

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 295.

Motor Vehicles (Third Party Insurance).

GENERAL ANNOTATION

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Finance at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in and in relation to this Chapter to—

“the Departmental Head”—should be read as references to the Secretary for Finance;

“the Department”—should be read as references to the Department of Finance.

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¹Subsidiary legislation has not been up-dated.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 295.

Motor Vehicles (Third Party Insurance) Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 295.

Motor Vehicles (Third Party Insurance) Act.

Being an Act—

- (a) to establish the Motor Vehicles Insurance (P.N.G.) Trust; and
- (b) to establish a Premium-Fixing Advisory Committee; and
- (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.

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” means an account established under Section 45;
- “the Commissioner” means the Insurance Commissioner appointed under Section 4(1) of the *Insurance Act*;
- “the Committee” means the Premium-Fixing Advisory Committee established Section 26;
- “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 Trust and to the annual pool account, means a period of 12 months commencing on 1 January and ending on 31 December; (*Amended by No. 47 of 1977, Schedule 1.*)
- “the Fund” means the Motor Vehicles Insurance Fund established under Section 32;
- “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*;
- “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" means a person licensed as an insurer under Section 18 of the *Insurance Act*;

"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;

"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 of 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 Trust or an agent of the Trust 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 policy 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;

"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 Trust or an agent of the Trust under this Act;

"the Trust" means the Motor Vehicles Insurance (P.N.G.) Trust established by Section 3;

"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 by No. 29 of 1978, s. 1.*)
- (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.

3. Establishment of the Trust.

(1) A body by the name of the "Motor Vehicles Insurance (P.N.G.) Trust" is hereby established.

(2) The Trust—

- (a) is a corporation; and
- (b) has perpetual succession; and
- (c) shall have a seal; and
- (d) subject to this Act, may acquire, hold and dispose of property; and
- (e) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Trust affixed to a document, and shall presume that it was duly affixed.

(4) The head office of the Trust shall be established at Port Moresby or at such other place in the country as the Minister, on the recommendation of the Trust, appoints.

4. Constitution of the Trust.

(1) The Trust shall consist of—

- (a) four directors appointed by the Minister, by notice in the National Gazette, after receiving a recommendation from the licensed insurers jointly; and
- (b) the Departmental Head or his nominee; and
- (c) the Commissioner; and
- (d) the Secretary for Justice or his nominee.

(*Amended by No. 29 of 1978, s. 2.*)

(2) Where the licensed insurers fail to nominate a person or persons, or nominate insufficient persons, for appointment as a director or directors under Subsection (1), the

Minister may, by notice in the National Gazette, appoint a person or persons to be a director or directors, as the case may be.

(3) A director appointed under Subsection (1)(a) shall be appointed for a period not exceeding three years, and is eligible for re-appointment.

(4) Subject to this Act, a director appointed under Subsection (1)(a) and an alternate director—

(a) may resign from office by written notice to the Minister; and

(b) may be removed from office by the Minister on the ground of inefficiency, inability, incapacity or proved misbehaviour.

(5) Where a director resigns or is removed from office, the Minister shall immediately notify the Trust.

5. Alternate directors of the Trust.

(1) For each director of the Trust an alternate director may be appointed in the same way and subject to the same conditions as the director for whom he is the alternate.

(2) A person shall not be appointed as an alternate director unless he is a resident of the country.

(3) In the event of the inability of a director of the Trust to act, the alternate director has and may exercise all his powers, functions, duties and responsibilities, and this Act applies accordingly.

(4) An alternate director may, unless the Trust directs otherwise, attend all meetings of the Trust but shall not, except where he is attending in the absence of the director for whom he is the alternate, take part in debate, vote on any matter or be counted towards a quorum.

6. Chairman of the Trust.

(1) The Trust shall appoint—

(a) one of the directors to be the Chairman of the Trust; and

(b) one of the directors to be the Deputy Chairman of the Trust.

(2) During a vacancy in the office of Chairman or when the Chairman is absent from the country or is unable by reason of illness or incapacity or otherwise to perform his duties, the Deputy Chairman has all the powers, functions, duties and responsibilities of the Chairman.

7. Calling of meetings.

(1) Subject to Subsection (2), the Trust shall meet in the country at such times and places as the Chairman thinks necessary for the efficient conduct of its affairs, but in any event not less frequently than once in each year.

