|  |  |  |
| --- | --- | --- |
| Member’s question | NDoT Response | Notes |
| Have you considered the impact on the clauses regarding the appointment of staff to the Board when taking into account the SABC judgment? | Ad: Clause 7: Composition of the Board (SABC Ruling)SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others; SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others (81056/14) [2017] ZAGPJHC 289 (17 October 2017Summary is as followsThe case involves two applications which were head together focusing on two key aspects of the Minister’s powers in respect of the SABC board. The two applications are instituted in the background of systematic and repeated failures in the governance and management of the SABC. This has presented itself in the continuous turn-over of Directors of the Board with resultant financial mismanagement. The critical systemic causes of governance failures and mismanagement were found to have been caused by Ministerial interference in the governance and operations of the SABC.The improper Ministerial interference in the affairs of the SABC was demonstrated in the report of the ad hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board[1] which found that the previous Minister of Communications, Ms Muthambi unlawfully interfered in the affairs of the Board.The ad hoc committee report was preceded by the Public Protector’s report on allegations of maladministration, systemic corporate governance deficiencies, abuse of power and irregular appointment of Mr Motsoeneng by the SABC, “When Governance and Ethics Fail” (17 February 2014) [2]. The Public Protector’s report demonstrates the history of Ministerial interference in the affairs of the SABC. She found that the previous Minister of Communications, Ms Pule, unlawfully interfered with the recruitment and appointment of a Chief Financial officer of the SABC in 2012.The issues for determinationBoth applications concern the constitutionality and lawfulness of the powers that the Minister of Communications (‘the Minister”) exercises in respect of the Directors of the SABC Board.First case:SABC 1 Concerns the lawfulness of the powers vested in the Minister under SABC’s Memorandum of Incorporation (MOI) and SABC Charter in respect of the appointment, discipline and suspension of the three Executive Directors of the SABC, being the GCEO, COO and CFO. The central issue in dispute is whether the powers vested in the Minister undermine the independence of the SABC, which the applicants and amicus contend is required by the right to freedom of expression (including the freedom of the media) under S16 of the Constitution. An ancillary issue is whether the Minister’s powers contravene S13(11) of the Broadcasting Act, which provides that the SABC Board must “control the affairs” of the SABC.The SABC’s Memorandum of Incorporation (MoI) and the SABC Board Charter confer extensive powers on the Minister in respect of all three executive directors. This includes giving the Minister a veto power in respect of their appointment; the power to approve the terms and conditions of their appointment; the powers to determine the term of office, re-appointment and acting appointments; and the power to approve any disciplinary proceedings and suspension from office of the Executive Directors. The court held that these provisions of the MoI and Board Charter are in breach of the Broadcasting Act, particularly section 13(11) which provides that the SABC Board, not the Minister, must control ‘the affairs’ of the SABC. The second caseSABC 2 concerns the power of the Minister to remove all of the directors of the SABC, including the non-executive directors. The Minister contends that she has a right to remove the directors from office. She contends that this power flows from section 71 of the Companies Act, which she followed. The Minister has exercised these powers by dismissing three non-executive directors of the SABC Board. The court held that the removal of the directors is regulated by sections 15 and 15A of the Broadcasting Act, not the Companies. In instances where there was conflict between the Companies Act and the Broadcasting Act, the latter would prevail. Those sections require that the removal of the directors to be effected by a decision of the National Assembly, when such removal is warranted. By permitting the removal of a board member unilaterally at the instance of the Minister as sole shareholder and removal by simple majority vote of the Board, section 71 undermines their independence. The threat of removal without any oversight, on any ground, and without due enquiry, would render Board members not likely to express views not aligned with that of the government or the majority Board members. The Broadcasting Act is not listed under section 5(4)(b)(i) of the Companies Act, accordingly, none of the provisions of the Broadcasting Act, is made applicable in the event of inconsistency with the Companies Act. This violates section 7(2) and 16 of the Constitution and the relevant provisions of the Companies Act are invalid to this extent.The SABC situation as outlined above is unlikely to occur as the composition and appointment of the Board is provided for in the legislation. | Minister Nomvula Mokonyane reviews decision of litigate on SABC Executive appointments judgementThe Minister of Communications, Ms Nomvula Mokonyane, has noted the judgement of Matojane J in the matter of SOS Support Public Broadcasting Coalition & Others v The SABC, the Minister of Communications and Others regarding the Minister’s powers to appoint executive members of the SABC.At the outset, the Minister regrets the non-appearance of the department’s legal representatives at court as this borders on unethical conduct and disrespect for the court.The Minister has requested the Office of the State Attorney who has taken full responsibility for the non-appearance, to provide her with a full report for such.Notwithstanding such non-appearance, the directive of the Minister upon her appointment has been not to pursue any further litigation (as initiated by her predecessor) relating to the matter pursuant to legal advice, but instead focus her energy together with the Board, towards the rebuilding and repositioning the SABC as a true public broadcaster that is able to deliver on its public mandate which is the critical task at hand. The decision of the Minister was taken in the spirit of good governance, mutual trust and cooperation which currently underpins the relationship between the Minister and the board of the SABC as provided in the Broadcasting Act.The SABC board continues to consult the Minister on the various matters including the appointment of Executive Members. The mutual trust and cooperation between the Minister and the board of the SABC has enabled the board to appoint a Group Chief Executive Officer and a Chief Financial Officer who will be commencing their duties in due course. “Our focus is to ensure that we build a financially sustainable, professional and leading public broadcaster in content and technology that will be an asset of the people of South Africa and a source of information, news and knowledge for citizens” said Minister Mokonyane. For more information contact:Mlimandlela NdamaseCell: 083 480 0014E-mail: NdamaseM@dws.gov.zaMedia statementsYear: 2018Media Statement date: Wednesday, June 20, 2018PWC: State-owned enterprises: Governanceresponsibility and accountabilityPublic Sector Working Group: Position Paper 3SOEs are established to provide strategic goods and servicesto the country’s citizens, whether natural (e.g. energy)or intellectual (e.g. programming), and require suitablyqualified and experienced directors and CEOs to lookafter the affairs of the entities themselves. Government, asshareholder, often in terms of an SOEs enabling legislation,has the right to appoint the board, made up of nonexecutiveand executive directors, which generally includesthe chief executive officer3. This may create accountabilitychallenges. Furthermore, in some cases these appointmentsmay be politically influenced, which may negatively impactthe execution of the SOE’s strategy and fulfilment of itsmandate.The power of the boards of SOEs is often usurped byGovernment. Government sets and drives the strategy of SOEs; appoints and dismisses the CEO; and approvesfinancial and major capital expenditures of the SOEs.This creates a complex situation in which various factorscontribute to confuse the board as to its powers and theirexecution.In addition to the Companies Act, the enabling legislationgoverning an SOE may regulate the board profile andcomposition, while the PFMA merely establishes the function of the Accounting Authority. The CompaniesAct goes further to prescribe qualifying criteria for boardmembership.The ‘Handbook for the appointment of persons to boardsof state and state controlled institutions13’, issued bythe Department of Public Service and Administrationdetermines that ‘those responsible for conducting theappointment process must be familiar with the statutoryrequirements that govern appointments to boards14’. Thehandbook, however, ‘represents a stand-alone practicaldocument which is not in any way prescribed in terms ofany formal framework, regulation or legislation 15‘ and fewSOEs are aware of its existence.Some of these regulatory and policy provisions prevent SOEsfrom applying certain King III principles, thereby furtherweakening their governance framework.The Companies Act, 2008 (Act No. 71 of 2008) was signedby the President on 8 April 2009 and gazetted in GazetteNo. 32121 (Notice No. 421). It came into operation on 1May 2011. It is significant that the previous Companies Act(No. 61 of 1973) did not specify that SOEs had to complywith the Act, while the current one does. The Act refers toSOEs to as state-owned companies, which is abbreviated toSOC Ltd.The majority of the provisions of the Act that apply to apublic company also apply to an SOE unless specificallyexempted by the minister or as prescribed by legislation.SOEs should therefore comply with provisions that apply topublic companies, some of which the boards of SOEs havenot always been held accountable for.As an example, SANRAL’s enabling legislationprovides the Minister of Transport, as theexecutive authority, the right to appoint and/or replace SANRAL’s Chief Executive Officer(CEO) as well as the Chairperson of the Board.In the corporate world, these powers wouldnormally be in the purview of a board. |
