

No. 9 of 2002.

Compulsory Third party Motor vehicles Insurance Industry Act 2002.

Certified on: 10/5/2002.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 9 of 2002.

Compulsory Third party Motor vehicles Insurance Industry Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Compulsory Third party Motor vehicles Insurance Industry Act 2002,

Being an Act to amend the *Motor Vehicles (Third Party Insurance) Act 1974* and the *Insurance Act 1995* to change the way in which premiums for compulsory third party motor vehicles insurance are determined, and for related purposes,

MADE by the National Parliament to come into operation –

- (a) in respect of Sections 12, 13 and 14 –in accordance with Section 23; and
- (b) in respect of the remainder –in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART 1. – PRELIMINARY.

1. 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 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) 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* 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 6

and such terms shall 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.

PART 2. – AMENDMENT OF THE *MOTOR VEHICLES (THIRD PARTY INSURANCE) ACT 1974.*

2. AMENDMENT OF LONG TITLE.

The long title of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended by repealing Paragraph (b).

3. NEW SECTION 1A.

Part I of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended by inserting immediately before Section 1 the following new section: –

“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 arbitrary search of person or property and entry of premises, conferred by Section 42 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 (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 to be made without delay.”

2. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1 of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended –

- (a) by repealing the definition of “ annual pool account ”; and
- (b) by repealing the definition of “ the Committee ”; and
- (c) in the definition of “ fiscal year”, by deleting the words “ and to the annual pool account ”; and
- (d) by repealing the definition of “ the Fund”; and
- (e) by inserting after the definition of “ fiscal year ”the following new definitions: –

“**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*; and

- (f) by inserting after the definition “ the regulations ”the following new definition: –

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

5. REPEAL AND REPLACEMENT OF PART V.

The *Motor Vehicles (Third Party Insurance) Act 1974* is amended by repealing Part V and replacing it with the following new Part: –

“Part V – Role of the ICCC”

“26. COMPULSORY THIRD PARTY MOTOR VEHICLES INSURANCE IS A REGULATED INDUSTRY.

The compulsory third party motor vehicles insurance industry is declared to be 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 vehicle industry;
- (c) in consultation with the Commissioner, ensuring that this Act is implemented with the 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 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 made 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 require 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 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.”

6. REPEAL AND REPLACEMENT OF SECTION 32.

Section 32 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed and replaced with the following: –

“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).”

7. REPEAL OF SECTION 34.

Section 34 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed.

8. REPEAL OF SECTION 35.

Section 35 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed.

9. REPEAL AND REPLACEMENT OF SECTION 37.

Section 37 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed and is replaced with the following: –

“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*.”

10. REPEAL AND REPLACEMENT OF SECTION 42.

Section 42 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed and is replaced with the following: –

“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, 000.00 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 1974*; 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 1974* 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.”

11. REPEAL OF SECTION 43.

Section 43 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed.

12. REPEAL OF SECTION 56.

Section 56 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed.

13. RECOVERY BY THE SUCCESSOR COMPANY IN CERTAIN CASES (AMENDMENT OF SECTION 57).

Section 57 of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended by repealing Subsections (4) and (5).

14. SHARES IN SUCCESSOR COMPANY ON TRANSFER DATE (AMENDED OF SECTION 66).

Section 66 of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended by repealing Subsection (2).

15. REPEAL AND REPLACEMENT OF SECTION 69.

Section 69 of the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed and is replaced with the following: –

“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.”

16. REPLACEMENT OF SUCCESSOR COMPANY (AMENDMENT OF SECTION 71).

Section 71 of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended –

(a) in Subsection (1)(b), by repealing the words “ as the administrator of the Fund”; and

(b) by repealing Subsection (3).

17. ANOTHER NOMINATED COMPANY (AMENDMENT OF SECTION 72).

Section 72 of the *Motor Vehicles (Third Party Insurance) Act 1974* is amended –

(a) in Subsection (1) –

(i) by reporting the word “ Where ”and replacing it with the following: –

“Subject to Subsection (1)(a), where;”

and

(ii) by repealing the words “the Minister may, by notice in the National Gazette” and replacing them with the following: –

“the Minister may, following and in accordance with a decision of the National Executive Council, by notice in the National Gazette”

; and

(b) by inserting after Subsection (1) the following new subsection: –

“(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*.”

; and

- (c) in Subsection (2), by repealing the words “ in place of or”; and
- (d) in Subsection (3), by repealing the word “ effect ”and replacing it with the following: –
“affect”

; and

- (e) in Subsection (4) by repealing the word “ The ”at the beginning of that subsection and replacing it with the following: –
“Subject to Subsection (1)(a), the”

; and

- (f) by repealing Subsection (5).

18. REPEAL OF THE SCHEDULE.

The Schedule to the *Motor Vehicles (Third Party Insurance) Act 1974* is repealed.

PART 3. – AMENDMENT OF THE *INSURANCE ACT 1995*.

19. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the *Insurance Act 1995* is amended by inserting after the definition of “the Register of Licensed Insurers and Licensed Brokers and Licensed Loss Adjuster” the following new definitions: –

“**regulated entity**” has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

“**regulated contract**” has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

20. LICENSING OF INSURERS AND BROKERS AND LOSS ADJUSTERS (AMENDMENT OF SECTION 19) .

Section 19 of the *Insurance Act 1995* is amended by inserting after Subsection (6), the following new subsection: –

“(6A) If any condition in a licence held by a regulated entity conflicts with, or is inconsistent with, any term or condition of the regulatory contract relating to that regulated entity, the provisions of the regulatory contract shall prevail and the licence conditions, to the extent of any inconsistency, shall be of no effect.”

21. REVOCATION OF LICENCE (AMENDMENT OF SECTION 23).

Section 23 of the *Insurance Act 1995* is amended by repealing Subsection (1)(c).

22. DEPOSITS AND GUARANTEES BY LICENSED INSURERS AND LICENSED BROKERS (AMENDED OF SECTION 27).

Section 27 of the *Insurance Act 1995* is amended by inserting after Subsection (6) the following new subsection: –

“(7) This section does not apply to the successor company under the *Motor Vehicles (Third Party Insurance) Act 1974* or to any other company nominated under Section 72 of the *Motor Vehicles (Third Party Insurance) Act 1974* to provide compulsory third party motor vehicles insurance coverage.”

PART 4. – MISCELLANEOUS.

23. COMMENCEMENT OF CERTAIN SECTIONS OF ACT.

Sections 44, 45 and 46 shall come into operation on 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*, and the Minister shall cause such date to be published in the National Gazette.

Office of Legislative Counsel, PNG