(2) Within seven days after the receipt of a written request by not less than two members of the Trust, the Chairman shall call a meeting of the Trust.

8. Procedure at meetings.

(1) At a meeting of the Trust—

(a) the Departmental Head, or his nominee, and three other directors are a quorum; and

(b) the Chairman or the Deputy Chairman shall preside; and

- (c) all questions shall be decided by a majority of the votes of the directors present; and
- (d) the Chairman has a deliberative and, in the event of an equality of votes on a question, also a casting vote.

(2) The Trust shall cause a record of its proceedings to be kept.

9. Disclosure of interest.

(1) Subject to Subsection (3), a director of the Trust who is directly or indirectly interested in a contract made, or proposed to be made, by the Trust, otherwise than as a member, and in common with the other members, of an incorporated company consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Trust.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Trust, and, after the disclosure, the director—

- (a) shall not take part in any deliberation or decision of the Trust with respect to the contract; and
- (b) shall be disregarded for the purpose of constituting a quorum for any such deliberation or decision.

(3) Subsection (1) does not apply to a director representing a licensed insurer where the contract is between the Trust and the licensed insurer.

10. Vacation of office.

A director of the Trust shall be deemed to have vacated his office—

- (a) if he becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his property for their benefit; or
- (b) if he is absent, except on leave granted by the Trust, from three consecutive meetings of the Trust; or
- (c) if he is of unsound mind as that expression is used in the *Public Health Act*.

11. Powers of the Trust to deal with property.

(1) For the purposes of the Trust, the Trust may acquire any property by transfer, purchase, gift, devise, demise or bequest or otherwise.

(2) Subject to this section and to any law relating to dealings in land and to any conditions attaching to the acquisition of the property under Subsection (1), the Trust may—

- (a) control and manage the property; or
- (b) sell any of the property and apply or invest the proceeds of the sale for the purposes of this Act.

12. Oath and affirmation of office.

(1) Before entering on the duties of his office, a director shall take an oath or make an affirmation in the form in the Schedule.

(2) The oath or affirmation shall be taken or made before the Minister or a person appointed by the Minister for the purpose.

13. Functions of the Trust.

The functions of the Trust are—

- (a) to administer the Fund; and
- (b) to provide third-party insurance cover to owners of motor vehicles required by this Act to effect third-party insurance; and
- (c) to engage in other activities to the extent that they are within the limits of the powers of the Trust under a provision of this Act other than this section.

14. Powers of the Trust.

(1) Subject to Subsection (2), the Trust has power to carry on all such activities as appear to it to be necessary or convenient for or in connexion with the performance of its functions.

(2) The Trust is subject to the provisions of the *Insurance Act* and all other laws in force from time to time in the country relating to insurance.

(3) For the purposes of the *Insurance Act* the Trust shall be deemed to be a public corporation.

(Replaced by No. 29 of 1978, s. 3.)

15. Delegation.

The Trust may, by instrument, delegate to any person all or any of its powers and functions (except this power of delegation).

16. Provisions relating to secrecy.

(1) This section applies to every person who is or has been—

- (a) a director; or
- (b) the General Manager; or
- (c) an officer or employee of the Trust; or
- (d) a member of the Committee.

(2) Subject to this section, a person to whom this section applies who, directly or indirectly, except in the performance of a duty under or in connexion with this Act—

- (a) makes a record of; or
- (b) divulges or communicates to any person,

any information concerning the affairs of any other person that was acquired by him by reason of his office or employment under or for the purposes of this Act is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months, or both.

(3) This section does not prevent the communication of information or the production of a document by the Trust, a director, an officer or employee of the Trust or a member of the Committee to a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced.

17. Annual report.

The Trust shall, within six months after the end of each fiscal year present to the Minister, for presentation to the Parliament—

- (a) a report reviewing the operation of this Act and drawing attention to any measures that are, in its opinion, desirable for achieving the purposes of this Act; and
- (b) a copy of the financial statements of the Fund for that year; and
- (c) a copy of the report of the auditor for that year.

18. Agents of the Trust.

(1) For the purposes of this Act—

- (a) the Superintendent is an agent of the Trust; and
- (b) the Trust may appoint such other agents as it thinks necessary for the effective administration of this Act.

(2) Subject to this Act, the terms and conditions of employment of an agent are as agreed on between the agent and the Trust.

19. Application of Boards (Fees and Allowances) Act.

The *Boards, (Fees and Allowances) Act* applies to directors and alternate directors of the Trust as though they were members of an approved Board within the meaning of that Act.