| What responsibilities are placed on the Board per the King IV Code? Does any of the provisions in the Bill conflict with the King IV Code?What powers do the ex-officio board members have? | King IVThe King Code is non-legislative and is based on principles and practices. Although the code is not enforced through legislation, due to evolutions in South African law many of the principles are now embodied as law in the Companies Act of South Africa of 2008. The philosophy of the code consists of the three key elements of leadership, sustainability and good corporate citizenship. It views good governance as essentially being effective and ethical leadership.The King IV code focuses on the concept of stakeholder inclusivity and highlights that organisations are not merely responsible for the economic bottom line but critically need to consider the societal and environmental impacts and outcomes of their operations.The King IV Code has been structured as a framework that can be applied more easily across both listed and unlisted companies, profit and non-profits as well as private and public entities.King IV has the following elements: practices, principles and governance outcomes. The practices are recommended at an optimum level of corporate governance and should be adapted by each organisation to achieve the principle. The governance outcome is the positive effect or benefits of good corporate governance for the organisation and includes ethical culture, performance and value creation, adequate and effective control and trust, good reputation and legitimacy. The 75 King III principles have been consolidated into 17 principles in the draft King IV, each linked to very distinct outcomes. King IV requires an ‘Apply AND Explain’ approach, as opposed to King III which is ‘Apply OR Explain’. This means that application of the principles is assumed, and that an explanation is disclosed on the practices that have been implemented and the progress made towards governance outcomes.As alluded to above, the King IV is a set of voluntary principles and good practices of corporate governance. If King IV conflicts with any legislation, the legislation will prevail. However, for entities with a primary listing on the JSE Limited Securities Exchange certain aspects of King IV are binding by virtue of the listings requirements imposing obligations on issuers to comply therewith. The fact that King IV is not legally binding in itself does not mean that there are no legal consequences arising from non-compliance. A court will consider King IV when evaluating what is regarded as practice in a particular situation, especially where governance duties are involved. Failure to meet corporate governance practice, and by implication the principles set out in King IV, may invoke liability of the board in certain circumstances.King IV in Part 5.3 “Governing Structures and Delegation”, Principle 7, provides in recommended practice 9 that:“As a minimum, the chief executive officer (CEO) and at least one other executive should be appointed to the governing body to ensure that it has more than one point of direct interaction with management. The executive other than the CEO appointed to the governing body may be the chief financial officer (CFO) or another designated executive as is appropriate for the organisation”King IV does not exclude the voting powers of the above contemplated executive members in any recommended practice. The Sector Supplement King IV and SOEs confirms the relevance of Principle 7 for SOEs.Reverting to the RABS Bill, in our response last week Friday, the Department stated that “The addition of CEO and CFO as Board members is aligned with the King IV to ensure direct interaction between management and the Board. | The introduction of the King reports on corporate governance in South Africa introduced good corporate governance principles to be applied by companies and entities; public, private and state-owned companies. The purpose of King I, II, III and draft King IV on corporate governance is to provide and promote a good transitional process in companies in order for them to showcase the principles of accountability, sustainability and transparency; which are the fundamental aspects of which every company has to adhere to in order for it to be a good corporate citizen of the state.Comparison of King IV and King III - PWCWhile King III was specific inrecommending that the CEOand the director responsible forthe finance function should beappointed to the governing body, King IV TM allows more flexibility in recommending that the CEO and another executive should be appointed to the governing body.As a minimum, the chief executive officer (CEO) and at least one other executive should be appointed to the governing body to ensure that it has more than one point of direct interaction with management. The executive other than the CEO appointed to the governing body may be the chief finance officer (CFO) or another designated executive as is appropriate for the organisation.[Part 5.3 Recommended practice 9]Where King III only recommended the appointment of a lead independent in instances where the chairperson was not independent, King IV TM recommends the appointment of a lead independent as a matter of course, to fulfilfunctions that go beyond strengthening the independence of the governing body if the chair is not an independent non-executivemember.The governing body should appoint an independent nonexecutive member as the lead independent to fulfil thefollowing functions:a. To lead in the absence of the chair.b. To serve as a sounding board for the chair.c. To act as an intermediary between the chair and othermembers of the governing body, if necessary.d. To deal with shareholders’ concerns where contactthrough the normal channels has failed to resolve concerns, or where such contact is inappropriate.e. To strengthen independence on the governing body if thechair is not an independent non-executive member of thegoverning body.f. To chair discussions and decision-making by thegoverning body on matters where the chair has a conflictof interest.g. To lead the performance appraisal of the chair.[Part 5.3 Recommended practice 32]CEO appointment The King IV TM recommendations are similar to those of King III.The governing body should appoint the CEO.[Part 5.3 Recommended practice 76]Functions of the CEO King IV TM sets out the functions of the CEO in principle, withoutgoing into the detail that King III contained.The CEO should be responsible for leading the implementation and execution of approved strategy, policy and operational planning, and should serve as the chief link between management and the governing body.The CEO should be accountable, and report to, thegoverning body.[Part 5.3 Recommended practices 77 and 78] |
| Provisions of the PFMA regarding board membership must be complied with along with considering the effect the proposed clauses will have when one considers the provisions of section 49 of the PFMA.The concerns regarding good corporate governance must be addressed. | PFMA – Accounting AuthoritySubsections 49(1) and (2) of the PFMA provides for accounting authorities, as follows:“49. Accounting authorities.—(1) Every public entity must have an authority which must be accountable for the purposes of this Act.(2) If the public entity—(a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or(b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority.”The above section merely serves to assign the duties of an accounting authority between two types of organisations, e.g. the RAF has a board, consequently the board is the accounting authority per subsection 49(2)(a), as opposed to SASSA which does not have a board but only a CEO, which CEO is the accounting authority in terms of subsection 49(2)(b). Importantly, the above section does not preclude the appointment of a CEO as member of a board. PFMA - ConflictsAs part of the Department’s response to comments that were made on clause 16(2)(b), the PCOT will recall that the Department proposed a reference in the (proposed) Bill to the applicable section of the PFMA. | The PFMA is the principal Act promulgated by the government to stipulate in detail the rules and regulations related to financial management and reporting to be followed and matters of SOEs, all other legislation is subordinated to the PFMA. Although the PFMA should be considered to its entirety sections 46 through 86 are of particular importance for financial governance issues.The accounting authority of a public entityis usually the board of that entity, and hasan overarching fiduciary responsibility. It hasa “duty to exercise utmost care …, act withfidelity, integrity and honesty and in the bestinterests of the public entity in managing thefinancial affairs” (PFMA, sections 49-50).The role of an accounting officer as defined inthe PFMA includes, inter alia, the responsibilityto ensure there is an efficient and transparentsystem of financial and risk management andinternal control. The accounting officer shouldalso ensure that the SOE’s procurement andprovisioning system is fair, cost-effective, andtransparent, and take appropriate steps toprevent fruitless and wasteful, or unauthorisedexpenditure (PFMA, sections 36-44).Given the important roles of the accountingofficer and the accounting authority, it iscritical that the qualifications, experience andintegrity of these individuals are interrogatedand found to be beyond reproach.The PFMA, if utilised appropriately, providesa measure of protection and certaintythat public finances should be managedprudently and with a duty of “utmost care”. |
