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THE MOTOR VEHICLE ACCIDENTS FUND ACT, 2026

(Act No. 4 of 2026)



I ASSENT

MSWATI III
KING OF THE KINGDOM OF
ESWATINI

....., 2026

**AN ACT
ENTITLED**

AN ACT to extend the mandate of the Motor Vehicle Accidents Fund and to repeal the Motor Vehicle Accidents Act No. 13 of 1991 and to provide for incidental matters.

ENACTED by the King and Parliament of the Kingdom of Eswatini.

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PART I PRELIMINARY PROVISIONS

Short title and commencement

1. (1) This Act may be cited as the Motor Vehicle Accidents Act, 2026.

(2) This Act shall come into force on a date to be determined by the Minister through notice in the Gazette.

Interpretation

2. (1) In this Act unless the context otherwise requires -

“business” does not include an unlawful business;

“board” means the Board of Directors of the Sincephetelo Motor Vehicle Accidents Fund established under Part III;

“claimant” means a natural person who has, inculpably, suffered loss or harm as a result of bodily injury or death caused by or arising out of the negligent or unlawful driving of a motor vehicle in any place in Eswatini and includes a person lodging a claim or a dependent of such person or any person under legal disability on behalf of whom a claim has been lodged;

“compensation” means redress of loss or harm suffered by a claimant through the payment of damages envisaged under section 19(2);

“conveyed” in relation to the conveyance of a person in a motor vehicle, includes entering or mounting the motor vehicle for the purpose of being so conveyed or alighting from the motor vehicle after having been conveyed;

“damages” means monetary compensation awarded to claimant as settlement of a claim or judgment issued by a competent court or an undertaking to award such compensation in future or to pay a service provider to the loss or harm suffered by claimant;

“defect” in relation to a motor vehicle, means any fault or dysfunction or disrepair in any part of the motor vehicle that renders it unsafe to operate and “defective” shall have a corresponding meaning;

“dependent”, in relation to a person involved in a motor vehicle accident means a spouse or a minor child of such person or a disabled or indigent person legally entitled, other than in terms of a contract, to monetary maintenance from such person;

“electronic means” mean a form of electronic communication of the contents of a document including the use of on-line application, electronic mail, on-line shared drives, universal serial bus drives or facsimile or any other forms of the electronic communication;

“financial year” means a period of twelve months ending on the 31st of March in any year or such other period as may be prescribed;

“fuel” means a measurable supply of energy to a motor vehicle enabling its engine to start or run, including petrol, diesel or electricity or any other power not being exclusively human or animal power contemplated under this Act for the purpose of the support and benefit of the Fund;

“funeral expenses” means the amount of money prescribed under this Act or its Regulations as a contribution towards the burial or cremation of the remains of a person who has been killed in a motor vehicle accident;

“general damages” means monetary compensation payable to a claimant for non-pecuniary loss such as pain and suffering, loss of amenities, disfigurement, but shall exclude emotional loss, loss of society and comfort;

“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;

“loss of earning capacity” means the reduction or infringement of claimant’s potential to earn income in the future due to a permanent injury or disability caused by a motor vehicle accident, which is different from actual earnings;

“medical expenses” means incurred or prospective costs in respect of the stabilization, treatment, rehabilitation of a person injured in a motor vehicle accident, including the provision of assistive devices and modification of a claimant’s home or car for purposes of enhancing the quality of the claimant’s post-accident life;

“medical treatment” means the management and care given to the person injured in a motor vehicle accident occurring in any place in Eswatini, administered by the allied health professionals or health professionals legally recognised in their respective areas of practice;

“Minister” means the Minister responsible for finance;

“motor vehicle” means any vehicle designed or adapted for propulsion or haulage on a road by means of any power (not being exclusively human power or animal power) without the aid of rails and includes any trailer of such a vehicle.

