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31 October 2018

**PORTFOLIO COMMITTEE ON TRANSPORT**

**ROAD ACCIDENT BENEFIT SCHEME BILL**

**[B17—2017]**

**PROPOSED AMENDMENTS**

**CLAUSE 1**

1. On page 5, after line 20, to insert:

**"Appeals Committee"** means the committee or committees established by section 48;

2. On page 5, in line 28, to omit "of the Administrator".

3. On page 5, from line 24, to omit the definition of "**average annual national income**" and to substitute:

**"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;

4. On page 5, after line 36, to insert:

"**co-payment**" means the amount above the tariff contemplated in subsection 32(1)*(b)*, for which amount the recipient of a health care service may incur personal liability towards a non-contracted health care service provider;

"**curator**" means a person appointed by a court to act as a curator in an instance where the beneficiary, injured person or a qualifying person is of unsound mind or otherwise incapable of managing his or her affairs;

5. On page 5, after line 50, to insert:

"**illegal income**" means income derived from any activity which contravenes the law;

6. On page 5, after line 54, to insert:

**"interim Board"** means an interim Board contemplated in section 9;

7. On page 6, in line 1, to insert:

**"maintenance"** means the payment of account fees, transaction costs, and other charges levied by the banker, or bankers, with whom the accounts contemplated in Chapter 4 are held;

8. On page 6, after line 7, to insert:

**"monetary asset"** means funds under management as contemplated in Treasury Regulation 31.3.1 made in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and published under Government Notice R 225 in Government *Gazette* 27388 of 15 March 2005, as amended;

9. On page 6, in line 48, to omit "and".

10. On page 6, in line 51, to omit the full stop and substitute "; and".

11. On page 6, after line 51, to insert:

**"working day"** means when any period consisting of working days is calculated, the exclusion of the first day and the inclusion of the last day, counting only weekdays and excluding Saturdays, Sundays and public holidays.

**CLAUSE 5**

1. On page 7, in line 16, after "benefits” to insert "which are not competent in terms of this Act".

2. On page 7, in line 23, to omit the second "and".

3. On page 7, in line 24, to omit "law." and to insert "law; and".

4. On page 7, after line 24, to insert:

“*(h)* consider disputes in terms of section 55; and

 *(i)* as contemplated in subsections 56(2) and (3), assist injured persons and dependents to claim.”

**CLAUSE 6**

1. On page 7, in line 35, after "legislation," to insert "and in consultation with National Treasury".

2. On page 7, in line 37, after "legislation," to insert "and in consultation with National Treasury".

3. On page 7, from line 38, to omit "in such manner as it may deem fit".

4. On page 7, in line 40, to omit ", excluding share certificates".

5. On page 7, from line 51, to omit paragraph *(j)*.

6. On page 7, in line 54, to omit "*(k)*" and to substitute "*(j)*".

7. On page 8, in line 1, to omit "*(l)*" and to substitute "*(k)*".

8. On page 8, in line 3, to omit “(m)” and to substitute “(l)”.

9. On page 8, in line 5, to omit “(n)” and to substitute “(m)”.

**CLAUSE 7**

1. On page 8, after line 13, to insert the following paragraph:

“*(b)* the Chief Financial Officer;”.

2. On page 8, in line 14, to omit "*(b)*" and to substitute "*(c)*".

3. On page 8, in line 14, to omit " no more than 12" and to substitute not less than “7” and not more than"10".

4. On page 8, in line 15, to omit “10” and substitute “five”.

5. On page 8, in line 19, to omit “(c)” and to substitute “(d)”.

6. On page 8, in line 21, to omit “(d)” and to substitute “(e)”.

7. On page 8, in line 22, to omit “(e)” and to substitute “(f)”.

8. On page 8, from line 24, to omit “(f)” and to substitute “(g)”.

9. On page 8, in line 26, to omit "(1)*(b)*" and to substitute "(1)*(c)*".

10. On page 8, in line 33, to omit "(1)*(b)*" and to substitute "(1)*(c)*".

11. On page 8, in line 34, after "30" to insert "working".

12. On page 8, in line 37, after "Officer" to insert, "Chief Financial Officer".

13. On page 8, in line 38, to omit “, but may not vote at its meetings”.

**CLAUSE 8**

1. On page 8, in line 41, to omit "7(1)*(b)*" and to substitute "7(1)*(c)*".

2. On page 8, from line 42, to omit subsection (2) and to substitute:

"(2) The Chairperson shall preside at meetings of the Board.

 (3) Whenever the Chairperson of the Board is absent or unable to fulfil the functions of the Chairperson the Deputy Chairperson shall act as the Chairperson.”