| How will the funding and management of the outstanding claims from RAF cases be dealt with under the new RABS administration?Will there be sufficient funding to cover both claims under RAF and RABS simultaneously? | Money still owed after passing of Bill into law what happens?The response to this question can be linked to the question raised around retrospective application of the Bill. The PCOT will recall that as part of the Department’s reply it was stated that the proposed Bill will not apply retrospectively and that only claims that arose after 24h00 of the evening prior to the day on which the new Act comes into force will be administered under the new Act. All claims that arose prior to this will be administered under the current RAF Act. | The fuel levy currently going to RAF will go to RABS instead along with other fiscal funding resources and/or loans (similar to how SANRAL operates) and then the proposed transition account will allow for the transfer of the funds from the RABS to the RAF claim payments – per reply given from Treasury as well as the NDoT.Given that in some countries there was up to a 60% increase in claims when their system goes from fault to no-fault based, one should be assured of the affordability of running two systems at the same time as well as the increased pressures on the administration.The committee may want to ask the Department to place on record: how many more years after RABS comes into force would there still be a need to pay out old or existing RAF claims (10/15/20 or even 30 years)? |
| In instances where a child is injured, will the parents be able to receive a kind of income benefit considering that those parents will need to take time from work to look after the child and get the child to the required medical care? | Income BenefitsExample was made that “my child gets involved in an accident, he or she will not be reimbursed, aware that medical costs will be taken care of. As part of the comments from public hearings the claimant needs cash. Where a child is injured the needs that arise relate to financing of the medical treatment, rehabilitation, and caregiving cost of the child. In as far as the aforementioned needs are provided for by the medical benefit provided for in the Bill there is no further need for cash. As regards the child’s parents, in appropriate circumstances a parent or another family member could receive compensation for acting as a caregiver to the child, which in that sense may see compensation paid to a parent. | Should the caregiver benefit be paid out to parents, what tariff would this be calculated on?Would this take into account the loss of income for parents who must leave their jobs to become full-time caregivers to their seriously injured children or dependents? For how many years would this benefit be paid out, considering that life-long injuries may need parents to be out of work for over 15 years making a return to the job sector extremely difficult?  |
| What measures are in place to prevent instances where delays in processing of claims under RAF has caused some claimants to be informed that their claims had prescribed or cases where their attorneys are no longer to be found and they submitted claims but did not finalise these? | Prescription of RAF claimsIs there recourse available if this were to happen, if claim prescribes in the hands of the RAF/lawyers?Against a lawyer, a claim can be lodged with the law society where the attorney is based. A separate claim can be lodged with the Attorney’s Indemnity Insurance Fund who may compensate the claimant The law society will take appropriate measures against the lawyer which may include amongst others, striking the lawyer off the roll of practising attorneys thus barring him/her from practicing law for a specified period or lifetime depending on the merits of each case.Against RAF, a process is followed to approve the waiver of the prescription, based on a Board approved policy, where the RAF is determined to have acted in breach of its duty of care, the prescription is waived and disciplinary action is taken where indicated. | 1. What does prescription mean?Prescription is a rule of law that is designed to bring finality to disputes. It’s regulated by the Prescription Act 68 of 1969 (“the Act”).A debt, which is described as the payment of money or delivery of goods or services, will prescribe after the lapse of a certain time period. This means that the claimant will not be able to issue a claim once the time period have lapsed.2. What are the consequences of prescription?- the debtor will not be liable to the creditor for a debt; or - the creditor may not institute legal action against the debtor for a debt.3. When does prescription commence?According to section 12(1) and (2) of the Act, Prescription will run as soon as the debt is due (i.e. a debt is due once the creditor can identify the debtor and the facts from which the debt arises) or until the creditor becomes aware of the existence of the debt.4. What are the extinctive periods provided by the Act?The Act sets out various periods for different types of legal actions.Thirty years in respect of –- any debt secured by a mortgage bond;- any judgment debt;- any debt in respect of tax;- debts owed to the state in respect of any share of profits, royalties or any similar consideration payable in respect of rights to mine minerals.Fifteen years in respect of- any debt owed to the State and arising out of a loan of money or sale or lease of land by the State to a debtor.Six years in respect of- any debt arising from a negotiable instrument such as a cheque or a notarial contract.Three years in respect of- any other debt, such as contractual or delictual debts.5. When will prescription be delayed?According to Section 13(1) of the Act prescription will be delayed when:- the creditor is a minor, insane or a person under curatorship;- the debtor is at that time outside the Republic;- the creditor and debtor are married to each other;- the creditor and debtor partners and the debt arose out of the partnership relationship;- the creditor is a juristic person and the debtor is a member of the governing body of such juristic person;- the debt is the object of a dispute in arbitration;- the executor of either the debtor’s or the creditor’s deceased estate (either in the case of a debtor or a creditor) has not yet been appointed- the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor.6. When will prescription be interrupted?Prescription can be interrupted in two ways:- Prescription will be interrupted by the debtor’s express or tacit acknowledgment of his or her liability (Section 14)- Prescription may be interrupted by means of judicial interruption. This means that the prescription will be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt. However, the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside. (Section 15) |
| Consider the proposed mediation model submitted as additional submission by Dr Edeling and indicate whether such a model could be used in RABS. | Mediation by an external mediatorThe proposed Bill makes provision for the appeal process and the subsequent right of review. If mediation, arbitration, then litigation and appeals/review are allowed, the time and costs will be significantly increased.A review of other legislative dispute resolution mechanisms, within the broader social security landscape, confirms a preference for bespoke solutions, as follows:COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT NO. 130 OF 1993• No mediation• No arbitration• Section 91 – 91. Objections and appeal against decisions of Director-General.—(1) Any person affected by a decision of the Director-General or a trade union or employers’ organization of which that person was a member at the relevant time may, within 180 days after such decision, lodge an objection against that decision with the commissioner in the prescribed manner.(2) (a) An objection lodged in terms of this section shall be considered and decided by the presiding officer assisted by two assessors designated by him, of whom one shall be an assessor representing employees and one an assessor representing employers.(b) If the presiding officer considers it expedient, he may, notwithstanding paragraph (a), call in the assistance of a medical assessor.(c) The provisions of sections 6, 7, 45 and 46 shall apply mutatis mutandis in respect of the consideration of an objection.(3) (a) After considering an objection the presiding officer shall, provided that at least one of the assessors, excluding any medical assessor, agrees with him, confirm the decision in respect of which the objection was lodged or give such other decision as he may deem equitable… “SOCIAL ASSISTANCE ACT NO. 13 OF 2004• No mediation• No arbitration• Section 18 – 18. Reconsideration of decision by Agency and appeal.