“motor vehicle accident” means an event, whether involving a number of vehicles or not, in which injury or death of a person occurs on the account of the involvement of 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;

“Fund” means the Sincephetelo Motor Vehicle Accidents Fund established under part II of this Act;

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

“negligent driver” means the driver of a motor vehicle who causes the occurrence of a road traffic accident through the wrongful or unlawful driving of that driver; “owner” in relation to-

- (a) a motor vehicle which a motor dealer has in possession during the course of business and which may, in terms of any law relating to the licensing of any motor vehicle, not be driven or be used on a public road except under the authority of a motor dealer's licence of which the motor dealer concerned is the holder, means that motor dealer;
- (b) a motor vehicle which has been received for delivery by a motor dealer in the course of business of delivering new vehicles and which has not yet been delivered by the motor dealer, means that motor vehicle;
- (c) a motor vehicle which is the subject of a hire purchase agreement, means the purchaser under the hire purchase agreement in question;
- (d) a motor vehicle leased under an agreement of lease for a period of at least twelve months, means the lessee concerned;

"prescribed" means prescribed by Regulations under this Act;

"repealed Act" means the Motor Vehicle Accident No. 13 of 1991;

"unidentified motor vehicle" means a motor vehicle involved in a road traffic accident that could not be recognised by its registration letters and numbers and other forms of legal identification of a motor vehicle whose driver or owner could not be established in terms of the legal identification applicable to persons;

"service provider" means a person, company or organization appointed by the Fund to perform defined work on its behalf in terms of an agreement, implied or express;

"special circumstances" does not include any neglect, omission or ignorance; and

"support" means the legal obligation to provide maintenance for another person who is entitled to such maintenance in terms of the common law;

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

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

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

PART II CONTINUATION OF THE FUND

Continuation of the Fund

3. (1) There shall continue to exist as a body corporate to be known as the Sincephetelo Motor Vehicle Accident Fund with perpetual succession and common seal and which may sue and be sued in its corporate name.

(2) The Fund may acquire, hold and dispose of any movable or immovable property or enter into such contracts as may be necessary for its purposes.

Object of the Fund

4. The object of the Fund is to -

- (a) compensate claimants for patrimonial loss and non-patrimonial loss save for emotional loss, subject to the standards of the medico-legal industry and the provisions of this Act;
- (b) compensate injured claimants for patrimonial loss in collaboration with public health institutions;
- (c) administrate the fuel levy for purposes of -
 - (i) payment of compensation to claimants subject to the provisions of this Act;
 - (ii) providing any service or business through the establishment of subsidiary companies, partnerships or other schemes approved by the Minister in accordance with this Act and the Public Enterprise (Control and Monitoring) Act of 1989, or its successor;
- (d) provide or facilitate legal assistance, psycho-social support, maintain a national accident anonymized registry in accordance with Data Protection Act 2022 and fund targeted road safety education

Functions and powers of the Fund

5. The functions and powers of the Fund are to -

- (a) investigate and settle claims referred to it in section 1 arising from the driving of a motor vehicle whether or not the identity of the owner or the driver has been established;
- (b) commence, conduct, defend or abandon legal proceedings in connection to such claims;
- (c) manage and utilise the monies of the 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 subject to section 19 shall be administered;
- (e) procure of any services or goods that will enhance the performance of its duties;
- (f) borrow money and secure the payment, subject to the Minister's approval and to invest the money of the Fund as provided for under the Act, or investment guidelines of the Fund on condition that any proceeds or profits realised by such investment or any net income shall be deemed to be reserves and not profit and shall not be subject to dividends in the normal cause of business;
- (g) invest any monies not immediately required for the conduct of business in line with the provisions of paragraph (f), and to realise, 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 to the Fund, where such investment involves the offshore placement of funds, the Board shall seek the approval of the Minister first;

- (h) waive, relax or condoning the imposition of fuel levy penalties as the Fund deems reasonable and necessary;
- (i) collaborate with stakeholders for the prevention of revenue leakages and promotion of road safety which in the view of the Fund will promote its values;
- (j) receive a donation or make a donation for the fulfilment of any purpose under this Act;
- (k) do all such things as are incidental or conducive to the exercise of its powers or the performance of its duties under this Act;
- (l) upon approval by the Minister, establish or acquire subsidiary companies and hold shares in other companies and have power to appoint the Board of Directors of the subsidiaries companies, and

shall not be subject to the control of any Regulator or be required to subject itself to registration or licensing as if it were a provider of financial services and where any legislation provides so, the Regulator shall on the coming into force of this Act, give effect to same.