3. On page 8, in line 44, to omit “(3)” and to substitute “(4)”.

4. On page 8, in line 46, to omit "7(1)*(b)*" and to substitute "7(1)*(c)*".

5. On page 8, in line 47, after "inability" to insert "for the duration of the meeting."

**CLAUSE 9**

1. On page 8, in line 49, to omit "7(1)*(b)*" and to substitute "7(1)*(c)*".

2. On page 8, in line 50, to omit the second "period" and to substitute "term."

3. On page 8, in line 54, to omit "7(1)*(b)*" and to substitute "7(1)*(c)*".

4. On page 9, in line 1, to omit "12" and to substitute "six".

**CLAUSE 10**

1. On page 9, in line 5, to omit "7(1)*(b)*" and to substitute "7(1)*(c)*".

2. On page 9, from line 8, to omit ", without following the other provisions of section 7".

**CLAUSE 11**

1. On page 9, in line 11, to omit paragraph "*(a)*".

2. On page 9, in line 16, to omit "or unfit".

**CLAUSE 13**

1. On page 9, in line 29, to omit "a majority" and to substitute "50% plus 1".

2. On page 9, in line 32, after “by” to omit "a" and to substitute "50% plus 1 of the".

**CLAUSE 14**

1. On page 9, in line 38, after "**14.**" to insert "(1)".

2. On page 9, in line 38, to omit "7(1)*(b)*" and to substitute "7(1)*(c)*".

3. On page 9, after line 40, to insert the following subsection:

 "(2) The entitlement to the remuneration and allowances contemplated in subsection (1) must be fixed at a flat rate *per annum*, and must not be calculated based on the number of Board meetings attended.”.

**CLAUSE 15**

1. On page 10, from line 10, to omit subsections (2), (3) and (4) and to substitute:

 "(2) The Board may delegate any of the powers entrusted or duties assigned to the Administrator in terms of this Act, to a member of the Board, the Chief Executive Officer, the Chief Financial Officer, a committee or an employee of the Administrator.

 (3) The Chief Executive Officer may delegate any of his or her powers in terms of this Act, to an employee of the Administrator.

 (4) Any delegation under subsections (2) and (3) must be in writing and—

*(a)* is subject to any limitation or condition imposed in terms of this Act or by the Board or Chief Executive Officer, as the case may be;

*(b)* does not prevent the exercise of that power in question by the Board or the Chief Executive Officer;

*(c)* may authorise any person referred to in subsections (2) and (3) to sub-delegate, in writing, the delegated power or duty to another employee, or to the holder of a specific post in the Administrator; and

*(d)* does not divest the Board or Chief Executive Officer of responsibility for a function or power so delegated.

 (5) The Board or Chief Executive Officer, as the case may be, may confirm, vary or revoke any decision taken as a result of a delegation in terms of subsection (2) or (3), subject to any rights that may have become vested as a consequence of the decision.".

**CLAUSE 16**

1. On page 10, from line 27, to omit subsections (2) and (3) and to substitute:

 "(2) A member of the Board must at all times comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999) and any other legislation".

**CLAUSE 17**

1. On page 10, in line 39, after "by" to insert "giving three months".

**CLAUSE 18**

1. On page 10, in line 41, after "**18.**" to insert "(1)".

2. On page 10, after line 44, to insert the following subsection:

 "(2) The Minister may only remove a member—

*(a)* after having given the member an opportunity of seven working days to make representations; and

*(b)* after having considered any representations received, within seven working days from the date of receipt.".

**CLAUSE 19**

1. On page 10, from line 50, to omit paragraph *(b)* and to substitute:

"*(b)* The Minister may dissolve the Board only-

1. after having given the Board seven working days to make representations; and
2. after having considered any representations received, within seven working days from the date of receipt.”

2. On page 11, from line 1, to omit paragraph *(c)* and to substitute:

"*(c)* If the Minister dissolves the Board, or if the Board resigns, or if the Board becomes inoperable, the Minister—

(i) may appoint an administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and

(ii) must, as soon as it is feasible but not later than six months after the event contemplated in paragraph *(c)* has occurred, appoint new members to the Board and for this purpose section 7 applies with the changes required by the context.".

3. On page 11, from line 8, to omit subsection (2) and to substitute:

 "(2) *(a)* The costs associated with the appointment and functioning of the administrator shall be for the account of the Administrator.

 *(b)* The appointment of the administrator terminates at the first meeting of the new Board.".

**CLAUSE 20**

1. On page 11, from line 15, to omit subsection (1) and to substitute:

 "(1) The Board must, with the concurrence of the Minister, appoint a suitably qualified and experienced person as Chief Executive Officer on such terms and conditions of employment as may be determined by the Board.".

**CLAUSE 21**

1. On page 11, from line 21, to omit subsections (1) and (2) and to substitute:

 "(1) If the Chief Executive Officer is for any reason absent or unable to carry out his or her duties, or if a vacancy in the office of the Chief Executive Officer occurs, the Board may, with the concurrence of the Minister, appoint a suitably qualified person to act as Chief Executive Officer until the Chief Executive Officer is able to resume his or her duties or until the vacant position is filled.