—(1) If an applicant or a beneficiary disagrees with a decision made by the Agency in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written application to the Agency requesting the Agency to reconsider its decision in the prescribed manner.(1A) If an applicant or a beneficiary disagrees with a reconsidered decision made by the Agency in respect of a matter contemplated in subsection (1), that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.(2) The Minister may—(a) upon receipt of the applicant’s or a beneficiary’s written appeal and the Agency’s reasons for the decision, confirm, vary or set aside that decision; or(b) appoint an independent tribunal to consider an appeal contemplated in subsection (1A) in the prescribed manner and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision.(3) If the Minister has appointed an independent tribunal in terms of subsection (2) (b) all appeals contemplated in subsection (1A) must be considered by that tribunal.(4) Notwithstanding subsection (1A), the independent tribunal may in the prescribed manner condone any late application by an applicant or a beneficiary.”UNEMPLOYMENT INSURANCE ACT NO. 63 OF 2001• No mediation• No arbitration• Section 37 –37. Disputes relating to payment or non-payment of benefits.—(1) A person who is entitled to benefits in terms of this Act may appeal to a regional appeals committee if that person is aggrieved by a decision of—(a) the Commissioner to suspend such person’s right to benefits; or(b) a claims officer relating to the payment or non-payment of benefits.(2) A person who is dissatisfied with the decision of a regional appeals committee may refer the matter to the National Appeals Committee for a decision.(3) A decision by the National Appeals Committee is final, subject to judicial review.(4) For the purposes of an appeal in terms of this section—(a) the decisions of a regional appeals committee and those of the National Appeals Committee are determined by majority vote; and(b) a regional appeals committee or the National Appeals Committee, as the case may be, may, after considering an appeal, confirm or vary the decision in question, or rescind it and substitute the decision of the relevant regional appeals committee or the National Appeals Committee, as the case may be. | The department gave a general view on the use of mediation in the RABS system and did not address the submission by Dr Edeling directly or in detail.Mediation isintended to be an informal,voluntary, confidential, consultative andwithout prejudice process of assisting the parties to reach amutually satisfactory resolution of their dispute.“TechnicalMedico-Legal Mediation”(TMLM). This type of mediationconcerns medical- and other issues where scientific knowledgeand expertise are required to enlighten the parties. The second of the two types can be applicable to RABS as it may assist in settling any disputes that claimants may have with the administrator in determination of treatment or other benefits due:* Subtype B may be called “Technical Medico-LegalMediation – Personal Injury”(TMLM-PI). These are lesscomplex in that they do not require considerations ofnegligence, and in that the “merits” of these claims aretypically resolved without any need for expert evidence.Claims of this nature do, however, require appropriateexpertise to enlighten aspects of outcome, causation,attribution, apportionment and/or quantum of damages.
 |
| Given that the funding model and the benefits due to claimants are dependent on regulations, the Committee would benefit from seeing the draft regulations to better understand whether the funding would be adequate or how much benefits will be due to claimants.Viewing the tariff determination and funding methods will help the committee move forward and assist with determining if this will not result in a constitutional challenge. | Development of RegulationsComment was made that Regulations be developed simultaneously, the Committee to have sight of the regulations and comment on themThe regulations fall within the purview of the Minister and the latter publishes them for comments, for now, the regulations are awaiting the finalisation of the proposed RABS Bill as they are expected to deal with the who, the what, the when and the how. Development of the Regulations prior to finalisation of the proposed Bill might amount to pre-empting the outcome of the Parliament legislative authority. An important further consideration is the requirement to act within the rule of law. In Pharmaceutical Manufacturers Association of SA and Others; In Re: Ex Parte Application of President of the RSA and Others 2000 (3) BCLR 241 (CC), at 19 and onwards: “Section 2 of the Constitution lays the foundation for the control of public power. It provides: “This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.” Consistent with this, section 44(4) of the Constitution provides that in the exercise of its legislative authority Parliament “must act in accordance with, and within the limits of, the Constitution.” The same applies to members of the Cabinet who are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. They too are required to act in accordance with the Constitution. The exercise of all public power must comply with the Constitution which is the supreme law, and the doctrine of legality which is part of that law. The question whether the President acted intra vires or ultra vires in bringing the Act into force when he did, is accordingly a constitutional matter. The finding that he acted ultra vires is a finding that he acted in a manner that was inconsistent with the Constitution” In Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1998 (12) BCLR 1458 (CC), at 58 onwards: “It seems central to the conception of our constitutional order that the legislature and executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution. Whether the principle of the rule of law has greater content than the principle of legality is not necessary for us to decide here. We need merely hold that fundamental to the interim Constitution is a principle of legality. There is of course no doubt that the common-law principles of ultra vires remain under the new constitutional order. However, they are underpinned (and supplemented where necessary) by a constitutional principle of legality. In relation to “administrative action” the principle of legality is enshrined in section 24(a). In relation to legislation and to executive acts that do not constitute “administrative action”, the principle of legality is necessarily implicit in the Constitution.”The import of the above is that the regulation making powers derived from the Bill cannot be exercised by the Minister until, the earliest, when the Bill is accented to by the President, in accordance with Section 14 of the Interpretation Act No. 33 of 1957, which provides as follows:“14. Exercise of conferred powers between passing and commencement of a law.— Where a law confers a power—(a) to make any appointment; or(b) to make, grant or issue any instrument, order, warrant, scheme, letters patent, rules, regulations or by-laws; or(c) to give notices; or(d) to prescribe forms; or(e) to do any other act or thing for the purpose of the law,that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof: Provided that any instrument, order, warrant, scheme, letters patent, rules, regulations or by-laws made, granted or issued under such power shall not, unless the contrary intention appears in the law or the contrary is necessary for bringing the law into operation, come into operation until the law comes into operation.” | Although the legal position regarding the separation of powers and functions of the legislator and the executive are clarified, concerns raised by the committee regarding the lack of insight into the regulations as a cause of concern are not addressed comprehensively.Although the committee, at the Bill processing stage, has no powers in determining the content of the regulations that are within the powers of the Minister, nothing prevents the committee from commenting on the regulations once published.It is not unreasonable for the committee to request insight into the methodology that is aimed to be used in determining tariffs or financial viability of the scheme.The committee must be satisfied that it has legislated for all aspects required so that the bill does not end up being legislated via regulation.Given the concerns raised regarding the medical tariff determination judgment, the committee may consider legislating a timeframe in which these regulations must be published running from the date of commencement of the Act or date on which the President decides a specific section of the Act will come into force. |
| Explain the methodology that will be used by the Ministerial panel in determining an upward or downward adjustment in benefits. | Issue of upward/downward adjustmentThe proposed Bill proposes the definition of “average annual national income” means the amount based on the average annual after-tax income earned in the Republic, for the whole of the employed and unemployed population between the ages of 18 and 59, inclusive, calculated in accordance with the methodology prescribed by the Minister in consultation with the Minister of Finance.The methodology will be prescribed in the regulations but then reliable sources such the National Household Survey of the Statistics South Africa numbers and the South African Reserve Bank indices will be considered in the development of the prescribed methodology | Response does not comprehensively cover concerns regarding the method used for deciding on a downward adjustment of benefits.A decision based on that methodology to reduce benefits will require an amendment to the Act – as indicated by the NDoT. |
