

THE MOTOR VEHICLE ACCIDENTS (AMENDMENT) ACT, 2011

(Act No.....of 2011)



I ASSENT

**MSWATI III
King of Swaziland**

.....2011

**AN ACT
entitled**

An Act to amend the Motor Vehicle Accidents Act, 1991 and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.



ARRANGEMENT OF SECTIONS

1. Short title.
2. Amendment of the principal Act.
3. Amendment of section 2.
4. Replacement of section 4.
5. Amendment of section 5.
6. Replacement of Section 6.
7. Replacement of section 8.
8. Addition of new section *8bis*, *8ter*, *8quan*,
8quin, *8sext*, *8sept*, *8 Oct* and *8Nov*.
9. Replacement of section 9.
10. Addition of new section *9bis*.
11. Addition of new section *9ter*
12. Replacement of section 10
13. Addition of new section *10bis*, *10ter*, *10quan*,
10quin and *10sext*.
14. Replacement of section 11.
15. Addition of new section *11bis*.
16. Amendment of section 12.
17. Replacement of section 13.
18. Amendment of section 14.
19. Amendment of section 15.
20. Amendment of section 16.
21. Replacement of section 17.
22. Addition of new section *17bis*.



23. Addition of new section 17^{ter}

24. Addition of new section 23

Short title

1. This Act shall be cited as the Motor Vehicle Accidents (Amendment) Act, 2011 and, shall be read as one with the Motor Vehicle Accidents Act, 1991 (hereinafter referred to as “the principal Act”).

Amendment of the principal Act

2. The principal Act is amended-

- (a) in the Long Title, by replacing the word “compensation” with the word “benefit or benefits as appropriate”
- (b) by replacing-
 - (i) the words “Motor Vehicle Accidents Fund” wherever they occur, with the words “Sincephetelo Motor Vehicle Accidents Fund”
 - (ii) the words “MVA Fund” wherever they occur, with the words “SMVA Fund” ,
- (c) in the head note to section 5, by deleting the words “and audit”;
- (d) by adding Schedule I and Schedule II.

Amendment of section 2

3. Section 2 of the principal Act is amended by-

- (a) inserting the following new definitions in their proper alphabetical order-

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“benefit or benefits” means a benefit or benefits available or payable to a claimant from the SMVA Fund under and in accordance with this Act;

“Board” means the Board of Directors of the Sincephetelo Motor Vehicle Accidents Fund established under section 8;

“claimant” means any person who has suffered loss as a result of personal injury or death caused by a motor vehicle accident, and who makes a claim in accordance with this Act, to the SMVA Fund in respect of that loss;

“Common Monetary Area” means the regional currency area as defined in terms of the Multilateral Monetary Agreement concluded in February 1992 between Lesotho, Namibia, South Africa and Swaziland;

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

“financial year” means the period of twelve months ending on the thirty first of March in any year or such other period as may be prescribed;

“health practitioner” means a medical practitioner and an allied or health professional and any other person concerned with the restoration of the physical or mental function of any person and registered in terms of any law relating to such professions;

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“motor vehicle accident” means an event, whether involving a number of vehicles or not, in which injury or death of a person occurs on account of the involvement of a motor vehicle being driven and includes an event where an unoccupied vehicle moves from one place to another, other than falling, on account of gravity;

“prescribed” means prescribed by regulations made under this Act;

“service provider” means a person or entity providing services or goods to a claimant who is entitled to benefits under this Act and includes a health practitioner and specified in Schedule II;

“undertaking” means an undertaking in writing given to a service provider by the SMVA Fund to settle all costs arising from services rendered by the service provider to a claimant in accordance with this Act;

(b) by replacing the definition of motor vehicle with the following-

“motor vehicle” means a vehicle which is designed or adapted for propulsion or haulage on a road by means of fuel and includes a trailer, caravan, an agricultural or other implement designed or adapted to be drawn by that vehicle and any other vehicle that may be prescribed”;

(c) replacing the words “Road Traffic Act, 1965”, which appear in the definition of “reward’ with the words “Road Traffic Act, 2007 ”.

Replacement of section 4



4. Section 4 of the principal Act is replaced with the following new section 4-

“Powers of the SMVA Fund

4. The SMVA Fund shall have the power to-

- (a) investigate and settle claims referred to in section 10 arising from the driving of a motor vehicle whether or not the identity of the owner or the driver thereof has been established,
- (b) commence, conduct, defend or abandon legal proceedings in connection with such claims;
- (c) manage and utilize the monies of the SMVA Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties;
- (d) stipulate the terms and conditions under which claims pursuant to section 10, shall be administered;
- (e) procure reinsurance for any risk undertaken by the SMVA Fund under this Act;
- (f) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments;
- (g) subject to section 10 of the Public Enterprises (Control and Monitoring) Act, 1989, invest any monies not immediately required for the conduct of



its business in such a manner as may from time to time be determined by the Board to be of benefit to the SMVA Fund, and to realize, alter, reinvest such investments or otherwise deal with such monies or investments in such manner as may from time to time be determined by the Board as being of benefit of the SMVA Fund but, where such investment involves the offshore placement of funds, the Board shall seek the approval of the Minister first;

- (h) subject to the approval of the Minister, borrow money and secure the payment thereof in such manner as it may deem fit;
- (i) make such donations as it considers advisable for the fulfillment of any purpose under this Act;
- (j) promote and support road safety awareness and fund research in connection with the development of accident reduction strategies;
- (k) receive a donation or funding for the fulfillment of any purpose under this Act;
- (l) do all such things as are incidental or conducive to the exercise of its powers or the performance of its duties under this Act.”

