

CHAPTER 169

THE MOTOR VEHICLES INSURANCE ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 169

THE MOTOR VEHICLES INSURANCE ACT

An Act to make provision for insurance against third party risks arising out of the use of motor vehicles.

[1st November, 1946]

[GN No. 412 of 1961]

Ords Nos.
18 of 1945
6 of 1948
47 of 1949
33 of 1954
34 of 1957

- Short title **1.** This Act may be cited as the Motor Vehicles Insurance Act.
- Operation of Act **2.** The President may, by notice in the *Gazette*, suspend or restrict the operation of this Act.
- Interpretation
Ord. No.
47 of 1949 s. 2 **3.** In this Act, unless the context otherwise requires-
“driver”, where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the word “drive” shall be construed accordingly;
“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, but does not include a steam traction engine, a steam roller or a vehicle constructed and intended for use exclusively on rails;
“owner” in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession under that agreement;
“policy of insurance” includes a cover note;
“road” means any highway and any other road to which the public has access and includes bridges over which a road passes.

Motor vehicles to
be insured against
third party risks
Ord. Nos.
6 of 1948 s. 2
33 of 1954 s. 2
34 of 1957 s. 2

4.–(1) Subject to the provisions of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act.

(2) Where a person acts in contravention of this section he shall be liable to a fine not exceeding one hundred pounds or its equivalent in Tanzania shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and a person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction.

(3) The provisions of subsection (1) of this section which relate to the use of a motor vehicle on a road shall not apply-

- (a) to any person lawfully using a motor vehicle owned by the Government or a public corporation; or
- (b) to any authorised person while he is lawfully using, in accordance with any provision contained in the Road Traffic Act, a motor vehicle owned by some other person, for the purpose of inspecting or detaining such vehicle or for any other purpose, whether similar to the foregoing or not, specified in such provision.

(4) The provisions of subsection (1) of this section which relate to a person causing or permitting some other person to use a motor vehicle on a road shall not apply to the owner of a motor vehicle by reason only of its use by an authorised person, where such authorised person has taken charge of such vehicle under any provision contained in the Road Traffic Act for the purpose of inspecting, detaining such vehicle or for any other purpose, whether similar to the foregoing or not, specified in such provision

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(5) For the purpose of this section, “authorised person” means any officer or person authorised under any provision contained in the Road Traffic Act to use a motor vehicle owned by some other person.

Requirements
in respect of
insurance policies

5. In order to comply with the requirements of section 4, the policy of insurance shall be a policy which-

- (a) is issued by a person who is approved by the President, by notice in the *Gazette*, as an insurer for the purposes of this Act; and
- (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road:

Provided that, a policy in terms of this section shall not be required to cover-

- (i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment;
- (ii) except in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise; or
- (iii) any contractual liability.

Requirements
in respect of
securities

6.-(1) In order to comply with the requirements of this Act, a security shall-

(a) consist of an undertaking by the giver of the security to make good, subject to any conditions specified therein, and up to an amount approved by the President, any failure by the owner of the vehicle or such other persons or classes of persons as may be specified in the security duly to discharge any such liability as is required to be covered by a policy of insurance under paragraph (b) of section 5 of this Act which may be incurred by him or them; and

(b) be approved by the President and deposited with him.

(2) Whenever such a security is approved by the President and deposited with him, the President shall give to the owner of the vehicle concerned a certificate, hereinafter referred to as “a certificate of security”, in the prescribed form and containing such particulars of any conditions subject to which the security is given as may be prescribed.

(3) References in sections 8, 9 and 11 of this Act to a policy, a certificate of insurance, an insurer or an insured shall be deemed to include references to a security, a certificate of security, a giver of a security or a person secured, respectively.

Certificate of
insurance

7.-(1) A certificate of insurance shall be issued by the insurer to the person by whom a policy of insurance is effected at the same time as the cover note is issued.

(2) A certificate issued under subsection (1) shall be in the prescribed form and shall contain such particulars of any conditions subject to which the policy is issued and of any matters as may be prescribed and different forms and different particulars may be prescribed in relation to different cases or circumstances.

Certain
conditions
in policies of
insurance of no
effect

8. A condition in a policy of insurance providing that no liability shall arise under the policy, or that any liability so arising shall cease in the event of some specified thing done or omitted to be done after the happening of the event giving rise

to a claim under the policy, shall, as respects such liabilities as are required to be covered by a policy under section 5 of this Act, be of no effect:

Provided that, nothing in this section shall be taken to render void any provision in a policy requiring the persons insured to repay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

Production of
certificate of
Insurance
Ord. No.
34 of 1957 s. 3

9.-(1) A person driving a motor vehicle on a road shall, on being required by a police officer, give his name and address and the name and address of the owner of the vehicle and produce his certificate of insurance, and if he fails so to do, he commits an offence:

Provided that, if the driver of a motor vehicle within five days after the date on which the production of his certificate of insurance was so required produces the certificate of insurance or policy of insurance at such police station as may have been specified by him at the time its production was required, he shall not be convicted of an offence under this subsection by reason only of failure to produce his certificate of insurance to the police officer.

(2) Where, in any case where, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person, the driver of the vehicle does not at the time produce his certificate of insurance to a police officer, or to some person who, having reasonable grounds for so doing, has required its production, the driver shall, as soon as possible, and in any case within forty-eight hours of the occurrence of the accident, report the accident at a police station, to an administrative officer, or to a police officer, and thereupon produce his certificate of insurance and, if he fails so to do, he shall commit an offence:

Provided that, a person shall not be convicted of an offence under this subsection by reason only of failure to produce his

certificate of insurance if, within five days after the occurrence of the accident, he produces the certificate of insurance or policy of insurance at such police station as may be specified by him at the time of accident was reported.