 (2) An acting Chief Executive Officer—

*(a)* may exercise all the powers and must carry out all the duties of the Chief Executive Officer; and

*(b)* is appointed on terms and conditions, including those relating to remuneration and allowances, as the Board may determine.".

**CLAUSE 24**

1. On page 11, in line 43, to omit subsection (1) and to substitute:

“(1) The Chief Executive Officer, with the concurrence of the Board, appoints and dismisses Chief Audit Executive.".

(2) The Chief Executive Officer, after consultation with the Board, appoints and dismisses executive managers.

2. On page 11, in line 45, to omit “(2)” and to substitute “(3”).

**CLAUSE 25**

1. On page 11, in line 47, to omit clause 25 and to substitute:

"The Board may for good reason, with the concurrence of the Minister, dismiss or suspend the Chief Executive Officer".

**CLAUSE 26**

Clause rejected.

**NEW CLAUSES**

1. That the following be new Clauses:

**"Benefit account**

 **26.** (1) The Administrator must open and maintain a benefit account.

 (2) The benefit account shall consist of—

*(a)* Road Accident Benefit Scheme levies imposed in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964);

*(b)* money appropriated by Parliament;

*(c)* money loaned to the Administrator;

*(d)* interest earned on money in the account;

*(e)* money recovered in terms of any claims re-insurance scheme; and

*(f)* investment returns on invested money from the account.

**Use of money in benefit account**

 **27.** The money in the benefit account shall, subject to the provisions of this Act, be under the control of the Chief Executive Officer, and shall be used for—

*(a)* the payment of benefits provided for in Chapter 6;

*(b)* the costs related to the appointment of, and the fees of, curators appointed to assist claimants and beneficiaries;

*(c)* the payment in respect of documents contemplated in subsection 56(3);

*(d)* subject to approval by the Minister of Transport, in consultation with the Minister of Finance, transfers to the transition account referred to in section 28;

*(e)* the payment of premiums related to any claims re-insurance scheme;

*(f)* the payment of expenses related to the maintenance of the benefit account ;and

*(g)* repayment of loans contemplated in section 26(2)(c).

**Transition account**

 **28.** (1) The Administrator must open and maintain a transition account.

 (2) The transition account shall consist of—

*(a)* money that belonged to the Road Accident Fund prior to the coming into effect of this Act;

*(b)* money appropriated by Parliament;

*(c)* money transferred into the transition account, subsequent to the approval contemplated in section 27*(d)*;

*(d)* money loaned to the Administrator;

*(e)* interest earned on money in the transition account;

*(f)* money recovered in terms of any claims re-insurance scheme in respect of claims, that arose prior to the coming into effect of this Act, under the Road Accident Fund Act, 1996 (Act No. 56 of 1996); and

*(g)* investment returns on invested money from the account.

**Application of money in transition account**

 **29.** The money in the transition account shall, subject to the provisions of this Act, be under the control of the Chief Executive Officer, and shall be used for—

*(a)* the payment of third party compensation, expert reports and litigation expenses under the Road Accident Fund Act, 1996 (Act No. 56 of 1996), in respect of claims that arose prior to the coming into effect of this Act;

*(b)* the payment of premiums related to any claims re-insurance scheme contemplated in subsection 28(2)(f);

*(c)* the payment of expenses related to the maintenance of the transition account; and

*(d)* repayment of loans contemplated in section 28(2)(d).

**Operations account**

 **30.** (1) The Administrator must open and maintain an operations account.

 (2) The operations account shall consist of—

*(a)* money appropriated by Parliament;

*(b)* money donated or bequeathed to the Administrator;

*(c)* money that may become due to the Administrator in terms of any other legislation;

*(d)* interest earned on money in the operations account;

*(e)* investment returns on invested money from the account; and

*(f)* money recovered in terms of any insurance scheme.

**Application of money in operations account**

 **31.** The money in the operations account shall, subject to the provisions of this Act, be under the control of the Chief Executive Officer, and shall be used for—

*(a)* the payment of administrative expenditure arising from the duties of the Administrator set out in section 5;

*(b)* the payment of administrative expenditure arising from the powers of the Administrator set out in section 6;

*(c)* the payment of remuneration and allowances for the Board as provided for in section 14;

*(d)* the payment of all non-claim liabilities of the former Road Accident Fund as provided for in section 63;

*(e)* the cost of the actuarial valuations contemplated in section 32; and

*(f)* the payment of expenses related to the maintenance of the operations account.

**Actuarial valuations**

 **32.** (1) The assets and the liabilities to be funded, respectively, from the benefit account and the transition account, shall be valued annually by an actuary appointed by the Administrator, to determine the sufficiency of the money in the respective accounts.

 (2) The result of the valuations referred to in subsection (1) shall be included in the Administrator’s annual report.