Amendment of section 5

5. Section 5 of the principal Act is amended-



(a) by replacing subsection (1) with the following new subsection (1)-

“(1) The monies of the SMVA Fund shall consist of the motor vehicle accidents levy imposed on fuel under section 6 and any income derived from the investment of the monies of the SMVA Fund and such other sums as the SMVA Fund may acquire, earn or borrow in accordance with the provisions of this Act and, any unclaimed or unused monies deposited into the SMVA Fund’s bank account remaining so deposited for a period exceeding two years shall be deemed to have accrued to the SMVA Fund.”; and,

(b) by repealing subsections (4) and (5).

Replacement of Section 6

6. Section 6 of the principal Act is hereby replaced with the following section 6-

“Imposition of Motor Vehicle Accidents Levy

6. (1) With effect from the date of commencement of this Act, the motor vehicle accidents levy shall be thirty five cents (35c).

(2) The Minister may, at least once in twelve (12) months, or as deemed necessary and after consultation with the Board and subsequently with the Minister responsible for Natural Resources and Energy, by notice published in the Gazette determine such amount of the motor vehicle accidents levy.

(3) A person who imports fuel in bulk from any place outside Swaziland shall pay the levy imposed under subsection (1) at the time of such importation or at such other



time not being later than 15 days after such importation, or such other time whether before or after such importation, as the Minister may prescribe and also the Minister may prescribe the manner of making payment and collection of such levy.

(4) A levy due and payable under subsection (1) shall be a civil debt due to the SMVA Fund and if any person fails to pay the levy within the specified time, a sum of E5, 000 shall be added to the levy for each day or part thereof during which any such sums due to the SMVA Fund, shall remain unpaid and any such additional amount shall be recoverable as a civil debt due to the SMVA Fund as if it were the levy.

(5) A person who fails to pay a levy under this Act or in accordance with Regulations made thereunder commits an offence and shall be liable on conviction to a fine not exceeding E10, 000 or to imprisonment of two years or both.

Replacement of section 8

7. The principal Act is amended by replacing section 8 with the following new section 8-

“Board of Directors

8. (1) There is hereby established a Board of Directors of the Sincephetelo Motor Vehicle Accidents Fund (the “Board”) which shall exercise, the powers of the SMVA Fund under section 4 and section 8ter.

(2) The Board shall execute such powers by issuing general and specific mandates, instructions and directions to the Chief Executive Officer.



Addition of new section 8bis, 8ter, 8quan, 8quin, 8sext, 8sept, 8oct and 8nov-

8. The principal Act is amended by adding the following new sections *8bis, 8ter, 8quan, 8quin, 8sext, 8sept, 8oct and 8nov-*

“Powers and functions of the Board

8bis (1) The Board shall, subject to the provisions of this Act, exercise overall authority and control over the financial position, operation and management of the SMVA Fund, and may -

- (a) make recommendations to the Minister in respect of-
 - (i) the annual budget of the SMVA Fund;
 - (ii) any review or amendment of this Act;
 - (iii) the entering into an agreement with any institution in respect of the reciprocal recognition of compulsory motor vehicle insurance or compulsory motor vehicle accidents benefits;
 - (iv) the appointment of the Chief Executive Officer;
 - (v) the appointment of the Chief Financial Officer; or,



- (vi) any regulation to be made under this Act;
- (b) approve the determination of conditions of employment of staff of the SMVA Fund by the Chief Executive Officer;
- (c) approve internal rules in respect of the management of the SMVA Fund;
- (d) promote and support road safety awareness and fund research in connection with the development of accident reduction strategies;
- (e) determine guidelines in relation to the investment of the monies of the SMVA Fund;
- (f) nominate the auditors of the SMVA Fund in accordance with section 9 of the Public Enterprises (Control and Monitoring) Act, 1989;
- (g) approve the appointment of the attorneys of the SMVA Fund; or,
- (h) subject to subsection (3), delegate or assign to the Chief Executive Officer any power or duty of the Board as it may deem fit.

(2) Without prejudice to the provisions of subsection (1), the Board shall from time to time fix the rate of interest payable in respect of future benefits and in determining the rate of such interest, the Board shall have regard to the net income of the SMVA Fund for a financial year after allowing for the expenses of administration of the



SMVA Fund as have been properly incurred under this Act, and the rate shall be fixed so that the total amount allocated by way of interest shall not exceed the net income of the SMVA Fund for that financial year.

(3) The Board shall not be divested of any power or duty delegated or assigned under subsection (1) (h), and may amend or withdraw any decision made by virtue of such delegation or assignment.

Membership of the Board

8ter. (1) The Board shall consist of the following persons who shall be appointed by the Minister for a term not exceeding 3 years and who shall be eligible for reappointment-

- (a) Chairperson;
- (b) the Chief Executive Officer *ex officio* and who shall be the secretary of the Board;
- (c) the Ministry of Finance's representative;
- (d) six other persons with appropriate knowledge, skills and personal attributes to properly ensure the functional integrity of the SMVA Fund one of whom shall be a medical practitioner.

(2) A person is not eligible for appointment to the Board if he has at any time been-



- (a) convicted of a criminal offence for which the prescribed punishment is a term of imprisonment not less than six months, with or without the option of a fine;
- (b) found guilty of professional misconduct by a competent tribunal, Board or body legally constituted for the purpose of adjudicating on matters of discipline and conduct;
- (c) declared insolvent and has not been rehabilitated; or
- (d) certified to be of unsound mind by a competent, registered and duly certified medical practitioner.

(3) The Members of the Board, except the Chief Executive Officer, shall be paid such fees or allowances as may be determined by Minister.