PART III.—THE GENERAL MANAGER.

20. Appointment, etc., of General Manager.

(1) There shall be a General Manager for the Trust who—

- (a) shall be appointed by the Trust by notice in the National Gazette; and
- (b) shall be appointed for such period as the Trust determines; and
- (c) shall be the Chief Executive Officer of the Trust; and
- (d) shall be head of the Service of the Trust.

(2) The terms and conditions of employment of the General Manager are as determined by the Trust.

(3) A director or an alternate director is eligible for appointment as the General Manager.

21. Vacation of office of General Manager.

(1) If the General Manager—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand to the Trust; or
- (c) engages, without the consent of the Trust, in any paid employment outside the duties of his office; or
- (d) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (e) is convicted of an offence punishable under a law by death or imprisonment for one year or longer and, as a result of the conviction, is under sentence of death or imprisonment,

the Trust shall terminate his appointment.

(2) The Trust may, at any time, terminate the appointment of the General Manager for inability, inefficiency, incapacity or misbehaviour.

22. Public Service rights of General Manager.

(1) If an officer of the Public Service is appointed to be the General Manager, his service as General Manager shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

(a) leave of absence on the grounds of illness; and

(b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

(2) Section 104 of the *Public Service Act* applies in relation to the office of General Manager as if it had been specifically included in that section.

23. Functions of General Manager.

(1) The General Manager shall manage the affairs of the Trust, the Fund and any associated service and shall, in relation to the management of the Trust, the Fund or that service, act in accordance with the policy and directions of the Trust.

(2) In addition, the General Manager shall advise the Trust on any matter concerning the affairs of the Trust or the Fund referred to him by the Trust.

(3) The General Manager has such other functions as the Trust determines.

PART IV.—THE SERVICE OF THE TRUST.

24. Appointment of officers.

(1) The Trust may, on the recommendation of the General Manager, appoint to be officers of the Trust such persons as it thinks proper and necessary for the purposes of the Trust.

(2) The General Manager and the officers of the Trust constitute the Service of the Trust.

(3) Subject to this Part, officers hold office on such terms and conditions as the Trust determines.

(4) If an officer appointed under this section was, immediately before his appointment, an officer of the Public Service, his service as an officer of the Trust shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

(a) leave of absence on the ground of illness; and

(b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

(5) Section 104 of the *Public Service Act* applies in relation to an office in the Service of the Trust as if it had been specifically included in that section.

25. Temporary and casual employees.

(1) The General Manager may appoint such temporary and casual employees as he thinks necessary for the purposes of this Act.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Trust determines.

PART V.—PREMIUM-FIXING ADVISORY COMMITTEE.

26. Appointment, etc., of Premium-Fixing Advisory Committee.

(1) For the purposes of this Part, a body by the name of the "Premium-Fixing Advisory Committee" is established.

(2) The Committee shall consist of—

- (a) the Commissioner; and
- (b) a representative of the Trust appointed by the Minister, by notice in the National Gazette, on the nomination of the Trust; and
- (c) two other persons appointed by the Minister, by notice in the National Gazette, of whom one shall be appointed on the nomination of the Trust.

(3) The Minister shall, by notice in the National Gazette, appoint one of the members of the Committee to be the Chairman of the Committee.

27. Meetings of Committee.

(1) Meetings of the Committee shall be held annually and at such other times and places as are directed by the Minister.

(2) At a meeting of the Committee—

- (a) two members are a quorum; and
- (b) the Chairman, or in his absence a person elected by the members present from their own number, shall preside; and
- (c) all questions shall be decided by a majority of votes of the members present and voting; and
- (d) the person presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(3) The Committee shall cause minutes of its meetings to be kept.

(4) Subject to this Part, the procedures of the Committee are as determined by the Committee.

28. Powers of inspection.

(1) For the purposes of the performance of its functions under this Part, the Committee or a person authorized by the Committee may—

- (a) require any person to produce or make available to the Committee or authorized person any books, documents, records or information in the possession of or under the control of the person relating to third-party insurance; and
- (b) take copies of or extracts from any such books, documents or records.

(2) A person who—

- (a) when required to do so under Subsection (1), refuses or fails, without reasonable excuse (proof of which is on him), to produce or make available any books, documents, records or information; or

(b) hinders or obstructs the Committee or an authorized person in the exercise of its or his powers or the performance of its or his functions under this Act, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K10.00.