 (3) Subject to subsection (4), the liabilities to be paid from the benefit account must, in the long-term, be financed on a fully funded basis.

 (4) In the event that the ratio of actuarial value of monetary assets to liabilities of the benefit account, expressed as a percentage, falls below 90%, the Minister must take all reasonable steps provided for in this Act to restore the ratio to 90% or above, and may, in consultation with the Minister of Finance, undertake a review of the benefits or an adjustment of revenue sources or both, taking into account the requirements of the Constitution, the impact on the public and the fiscal position of government.

**Consideration of actuarial valuations**

 **33.** (1) The Administrator, the Minister and the Minister of Finance, or their delegates, provided that such delegates are not those contemplated in section 7*(c)* to *(d)*, shall meet within 30 working days of receipt by the Administrator of the actuarial valuations contemplated in section 32, to consider the financial position of the Administrator and any remedial actions that may be necessary.

 (2) In addition to the matter contemplated in subsection (1), at the meeting, the respective Ministers specified in section 60 shall consider the adjustment of the tariff and treatment protocols, annual average national income, pre-accident annual income cap, lump-sum funeral benefit, and the limit on the provision of vocational training.".

**CLAUSE 27**

1. On page 12, from line 14, to omit subsection (1) and to substitute:

 "(1) The Administrator shall not be liable to provide a benefit, nor is the liability of any person excluded, in respect of bodily injury or death caused by or arising from the use of a vehicle—

*(a)* to perpetrate any terrorist activity, as defined in the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004); or

*(b)* in circumstances where the producer, importer, distributor, or retailer is liable for the harm in terms of section 61 of the Consumer Protection Act, 2008 (Act No. 68 of 2008).".

**CLAUSE 29**

1. On page 13, in line 2, after "BENEFITS" to insert "AND BENEFIT REVIEW

2. On page 13, in line 4, after "**29.**" to insert "(1)".

3. On page 13, after line 13, to insert:

 "(2) The Administrator may terminate, suspend or review a benefit contemplated in subsection (1)*(a)* to *(c)* for the reasons and in the manner provided for in Part E of this Chapter.".

**CLAUSE 31**

1. On page 13, from line 43, to omit subsection (1) and to substitute:

 "(1) Subject to the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), the Administrator may enter into agreements with public and private sector health care service providers to provide for the delivery of health care services to injured persons.".

**CLAUSE 32**

1. On page 14, after line 24, to insert:

 "(2) A non-contracted health care service provider must obtain written approval from the injured person, his guardian, or curator, prior to providing any health care service to the injured person that may result in a co-payment, failing which the injured person and guardian shall incur no liability for the co-payment.

 (3) In the event that the injured person requires an emergency health care service, and the injured person, his guardian, or curator, is unable to provide the consent contemplated in subsection (2), the Administrator will be liable for the reasonable co-payment.".

2. On page 14, in line 25, to omit "(2)" and to substitute "(4)".

**CLAUSE 34**

1. On page 15, in line 16, to omit "within a reasonable period" and to substitute "within 30 working days".

**CLAUSE 35**

1. On page 15, in line 51, to omit "failed" and to "substitute "was unable".

2. On page 16, in line 52, after "benefit" to insert "upwards".

**CLAUSE 39**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Liability of Administrator in respect of funeral benefit**

 **39.** (1) Subject to this Act, the Administrator shall be liable, in respect of the funeral of a person whose death was caused by or arose from a road accident to pay an immediate family member of the deceased, a lump sum of R 20 000.00, in the manner set out in the rules, upon submission of—

*(a)* a copy of the death certificate issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992); and

*(b)* proof that the death was caused by or arose from a road accident.

 (2) The Minister may, with the concurrence of the Minister of Finance, subject to affordability, from time to time, adjust the amount contemplated in subsections (1) upwards by notice in the *Gazette* to take into account the effects of inflation.".

**CLAUSE 42**

1. On page 21, after line 33, to insert:

 "(2) Subject to this Act, a dependent of a beneficiary of a temporary or long-term income support benefit, who died as a result of the injuries sustained in the road accident, is entitled to a family support benefit without submitting a claim, in the manner set out in the rules.".

2. On page 21, in line 34, to omit "(2)" and to substitute "(3)".

3. On page 21, from line 34, to omit "funeral benefit in terms of section 39(2)"and to substitute "family support benefit in terms of subsection (2)".

4. On page 21, in line 37, to omit "(3)" and to substitute "(4)".

**CLAUSE 43**

1. On page 21, in line 43, after "may" to insert ", subject to the duty to assist the claimant contemplated in subsection 56(2),".