Vacation of office

8quan. A member of the Board shall cease to hold office and such office shall become vacant-

- (a) in the event of any occurrence which would have rendered that member ineligible for appointment in accordance with section 8 *ter* or if he fails to attend three consecutive Board meetings without leave of the Chairman of the Board;
- (b) upon his death;



- (c) upon the expiry of one month's notice, given in writing to the Minister, of his intention to resign his office;
- (d) upon the expiry of such time as the Minister may specify in writing, notifying him of his removal from office by the Minister under paragraph 4; or,
- (e) if he becomes physically incapable of performing his duties as a member of the Board.

Removal or suspension and filling of vacancies

8quin. (1) The Minister may, if he is satisfied that a member of the Board has acted improperly as such member, or is physically incapable of performing his duties efficiently, require that member, in writing, to vacate his office within such time as the Minister may specify.

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

(3) On the death of, or the vacating of office by, a member of the Board, the Minister shall, as soon as possible, appoint a person, in accordance with this Act, for the remaining period of office of such deceased or vacating member.



Meetings and procedure of Board

8*sect.* (1) The Board shall meet as often as the business of the SMVA Fund may require, but not less frequently than once in each quarter of the year or when requested by the Minister to do so, meet to report to the Minister regarding matters dealt with during that year or as requested by the Minister.

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

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

(4) Upon giving notice in writing of not less than seven days, a meeting of the Board may be called by the Chairperson but, if the urgency of any matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter written notice.

(5) The Chairperson shall preside at any meeting of the Board and, in the absence of the Chairperson, the members present may elect one of their number to act as Chairperson for purposes of that meeting.

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

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

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

Declaration of interest

8sept. (1) Where a member of the Board is present at a meeting of the Board or any committee or subcommittee of the Board at which any matter being discussed thereat is one in which the member is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question concerning such matter.

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

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

(4) Any member who fails to comply with the provisions of this section commits an offence and shall be liable to a fine not exceeding E10, 000 or to imprisonment for a term not exceeding 10 years or both.



Signification of documents

8oct. All documents made by, and all decisions of, the Board, may be signified under the hand of the Chairperson of the Board or any member of the Board or senior officer of the Fund generally or specially authorised in that behalf.

Committees of the Board

8nov. (1) The Board may establish from amongst its members such committees as it deems necessary to assist it in the exercise of its functions and the performance of its duties.

(2) Without derogating from the generality of subsection (1), the Board shall establish-

- (a) a Remunerations Committee which shall be responsible, *inter alia* for approving and determining the conditions of employment of the staff of the SMVA Fund;
- (b) an Audit Committee which shall be responsible, *inter alia* for the matters referred to under section 9ter,;
- (c) an Investment Committee which shall be responsible, *inter alia* for the management of the trust referred to under section 10ter,

and each Committee shall, in addition, advise the Board on any matter the Board may refer to it.



(3) A committee established under this paragraph shall regulate its own procedures”.

Replacement of section 9

9. The principal Act is amended by replacing section 9 with the following new section 9-
“Chief Executive Officer and other staff

9. (1) The Chief Executive Officer shall be appointed by the Board in accordance with the provisions of section 8(1) of the Public Enterprises (Control and Monitoring) Act, 1989, and on such terms and conditions as the Minister may determine.

(2) The Chief Executive Officer shall hold office for a period as maybe decided by the Minister on the recommendation of the Board.

(3) Subject to the provisions of this act, the Chief Executive Officer shall exercise authority and control over the operations and management of the SMVA Fund. The Chief Executive Officer shall:-

- (a) conduct the day to day business and administration of the SMVA Fund;
- (b) exercise the powers and perform the functions of the SMVA Fund under section 4;
- (c) exercise such powers and perform such duties as may be delegated and assigned to him by the Board under section 8;
- (d) employ, train, transfer, promote, discipline, suspend, dismiss any employee of the Fund and deal with employee grievances and disputes in accordance with the Fund’s policies, Employment Act,



Industrial Relations Act, Disciplinary and grievance procedures adopted by the Fund.

- (e) draft internal rules and directions in respect of the operations and management of the SMVA Fund and shall make recommendations in respect thereof to the Board;
 - (f) enter, with the approval of the Board, into an agreement with a suitable or competent person for the rendering of a particular service related to the management of the SMVA Fund or its functions;
 - (g) carry out any other function, duty or exercise any power related to the purposes of the SMVA Fund.
- (4) The Chief Executive Officer shall consult with the Board on matters of policy.
- (5) The Chief Executive Officer may resign from office by giving notice in writing to the Board in terms of his contract of employment.
- (6) The Chief Executive Officer may be removed from office by the Minister on the recommendation of the Board in accordance with the provisions of section 8 of the Public Enterprises (Control and Monitoring) Act, 1989.
- (7) The dismissal of all other officers shall be carried out by the Chief Executive Officer or such senior officer as he may delegate to perform that function”.



Addition of new section 9bis

10. The principal Act is amended by adding the following new section *9bis* -

“Chief Financial Officer

9bis. (1) The Chief Financial Officer shall be appointed and dismissed by the Board in accordance with the provisions of section 8(2) of the Public Enterprises (Control and Monitoring) Act, 1989, and on such terms and conditions as the Minister may determine.

(2) The Chief Financial Officer shall hold office for a period as maybe decided by the Board.