29. Statistical and other returns.

(1) The Committee may require a participating licensed insurer or the Trust to provide it with such statistics, statistical returns and other returns as, in the opinion of the Chairman of the Committee, are necessary for the purpose of the performance of its functions under this Part.

(2) A participating licensed insurer or the Trust, as the case may be, who, when required to do so under Subsection (1), refuses or fails, without reasonable excuse (proof of which is on him or it), to provide the statistics or returns is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

30. Report of Committee to Minister.

The Committee shall, at least once in each year and at such other times as are directed by the Minister, report to the Minister—

- (a) on the levels of premiums charged for third-party insurance; and
- (b) on such other matters connected with third-party insurance as it thinks fit or as are directed by the Minister.

31. Level of premiums, etc.

After receiving a report from the Committee, the minister may, by notice in the National Gazette, fix the level of premiums payable and the classification of vehicles in respect of the issue of third-party insurance cover, generally or in relation to a class or classes of motor vehicles.

PART VI.—THE MOTOR VEHICLES INSURANCE FUND.

32. Establishment of the Fund.

(1) A Fund to be known as the "Motor Vehicles Insurance Fund" shall be established.

(2) There shall be paid into the Fund such moneys as are specified by this or any other Act.

(3) The Fund shall be administered by the Trust.

(4) Whether or not he has paid any amount into the Fund, no person is entitled to any part of the Fund, and no person is entitled to receive any payment or benefit from the Fund except in accordance with this Part.

33. Participation in the Fund.

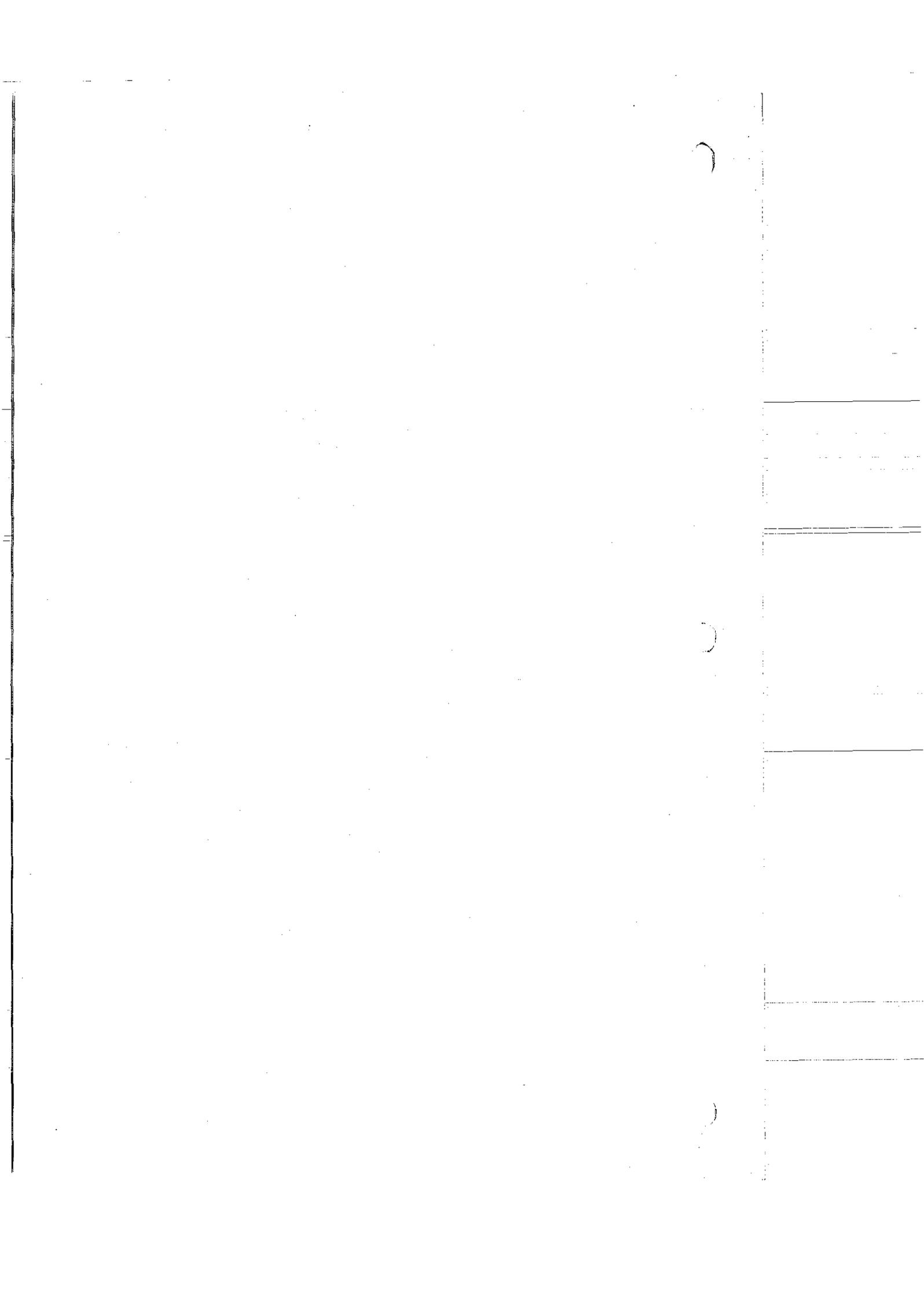
(1) Subject to Subsection (2), every licensed insurer shall participate in the Fund.