**CLAUSE 46**

1. On page 23, in line 53, to omit "one year" and to substitute "three years".

**CLAUSE 47**

1. On page 24, in line 13, after "to" to insert "lodge a dispute or an".

**NEW CLAUSE**

1. That the following be a new clause:

“**Disputes**

 (1) Any qualifying person, claimant or beneficiary may, on the form and in the manner set out in the rules, lodge a dispute with the Administrator regarding any matter provided for in this Act.

 (2) The dispute must be lodged within three months of the dispute arising.

 (3) The Administrator may request a disputant to supply any additional information necessary to consider the dispute in writing or to attend a meeting for the purpose of making an oral enquiry into the dispute.

 (4) The Administrator must consider the dispute and respond in writing, not later than three months after the dispute was lodged, informing the disputant of the Administrator’s decision.".

**CLAUSE 48**

1. On page 24, in line 18, to omit "may" and substitute "must".

2. On page 24, from line 22, to omit "as a member of a law society" and to substitute "and enrolled as an advocate or an attorney in terms of the Legal Practice Act, 2014 (Act No. 28 of 2014)".

3. On page 24, in line 23, to omit "10" and to substitute "five".

4. On page 24, in line 24, to omit "alternative".

5. On page 24, in line 28, to omit "10" and to substitute "five".

6. On page 24, in line 32, to omit "10" and to substitute "five".

7. On page 24, in line 36, after "30" to insert "working".

**CLAUSE 49**

1. On page 24, in line 45, after "30" to insert "working".

**CLAUSE 51**

1. On page 25, in line 6, after "members" to insert "who must be in attendance for the whole meeting".

2. On page 25, in line 11 to omit "the majority" and to substitute "50% + 1".

**CLAUSE 52**

1. On page 25, in line 20, after "**50**", to insert (1).

2. On page 25, after line 22, to insert:

 "(2) The entitlement to remuneration and allowances of members of the Appeals Committee must be fixed at a flat rate *per annum,* and must not be calculated based on the number of attendances of Appeals Committee meetings.

 (3) The entitlement to remuneration and allowances of alternates of the Appeals Committee must not be fixed at a flat rate *per annum*, and must be calculated based on the ad hoc number of Appeals Committee meetings.".

**CLAUSE 53**

1. On page 25, after line 31, to insert:

 "(3) In the event of a breach of subsection (2) the Minister may remove a member or alternate after having—

*(a)* given the member or alternate an opportunity of seven working days to make representations; and

*(b)* considered any representations received, within seven working days from the date of receipt.".

**CLAUSE 54**

1. On page 25, in line 32, to omit "**from membership**" and to substitute "**from the** **Appeals Committee**".

2. On page 25, in line 33, to omit "may" and to substitute "must".

3. On page 25, in line 46, to omit "or".

4. On page 25, at the end of line 47, to omit fullstop and to substitute “; or”.

5. On page 25, after line 47, to insert:

*(d)* fails to disclose an interest in terms of section 53(2).

**CLAUSE 55**

1. On page 26, in line 4, to omit "30" and to substitute "180".

**CLAUSE 56**

1. On page 26, in line 20, after "**56.**" to insert "(1)".

2. On page 26, after line 23, to insert:

 "(2) The Administrator must assist the injured person, claimant or beneficiary to obtain the documents required to submit a claim and to process a benefit.

 (3) The Administrator must pay the reasonable and necessary costs associated with obtaining the documents contemplated in subsection (2).".

**CLAUSE 60**

1. On page 26, in line 37, after "Health" to insert "and the Minister of Finance".

2. On page 26, in line 51, after "cap;” to insert "and".

3. On page 27, in line 1, to omit paragraph *(i).*

4.On page 27, in line 2, to omit"*(j)*"and to substitute"*(i)*"*.*

5. On page 27, in line 5, to omit "it".

6. On page 27, from line 10, to omit subsection (4) and to substitute:

"(4) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* adjust upwards the tariff, with the concurrence of the Minister of Health, and the average annual national income, the pre-accident annual income cap and the lump-sum funeral benefit referred to in section 39, to take into account the effects of inflation.

**CLAUSE 61**

1. On page 27, in line 35, to omit "unless it is impractical to do so".

**CLAUSE 62**

1. On page 27, in line 40, to omit "three" and to substitute "six".

2. On page 27, in line 43, to omit "three" and to substitute "five".

**CLAUSE 63**

1. On page 28, in line 37, to omit "subsection (3)" and to substitute:

 "(3) The laws specified in the first column of Schedule 2 are amended or repealed to the extend set out in the third column of that Schedule.".

**CLAUSE 64**

Clause rejected.

**CLAUSE 65**

Clause rejected.

