any claim under this section lies against the successor company unless notice of intention to make a claim is given by the claimant to the successor company within a period of six months after the occurrence out of which the claim arose, or within such further period as—

- (a) the Commissioner; or
- (b) the court before which the action is instituted,

on sufficient cause being shown, allows.

(7) For the purposes of this Act, if the owner of a motor vehicle or his estate becomes liable, by way of damages, in respect of a motor vehicle for the death of or bodily injury to a person who is a worker within the meaning of any law relating to workers compensation, compensation under that law in respect of which a person is entitled to be indemnified by the owner or his estate is damages.

55. Representation of owner and driver in action for compensation.

Where a claim for damages under Section 54(1) is made against the successor company, a copy of the claim shall, where possible, be served on the owner, and where the owner is not the driver also on the driver, and the owner and driver may be represented on the hearing of the claim as though they were parties to the action.

56. Reimbursement of the successor company. [Repealed]

57. Recovery by the successor company in certain cases.

- (1) Subject to Subsection (2), the successor company may recover—
- (a) any amount properly paid by the successor company in satisfaction of a claim under Section 54(1)(b) or (c) or, judgement recovered against it under such a claim; and
 - (b) the amount of any costs and expenses properly incurred by it in relation to any such claim or to the proceedings in which judgement was obtained,

as a debt from the person who, at the time of the occurrence out of which the claim arose or in respect of which the judgement was obtained, was the owner of the motor vehicle, or, where at the time of the occurrence some other person was driving the vehicle, from the owner and the driver jointly or from either of them severally.

- (2) It is a sufficient defence in any proceedings under this section—
 - (a) against the owner (whether severally or jointly with the driver)—if he establishes to the satisfaction of the court before which the action is instituted that, at the time of the occurrence, some other person was driving the motor vehicle without his authority; or
 - (b) against the driver of an uninsured motor vehicle (whether severally or jointly with the owner)—if he establishes to the satisfaction of the court before which the action is instituted that, at the time of the occurrence—
 - (i) he was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing, and did in fact believe, that he had such authority; and
 - (ii) he had reasonable grounds for believing, and did in fact believe, that the motor vehicle was an insured motor vehicle.

(3) Any amount properly paid by the successor company in satisfaction of a claim under Section 54(1)(a) or a judgement recovered against it under such a claim. and the amount of any costs and expenses properly incurred by it in relation to any such claim or to the proceedings in which judgement was obtained, may, where the driver of the vehicle in relation to which the claim was made or the judgement recovered has been convicted of an offence under Section 40 of the *Motor Traffic Act* relating to the incident from which the claim arose, be recovered by the successor company as a debt from the driver of the vehicle.

(4) . . . [Repealed]

(5) . . . [Repealed]

58. Settlement, etc., by the successor company.

- (1) The successor company—
 - (a) may undertake the settlement of a claim against it or any other person under this Act; and
 - (b) shall indemnify a person insured under this Act against all costs and expenses incidental to proceedings under this Act to the relevant amount specified in Section 49(2)(a).

(2) The person referred to in Subsection (1) shall sign all such warrants and authorities as the successor company requires for the purpose of enabling it to have the defence or conduct of any proceedings referred to in that subsection and, in default of his so doing, the court in which the proceedings are taken or had may order that they be signed by the successor company on his behalf.

(3) Nothing said or done by or on behalf of the successor company in connexion with the settlement of any such claim or the defence or conduct of any such proceedings shall be regarded as an admission of liability in respect of, or in any way prejudices, any other claim, action or proceedings arising out of the same occurrence.

PART X.—OFFENCES.

59. Use of uninsured vehicle.

(1) Subject to this section, a person who uses, or causes or permits any other person to use, an uninsured motor vehicle is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding 12 months, or both.

(2) It is a defence to a charge of an offence against Subsection (1) if the defendant proves to the satisfaction of the court hearing the case that at the time when the vehicle was used he had reasonable grounds for believing, and in fact believed, that the vehicle was insured under this Act.

60. Soliciting instructions, etc.

- (1) A person who, directly or indirectly, for personal gain—
- (a) solicits instructions or authority to act on behalf of any other person in respect of the making or commencement of a claim or action for damages or compensation for the death of or bodily injury to a person caused by, or arising out of the use of, a motor vehicle, or in respect of negotiation, compromise or settlement of any such claim or action; or
 - (b) on behalf of any other person, makes or commences, or causes to be made or commenced, a claim or action for damages or compensation referred to in Paragraph (a), or negotiates, settles or compromises any such claim when made or commenced,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Subsection (1)(b) does not apply to a lawyer properly acting in the course of his profession.

(3) An agreement to pay to a person who contravenes Subsection (1) money for work done or services rendered in respect of a matter referred to in that subsection is void, and money so paid is recoverable by action brought in a court of competent jurisdiction by the person who paid it.

61. Saving of other remedies.

No proceedings or conviction for an offence against, contravention of or neglect or failure to comply with this Act affects any remedy to which a person aggrieved or injured by the act or omission to which the proceedings or conviction relates is entitled against the successor company, or against the person who committed the act or was responsible for the omission.

62. Avoidance of certain contracts.

(1) In this section, "public motor vehicle" means a public motor vehicle as defined in the *Motor Traffic Act*.

(2) A contract for the conveyance of a passenger in a public motor vehicle is void so far as it purports to negative or to restrict the liability of the successor company or a person in respect of claims that may be made against the successor company or the person in respect of the death of or bodily injury to the passenger while being carried in, entering or alighting from the vehicle, or purports to impose a condition with respect to the enforcement of any such liability.