(3) Subject to the directions of the Board, the Chief Financial Officer shall-

- (a) report directly to the Chief Executive Officer regarding financial management matters of the SMVA Fund;
- (b) oversee all financial management activities relating to the programs and operations of the SMVA Fund;
- (c) develop and maintain an integrated SMVA Fund accounting and financial management system, including financial reporting and internal controls, which-
 - (i) complies with applicable accounting principles, standards, and requirements, and internal control standards;
 - (ii) complies with such policies and requirements as may be prescribed by the Board;



- (iii) complies with any other requirements applicable to such systems;
 - (iv) provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of the Board;
 - (v) provides for the development and reporting of cost information;
 - (vi) provides for the integration of accounting and budgeting information; and,
 - (vii) provides for the systematic measurement of performance;
- (d) direct, manage, and provide policy guidance and oversight of the SMVA Fund financial management personnel, activities, and operations, including-
- (i) the preparation and annual revision of the SMVA Fund financial management plan;
 - (ii) the implementation of the SMVA Fund asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control;
- (e) prepare statement of accounts which shall include-

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- (i) a description and analysis of the status of financial management of the SMVA Fund;
 - (ii) the annual financial statements prepared under section 9ter (5); and,
 - (iii) other information the Chief Executive Officer considers appropriate to fully inform the Board;
- (g) monitor the financial execution of the budget of the SMVA Fund in relation to actual expenditures, and prepare and submit to the Board timely performance reports.

(4) The Chief Financial Officer shall consult with the Chief Executive Officer on matters of financial policy.

(5) The Chief Financial Officer may resign from office by giving notice in writing to the Board in terms of his contract of employment.

(6) The Chief Financial Officer may be removed from office by the Minister on the recommendation of the Board in terms of his contract of employment.”

Addition of new section 9ter

11. The principal Act is amended by adding the following new section 9ter -

“Accounts, audit and annual report

9ter. (1) The Board shall cause to be kept proper books of account and records of all financial transactions, assets and liabilities of the SMVA Fund in respect of each financial year.



(2) The accounts of the SMVA Fund in respect of each financial year shall, within three months or such extended period after the end thereof as the Minister may direct, be audited annually by an independent auditor appointed in accordance with the provisions of section 9 of the Public Enterprises (Control and Monitoring) Act, 1989.

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

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

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



(5) The SMVA Fund shall, within four months of the financial year submit, to the Minister, a comprehensive report on its operations during such year, together with the auditors' report and the audited accounts in accordance with the provisions of section 7 of the Public Enterprises (Control and Monitoring) Act, 1989.

(6) The Minister shall lay, before Parliament, a copy of the report submitted to him in terms of subsection (5), within six months after the financial year end."

Replacement of section 10

12. The principal Act is amended by replacing section 10 with the following new section 10-
"Liability of the SMVA Fund

10. (1) A claimant who has suffered loss as a result of injury to himself, or as a result of the death or injury of any person, in either case caused by or arising out of the negligent driving in any place in Swaziland of a motor vehicle by another person or other unlawful act of the person driving the motor vehicle ("the driver") or of the owner of the motor vehicle or his servant in the execution of his duty, shall, subject to the conditions, limitations and exclusions imposed by this Act, be entitled to claim the benefits prescribed by this Act from the SMVA Fund.

(2) Subject to the conditions, limitations and exclusions imposed by this Act, the benefits to be provided by the SMVA Fund shall be one or more of the following-

(a) the payment of income lost as a result of inability to work on account of injuries sustained in an accident, limited to the amounts specified under this Act,



- (b) where the benefit paid under paragraph (a), is to pay for future loss of income projected over an anticipated period of loss, the SMVA Fund shall furnish the claimant concerned with an undertaking to pay such amount as claimed, proved or agreed prior to such undertaking and shall thereafter pay the amount due in respect thereof by instalments payable monthly or yearly (whichever is more convenient for the administration by the SMVA Fund) in accordance with such projection;
- (c) the payment of financial support lost by dependants as a result of the death of a person caused by an accident;
- (d) where the benefit paid under paragraph (c), is to pay for future loss of financial support such benefit shall be payable by such instalments, and be limited to such amount specified under this Act;
- (e) such assistance as may be recommended to be necessary to enhance the quality of the post accident life of a claimant by a service provider;
- (f) the payment of the cost of treatment rendered by any service provider, including consultation, treatment and hospitalisation costs;
- (g) medical treatment or management by any service provider, including consultation and hospitalisation;



- (h) rehabilitation by any service provider including consultation, treatment and hospitalisation;
 - (i) payment of incidental expenses which shall include accommodation, transport and subsistence costs incurred or to be incurred during the treatment or rehabilitation of the claimant;
 - (j) subject to subsection (5), payment of funeral expenses; and,
 - (k) such other benefits as the Minister may, in consultation with the Board, prescribe.
- (3) Where medical treatment, management or rehabilitation is provided as a monetary award –
- (a) it shall be carried out on such terms and conditions as may be stipulated by the SMVA Fund in the award;
 - (b) if a claimant accepts such medical treatment, medical management or rehabilitation but requires reasonable changes thereto in terms of advice by a service provider, then the SMVA Fund shall accordingly vary the offer of benefits even if it involves further expense.
- (4) Where a claimant is entitled to benefits in terms of this section, and has incurred costs in respect of accommodation for himself, the injured or deceased person in



a hospital, or has incurred the costs of treatment, the rendering of a service, or goods supplied, the person providing such accommodation, treatment, service or goods may claim the amount due therefor directly from the SMVA Fund on such form as may be prescribed, and any such claim shall be subject to the provisions applicable to any claim in terms of this Act.

(5) Where a claim under this section or this Act is in respect of funeral expenses incurred as a result of the death of any person under the circumstances mentioned in subsection (1), such claim shall be limited to reasonable expenses incurred and in any event, not exceeding a sum of E10, 000.

(6) The SMVA Fund may, in addition to any benefit payable under this Act, make a contribution towards any other costs incurred by a claimant as may be agreed or such contribution as may be deemed reasonable in the opinion of the SMVA Fund but, where the claimant and his attorney have agreed on an attorney- and- own client costs, the SMVA Fund may at its discretion, pay such legal costs directly to the claimant's attorney and deduct such amount from the benefits payable to the claimant.