PART III ESTABLISHMENT OF THE BOARD

Board of Directors

6. (1) There is established a Board of Directors of the Sincephetelo Motor Vehicle Accidents Fund (the "Board") which shall exercise the functions of the Fund under this Act.

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

Powers and Functions of the Board

7. (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 Fund, and may -

- (a) make recommendations to the Minister in respect of -
 - (i) the annual budget of the Fund;
 - (ii) surplus reserves required and investments to be made on behalf on the Fund;
 - (iii) any review or amendment of this Act;
 - (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 Fund by the Chief Executive Officer;
- (c) approve internal rules in respect of the management of the 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 Fund;
- (f) nominate the auditors of the Fund;
- (g) approve the appointment of attorneys of the Fund; and
- (h) 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 have regard to the net income of the Fund for a financial year after allowing for the expenses of administration of the Fund as have been properly incurred under this Act.

(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

8. (1) The Board shall consist of the following persons, who shall be appointed by the Minister for a term not exceeding three (3) years –

- (a) Chairperson;
- (b) the Chief Executive Officer who shall be an ex officio member of the Board;
- (c) the Principal Secretary Ministry of Finance or representative;
- (d) a representative of claimants appointed from claimants as defined under section 2 of the Act;
- (e) a health professional; and
- (f) four other persons with appropriate knowledge, skills and personal attributes to properly ensure the functional integrity of the Fund.

(2) The persons appointed in subsection (1) shall be eligible for re-appointment.

(3) A person is not eligible for appointment to the Board if that person 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 (6) 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.

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

Vacation of Office

9. 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 or if the member fails to attend three consecutive board meetings without leave of the Chairperson of the Board;

(b) upon member's death;

(c) upon the expiry of one months' notice, given in writing to the Minister of intention to resign from office;

(d) upon the expiry of such time as the Minister may specify in writing, notifying the member's removal from office; or

(e) if the member becomes physically or mentally incapable of performing duties as a member of the board.

Removal and filling of vacancies

10. (1) The Minister may, by written notice, remove a member from office where the Minister is satisfied that the member-

(a) has, without the consent of the Chairperson, been absent from three (3) consecutive meetings of the Board or for periods exceeding one third of the total meetings held in a year;

(b) has an interest that is likely to perpetually prejudice the exercise and performance of functions as a member;

(c) is unable or unfit to discharge functions as a member; or

(d) is in breach of any condition imposed upon appointment.

(2) The Minister shall, in writing, suspend from office a member of a board against whom a criminal conviction has been obtained.

(3) If a member dies, resigns, or is removed from or otherwise vacates office prior to the expiry of the term for which the member has been appointed, the Minister shall appoint a new member for the unexpired period of the term of office of the member in whose place the member is appointed.

Meetings and Procedures of the Board

11. (1) The Board shall meet as often as the business of the Fund may require, but not less frequently than once in each quarter of the year or when requested by the minister to do so.

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

(3) In the event the Chairperson is unable to attend or to chair a meeting, the Chairperson may appoint one of the members to act as Chairperson.

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

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

Secretary to the Board

12. (1) The Board shall appoint a fit and proper person who is a legal practitioner admitted in the High Court of Eswatini, to be the Secretary to the Board and the person shall-

(a) be responsible for preparing and keeping the records of meetings of the Board and sub-committees of the Board;

(b) have custody of the Seal;

(c) be the executive head responsible for providing guidance on corporate governance issues and legal advice or opinions on different legal issues arising from the work of the Fund and the conduct of the Board's business; and

(d) perform such other duties as the Board or Chief Executive Officer may direct.