| Should we consider the proposed reverting to a 3rd party insurance cover/fund as was in place prior to RAF?Have not seen your response to the proposals made during submissions that we must consider using a 3rd party insurance system instead of RABS. | Third Party ClaimsWhat is the position with regards to the third party claim? Should a claim against the third party be allowed?In this regard the approved policy provides as follows: “The recent amendments were challenged for being unconstitutional, but by the end of 2009, the Constitutional Court had dismissed most of the attacks and held that the removal of the common law right is constitutionally valid. The removal of the balance of the common law right will continue under the RABS.” Therefore, allowing the third party claim would be a deviation from the policy.Furthermore, the Constitutional Court expressed the following sentiments in regard the third party claim: “The colossal risk to which the new cap exposes all drivers (from which the Fund would previously have protected them by paying full compensation), as against the relatively small inattentiveness or oversight that could give rise to the risk, lends further support to the abolition of the common law action. What is more, the retention of the common law claim does not sit well with a social security compensation system that aims to provide equitable compensation (as distinct from the right to sue for compensation) for all people regardless of their financial ability.” Therefore, allowing the third party claim would be opposite social security principles as expressed by the CC.  | The rising cost of motor insurance in South Africa is fast becoming unsustainable for many consumers. This, combined with the high volume of uninsured vehicles on the roads, has made it increasingly crucial that new measures such as compulsory third party motor property insurance are implemented, in order to widen the risk pool of participants and reduce the cost of insurance to policyholders.Santie Stevens of Insurance Busters comments “Due to the high volume of uninsured vehicles on our roads, the people that are paying for vehicle insurance are ending up having to pay more and more as repair costs increases. It is speculated that 63% of households with vehicles are uninsured.”The introduction of a compulsory form of insurance for all motorists would mean that everyone has at least some form of basic protection through insurance cover and will ensure a more equitable distribution of the financial burden of motor accidents.Third party insurance is purchased by the insured (first party) from an insurance company (second party) for protection against another’s (third party) claims. Currently, in South Africa consumers can purchase third party cover, which covers any costs associated with the injury to passengers. However, a problem arises when insured motorists are involved in an accident with uninsured motor vehicles.The reality is that currently many insurance companies struggle to recoup costs from third parties who have no form of insurance. If the insurance companies are unable to recover this money then they must fund these repairs themselves; and the only way to do this is to increase premiums for the wider pool of policyholders. As a result, those who do have insurance cover are being forced to cover the costs for those who do not.As a result compulsory third party motor property insurance would make insurance more affordable for all those who do currently insure their vehicles as the costs to insurance companies will be reduced.Introducing compulsory third party motor insurance will also enhance road safety as a whole. If vehicles involved in accidents are repaired properly this will enhance the general roadworthiness of vehicles on the road. This in turn, will have an effect on the number of road accidents. Vehicles which are not roadworthy contribute hugely to the sheer volume of accidents that happen on our roads on a daily basis.Third Party insurance is compulsory for travelling to both Zimbabwe and Mozambique.Why we need a state-run third-party insurance provider07 December 2015Chris Barry, HCVChris Barry, MD of HCV Insurance.Chris Barry, MD of HCV Insurance.With vehicle insurance not being compulsory in South Africa, experts estimate that only 30% to 40% of vehicles on the road are covered, making all drivers on the road vulnerable to the costly after-effects of an accident. It’s time for the South African government to set up a state-run compulsory third-party insurance vehicle, run along the same lines as SASRIA insurance to protect citizens from the consequences of an accident with an uninsured vehicle, in particular to cover the costly aftermath of an accident not covered by the Road Accident Fund (RAF).While injuries to your person are covered by the RAF, damage to a vehicle is not – and if an uninsured or underinsured driver has an accident with another vehicle, they would be liable for the costs incurred in that accident. How many uninsured or underinsured South Africans have the money lying around to pay for repairs to damage caused by an accident – even a bumper bashing? If we were to look for a locally relevant model on which to base this third-party insurance provider, SASRIA would be a good reference point. It is one of the state-owned enterprises (SOE) that has a good story to tell, with its results for the last year including an underwriting surplus or R468 million, a net profit before tax of R834 million, and gross written premiums of R1.5 billion. The dividend paid to the state was R206 million, an increase of nearly R100 million from the previous year. Obviously, this state-run third-party insurance would need to be funded from somewhere, and there would always be the argument that South Africa’s drivers cannot afford even more costs to be added to their licensing fees or to the overall fuel price. Neighbouring countries such as Zimbabwe have seen the wisdom of instituting compulsory third party insurance, with Zimbabwe charging road users the equivalent of R550 per annum per car, R990 per annum per truck, and R330 per annum per trailer. With around 9.2 million cars and light delivery vehicles, 365,000 trucks and 183,000 trailers on South African roads, that amounts to a minimum annual income of nearly R5.4 billion.If government were to set up a third-party insurance SOE run on the same lines as SASRIA, the organisation could turn to short term insurance companies to collect annual fees, in return for a small commission for the administration and collection of premiums. The insurer would be self-managed, and would settle claims directly with claimants, keeping operating expenses to a minimum.If the state was either a licence carrier or a shareholder, we could assume an underwriting margin of 10%, yielding a R540 million margin, and if we were to assume a 20% underwriting surplus, that would result in more than R1 billion surplus … if the third-party insurance SOE was run on the same principles as SASRIA.Introducing this insurance would also be an opportunity to reduce the number of uninsured vehicles on South African roads. Furthermore, if third party cover was in the region of about 10%, it would make a significant dent in the more than R350 billion that accidents cost the country each year.In many jurisdictions, it is compulsory to have vehicle insurance before using or keeping a motor vehicle on public roads. Most jurisdictions relate insurance to both the car and the driver; however, the degree of each varies greatly.Several jurisdictions have experimented with a "pay-as-you-drive" insurance plan which utilizes either a tracking device in the vehicle or vehicle diagnostics. This would address issues of uninsured motorists by providing additional options and also charge based on the miles (kilometers) driven, which could theoretically increase the efficiency of the insurance, through streamlined collection.[3]AustraliaIn Australia, Compulsory Third Party (CTP) insurance is a state-based scheme that covers only personal injury liability. Comprehensive and Third Party Property Damage insurance are sold separately. Comprehensive insurance covers damages to third-parties and the insured property and vehicle. Third Party Property Damage insurance covers damage to third-party property and vehicles, but not the insured vehicle. Third Party Property Damage with Fire and Theft insurance additionally covers the insured vehicle against fire and theft.Compulsory Third Party InsuranceCTP insurance is linked to the registration of a vehicle. It is transferred when an already registered vehicle is sold. It covers the vehicle owner and any person who drives the vehicle against claims for liability in respect of the death or injury to people caused by the fault of the vehicle owner or driver, but not for damage. A Compulsory Third Party Insurance is the coverage which covers the third party with the repairing cost of the vehicle, any property damage or medication expenses which are encountered as a result of an accident by the insured. This may include any kind of physical damage, bodily injuries or damage to property and covers the cost of all reasonable medical treatment for injuries received in the accident, loss of wages, cost of care services, and in some cases compensation for pain and suffering. Notably, the motorist or the insured is responsible for his own loss as he is not covered for any loss in such type of insurance.In New South Wales and the Northern Territory CTP insurance is compulsory; each vehicle must be insured when registered. A 'Greenslip,'[4] another name by which CTP insurance is commonly known due to the colour of the form, must be obtained through one of the five licensed insurers in New South Wales. Suncorp and Allianz both hold two licences to issue CTP Greenslips – Suncorp under the GIO and AAMI licences and Allianz under the Allianz and CIC/Allianz licences. The remaining three licences to issue CTP Greenslips are held by QBE, Zurich and Insurance Australia Limited (NRMA). APIA and Shannons and InsureMyRide insurance also supply CTP insurance licensed by GIO. In addition to the Greenslip, additional car insurance can be purchased through insurers in Australia. This will cover claims that the standard CTP insurance cannot provide. This is known as a comprehensive car insurance.A similar scheme applies in the Australian Capital Territory through AAMI, GIO and NRMA (IAL).In Victoria, Third Party Personal insurance from the Transport Accident Commission is similarly included, through a levy, in the vehicle registration fee.