(7) Subject to the provisions of this Act, where a claim for benefits under this Act-

- (a) includes a claim for general damages, the benefit shall be a monetary award paid by way of a lump sum;
- (b) includes a claim for the cost of any future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him, the SMVA Fund shall,

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after furnishing the claimant concerned with an undertaking to that effect or a competent court has directed the SMVA Fund to furnish such undertaking compensate-

- (i) the claimant in respect of the said cost after the cost has been incurred and on production of acceptable proof of payment thereof; or,
- (ii) the provider of such service or treatment directly.

(8) Subject to the conditions, limitations and exclusions imposed by this Act, the benefits that the SMVA Fund is required to pay in respect of medical expenses on any claim shall not exceed such sum, or sums, as is or are currently prescribed and generally chargeable in terms of any accepted formal or informal tariff used in the medical profession in Swaziland and the Common Monetary Area.”

Addition of new section 10bis, 10ter, 10quan, 10quin and 10sext-

13. The principal Act is amended by adding the following new sections *10bis*, *10ter*, *10quan*, *10quin* and *10sext-*

“Claims relating to minors and mentally disabled persons

10bis. (1) Subject to subsection (3), where the SMVA Fund accepts liability or is found by a competent court to be liable in respect of any claim –

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- (a) to a claimant who is a minor, the sum due and payable in respect of loss or damage as a result of injury of the minor himself;
- (b) to a minor claiming as a dependent, any amounts provided for the care and treatment of such a minor;
- (c) to a minor claiming as a dependent, for past loss of support;
- (d) to a minor claiming as a dependent, any amounts representing future loss of support,

the SMVA Fund shall set aside all monies for such payments and shall maintain such monies in an interest bearing bank account or shall otherwise invest them until such minor attains the age of 18 years, whereupon the sums due, if any, shall be paid over to the minor in accordance with this Act.

(2) Notwithstanding subsection (1), where certain funds are required and are necessary from time to time for the care, education or medical treatment of the minor, the SMVA Fund may pay such amounts to the parent, guardian, curator bonis, or any person who, in the opinion or discretion of the SMVA Fund is entitled to access such monies.

(3) In the event of a claimant who is a minor dying before utilising any monies set aside pursuant to this section, such monies, including the remainder of the amounts provided in terms of subsection (2) and any interest accrued thereon, shall revert to the SMVA Fund.

(4) Where the SMVA Fund accepts liability, or is found by a competent court to be liable in respect of any claim on behalf of a person who is mentally disabled-



- (a) the sum due and payable in respect of loss or damage as a result of injury of the mentally disabled person himself;
- (b) any amounts provided for the care and treatment of such a person;
- (c) past loss of support and past medical expenses;
- (d) any amounts representing future loss of support,

the SMVA Fund shall set aside all monies for such payments and shall maintain such monies in an interest bearing bank account or shall otherwise invest them and the sum so invested shall accrue to the mentally disabled person.

(5) Notwithstanding subsection (4), where certain funds are required and are necessary from time to time for the care, education or medical treatment of such a person, the SMVA Fund may pay such amounts to the parent, curator, or any person who, in the opinion or discretion of the SMVA Fund is entitled to access such monies.

(6) In the event of a claimant who is mentally disabled dying before utilising any monies set aside pursuant to this section, such monies, including the remainder of the amounts provided in terms of subsection (5) and any interest accrued thereon, shall revert to the SMVA Fund”

“Trusts

10ter. (1) All monies set aside by the SMVA Fund for the payment of future benefits as set out under this Act shall be held in trust by the SMVA Fund in an interest



bearing account or shall be otherwise invested until such monies are required for any purpose set out in this Act.

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

- (a) a future medical intervention and the claimant medically no longer requires the same undertaking or dies before utilising it; or,
- (b) loss of income or loss of support and the claimant dies before the end of the projected period of loss.”

Order of preference of payment

10*quan* (1) The order of precedence for the discharge of benefits payable in the case of an injured party shall be as follows -

- (a) medical and rehabilitative benefits;
- (b) enhancement of quality of life benefits;
- (c) incidental expenses; and,
- (d) loss of income.

(2) In the case of a claim pertaining to a deceased person, the order of precedence shall be as follows-



- (a) funeral expenses; and,
- (b) loss of financial support.

Provision for payment in advance

10quin Notwithstanding the provision of this Act the SMVA Fund may upon application by the claimant and on consideration of the circumstances of each case made to the Fund, it may, discharge a portion of the benefits due to the claimant in advance as it may deem appropriate.

Acceptance and rejection of claims by the Fund

10sext The SMVA Fund shall within 180days of a claim referred to in section 10(1) in this Act, notify the claimant in writing whether it accepts or rejects liability for the claim and where the liability is rejected by the Fund or where the Fund fails to notify the claimant of its decision within 180days the claimant shall be entitled to sue the Fund, the period of prescription shall be suspended during the period of 160 days.

Replacement of section 11

14. The principal Act is amended by replacing section 11 with the following new section 11-

“Limitations of liability

11. (1) Notwithstanding any other provision of this section, the total liability of the SMVA Fund under section 10 in respect of a motor vehicle accident shall not exceed the sum of E1, 000,000.

(2) The total liability of the SMVA Fund under section 10 in respect of general damages shall not exceed the sum of E150, 000.

(3) The total liability of the SMVA Fund under section 10 in respect of a claim for loss of support shall not exceed the sum of E350, 000 in respect of a claimant or such other sum as the Minister may, in consultation with the Board, prescribe or, where there are several claimants the total liability of the SMVA Fund shall, irrespective of the number of claimants, not exceed the sum of E1, 000,000.