**NEW SCHEDULE**

1. That the following be a new Schedule:

**SCHEDULE 2**

*(Section XXX)*

| **No. and year of law** | **Short title** | **Extent of repeal or amendment** |
| --- | --- | --- |
| Act No. 58 of 1962 | Income Tax Act, 1962. | 1. The amendment of section 10 by the insertion after item (iv) in subsection (1)(gB) of the following item: "(v) benefits paid in terms of Chapter 6 of the Road Accident Benefit Scheme Act, 2017". |
| Act No. 56 of 1996 | Road Accident Fund Act, 1996. | 1. The insertion in section 1 above the definition of "convey" of the following definition:"’Administrator’ means the administrator established in terms of section 3 of the Road Accident Benefit Scheme Act, 2017;”.2. The deletion in section 1 of the definitions of "agent", "Board", "Chief Executive Officer", "Fund", "lift club" and "reward". 3. The deletion of subsection (1) in section 2.4. The substitution in section 2 for paragraph *(a)* in subsection (2) of the following: "*(a)* Subject to section 28 (1), the Multilateral Motor Vehicle Accidents Fund established by the Agreement concluded between the Contracting Parties on 14 February 1989, shall cease to exist, and all money credited to that fund immediately before the commencement of this Act shall vest in the **[Fund]** Administrator, all assets, liabilities, rights and obligations, existing as well as accruing, of the first-mentioned fund shall devolve upon the **[Fund]** Administrator, and any reference in any law or document to the said Multilateral Motor Vehicle Accidents Fund shall, unless clearly inappropriate, be construed as a reference to the **[Fund]** Administrator.”.5. The deletion of sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.6. The substitution for sections 17, 18 and 19 of the following sections:**"Liability of [Fund] Administrator and agents** **17.** (1) The **[Fund]** Administrator or an agent shall— *(a)* subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;*(b)* subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee’s duties as employee: Provided that the obligation of the **[Fund]** Administrator to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in [subsection (1A)](#ge) and shall be paid by way of a lump sum. (1A) *(a)* Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.  *(b)* The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974). (2) … (3) *(a)* No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of [subsection (1)](#g1) shall be payable unless 14 days have elapsed from the date of the court’s relevant order.  *(b)* In issuing any order as to costs on making such award, the court may take into consideration any written offer, including a written offer without prejudice in the course of settlement negotiations, in settlement of the claim concerned, made by the **[Fund]** Administrator or an agent before the relevant summons was served. (4) Where a claim for compensation under [subsection (1)](#g1)—*(a)* includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the **[Fund]** Administrator or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the **[Fund]** Administrator or the agent to furnish such undertaking, to compensate—(i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or(ii) the provider of such service or treatment directly, notwithstanding section 19 *(c)* or *(d)*, in accordance with the tariff contemplated in [subsection (4B)](#gp);*(b)* includes a claim for future loss of income or support, the amount payable by the **[Fund]** Administrator or the agent shall be paid by way of a lump sum or in instalments as agreed upon;*(c)* includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding— (i) R273 863.00 per year in the case of a claim for loss of income; and (ii) R273 863.00 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support. (4A) *(a)* The **[Fund]** Administrator shall, by notice in the Gazette, adjust the amounts referred to in [subsection (4) *(c)*](#gv) quarterly, in order to counter the effect of inflation.  *(b)* In respect of any claim for loss of income or support the amounts adjusted in terms of [paragraph *(a)*](#gl) shall be the amounts set out in the last notice issued prior to the date on which the cause of action arose. (4B) *(a)* The liability of the **[Fund]** Administrator or an agent regarding any tariff contemplated in [subsections (4) *(a)*](#g9), [(5)](#gb) and [(6)](#gc) shall be based on the tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003), and shall be prescribed after consultation with the Minister of Health. *(b)* he tariff for emergency medical treatment provided by a health care provider contemplated in the National Health Act, 2003—(i) shall be negotiated between the **[Fund]** Administrator and such health care providers; and(ii) shall be reasonable taking into account factors such as the cost of such treatment and the ability of the **[Fund]** Administrator to pay. *(c)* In the absence of a tariff for emergency medical treatment the tariffs contemplated in [paragraph *(a)*](#go) shall apply. (5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may, notwithstanding section 19 *(c)* or *(d)*, claim an amount in accordance with the tariff contemplated in [subsection (4B)](#gp) direct from the **[Fund]** Administrator or an agent on a prescribed form, and such claim shall be subject, mutatis mutandis, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered. (6) The **[Fund]** Administrator, or an agent with the approval of the **[Fund]** Administrator, may make an interim payment to the third party out of the amount to be awarded in terms of [subsection (1)](#g1) to the third party in respect of medical costs, in accordance with the tariff contemplated in [subsection (4B)](#gp), loss of income and loss of support: Provided that the **[Fund]** Administrator or such agent shall, notwithstanding anything to the contrary in any law contained, only be liable to make an interim payment in so far as such costs have already been incurred and any such losses have already been suffered. **Liability limited in certain cases** **18.