[5] A similar scheme exists in Tasmania through the Motor Accidents Insurance Board.[6]In Queensland, CTP is a mandatory part of registration for a vehicle. There is choice of insurer but price is government controlled in a tight band.[7]In South Australia, Third Party Personal insurance from the Motor Accident Commission is included in the licence registration fee for people over 17.[8] A similar scheme applies in Western Australia, though there is only one CTP insurer, the Insurance Commission of Western Australia (ICWA).[9]CanadaSeveral Canadian provinces (British Columbia, Saskatchewan, Manitoba and Quebec) provide a public auto insurance system while in the rest of the country insurance is provided privately [third party insurance is privatized in Quebec and is mandatory. The province covers everything but the vehicle(s)].[10] Basic auto insurance is mandatory throughout Canada with each province's government determining which benefits are included as minimum required auto insurance coverage and which benefits are options available for those seeking additional coverage. Accident benefits coverage is mandatory everywhere except for Newfoundland and Labrador.[11] All provinces in Canada have some form of no-fault insurance available to accident victims. The difference from province to province is the extent to which tort or no-fault is emphasized. International drivers entering Canada are permitted to drive any vehicle their licence allows for the 3-month period for which they are allowed to use their international licence. International laws provide visitors to the country with an International Insurance Bond (IIB) until this 3-month period is over in which the international driver must provide themselves with Canadian Insurance. The IIB is reinstated every time the international driver enters the country. Damage to the driver's own vehicle is optional – one notable exception to this is in Saskatchewan, where SGI provides collision coverage (less than a $1000 deductible, such as a collision damage waiver) as part of its basic insurance policy.[12] In Saskatchewan, residents have the option to have their auto insurance through a tort system but less than 0.5% of the population have taken this option.[13]GermanyInternational Motor Insurance Card (IVK)Since 1939, it has been compulsory to have third party personal insurance before keeping a motor vehicle in all federal states of Germany.[2] In addition, every vehicle owner is free to take out a comprehensive insurance policy. All types of car insurance are provided by several private insurers. The amount of insurance contribution is determined by several criteria, like the region, the type of car or the personal way of driving.[14]The minimum coverage defined by German law for car liability insurance / third party personal insurance is: 7.5 million euro for bodily injury (damage to people), .5 million euro for property damage and 50,000 euro for financial/fortune loss which is in no direct or indirect coherence with bodily injury or property damage.[15] Insurance companies usually offer all-in/combined single limit insurances of 50 Million Euro or 100 Million Euro (about 141 Million Dollar) for bodily injury, property damage and other financial/fortune loss (usually with a bodily injury coverage limitation of 8 to 15 million euro for each bodily injured person).Hong KongAccording to section 4(1) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272 of the Laws of Hong Kong), all users of a car, include its permitted users, must have insurance or some other security with respect to third-party risks.[16]HungaryThird-party vehicle insurance is mandatory for all vehicles in Hungary. No exemption is possible by money deposit. The premium covers all damage up to HUF 500M (about €1.8M) per accident without deductible. The coverage is extended to HUF 1,250M (about €4.5M) in case of personal injuries. Vehicle insurance policies from all EU-countries and some non-EU countries are valid in Hungary based on bilateral or multilateral agreements. Visitors with vehicle insurance not covered by such agreements are required to buy a monthly, renewable policy at the border.[17]IndonesiaThird-party vehicle insurance is a mandatory requirement in Indonesia and each individual car and motorcycle must be insured or the vehicle will not be considered legal. Therefore, a motorist cannot drive the vehicle until it is insured. Third Party vehicle insurance is included through a levy in the vehicle registration fee which is paid to the government agency Samsat (Sistem Administrasi Manunggal di bawah Satu Atap), which is responsible for cars and roads.[18] Third-Party Vehicle Insurance is regulated under Act No. 34 Year 1964 Re: Road Traffic Accident Fund and merely covers Bodily injury, and managed by a SOE named PT. Jasa Raharja (Persero).[19] The Indonesian government has a road insurance fund which includes life insurance for traffic accidents. The annual fee is called the Compulsory Contribution Fund for Traffic Accidents or Sumbangan Wajib Dana Kecelakaan Lalu Lintas Jalan.[18]IndiaA Sample Vehicle Insurance Certificate in IndiaAuto insurance in India deals with the insurance covers for the loss or damage caused to the automobile or its parts due to natural and man-made calamities. It provides accident cover for individual owners of the vehicle while driving and also for passengers and third party legal liability. There are certain general insurance companies who also offer online insurance service for the vehicle.Auto insurance in India is a compulsory requirement for all new vehicles used whether for commercial or personal use. The insurance companies have tie-ups with leading automobile manufacturers. They offer their customers instant auto quotes. Auto premium is determined by a number of factors and the amount of premium increases with the rise in the price of the vehicle. The claims of the auto insurance in India can be accidental, theft claims or third party claims. Certain documents are required for claiming auto insurance in India, like duly signed claim form, RC copy of the vehicle, driving license copy, FIR copy, original estimate and policy copy.There are different types of auto insurance in India:Private Car Insurance – Private Car Insurance is the fastest growing sector in India as it is compulsory for all the new cars. The amount of premium depends on the make and value of the car, state where the car is registered and the year of manufacture. This amount can be reduced by asking the insurer for No Claim Bonus (NCB) if no claim is made for insurance in previous year.[20]Two Wheeler Insurance – The Two Wheeler Insurance in India covers accidental insurance for the drivers of the vehicle. The amount of premium depends on the current showroom price multiplied by the depreciation rate fixed by the Tariff Advisory Committee at the beginning of a policy period.Commercial Vehicle Insurance – Commercial Vehicle Insurance in India provides cover for all the vehicles which are not used for personal purposes like trucks and HMVs. The amount of premium depends on the showroom price of the vehicle at the commencement of the insurance period, make of the vehicle and the place of registration of the vehicle. The auto insurance generally includes: Loss or damage by accident, fire, lightning, self ignition, external explosion, burglary, housebreaking or theft, malicious act Liability for third party injury/death, third party property and liability to paid driver On payment of appropriate additional premium, loss/damage to electrical/electronic accessoriesThe auto insurance does not include: Consequential loss, depreciation, mechanical and electrical breakdown, failure or breakage When vehicle is used outside the geographical area War or nuclear perils and drunken drivingIrelandThe Road Traffic Act, 1933 requires all drivers of mechanically propelled vehicles in public places to have at least third-party insurance, or to have obtained exemption – generally by depositing a (large) sum of money to the High Court as a guarantee against claims. In 1933, this figure was set at £15,000.