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(4) Subject to subsection (1), the total liability of the SMVA Fund under section 10 in respect of a motor vehicle accident caused by the negligence of the driver or owner of a motor vehicle in which a person injured or killed was being conveyed as a passenger-

- (a) for reward;
- (b) in the course of the business of the owner or the driver of that motor vehicle; or,
- (c) in the case of an employee of the driver or owner of that motor vehicle, in respect of whom subsection (6) does not apply, in the course of his employment,

shall not exceed the sum of E100, 000 or such other sum as the Minister may, in consultation with the Board, prescribe, in respect of a claim by an injured party and, the total liability for claims by all claimants shall be limited to the sum of E1,000,000 irrespective of the number of claimants.

(5) Subject to subsection (1), the total liability of the SMVA Fund under section 10 in respect of a motor vehicle accident caused by the negligence of the driver or owner of a motor vehicle in the case of a person who was being conveyed in the motor vehicle concerned under circumstances other than those referred to in subsection (4), shall not exceed the sum of E50,000 in respect of loss of income and the cost of accommodation in a hospital or nursing home, treatment, provision of service or goods as a result of bodily injury to or the death of one such person, plus the cost of recovering such benefits but excluding the payment of benefits in respect of any other loss or damage and, the total benefits for claims by all dependants shall be limited to the sum of E500,000 irrespective of the number of dependants.



(6) Where the loss or damage referred to in section 10 is suffered as a result of bodily injury or death of an employee and the claimant is entitled to compensation under the Workmen's Compensation Act, 1983 in respect of such injury or death –

- (a) the liability of the SMVA Fund, in respect of the bodily injury to or death of anyone such employee shall be limited in total to the sum representing the difference between the amount which that employee could, but for the provisions of this paragraph, have claimed from the SMVA Fund or the amount to which that employee is entitled by way of compensation under that Act;
- (b) the total liability of the SMVA Fund, in connection with any one occurrence to pay a benefit under paragraph (a) to claimants shall be limited to the sum of E250,000 irrespective of the number of such employees whose bodily injuries or deaths were caused by or arose out of that occurrence; and,
- (c) the SMVA Fund shall not be liable under the Workmen's Compensation Act, 1983, for the amount of the compensation to which any such claimant is entitled under that Act.

(7) The total liability of the SMVA Fund in respect of-

- (a) A driver of a motor vehicle shall be limited to medical treatment, consultation, hospitalization and rehabilitation which shall not exceed the sum of E60 000.00.
- (b) A dependant of the driver of the motor vehicle referred to section 11(7) (a) shall be entitled to claim for medical treatment, consultation, hospitalization and rehabilitation if they have



suffered injury as a result of a motor vehicle accident contemplated in this Act and shall not exceed the sum of E 60 000.00 in anyone claimant or E 300 000 in respect of anyone number of claimants.

- (c) “Dependant” means for the purposes of this section, any person being a spouse or minor child of such person or a disabled or indigent person legally entitled, other than in terms of contract, to monetary maintenance from such person.

(8) Subject to subsection (12), the limitations specified in this section shall be exclusive of any order for costs as may be made by a court, or the costs of obtaining any medical or legal report or of procuring any expert opinion or advice.

(9) The benefits otherwise payable by the SMVA Fund to a driver of a motor vehicle involved in a motor vehicle accident shall be reduced by fifty percent where it is proved that the blood alcohol level of such driver exceeded the limit prescribed under the Road Traffic Act, 2007, or that he was, at the time of the accident in question, driving under the influence of a drug as defined under the Opium and Habit-forming Drugs Act, 1922.

(10) The benefits otherwise payable by the SMVA Fund in respect of a person injured or killed in a motor vehicle accident, shall be reduced by twenty-five percent, where such person was-

- (a) at the time of the accident not wearing a seat belt fitted to the vehicle for such purpose; or,
(b) not seated in or on a seat specifically designed for, and affixed permanently to, the vehicle.

(11) The benefits otherwise payable by the SMVA Fund to the driver of a vehicle, shall be reduced by fifty percent where the said driver was in unlawful possession or use of the vehicle, or where the vehicle was defective, irrespective of whether or not such possession, use or defect contributed to the cause of the vehicle accident in question, and the same reduction shall apply to any passenger in the vehicle if



it is provided that he knew, or ought reasonably to have known, of such unlawful possession or such defect.

(12) The Minister, on the advice of the SMVA Fund and subject to confirmation by Parliament, may by notice in the Gazette, adjust the amounts referred to in this section annually, in order to counter the effects of inflation.

(13) The SMVA Fund shall, where it has borne the costs of obtaining any medical or legal report or of procuring any expert opinion or advice deduct such costs from the benefits payable to a claimant under this Act.”

Addition of new section 11bis.

15. The principal Act is amended by adding the following new section 11bis –
“Liability for damage caused by unidentified vehicle.