** (1) … (2) Without derogating from any liability of the **[Fund]** Administrator or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death—*(a)* the liability of the **[Fund]** Administrator or such agent, in respect of the bodily injury to or death of any one such employee, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the **[Fund]** Administrator or such agent and any lesser amount to which that third party is entitled by way of compensation under the said Act; and*(b)* the **[Fund]** Administrator or such agent shall not be liable under the said Act for the amount of the compensation to which any such third party is entitled thereunder. (3) Without derogating from any liability of the **[Fund]** Administrator or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of a member of the South African National Defence Force, other than a person referred to in [subsection (2)](#g8), and the third party is entitled to compensation under the Defence Act, 1957, or another Act of Parliament governing the said Force in respect of such injury or death—*(a)* the liability of the **[Fund]** Administrator or such agent. in respect of the bodily injury to or death of any such member or the said Force, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the **[Fund]** Administrator or such agent and any lesser amount to which that third party is entitled by way of compensation under the said Defence Act or the said other Act; and*(b)* the **[Fund]** Administrator or such agent shall not be liable under the said Defence Act or the said other Act for the amount of the compensation to which any such third party is entitled thereunder. (4) The liability of the **[Fund]** Administrator or an agent to compensate a third party for any loss or damage contemplated in section 17 which is the result of the death of any person shall in respect of funeral expenses be limited to the necessary actual costs to cremate the deceased or to inter him or her in a grave.**Liability excluded in certain cases** **19.** The **[Fund]** Administrator or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage—*(a)* for which neither the driver nor the owner of the motor vehicle concerned would have been liable but for section 21; or*(b)* ...*(c)* if the claim concerned has not been instituted and prosecuted by the third party, or on behalf of the third party by—(i) any person entitled to practise as an attorney within the Republic; or(ii) any person who is in the service, or who is a representative of the state or government or a provincial, territorial or local authority; or*(d)* where the third party has entered into an agreement with any person other than the one referred to in [paragraph *(c)* (i)](#g6) or [(ii)](#g7) in accordance with which the third party has undertaken to pay such person after settlement of the claim—(i) a portion of the compensation in respect of the claim; or (ii) any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from the person contemplated in [paragraph *(c)* (i)](#g6) or [(ii)](#g7); or*(e)* suffered as a result of bodily injury to any person who—(i) unreasonably refuses or fails to subject himself or herself, at the request and cost of the **[Fund]** Administrator or such agent, to any medical examination or examinations by medical practitioners designated by the **[Fund]** Administrator or agent;(ii) refuses or fails to furnish the **[Fund]** Administrator or such agent, at its or the agent’s request and cost, with copies of all medical reports in his or her possession that relate to the relevant claim for compensation; or(iii) refuses or fails to allow the **[Fund]** Administrator or such agent at its or the agent’s request to inspect all records relating to himself or herself that are in the possession of any hospital or his or her medical practitioner;*(f)* if the third party refuses or fails— (i) to submit to the **[Fund]** Administrator or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or(ii) to furnish the **[Fund]** Administrator or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof; or*(g)* suffered as a result of an emotional shock sustained by that person when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.”.7. The substitution for sections 22, 23, 24 and 25 of the following sections:**"Submission of information to [Fund] Administrator, agent and third party** **22.** (1) *(a)* When, as a result of the driving of a motor vehicle, any person other than the driver of that motor vehicle has been killed or injured, the owner and the driver, if the driver is not the owner, of the motor vehicle shall, if reasonably possible within 14 days after the occurrence, furnish the **[Fund]** Administrator on the prescribed form with particulars of the occurrence together with the prescribed statements, and the **[Fund]** Administrator shall furnish such information to the agent who in terms of section 8 is responsible for any claim arising from the occurrence. *(b)* Whenever the question arises whether it was reasonably possible to furnish the **[Fund]** Administrator with the information contemplated in [paragraph *(a)*](#g2) within 14 days after the occurrence, the onus of proving that it was not reasonably possible to do so shall be on the person who in terms of that paragraph must so furnish the information. (2) The agent or the **[Fund]** Administrator shall within a reasonable period after the third party has complied with the requirements contemplated in section 19 *(f)* (i), furnish the third party or his or her agent with a copy of the information and statements which the owner or driver furnished in terms of [subsection (1)](#g1), together with all statements which were or are obtained from witnesses to the accident.**Prescription of claim** **23.** (1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the **[Fund]** Administrator or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose. (2) Prescription of a claim for compensation referred to in [subsection (1)](#g1) shall not run against—*(a)* a minor;*(b)* any person detained as a patient in terms of any mental health legislation; or*(c)* a person under curatorship. (3) Notwithstanding [subsection (1)](#g1), no claim which has been lodged in terms of section 17 (4) *(a)* or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose. (4) Notwithstanding section 36 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), any right under subsection (1) *(b)* of that section to recover an amount which under the said Act is required to be paid to a third party in circumstances other than those mentioned in section 18 (2) of this Act shall for the purposes of subsections (1) and (3) be deemed to be a right to claim compensation under section 17 of this Act