(2) Whenever the office of the Secretary is vacant, or the Secretary is for any reason temporarily unable to perform the functions of the office, the Board may appoint -

(a) a suitably qualified staff member of the Fund; or

(b) any other eligible person, to act as Secretary during the vacancy or during the period that the Secretary is unable to perform those functions.

Chief Executive Officer and Other Staff

13. (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, or its successor.

(2) The Chief Executive Officer shall hold office for a period not exceeding three (3) years and eligible for reappointment based on performance.

(3) The Chief Executive Officer shall exercise authority and control over the operations and management of the Fund.

(4) The Chief Executive Officer shall-

(a) conduct the day to day business and administration of the Fund;

- (b) exercise the powers and perform the functions of the Fund under section 5;
- (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 and labour laws.

(5) The Chief Executive Officer shall consult with the Board on matters of policy.

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

(7) The Chief Executive Officer may be removed from office by the Minister on the recommendation of the Board in accordance with the Public Enterprises (Control and Monitoring) Act, 1989 or its successors.

PART IV FINANCIAL PROVISIONS

Monies of the Fund

14. (1) The monies of the Fund shall consist of the motor vehicle accidents levy imposed on fuel under section 15 and any income derived from the investment of the monies of the Fund and such other sums as the Fund may acquire, or borrow in accordance with the provisions of this Act and, any unclaimed or used monies deposited into the Fund's bank account remaining so deposited for a period exceeding two (2) years shall be deemed to have accrued to the Fund.

(2) The Fund shall keep proper records of all its assets and liabilities.

Imposition of motor vehicle accidents levy

15. (1) The motor vehicle accidents levy shall be nine (9) cents per litre of imported or produced or blended fuel in addition to the current existing levy and such other rates as may be prescribed by the Minister through Regulations.

(2) The Minister shall after consultation with the Minister responsible for Natural Resources and Energy review the levy imposed under subsection (1) through Regulations after thirty-six (36) months from the commencement date of this Act.

(3) The Fund may reimburse Eswatini Railway at rate of forty percent (40%) of fuel levy based on the volume of fuel purchased by Eswatini Railway from importers or producers or blenders on a monthly basis.

(4) A person who imports fuel in bulk from any place outside Eswatini or who produces or blends fuel in bulk within Eswatini or who produces fuel in bulk in Eswatini shall pay the levy imposed under subsection (1) at the time of such importation or production or at such other time not being later than fifteen (15) days after such importation or production.

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

due to the Fund as if it were a levy.

(6) A person who fails to pay a levy under this Act or in accordance with the Regulations commits an offence and shall be liable on conviction to a fine not exceeding ten thousand Emalangeni (E10 000) or to imprisonment of two (2) years or both.

(7) Notwithstanding the provision of subsection (3), the Fund may waive part or all of the penalties payable under subsection (4) provided proof of special circumstances for failure to comply with subsection (3) has been furnished to the satisfaction of the Fund, where exceptional arrangements shall be made for the payment of the levy.

Chief Financial officer

16. (1) There shall be a Chief Financial officer of the Fund who shall be appointed and dismissed in accordance with the Public Enterprises (Control and Monitoring) Act, 1989 or its successor.

(2) The Chief Financial Officer shall-

- (a) keep all proper books of accounts and records in relation to the funds, undertakings, activities and property of the Fund;
- (b) prepare statement of account as maybe necessary to indicate the financial status of the Fund at the end of each Financial year;
- (c) cause the accounts of the Fund be examined, audited and reported annually by auditors appointed in terms of section 17; and
- (d) carry out any other duties assigned to the Chief Financial officer by the Chief Executive officer.

Accounts and Audit

17. The Fund shall cause its accounts to be annually audited by a lawfully registered firm of auditors appointed by the Fund in accordance with the Public and Enterprises (Control and Monitoring) Act 1989 or its successor.