(2) The Commissioner may exempt a licensed insurer from participation in the Fund.

(3) In relation to the provisions of Section 40, the Insurance Commissioner may, where—

- (a) written application is received in any year from a licensed insurer; and

(b) he is satisfied that the exemption is justified and in the national interest and of benefit to the insurance industry,
exempt from the calculation of gross premium income for that year of that licensed insurer derived from insurance business in Papua New Guinea the whole or a portion of the premium income in respect of any particular risk or any particular class of insurance. (*Added by No. 29 of 1978, s. 4.*)



34. Payments into the Fund.

There shall be paid into the Fund—

- (a) all moneys appropriated by Act for the purpose; and
- (b) all moneys received as contributions or insurance premiums by the Trust; and
- (c) any other moneys received by the Trust for the purposes of this Act.

35. Payments out of the Fund.

There shall be paid out of the Fund—

- (a) all moneys that the Trust is entitled or required to pay in payment or discharge of expenses, obligations and liabilities of the Trust arising under this Act; and
- (b) all moneys required for the payment of remuneration or allowances payable to a director, the General Manager or an officer or employee of the Trust; and
- (c) any other costs of administering the Fund.

36. Remission of amounts to the Trust.

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

37. Investment of money standing to the credit of the Fund.

Money standing to the credit of the Fund 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.

38. Distribution of excess and payment of deficiency.

(1) Where, in relation to an annual pool account, the Trust is satisfied that the assets of the account exceed its liabilities, the Trust may, at such time or times as it thinks proper, distribute from the Fund an amount equal to the excess, or such lesser amount as the Trust determines, to the participating licensed insurers in proportion to the percentage interest of each in the account.

(2) Where, in relation to an annual pool account, the Trust is satisfied that the assets of the account are less than its liabilities, the Trust shall recover the deficiency, or any part of the deficiency, from each of the participating licensed insurers in proportion to the percentage interest of each in the account, and shall pay those amounts into the Fund.

39. Winding-up of the Trust.

On the cessation of operations of the Trust, and the winding-up of its affairs—

- (a) any surplus money standing to the credit of the Fund shall be distributed to the participating licensed insurers; and
- (b) any deficiency in the Fund shall be recovered from the participating licensed insurers,

in proportion to the percentage interest of each in the Fund.

PART VII.—FINANCE, ETC.

40. Percentage interest of licensed insurer in the Fund.

(1) For the purposes of this Act, the percentage interest of a participating licensed insurer in an annual pool account is the proportion that the gross premium income of that licensed insurer derived from insurance business in the country in the fiscal year for which the account was established bears to the total amount of gross premium income from insurance business in the country derived by all participating licensed insurers in that fiscal year.

(2) The interest of a participating licensed insurer in the Fund is the sum of his interests in the annual pool account of which he is a participant.

(3) Where any question or dispute arises as to the percentage interest of a participating licensed insurer in an annual pool account or in the Fund, the question shall be submitted to the Commissioner, whose decision is final¹.

41. Bank accounts.

(1) The Trust 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 Trust shall pay all its money into an account referred to in Subsection (1).

42. Advances.

(1) The Trust may accept an offer by the Departmental Head to advance such money as are from time to time lawfully available for the purposes of the Trust on such terms as are agreed on between the Trust and the Departmental Head.