11bis. (1) The liability of the SMVA Fund under the Act in respect of claims for bodily injury or death arising from the driving of a motor vehicle of which neither the owner’s nor the driver’s identity can be established, hereinafter referred to as the “Unidentified motor vehicle”, shall be subject to the following conditions-

- (a) no liability shall be incurred by the SMVA Fund unless -
 - (i) the bodily injury or death arose from the negligent or unlawful driving of the unidentified motor vehicle and proof thereof to the satisfaction of the SMVA Fund is produced;



- (ii) evidence is produced to the satisfaction of the SMVA Fund proving that the claimant took all reasonable steps to identify the owner or driver of the unidentified motor vehicle;
 - (iii) the claimant's inability to obtain judgment in terms of section 10 of the Act is not due to any act or omission on his part; and,
 - (iv) evidence is produced to the satisfaction of the SMVA Fund that the unidentified motor vehicle (including anything on, in or attached to it) came into physical contact with the injured or deceased person or with any other person, vehicle, conveyance or any other object or objects which directly or indirectly caused or contributed to the injury or death;
- (b) the total liability of the SMVA Fund to pay for medical treatment, consultation, hospitalization and rehabilitation to any claimant based on a claim arising out of the same occurrence shall not exceed an amount of E150,000 in respect of any one claimant or E150,000 in respect of any number of claimants;

(2) The liability of SMVA Fund in respect of claims which arise under this section shall be subject to the following further conditions-

- (a) (i) a claim for compensation for loss or damage suffered by



the claimant shall be made to the SMVA Fund within two years from the date of the occurrence which gave rise to the bodily injury or death, with such modifications as are appropriate, in accordance with the provisions of section 16(1);

- (ii) the provisions of subparagraph (i) shall also apply to all claimants, irrespective of whether they are subject to any legal disability;
- (b) the SMVA Fund shall, within 180 days of a claim referred to in paragraph (a), notify the claimant in writing whether it accepts or rejects liability for the claim, and where liability for the claim is rejected by the SMVA Fund or where the SMVA Fund fails to notify the claimant of its decision within the 180 days the claimant shall be entitled to sue the SMVA Fund, but the period of prescription shall be suspended during the period of 180 days;
- (c) the SMVA shall not incur any liability unless summons issued under paragraph (b) has been properly served on it within two years and 180 days from the date of the occurrence which gave rise to the bodily injury or death, and the provisions of this paragraph shall also be applicable to all claimants, irrespective of whether they are subject to any legal disability.



(3) In an action brought under this section, the issues before the court shall, subject to the provisions of this section, be the same as the issues which would have been before the court if the motor vehicle had been identified.

(4) If so required by the SMVA Fund and provided the SMVA Fund grants the claimant full indemnity as regards costs, the claimant who brings an action under this section shall sue in the same action all such other persons as the SMVA Fund may require him to sue.

(5) The SMVA Fund shall, at any time after having received a claim under subsection (2) (a), be entitled to require any person who has suffered bodily injury giving rise to the claim to -

- (a) submit at the expense of the SMVA Fund, to a medical examination or examinations by medical practitioners appointed by the SMVA Fund;
- (b) submit at the request of the SMVA Fund or any of his representatives or any person so instructed by the SMVA Fund, to interrogation by such parties at a place indicated by the SMVA Fund and, at the request of the SMVA Fund or such representative or such other person, to make a sworn statement setting out in full the circumstances of the alleged occurrence on which his claim is based;

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- (c) furnish the SMVA Fund in writing with such further particulars as may be required in respect of the occurrence or accident and of how it occurred;
- (d) furnish the SMVA Fund with copies of all medical reports, X- ray photographs or other reports and accounts relating to the claim which are in his possession or in the possession of his agents; and,
- (e) give the SMVA Fund written authorization for the inspection by it or on its behalf of all records concerning himself which are in the possession of any hospital or medical practitioner.

(6) The SMVA Fund shall not pay a benefit under this Act to any person who fails to comply with the requirements of subsection (6).

(7) At any time after making payment to the claimant in settlement of a claim under this section, whether in terms of a judgment or otherwise, and in consideration of such payment, the SMVA Fund shall be entitled to the cession of any claim which the claimant may have against the owner or driver of the unidentified motor vehicle, or any person responsible in law for the acts of such owner or driver.”

Amendment of section 12

16. Section 12 of the principal Act is amended by-

- (a) replacing the *chapeau* to subsection (1) with the following-

“ The SMVA Fund shall not pay a benefit to a claimant under section 10 for any loss or damage-”;



(b) deleting the words “third party” where they occur in subsection (1) (b) and replacing them with the word “person”;

(c) inserting the following new paragraphs (d), (e), (f) and(g)

“(d) where the claimant has entered into an agreement with any person other than the one referred to in paragraph (c) in accordance with which the claimant has undertaken to pay such person after settlement of the claim-

(i) a portion of the benefits in respect of the claim; or

(ii) any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from the person contemplated in paragraph (c);

(e) suffered as a result of bodily injury to any person who-

(i) unreasonably refuses or fails to subject himself, at the request and cost of the SMVA Fund, to any medical examination or examinations by medical practitioners designated by the SMVA Fund;

(ii) refuses or fails to furnish the SMVA Fund, at its request and cost, with copies of all medical reports in his possession that relate to the relevant claim for benefits; or

(iii) refuses or fails to allow the SMVA Fund at its request to inspect all records relating to himself that are in the possession of any hospital or his medical practitioner;



- (f) if the claimant refuses or fails-
 - (i) to submit to the SMVA Fund, together with his claim form as prescribed or within a reasonable period thereafter and if he is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or
 - (ii) to furnish the SMVA Fund with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof;
- (g) in respect of claims for emotional loss.” and,
- (d) adding a new subsections (2) and (3) as follows-
 - “(2) A claim by a claimant who is a visitor to Swaziland on account of any injury or a claim by a claimant on account of the death of a visitor to Swaziland caused by a motor vehicle accident shall be excluded save for, and subject to other applicable limitations or conditions under this Act, medical and rehabilitation expenses incurred whilst that person is in Swaziland or to funeral expenses incurred as the case may be.
 - (3) For the purposes of this section, “visitor” means a person who is in Swaziland for a temporary period not exceeding six months but does not include a



person who is a citizen of the Republic of South Africa, Namibia, Lesotho and any other country as the Minister may from time to time prescribe.”