(3) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of the Commissioner of Police to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 4 of this Act on any occasion when the driver was required under this section to produce his certificate of insurance, and if the owner fails to do so he commits an offence.

(4) The provisions of subsections (2) and (3) shall not apply where a motor vehicle is being driven by a person to whom the provisions of subsection (1) of section 4 of this Act do not apply:

Provided that, such person shall give such information as may be required by a police officer for the purpose of determining whether such person is a person to whom subsection (1) of section 4 of this Act does not apply, and if such person fails to do so, he shall be guilty of an offence.

Duty of insurers
to satisfy
judgments
against persons
insured in respect
of third

10.—(1) Where, after a policy of insurance has been effected, judgment in respect of any liability as is required to be covered by a policy under paragraph (b) of section 5 of this Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) A sum shall not be payable by an insurer under subsection (1)-

- (a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings;
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either-
 - (i) before the happening of the said event, the certificate of insurance was surrendered to the insurer, or the person to whom the certificate of insurance was issued, made a statutory declaration stating that the certificate of insurance had been lost or destroyed;
 - (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate of insurance was surrendered to the insurer, or the person to whom the certificate of insurance was issued, made such a statutory declaration; or
 - (iii) either before or after the happenings of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate of insurance.

(3) It shall be the duty of a person who makes a statutory declaration, as provided in subparagraphs (i) and (ii) of paragraph (c) of subsection (2) of this section, to cause such statutory declaration to be delivered to the insurer.

(4) A sum shall not be payable by an insurer under the subsections (1), (2) and (3) if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that, an insurer who has obtained such a declaration in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given, shall be entitled, if he thinks fit, to be made a party thereto.

(5) Where the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(6) In this section, the expression “material” means a fact of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions, and the expression “liability covered by the terms of the policy”, means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

(7) In this Act references to a certificate of insurance in any provision relating to the surrender, loss or destruction of a certificate of insurance shall, in relation to policies under which more than one certificate of insurance is issued, be construed as references to all the certificates of insurance, and shall, where any copy has been issued of any certificate of insurance, be construed as including a reference to that copy.

Penalty for false statement and willful avoidance of policy

11. Where a person, for the purpose of obtaining a policy of insurance as required by section 5 of this Act, makes any false statement, in consequence whereof the policy is liable to be avoided, or wilfully does any act which disentitles him to claim under the policy, he commits an offence.

Duty of persons against whom claims are made to give information as to insurance

12.—(1) A person against whom a claim is made in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of this Act or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof under section 7 of this Act.

(2) Where, without reasonable excuse, any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as provided in subsection (1), commits an offence.

Duty to surrender certificate of insurance on cancellation of policy

13. Where a certificate of insurance has been issued under section 7 of this Act to the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate of insurance was issued shall, within seven days from the taking effect of the cancellation, surrender the certificate

of insurance to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and if he fails so to do, commits an offence.

Procedure on application for motor vehicle licence
Ord. No. 34 of 1957 s. 4
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14. A person who, applies for a licence or the renewal of a licence in respect of a motor vehicle under the Road Traffic Act shall produce evidence as may be prescribed that either-

- (a) a certificate of insurance to the effect that as from the date when the licence comes into operation there will be in force the necessary policy of insurance or the necessary security in relation to the user of the vehicle by the applicant or by other persons on his order or with his permission; or
- (b) the vehicle is owned by the Government or a public corporation.

Rights of third parties against insurers on bankruptcy of insured

15.-(1) Where under any contract of insurance a person, in this section referred to as "the insured", is insured against liabilities to third parties which he may incur, then-

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding up being passed, with respect to the company, or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

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(2) Where an order is made under section 120 of the Bankruptcy Act for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the Bankruptcy Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the making of an order under section 120 of the Bankruptcy Act in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2) of this section, the insurer shall be under the same liability to the third party as he would have been under to the insured, but-

- (a) where the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this section shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) where the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this section shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this section, the expression "liabilities to third parties", in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Avoidance of restrictions on scope of policies covering third party risks

16. Where a certificate of insurance has been issued under section 7 of this Act to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters-

- (a) the age or physical or mental condition of persons driving the vehicle;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the times at which or the areas within which the vehicle is used;
- (f) the horse-power or value of the vehicle;
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Road Traffic Act,

shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of section 5 of this Act, be of no effect:

Provided that, nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

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Provision with regard to visitors

17. Where there is in existence in respect of a motor vehicle-

- (a) a valid and subsisting international certificate issued in pursuance of the International Convention relative to Motor Traffic, 1926; or
- (b) a valid and subsisting licence to use such motor vehicle which has been granted under any law in force in Malawi, Kenya, Tanzania Zanzibar, Uganda or Zambia,

a person driving such motor vehicle shall not be required to produce a certificate of insurance, but it shall be the duty of such person to give such information as he may be required by or on behalf of the Commissioner of Police to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 4 of this Act.

Power to make rules

18. The President may make rules prescribing anything required by this Act to be prescribed, and generally for the better carrying out of the provisions of this Act.

Penalty for offences

19. A person who commits an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rules made thereunder, for which no other penalty is specifically provided, shall be liable on summary conviction before a district court to a fine not exceeding fifty pounds or its equivalent in Tanzania shillings or to imprisonment for a term not exceeding three months or to both.