Annual Reports

18. The Fund shall, in accordance with the Public and Enterprises (Control and Monitoring) Act, 1989 or its successor, within four (4) months after the end of each financial year, submit a report together with a copy of its audited financial accounts in respect of the discharge of its functions during the past financial year to the Minister and the Minister shall lay the report before Parliament.

PART V CLAIMS

Liability and compensation of claimants

19. (1) A claimant who has suffered loss or harm as a result of bodily injury to oneself or as a result of the death or bodily injury of any person, in either case caused by or arising out of the wrongful or unlawful driving of a motor vehicle in Eswatini by the negligent driver, shall

subject to the conditions and limitations imposed by this Act, be entitled to claim compensation from the Fund.

(2) Subject to the conditions, limitations and exclusions imposed by this Act, a claim under subsection (1) shall include one or more of the following-

- (a) medical expenses;
- (b) funeral expenses;
- (c) loss of support to dependents;
- (d) loss of lawful earnings;
- (e) loss of earning capacity;
- (f) general damages; and (g) curatorship fees.

(2) Where the damages payable under subsection 2(c), (d), and (e) are projected over an anticipated period of loss, the Fund shall furnish the claimant concerned with an undertaking to pay such amount as claimed, proved or agreed prior to such undertaking and shall pay the amount due by instalments payable periodically in accordance with such projection.

(3) Where the damages payable under subsection 2 (a) involve the future treatment and rehabilitation of the claimant, the Fund may furnish the claimant concerned with an undertaking to pay the supplier for such treatment and rehabilitation when they become due.

(4) Where the damages payable under subsection 2 (f) are in excess of fifty thousand Emalangeni (E50 000), the Fund may furnish the claimant concerned with an undertaking to settle the award by instalments payable periodically over a period not exceeding five (5) years, without interest.

(5) The costs of medico-legal investigations reports, curatorship orders, expert opinions, and legal expenses for obtaining court orders incurred in the course of administrative determination by the Fund of liability for compensation and the quantum as well as incidental expenses such as transportation, meals, accommodation of the claimant and similar costs in the course of investigations, shall not be deductible from the damages payable under subsection (2).

(6) A medical or funeral scheme with which a claimant has cover shall not make a claim to the Fund seeking re-imbursement for expenses incurred by that scheme in providing a benefit to a claimant on the basis of a contract making the claimant a member of that scheme.

Provision for payment in advance

20. Notwithstanding the provision of this Act the Fund may upon application by the claimant and on consideration of the circumstances of each case made to the Fund discharge a portion of the damages due to the claimant in advance as it may deem appropriate, and deduct such advanced amount from the settlement of the claim.

Acceptance or rejection of claims by the Fund

21. The Fund shall within fourteen (14) days of a claim referred to in section 19 (1), 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 the fourteen (14) days, the claimant shall be entitled to sue the Fund.

Limitations of liability

22. (1) The total liability of the Fund under section 19 (1) in respect of a motor vehicle accident shall not exceed the limits stated under this Act -

(2) The total liability of the Fund under section 19 (1) in respect of a motor vehicle accident caused by the wrongful or unlawful driving of the negligent driver or owner of the negligently driven motor vehicle in which a claimant -