[21] The Road Traffic Act, 1961[22] (which is currently in force) repealed the 1933 act but replaced these sections with functionally identical sections.From 1968, those making deposits require the consent of the Minister for Transport to do so, with the sum specified by the Minister.Those not exempted from obtaining insurance must obtain a certificate of insurance from their insurance provider, and display a portion of this (an insurance disc) on their vehicles' windscreen (if fitted).[23] The certificate in full must be presented to a police station within ten days if requested by an officer. Proof of having insurance or an exemption must also be provided to pay for the motor tax.[24]Those injured or suffering property damage/loss due to uninsured drivers can claim against the Motor Insurance Bureau of Ireland's uninsured drivers fund, as can those injured (but not those suffering damage or loss) from hit and run offences.ItalyThe law 990/1969 requires that each motor vehicle or trailer standing or moving on a public road have third party insurance (called RCA, Responsabilità civile per gli autoveicoli). Historically, a part of the certificate of insurance must be displayed on the windscreen of the vehicle. This latter requirement was revoked in 2015, when a national database of insured vehicles was built by the Insurance Company Association (ANIA, Associazione Nazionale Imprese Assicuratrici) and the National Transportation Authority (Motorizzazione Civile) to verify (by private citizens and public authorities) if a vehicle is insured. There is no exemption policy to this law disposition.Driving without the necessary insurance for that vehicle is an offence that can be prosecuted by the police and fines range from 841 to 3,287 euros. Police forces also have the power to seize a vehicle that does not have the necessary insurance in place, until the owner of the vehicle pays a fine and signs a new insurance policy. The same provision is applied when the vehicle is standing on a public road.Minimal insurance policies cover only third parties (including the insured person and third parties carried with the vehicle, but not the driver, if the two do not coincide). Also the third parties, fire and theft are common insurance policies, while the all inclusive policies (kasko policy) which include also damages of the vehicle causing the accident or the injuries. It is also common to include a renounce clause of the insurance company to compensate the damages against the insured person in some cases (usually in case of DUI or other infringement of the law by the driver).The victims of accidents caused by non-insured vehicles could be compensated by the Road's Victim Warranty Fund (Fondo garanzia vittime della strada), which is covered by a fixed amount (2.5%, as 2015) of each RCA insurance premium.New ZealandWithin New Zealand, the Accident Compensation Corporation (ACC) provides nationwide no-fault personal injury insurance.[25] Injuries involving motor vehicles operating on public roads are covered by the Motor Vehicle Account, for which premiums are collected through levies on petrol and through vehicle licensing fees.[26]NorwayIn Norway, the vehicle owner must provide the minimum of liability insurance for his vehicle(s) – of any kind. Otherwise, the vehicle is illegal to use. If a person drives a vehicle belonging to someone else, and has an accident, the insurance will cover for damage done. Note that the policy carrier can choose to limit the coverage to only apply for family members or person over a certain age.RomaniaRomanian law mandates Răspundere Auto Civilă, a motor-vehicle liability insurance for all vehicle owners to cover damages to third parties.[27]Russian FederationMotor-vehicle insurance is mandatory for all owners according to Russian legislation.South AfricaSouth Africa allocates a percentage of the money from fuel into the Road Accident Fund, which goes towards compensating third parties in accidents.[28][29]SpainEach motor vehicle on a public road to have a third party insurance (called "Seguro de responsabilidad civil").Police forces have the power to seize vehicles that do not have the necessary insurance in place, until the owner of the vehicle pays the fine and signs a new insurance policy. Driving without the necessary insurance for that vehicle is an offence that will be prosecuted by the police and will receive penalty. Same provision is applied when the vehicle is standing on a public road.The minimal insurance policies cover only third parties (included the insured person and third parties carried with the vehicle, but not the driver, if the two do not coincide). Also the third parties, fire and theft are common insurance policies.The victims of accidents caused by non-insured vehicles could be compensated by a Warranty Fund, which is covered by a fixed amount of each insurance premium.Since 2013 it is possible to contract an insurance by days as is possible in countries such as Germany and England.[30]United Arab EmiratesWhen buying car insurance in the United Arab Emirates, the traffic department requires a 13-month insurance certificate each time you register or renew a vehicle registration.United KingdomUninsured cars seized by Merseyside Police on display outside the force's headquarters in 2006In 1930, the UK government introduced a law that required every person who used a vehicle on the road to have at least third-party personal injury insurance. Today, this UK law is defined by the Road Traffic Act 1988,[31] (generally referred to as the RTA 1988 as amended) which was last modified in 1991. The Act requires that motorists either be insured, or have made a specified deposit (£500,000 in 1991) and keeps the sum deposited with the Accountant General of the Supreme Court, against liability for injuries to others (including passengers) and for damage to other persons' property, resulting from use of a vehicle on a public road or in other public places.It is an offence to use a motor vehicle, or allow others to use it without insurance that satisfies the requirements of the Act. This requirement applies while any part of a vehicle (even if a greater part of it is on private land) is on the public highway. No such legislation applies on private land. However, private land to which the public have a reasonable right of access (for example, a supermarket car park during opening hours) is considered to be included within the requirements of the Act.Police have the power to seize vehicles that do not appear to have necessary insurance in place. A driver caught driving without insurance for the vehicle he/she is in charge of for the purposes of driving, is liable to be prosecuted by the police and, upon conviction, will receive either a fixed penalty or magistrate's courts penalty.The registration number of the vehicle shown on the insurance policy, along with other relevant information including the effective dates of cover are transmitted electronically to the UK's Motor Insurance Database (MID) which exists to help reduce incidents of uninsured driving in the territory. The Police are able to spot-check vehicles that pass within range of automated number plate recognition (ANPR) cameras, that can search the MID instantly. It should be noted, however, that proof of insurance lies entirely with the issue of a Certificate of Motor Insurance, or cover note, by an Authorised Insurer which, to be valid, must have been previously 'delivered' to the insured person in accordance with the Act, and be printed in black ink on white paper.The insurance certificate or cover note issued by the insurance company constitutes the only legal evidence that the policy to which the certificate relates satisfies the requirements of the relevant law applicable in Great Britain, Northern Ireland, the Isle of Man, the Island of Guernsey, the Island of Jersey and the Island of Alderney. The Act states that an authorised person, such as a police officer, may require a driver to produce an insurance certificate for inspection. If the driver cannot show the document immediately on request, and evidence of insurance cannot be found by other means such as the MID, then the Police are empowered to seize the vehicle instantly.The immediate impounding of an apparently uninsured vehicle replaces the former method of dealing with insurance spot-checks where drivers were issued with an HORT/1 (so-called because the order was form number 1 issued by the Home Office Road Traffic dept). This 'ticket' was an order requiring that within seven days, from midnight of the date of issue, the driver concerned was to take a valid insurance certificate (and usually other driving documents as well) to a police station of the driver's choice. Failure to produce an insurance certificate was, and still is, an offence. The HORT/1 was commonly known – even by the issuing authorities when dealing with the public – as a "Producer". As these are seldom issued now and the MID relied upon to indicate the presence of insurance or not, it is incumbent upon the insurance industry to accurately and swiftly update the MID with current policy details and insurers that fail to do so can be penalised by their regulating body.Vehicles kept in the UK must now be continuously insured unless a Statutory Off Road Notification (SORN) has been formally submitted. This requirement arose following a change in the law in June 2011 when a regulation known as Continuous Insurance Enforcement (CIE) came into force. The effect of this was that in the UK a vehicle that is not declared SORN, must have a valid insurance policy in force whether or not it is kept on public roads and whether or not it is driven.