(2) The Trust shall repay, in accordance with the terms on which an advance under Subsection (1) is made, such portion of the advance as is repayable.

43. Private treaty loans.

(1) The Trust may, with the consent of the Minister, borrow, for the purposes of the Trust, money from a person on such terms as are agreed on between the Trust and that person.

(2) The Trust shall repay a loan made under Subsection (1) in accordance with the terms on which it is made.

44. Accounts and records.

The Trust shall—

- (a) cause to be kept proper accounts and records of its transactions and affairs in such form as is approved by the Commissioner; 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.

¹ But see Constitution, Section 155.

45. Annual pool accounts.

- (1) At the commencement of each fiscal year, the Trust shall—
 - (a) open an annual pool account for the fiscal year; and
 - (b) maintain the account for as long as it is necessary to maintain it for the purposes of this Act.
- (2) Each annual pool account shall show—
 - (a) the total amount of money received or receivable by the Trust from the payment of premiums and from all other sources during the year to which the account relates; and
 - (b) the total amount paid by the Trust and the estimated outstanding liability of the Trust in respect of all claims, together with all costs and other expenses incidental to the claims, resulting from motor vehicle accidents during the year to which the account relates; and
 - (c) the total amount paid and the total debts incurred by the Trust in respect of its administrative and general expenses during the year to which the account relates.

46. Audit.

(1) The Trust shall arrange for an inspection and audit of the accounts and records of the Trust 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 Trust and the auditor of the Trust.

47. Reports to participating licensed insurers.

The Trust shall, within 30 days after 30 September, 31 December, 31 March and 30 June in each year, forward to each participating licensed insurer a statement of account of each annual pool account showing—

- (a) the premiums and other money received or receivable into the Fund during the period of each annual pool account preceding that date; and
- (b) the outstanding liability of the Trust in respect of all claims made and outstanding during the period of each annual pool account preceding that date.

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 Trust 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 Trust 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 Trust to the owner of a motor vehicle on the owner obtaining from an agent of the Trust a certificate in a form approved by the Trust 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) K100 000.00 in respect of the death of or bodily injury to any one person in any one case; and
 - (ii) K500 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 or of 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 Trust; 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 Trust,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 Trust 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 Trust, 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 Trust 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 Trust a written notification of the notice or claim; and
- (g) the owner or the driver must not, without the written consent of the Trust, 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 Trust 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 Trust 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) (Basic 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 Trust 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 Trust unless notice of intention to make a claim is given by the claimant to the Trust 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 Trust, 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 Trust.

Where in relation to a claim under Section 54(1)(c) the Trust properly pays any amount in satisfaction of the claim made or judgement recovered against it and the amount of any costs and expenses properly incurred by it in relation to the claim, the Departmental Head shall, out of money lawfully available for the purpose, pay to the Trust such proportion of the amount as the Minister fixes.

57. Recovery by the Trust in certain cases.

(1) Subject to Subsection (2), the Trust may recover—

- (a) any amount properly paid by the Trust 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 Trust 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*¹ relating to the incident from which the claim arose, be recovered by the Trust as a debt from the driver of the vehicle.

(4) Any amount recovered by the Trust under Section 54(1)(c)² shall be paid by the Trust, in proportions determined by the Minister, to the State and the Fund.

(5) In making a determination under Subsection (4), the Minister shall have regard, as far as practicable, to the respective proportions of the amount provided by the State and the Trust.

58. Settlement, etc., by the Trust.

(1) The Trust—

- (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 Trust 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 Trust on his behalf.

(3) Nothing said or done by or on behalf of the Trust 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

¹ The original provision referred to offences "under" Section 19 of the pre-Independence *Motor Traffic Act* 1960, which corresponded to Section 40 of the *Motor Traffic Act*. That section does not create offences, so possibly "referred to in" was intended instead of "under".

² *Sic*. No amounts are recoverable by the Trust under Section 54(1)(c), and possibly the intention was to refer to recoveries by the Trust (under Section 57(1)) of amounts paid by it under Section 54(1)(c).

(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 Trust, 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 Trust or a person in respect of claims that may be made against the Trust 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 Trust had not avoided or cancelled the policy.

(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.

Ch. No. 295

Motor Vehicles (Third Party Insurance)

SCHEDULE.

Act, Sec. 12.

OATH AND AFFIRMATION OF OFFICE.