- (a) sustained minor injuries, shall be limited to compensation for general damages not exceeding nine thousand Emalangenani (E9,000);
- (b) sustained moderate injuries shall be limited to compensation for general damages not exceeding fifty-five thousand Emalangenani (E55,000);
- (c) sustained severe injuries shall be limited to compensation for general damages not exceeding one hundred thousand Emalangenani (E100,000);
- (d) sustained catastrophic injuries shall be limited to compensation for general damages not exceeding two hundred and fifty thousand Emalangenani (E250,000);
- (e) sustained personal injuries shall be limited to one million eight hundred thousand Emalangenani (E1,800,000) for medical expenses;
- (f) sustained personal injuries shall be limited to five thousand Emalangenani (E5,000) in respect of incidental expenses;
- (g) sustained personal injuries shall be limited to one million Emalangenani (E1,000,000) for loss of earnings;
- (h) sustained personal injuries shall be limited to five hundred thousand Emalangenani (E500,000) for loss of earning capacity;
- (i) sustained personal injuries shall not be more than eighteen thousand Emalangenani (E18,000) for curatorship fees per claimant per annum;
- (j) sustained fatal injuries shall be limited to fifteen thousand Emalangenani (E15,000) in respect of funeral expenses; and
- (k) sustained fatal injuries shall be limited to two million Emalangenani (E2, 000,000) for all dependents of the deceased in respect of loss of support.

(3) Where the income cannot be proved by the claimant to the satisfaction of the Fund, the Fund shall use the industry standard or the informal sector minimum wage of the deceased as a basis for the calculation the income and support due subject to the total maximum prescribed in this section.

(4) Where the loss or harm referred to in section 19(1) is suffered as a result of bodily injury of an employee and the claimant is entitled to compensation under the Workmen's Compensation Act, 1983 or its successor, in respect of such injury -

- (a) the total liability of the Fund, in respect of the bodily injury of such employee shall be limited to the amount representing the difference between the award which that employee could have otherwise been entitled to receive as settlement from the Fund and the compensation awarded under the Workmen's Compensation Act;
- (b) the total liability of the Fund, in connection with any one occurrence to pay damages under paragraph (a) to claimants shall be limited to the amount of three hundred thousand emalangeni (E300 000) per claimant or three million emalangeni (E3 000 000) in respect of multiple claimants per occurrence;
- (c) the Fund shall not be liable under the Workmen's Compensation Act, 1983 or its successor for the amount of the compensation to which any such claimant is entitled under that Act;

(5) The benefits otherwise payable by the Fund to a claimant injured in a motor vehicle accident who is proven to have exceeded the permissible alcohol level as prescribed under the Road Traffic Act of 2007 or its successor or that the claimant 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, or Medicines And Related Substances Control Act, 2016, or their successors shall be reduced by not less than fifty(50) percent.

(6) The benefits otherwise payable by the Fund in respect of a claimant injured in a motor vehicle accident, shall be reduced by not less than twenty-five (25) percent, where such person was at the time of the accident not wearing a seat belt fitted to the vehicle for such purpose; or not seated in or on a seat specifically designed for, and affixed permanently to, the vehicle.

(7) The benefits otherwise payable by the Fund to the claimant, being a driver of a motor vehicle, shall be reduced by not less than fifty (50) percent where such claimant was in an unlawful possession or use of the motor vehicle or where the motor vehicle was defective, and the same reduction shall apply to any passenger in the motor vehicle if it is proved that the passenger had knowledge, or ought to have known, of such unlawful possession or defect.

(8) Notwithstanding the provisions of subsections (5), (6) and (7) and scenarios contemplated by these subsections, common law principles on contributory negligence apportionment for other scenarios shall apply.

Liability excluded in certain cases

23. (1) The Fund shall not pay compensation to a claimant under section 19 (1) for any loss or damage-

- (a) for which neither the negligent driver nor the owner of the motor vehicle concerned would have been liable if section 27 would not have been enacted;
- (b) if the claim concerned has not been instituted and prosecuted by the claimant, or on behalf of the claimant by any person entitled to practice as an attorney within Eswatini.
- (c) where 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 damages 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 Fund to any medical examination, or examinations by medical practitioners designated by the Fund;
 - (ii) refuses or fails to furnish the 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 Fund at its request to inspect all records relating to himself that are in the possession of any hospital or his medical practitioner;
- (f) where claimant refuse or fails to submit to the Fund, together with his claim form as prescribed, or within a reasonable period 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 to furnish the Fund with copies of all statements and documents relating to the accident that rise to the claim concerned, within reasonable period after having come into possession; and
- (g) in respect of claims for emotional loss, loss of society and comfort.