[32]Insurer, and Vehicle Excise Duty (VED) / licence data, are shared by the relevant authorities including the Police and this forms an integral part of the mechanism of CIE. All UK registered vehicles, including those that are exempt from VED (for example, Historic Vehicles and cars with low or zero emissions) are subject to the VED taxation application process. Part of this is a check on the vehicle's insurance. A physical receipt for the payment of VED was issued by way of a paper disc which, prior to 1 October 2014, meant that all motorists in the UK were required to prominently display the tax disc on their vehicle when it was kept or driven on public roads. This helped to ensure that most people had adequate insurance on their vehicles because insurance cover was required to purchase a disc, although the insurance must merely have been valid at the time of purchase and not necessarily for the life of the tax disc.[33] To address the problems that arise where a vehicle's insurance was subsequently cancelled but the tax disc remained in force and displayed on the vehicle and the vehicle then used without insurance, the CIE regulations are now able to be applied as the Driver & Vehicle Licence Authority (DVLA) and the MID databases are shared in real-time meaning that a taxed but uninsured vehicle is easily detectable by both authorities and Traffic Police. Post 1 October 2014 it is no longer a requirement to display a vehicle excise licence (tax disc) on a vehicle.[34] This has come about because the whole VED process can now be administered electronically and alongside the MID, doing away with the expense, to the UK Government, of issuing paper discs.If a vehicle is to be "laid up" for whatever reason, a Statutory Off Road Notification (SORN) must be submitted to the DVLA to declare that the vehicle is off the public roads and will not return to them unless SORN is cancelled by the vehicle's owner. Once a vehicle has been declared 'SORN' then the legal requirement to insure it ceases, although many vehicle owners may desire to maintain cover for loss of or damage to the vehicle while it is off the road. A vehicle that is then to be put back on the road must be subject to a new application for VED and be insured. Part of the VED application requires an electronic check of the MID, in this way the lawful presence of a vehicle on the road for both VED and insurance purposes is reinforced. It follows that the only circumstances in which a vehicle can have no insurance is if it has a valid SORN; was exempted from SORN (as untaxed on or before 31/10/1998 and has had no tax or SORN activity since); is recorded as 'stolen and not recovered' by the Police; is between registered keepers; or is scrapped.Road Traffic Act Only Insurance differs from Third Party Only Insurance (detailed below) and is not often sold, unless to underpin, for example, a corporate body wishing to self-insure above the requirements of the Act. It provides the very minimum cover to satisfy the requirements of the Act. Road Traffic Act Only Insurance has a limit of £1,000,000 for damage to third party property, while third party only insurance typically has a greater limit for third party property damage.Motor insurers in the UK place a limit on the amount that they are liable for in the event of a claim by third parties against a legitimate policy. This can be explained in part by the Great Heck Rail Crash that cost the insurers over £22 million in compensation for the fatalities and damage to property caused by the actions of the insured driver of a motor vehicle that caused the disaster. No limit applies to claims from third parties for death or personal injury, however UK car insurance is now commonly limited to £20m for any claim or series of claims for loss of or damage to third party property caused by or arising out of one incident.The minimum level of insurance cover generally available, and which satisfies the requirement of the Act, is called third party only insurance. The level of cover provided by Third party only insurance is basic, but does exceed the requirements of the act. This insurance covers any liability to third parties, but does not cover any other risks.More commonly purchased is third party, fire and theft. This covers all third party liabilities and also covers the vehicle owner against the destruction of the vehicle by fire (whether malicious or due to a vehicle fault) and theft of the insured vehicle. It may or may not cover vandalism. This kind of insurance and the two preceding types do not cover damage to the vehicle caused by the driver or other hazards.Comprehensive insurance covers all of the above and damage to the vehicle caused by the driver themselves, as well as vandalism and other risks. This is usually the most expensive type of insurance. It is custom in the UK for insurance customers to refer to their Comprehensive Insurance as "Fully Comprehensive" or popularly, "Fully Comp". This is a tautology as the word 'Comprehensive' means full.Some classes of vehicle ownership, or use, are "Crown Exempt" from the requirement to be covered under the Act including vehicles owned or operated by certain councils and local authorities, national park authorities, education authorities, police authorities, fire authorities, health service bodies, the security services and vehicles used to or from Shipping Salvage purposes. Although exempt from the requirement to insure this provides no immunity against claims being made against them, so an otherwise Crown Exempt authority may chose to insure conventionally, preferring to incur the known expense of insurance premiums rather than accept the open-ended exposure of effectively, self-insuring under Crown Exemption.The Motor Insurers' Bureau (MIB) compensates the victims of road accidents caused by uninsured and untraced motorists. It also operates the MID, which contain details of every insured vehicle in the country and acts as a means to share information between Insurance Companies.Soon after the introduction of the Road Traffic Act in 1930, unexpected issues arose when motorists needed to drive a vehicle other than their own in genuine emergency circumstances. Volunteering to move a vehicle, for example, where another motorist had been taken ill or been involved in an accident, could lead to the 'assisting' driver being prosecuted for no insurance if the other car's insurance did not cover use by any driver. To alleviate this situation an extension to UK Car Insurances was introduced allowing a Policyholder to personally drive any other motor car not belonging to him/her and not hired to him/her under a hire purchase or leasing agreement. This extension of cover, known as "Driving Other Cars" (where it is granted) usually applies to the Policyholder only. The cover provided is for Third Party Risks only and there is absolutely no cover for loss of or damage to the vehicle being driven. This aspect of UK motor insurance is the only one that purports to cover the driving of a vehicle, not use.On 1 March 2011, the European Court of Justice in Luxembourg ruled that gender could no longer be used by insurers to set car insurance premiums. The new ruling will come into action from December 2012.[35]Investigation into repair costs & fraudulent claimsIn September 2012, it was announced that the Competition Commission had launched an investigation into the UK system for credit repairs and credit hire of an alternative vehicle leading to claims from third parties following an accident. Where their client is considered to be not at fault, Accident Management Companies will take over the running of their client's claim and arrange everything for them, usually on a 'No Win - No Fee' basis. It was shown that the insurers of the at-fault vehicle, were unable to intervene in order to have control over the costs that were applied to the claim by means of repairs, storage, vehicle hire, referral fees and personal injury. The subsequent cost of some items submitted for consideration has been a cause for concern over recent years as this has caused an increase in the premium costs, contrary to the general duty of all involved to mitigate the cost of claims. Also, the recent craze of "Cash for crash" has substantially raised the cost of policies. This is where two parties arrange a collision between their vehicles and one driver making excessive claims for damage and non existent injuries to themselves and the passengers that they had arranged to be "in the vehicle" at the time of the collision. Another recent development has seen crashes being caused deliberately by a driver "slamming" on their brakes so that the driver behind hits them, this is usually carried out at roundabout junctions, when the following driver is looking to the right for oncoming traffic and does not notice that the vehicle in front has suddenly stopped for no reason. The 'staging' of a motor collision on the Public Highway for the purpose of attempting an insurance fraud is considered by the Courts to be organised crime and upon conviction is dealt with as such.United StatesMain article: Vehicle insurance in the United StatesThe regulations for vehicle insurance differ with each of the 50 US states and other territories, with each U.S. state having its own mandatory minimum coverage requirements (see separate main article). Each of the 50 U.S. states and the District of Columbia requires drivers to have insurance coverage for both bodily injury and property damage, but the minimum amount of coverage required by law varies by state. For example, minimum bodily injury liability coverage requirements range from $30,000 in Arizona[36] to $100,000 in Alaska and Maine,[37] while minimum property damage liability requirements range from $5,000 to $25,000 in most states. |