Replacement of section 13

17. The principal Act is amended by replacing section 13 with the following new section 13-
“*Claim for benefits lies against SMVA Fund only*”

13. Where a claimant is entitled under section 10 to claim from the MVA Fund any benefits in respect of any loss or damage as a result of any bodily injury or death caused by or arising out of the driving of a motor vehicle by the owner thereof or by another person with the consent of the owner, that claimant shall not be entitled to claim –

- (a) the benefits in respect of that loss or damage from the owner or from the person who so drove the vehicle; or,
- (b) the benefits in respect of that loss or damage from his employer, if that person drove the vehicle as a servant in the execution of his duty;

unless the SMVA Fund is unable or refuses to pay the benefits.”

Amendment of section 14

18. Section 14 of the principal Act is amended in subsection (3), by deleting the words “third party” where ever they occur and replacing them with the word “claimant”.

Amendment of section 15

19. Section 15 of the principal Act is amended–
- (a) by deleting the words “third party” where ever they occur in that section and replacing them with the word “claimant”;



(b) by replacing subsection (1) as follows-

“(1) Notwithstanding the provisions of any other law in Swaziland relating to prescription and subject to the provisions of subsection (2)-

(a) a right to claim under this Act, shall be notified in writing to the SMVA Fund within six months of the occurrence of the motor vehicle accident giving rise to such right and the notification shall be in the prescribed form;

(b) the right to claim compensation under section 10 shall become prescribed upon the expiration of a period of two years from the date on which the claim arose but the period of prescription shall be suspended during the period of ninety days referred to in section 16(2)(a).”

(c) in subsection (2) and (3), by deleting the words “for compensation” where ever they occur in those subsections;

(d) in subsection (6), by deleting the word “compensation” where it first occurs in that subsection and, replacing it with the word “benefits” where it occurs in the proviso to that subsection;

Amendment of section 16

20. Section 16 of the principal Act is amended by deleting the words “for compensation”.

Replacement of section 17.

21. The principal Act is amended by replacing section 17 with the following new section 17-

“SMVA Fund’s right of recourse



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

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

Addition of new section 17bis.

22. The principal Act is amended by adding the following new section 17bis -



“Service providers

17bis. (1) For purposes of this Act, the institutions specified in Schedule I shall be recognised service providers.

(2) The Minister may, on the advice of the Board, amend Schedule I.”

Addition of new section 17ter

23. The principal Act is amended by adding the following new section 17ter -

“Assistance to SMVA Fund.

17ter (1) Where the SMVA Fund has paid any sum as benefits in terms of the Act , the person to whom such benefits have been paid shall, at the request of the Fund, render all necessary assistance to the SMVA Fund in relation to any legal proceedings instituted by the SMVA Fund against the person who caused the vehicle accident.

(2) The assistance which shall be rendered by the person referred to in subsection (1) shall include, but shall not be limited to –

- (a) the furnishing of all documents and evidence relating to the accident in the possession of such person;
- (b) the giving of evidence in a court of law by such person and any other witnesses; and,
- (c) the rendering of any assistance which may reasonably be required by the SMVA Fund for the institution of legal proceedings.

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(3) In the event that the SMVA Fund makes a written request for assistance from any person to whom benefits have been paid by the SMVA Fund, and the person fails, without reasonable cause, to render such assistance to the SMVA Fund, the person commits an offence and is on conviction liable to a fine not exceeding E500 or to imprisonment not exceeding 30days, or to both.

Addition of new section 23

24. The Principal Act is hereby amended by the addition of a new section 23 as follows –

Exemption from tax, transfer duty and stamp duty

23. (1) The income or money of the SMVA Fund shall be exempt from army corporate tax provided for in the Income Tax Order, 1975.

(2) The exemption shall exclude any duties payable under the Sales tax Act, 1983.

(3) The SMVA Fund shall be exempt from the payment of transfer duty and stamp duty which may be applicable under the Deeds Registry Act, 1968.

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SCHEDULE I

(under section 17bis)

APPROVED SERVICE PROVIDERS

All Government hospitals and health institutions (clinics, centres).

All private clinics and hospitals in Swaziland duly recognised under the Medical and Dental Practitioners Act, 1970, or other relevant law or by the Medical and Dental Association of Swaziland.

All doctors duly registered to practice medicine under the Medical and Dental Practitioners Act, 1970, or other relevant law.

All attorneys admitted in terms of the Legal Practitioners Act, 1964

SMVA FUND FEES PAYABLE TO ATTORNEYS

1. An attorney who shall represent a Claimant under this Act shall hold an Accountant's Certificate and shall have paid his contributions due to the Fidelity Fund in terms of the Legal Practitioners Act, 1964.
2. With effect from the commencement date of this Act the following fees shall be payable to attorneys for services provided to a claimant whose liability for such payment shall be borne by the SMVA Fund to the attorney not exceeding the amounts prescribed herein-

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- (a) 10% on the first E100,000.00 awarded to the claimant, subject to a minimum of E 5,000.00 and;
 - (b) 3.5% on the balance of the award thereafter, which amount of the fees to be payable to the attorney shall not include disbursements and any order for costs issued by a competent court as a result of litigation between a claimant and the SMVA Fund.
3. The amount of the disbursement to b paid to an attorney shall not include disbursement which shall be subject to a maximum of 20% of the of fees referred to in paragraph 2 of this Schedule
 4. The fees payable to an attorney shall not be applicable where a competent court has granted an order for costs as a result of litigation arising out of a repudiation of a claim by the SMVA Fund.
 5. There shall be no fee payable to a attorney for any services rendered to a claimant if the attorney does not comply with the provisions of this Schedule.

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