Claims for compensation lies exclusively against Fund

24. Where a claimant is entitled under section 19 to claim compensation from the Fund 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 or by another person with the consent of the owner, that claimant shall not be entitled to claim –

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

unless the Fund is unable or refuses to pay the damages.

Submission of information

25. (1) The driver or owner of a motor vehicle involved in an accident which results in a death or injury of any person shall where possible report within twenty-four (24) hours after the occurrence of the accident or under any circumstances within three (3) days after the occurrence and shall furnish the Fund with information relating to the occurrence of the accident, persons involved in the accident and other details that may be required by the Fund.

(2) Any person in possession of information or records relating to a claimant shall furnish such information or records to the Fund upon written demand by the Fund.

(3) A person who fails to furnish information or furnishes false information, as required under subsection (1) and (2) commits an offence and shall be liable on conviction to a fine not

exceeding Two Thousand Emalangeni (E2, 000) or imprisonment not exceeding two months (2), unless he proves that his inability or failure to comply with the relevant provision is not due to his own action or default.

Medical Aid Schemes and Insurance Schemes prohibited from claiming

26. (a) A medical aid scheme or any insurance scheme with which a claimant was covered or insured, shall not make a claim to the Fund seeking reimbursement for expenses incurred by that scheme in providing a benefit to a claimant on the basis of a contract making the claimant a member of that scheme.
- (b) For purposes of paragraph (a), "member" means a person who has been enrolled or admitted as a member of a medical aid scheme or any insurance scheme, or who, in terms of the rules of that scheme, is a beneficiary of such scheme.

Right of recourse

27. (1) Despite the provisions of any other law, where the Fund has paid or made an undertaking to pay any damages in terms of this Act, the Fund shall have the right to recover such amount paid or undertaken to be paid as damages to the claimant(s) from the negligent person, if at the time of the motor vehicle accident the negligent person-

- (a) was under the influence of intoxicating liquor or drugs;
- (b) was driving the motor vehicle recklessly;
- (c) was driving the motor vehicle without being the holder of a valid driving licence;
- (d) was driving a defective motor vehicle;
- (e) was driving a stolen motor vehicle knowing, or ought to have reasonably known that it was stolen;
- (f) being the owner, custodian or lawful possessor of the motor vehicle, can be held vicariously liable or permitted the motor vehicle to be driven in the circumstances set out in (a), (b), (c) and (d).

(2) Despite the provisions of any other law, where the Fund has paid or undertaken to pay any sum as damages to claimants, it shall, within a period of thirty-six (36) months from the date of settling a claim or claims arising from a motor vehicle accident that is subject to the Fund's right of recourse, exercise the right to recover such sum from the negligent driver or owner of the negligently driven motor vehicle without the onus to prove any causal link between the circumstances stipulated in paragraphs (a), (b), (c), (d) and (e) and the occurrence of the motor vehicle accident giving rise to the loss or harm sustained by the claimant(s).

(3) Provided that the costs incurred by the Fund under section 19 (5) of this Act shall be excluded from the amounts recoverable under the conditions stipulated in paragraphs (a) to (f) of this section.

Prescription

28. (1) Despite the provisions of any other law relating to extinctive prescription, the right to lodge a claim under section 19(1) shall become prescribed upon the expiration of a period of twelve (12) months calculated from the date on which the accident arose.

(2) Despite the provision of any other law relating to the right to institute civil proceedings, the right to institute civil proceedings against the Fund in connection with claims referred to it under section 19(1) shall become prescribed upon expiration of a period of twelve (12) months calculated from the date on which the claim was rejected or counter-offer rejected by the Fund.

(3) Prescription of a claim under this Act shall not apply against-

- (a) a minor;
- (b) any person detained as a patient in terms of any mental health legislation;
- (c) a person under guardianship; and
- (d) any person suffering from any form of legal disability.