Oath.

I, _____, do swear that I will well and truly serve the Independent State of Papua New Guinea in the office of director of the Motor Vehicles Insurance (P.N.G.) Trust.

So help me God!

Affirmation.

I, _____, do solemnly and sincerely promise and declare that I will well and truly serve the Independent State of Papua New Guinea in the office of director of the Motor Vehicles Insurance (P.N.G.) Trust.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 295.

Motor Vehicles (Third Party Insurance).

SUBSIDIARY LEGISLATION.

1. Act, Section 26(3)—Ex officio appointment of Chairman of Premium-Fixing Advisory Committee.

The Insurance Commissioner appointed under the *Insurance Act*.

2. Act, Section 31—Levels of premiums and classification of vehicles.

Class of vehicle.	Description of vehicle.	Premium.
		K.
Class 1	Private motor cars, if used exclusively—	16.00
	(a) by the owner or any other person for the carriage of the owner, his family, relatives or friends, for purposes of pleasure or for private or domestic purposes, but not directly for business purposes (a motor car shall not be deemed to be used for business purposes within the meaning of this paragraph merely by reason of the fact that it is used for the carriage of a person to and from his place of business, or the place where he exercises his profession or calling); or	
	(b) personally by the owner, being an individual, for the purpose of making personal calls in relation to his profession, business or calling, unless the profession, business or calling is that of a commercial traveller, insurance agent, inspector or assessor, land or estate agent, manufacturer's agent, stock, agent, station agent or salesman; or	
	(c) by religious or social workers in the course of their religious or social work; or	
	(d) by medical practitioners for the purpose of their profession; or	
	(e) by farmers in connexion with their farming operations; or	
	(f) in connexion with the work of—	
	(i) any public or private hospital or charitable institution, by or on account of the Board or other authority controlling the hospital or institution; or	
	(ii) a trade union; or	
	(g) as an ambulance for the carriage of sick or injured persons	
Class 2	Private motor cars used for any purpose not included in the purposes specified in Class 1	55.00

Class of vehicle.	Description of vehicle.	Premium.
		K.
Class 3	Commercial motor vehicles, trucks and cars fitted with commercial-type bodies for the carriage of goods	66.00
Class 4	(1) Trucks and utilities, owned by farmers, graziers or prospectors and used in connexion with their occupations (2) Utilities used exclusively for private purposes	55.00 33.00
Class 5	Hearses and mourning coaches	17.60
Class 6	Passenger vehicles for hire, "Drive-yourself" cars, buses and service cars	82.50
Class 7	Motor garage proprietors, motor vehicle vendors or dealers, per registration plate	44.00
Class 8	Motor cycles—	
	(a) equipped with engines of more than 0.75 kw ¹	11.00
	(b) equipped with engines of 0.75 kw ¹ or less	11.00
Class 9	Motor cycle proprietors, motor cycle vendors or dealers, per registration plate	11.00
Class 10	Any motor vehicle of a class not otherwise specified	11.00
Class 11	Trailers	11.00

¹ Metricated editorially. The original figure was 1 h.p.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER No. 295.

Motor Vehicles (Third Party Insurance).

APPENDIX.

SOURCE OF THE MOTOR VEHICLES (THIRD PARTY INSURANCE) ACT.

Part A.—Previous Legislation.

Motor Vehicles (Third Party Insurance) Act 1974 (No. 56 of 1974).

as amended by—

Motor Vehicles (Third Party Insurance) (Amendment) Act 1975 (No. 33 of 1975)

Statute Law Revision (Change of Fiscal Year) Act 1977 (No. 47 of 1977)

Motor Vehicles (Third Party Insurance) (Amendment) Act 1978 (No. 29 of 1978).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .	Section, etc., in Revised Edition.	Previous Reference ¹ .
1	1	29	29
2	2	30	30
3	3	31	31
4	4	32	32
5	5	33	33
6	6	34	34
7	7	35	35
8	8	36	36
9	9	37	37
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18	18	46	46
19	19	47	47
20	20	48	48
21	21	49	49
21	21	50	50
22	22	51	51
23	23	52	52
24	24	53	53
24	24	54	54
25	25	55	55
26	26	56	56
27	27	57	57
28	28	58	58

¹Unless otherwise indicated, references are to the Act set out in Part A.

Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
59	59	63	63
60	60	64	64
61	61	Schedule	Schedule
62	62		