63. Statement by owner as to insurance.

(1) The owner of a motor vehicle in respect of which a claim is made in relation to a death or bodily injury arising out of or caused by the use of the motor vehicle shall, on demand by or on behalf of the person making the claim, state whether or not he is or was insured under this Act, or would have been so insured if the successor company had not avoided or cancelled the certificate.

(2) A person who, without reasonable excuse, fails to comply with Subsection (1), or wilfully makes a false statement in reply to a demand under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K500.00.

PART XI.—MISCELLANEOUS.

64. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out

or giving effect to this Act.

PART XII.—TRANSFER OF UNDERTAKING OF THE SUCCESSOR COMPANY, ETC.

65. Minister may appoint transfer date and nominate company.

The Minister may, by notice in the National Gazette—

- (a) appoint a day (hereinafter referred to as "the transfer date"); and
- (b) nominate a company or companies incorporated under the *Companies Act* (Chapter 146) (hereinafter referred to as "the successor company"), for the purposes of this Part.

66. Shares in successor company on transfer date.

(1) The successor company shall, on the transfer date, be wholly owned by the State.

(2) . . . [Repealed]

67. Transfer of assets, etc., of Trust to successor company on transfer date.

On the transfer date—

- (a) all assets held by, and all obligations and liabilities imposed on, the successor company are transferred to the successor company; and
- (b) all contracts and agreements (including contracts of employment) entered into, made with or addressed to the successor company are, to the extent they were immediately before the transfer date binding on and enforceable against the successor company binding on and of full force and effect against or in favour of the successor company as if the successor company had been a party to them or bound by them or entitled to the benefit of them; and
- (c) all licences held by the successor company are transferred to, and deemed to be held by, the successor company for the unexpired period of such licences; and
- (d) any arbitration, action or proceeding pending or existing by, against or in favour of the successor company does not abate or discontinue, but may be prosecuted, continued or enforced by, against or in favour of the successor company.

68. Formal transfer of land, etc., unnecessary.

Where any asset falling to be transferred under Section 67(a) is land registered under the *Land Registration Act* (Chapter 191), the Registrar of Titles shall,

without formal transfer and without fee, on application by the successor company, enter or register the successor company in the register kept under the Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

69. Privatization Commission empowered to sell shares in Motor Vehicles Insurance Ltd.

The Privatization Commission established under the *Privatization Act* 1999 is, on and in accordance with the terms of the direction of the National Executive Council, empowered to sell the shares of Motor Vehicles Insurance Ltd.

70. Tax and duties.

(1) For the purposes of the *Income Tax Act* 1959, the successor company shall be deemed to have acquired the assets, obligations and liabilities referred to in Section 67(a) at a value equal to their written down book value in the books of the successor company as at the transfer date.

(2) The successor company shall be entitled to tax depreciation and to any other applicable tax deduction in respect of assets, obligations and liabilities referred to in Section 67(a) as if the successor company had owned such assets, rights and liabilities since such assets, rights and liabilities were first acquired by the successor company.

(3) Shares issued to the Minister responsible for finance matters on behalf of the State shall be deemed to have been fully paid and issued for valuable consideration other than cash.

(4) The transfer to the successor company of the assets, rights and liabilities specified in the allocation statement shall be exempt from any stamp duty, fee, tax, charges or other duty payable under any Act, including without limitation, the *Land Registration Act* (Chapter 191).

(5) No registration fee shall be payable in respect of the authorized capital of the successor company, and no tax or duty shall be payable on the issue of shares, to the Minister responsible for finance matters on behalf of the State.

71. Replacement of successor company.

(1) Subject to Section 72—

(a) on and from 1 January 1999, Motor Vehicles Insurance Ltd is deemed to be, and to have been at all times on and from that date, the successor company under this Act other than in this Part; and

(b) all claims and liabilities arising as a result of the provision of

third-party insurance cover to owners of motor vehicles under and in accordance with this Act which arose before 1 January 1999, or which arose or may rise after 1 January 1999, are claims against and liabilities of Motor Vehicles Insurance Ltd.

(2) Subsection (1) does not alter or affect the ownership of assets held by the successor company prior to 1 January 1999 or the results of the amalgamation of the successor company with PNGBC Ltd and the PNGBC Holding Co. No. 1 Ltd (which amalgamation, for the avoidance of doubt, is deemed to have taken effect on 31 December 1998).

(3) . . . [Repealed]

72. Another nominated company.

- (1) Subject to Subsection (1A), where at any time—
- (a) another company is able and willing to carry on the insurance business; and
 - (b) the Minister is satisfied that the other company has the capacity to carry on the insurance business to be able to provide adequate third-party insurance cover to owners of motor vehicles in Papua New Guinea,

the Minister may, following and in accordance with a decision of the National Executive Council, by notice in the National Gazette, nominate that other company to carry on the insurance business commencing on a specified date after the date of the notice.

(1A) Motor Vehicles Insurance Ltd shall have the exclusive right to provide compulsory third party motor vehicles insurance within Papua New Guinea for a period of five years from the date on which all or a majority of the shares in Motor Vehicles Insurance Ltd cease to be held by the Privatization Commission established under the *Privatization Act 1999*.

(2) On and from the date specified in the notice under Subsection (1), the nominated company shall carry on the insurance business in addition to Motor Vehicles Insurance Ltd by providing third-party insurance cover from that date and thereafter.

(3) A nomination under Subsection (1) shall not affect the responsibility of Motor Vehicles Insurance Ltd for claims and liabilities arising in respect of the insurance business before the date specified in the notice.

(4) Subject to Subsection (1A), the Minister may nominate under this

section—

- (a) more than one company to carry on the insurance business at the same time; or
 - (b) one or more companies to carry on the insurance business at the same time as Motor Vehicles Insurance Ltd.
- (5) . . . [Repealed]

SCHEDULE. [Repealed]