(4) Where a person has failed to exercise his rights in terms of subsections (1) and (2), a written application for a waiver of prescription may be submitted to the Fund within three (3) months from the date on which such right prescribed provided special circumstances can be established by such person, and where the Fund dismisses the application, the person may approach a court of competent jurisdiction within three (3) months from the date on which such dismissal of the application was communicated by the Fund, and where-

- (a) the court is satisfied that special circumstances exist as to the reason for the claim having prescribed;
- (b) the application is brought not later than three (3) months after the waiver application was dismissed by the Fund; and
- (c) the claimant provides security for costs to the satisfaction of the court.

(5) The court may entertain the waiver application brought by such person.

Procedure

29. (1) A claim under section 19(1) shall-

- (a) be set out in the prescribed manner on a prescribed form and shall include provision of a medical report or reports completed by the prescribed person or persons, in regard to the cause of the death or the nature and treatment of the bodily injury in respect of which the claim is instituted and of the prescribed supporting proof and particulars; and
- (b) be sent by electronic means, by registered post or delivered by hand, at the registered office or local branch office, of the Fund which shall, in the case of delivery by hand, acknowledge receipt thereof and the date of such receipt in writing.

(2) Where the Fund proposes an offer or deed of settlement of a claim, the claimant shall within a period of thirty (30) days -

- (a) accept the offer or furnish written grounds for a counter-offer if the offer is not acceptable; and
- (b) if the claimant neglects or fails to accept the offer or to make a substantiated counter-offer,

(3) the Fund shall transfer such settlement to a separate account according to the terms proposed in the offer or deed of settlement subject to a further thirty (30) days written notice for an undertaking to deal with the proposed settlement as provided for in this subsection.

(4) An action to enforce such a claim may be brought in any Court of competent jurisdiction in Eswatini within whose area of jurisdiction the occurrence which caused the injury or death took place.

Transmissibility of claims

30. Where the liability of the Fund in terms of section 19(1) can be confirmed and the claimant dies before the finalization of the claim, with no link between claimant's death and the motor vehicle accident injuries that gave rise to the claim, the Fund shall assess the general damages and any other damages proven to have diminished the estate of the deceased claimant and shall pay them over to the estate of the deceased claimant.

PART VI MISCELLANEOUS

Assistance to the Fund

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

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

- (a) the furnishing of all documents and evidence relating to the accident in the possession of such 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 Fund for the institution of legal proceedings.

(3) In the event the Fund makes a written request for assistance from any person to whom benefits have been paid by the Fund, and the person fails, without reasonable cause, to render such assistance to the Fund, the person commits an offence and is on conviction liable to a fine not exceeding two thousand (E2, 000.00) or to imprisonment not exceeding 30 days, or both.

Exemption from transfer duty and stamp duty

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

Regulations

33. (1) The Minister may make Regulations for the better carrying out of the purposes and provisions of this Act, and in particular, may make regulations with respect to any of the following matters –

- (a) prescribing anything required by this Act to be prescribed, and the manner in which any form so prescribed shall be completed or rendered;
- (b) prescribing fees on alternative forms of fuel; and
- (c) prescribing the powers and duties in connection with the administration of this Act which may be exercised or performed by such persons as the minister may designate;

(2) Regulations made under subsection (1) may provide for penalties not exceeding a fine of five thousand (E5 000) for a contravention or failure to comply with any order or direction given under the Regulations.

Repeals and Savings

34. (1) The Motor Vehicle Accident Act No.13 of 1991 is repealed.

(2) The Motor Vehicle Accident Regulations, 1992 shall remain in force until new regulations are enacted.

Transitional

35. (1) The employees of the existing Fund employed before the commencement of this Act shall be deemed to be employees of the Fund.

(2) Any assets, liabilities and obligations of the Fund shall continue to be vested in the Fund.

(3) All rights and liabilities of the Fund in respect of the assets, liabilities and obligations vested in the Fund shall continue with the Fund.