arising on the same date as the cause of action of such third party under the said section 17: Provided that if the recovery of any such amount has been debarred by virtue of this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned. (5) Notwithstanding section 149ter of the Defence Act, 1957 (Act No. 44 of 1957), or of a similarly worded section of another Act of Parliament governing the South African National Defence Force, any right under the said sections to recover an amount which under the said legislation is required to be paid to a third party in circumstances other than those mentioned in section 18 (3), shall for the purposes of subsections (1) and (3) be deemed to be a right to claim compensation under section 17 of this Act arising on the same date as the cause of action of such third party under the said section 17: Provided that if the recovery of any such amount has been debarred by virtue of this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned.**Procedure** **24.** (1) A claim for compensation and accompanying medical report under section 17 (1) shall—*(a)* be set out in the prescribed form, which shall be completed in all its particulars;*(b)* be sent by registered post or delivered by hand to the **[Fund]** Administrator at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent’s registered office or local branch office, and the **[Fund]** Administrator or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing. (2) *(a)* The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made. *(b)* Where a person is killed outright in a motor vehicle accident the completion of the medical report shall not be a requirement, but in such a case the form referred to in [subsection (1) *(a)*](#g2) shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased’s death, a copy of the relevant charge sheet from which it can clearly be determined that such person’s death resulted from the accident to which the claim relates. (3) A claim by a supplier for the payment of expenses in terms of section 17 (5) shall be in the prescribed form, and the provisions of this section shall apply mutatis mutandis in respect of the completion of such form. (4) *(a)* Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act. *(b)* A clear reply shall be given to each question contained in the form referred to in [subsection (1)](#g1), and if a question is not applicable, the words "not applicable" shall be inserted. *(c)* A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed. *(d)* Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers. (5) If the **[Fund]** Administrator or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the **[Fund]** Administrator or such agent as contemplated in [subsection (1)](#g1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects. (6) No claim shall be enforceable by legal proceedings commenced by a summons served on the **[Fund]** Administrator or an agent—*(a)* before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the **[Fund]** Administrator or the agent as contemplated in [subsection (1)](#g1); and*(b)* before all requirements contemplated in section 19 *(f)* have been complied with: Provided that if the **[Fund]** Administrator or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the **[Fund]** Administrator or the agent, as the case may be.**Right of recourse of [Fund] Administrator or agent** **25.** (1) When the **[Fund]** Administrator or an agent has paid any compensation in terms of section 17 the **[Fund]** Administrator or agent may, subject to [subsections (2)](#g2) and [(3)](#g8), without having obtained a formal cession of the right of action, recover from the owner of the motor vehicle concerned or from any person whose negligence or other wrongful act caused the loss or damage concerned, so much of the amount paid by way of compensation as the third party concerned could, but for the provisions of section 21, have recovered from the owner or from such person if the **[Fund]** Administrator or agent had not paid any such compensation. (2) The **[Fund’s]** Administrator’s or agent’s right of recourse against the owner of a motor vehicle under [subsection (1)](#g1) shall only be applicable in any case where the motor vehicle at the time of the accident which gave rise to the payment of the compensation was being driven—*(a)* by a person other than the owner and the driver was under the influence of intoxicating liquor or of a drug to such a degree that his or her condition was the sole cause of such accident and the owner allowed the driver to drive the motor vehicle knowing that the driver was under the influence of intoxicating liquor or of a drug; or *(b)* by a person other than the owner without the driver holding a licence issued under any law governing the licensing of drivers of motor vehicles which the driver was required to hold, or the driver, being the holder of a learner’s or other restricted licence issued under such law, failed, while he or she was so driving the motor vehicle, to comply with the requirements or conditions of such learner’s or restricted licence. and the owner allowed the driver to drive the motor vehicle knowing that the driver did not hold such a licence or that the driver failed to comply with the requirements or conditions of a learner’s or restricted licence, as the case may be; or*(c)* by the owner and he or she was under the influence of intoxicating liquor or of a drug to such a degree that his or her condition was the sole cause of such accident; or*(d)* by the owner without holding a licence issued under any law governing the licensing of drivers of motor vehicles, which he or she was required to hold, or the owner, being the holder of a learner’s or other restricted licence issued under such law, failed, while he or she was so driving the motor vehicle, to comply with the requirements or conditions of such learner’s or restricted licence; or*(e)* by the owner and he or she failed to comply with any requirement contemplated in section 22 (1) with reference to the said accident, or knowingly furnished the **[Fund]** Administrator or the agent with false information relating to such accident and the **[Fund]** Administrator or agent was materially prejudiced by such failure or by the furnishing of such false information, as the case may be. (3) The provisions of [subsection (2) *(c)*](#g5), [*(d)*](#g6) and [*(e)*](#g7) shall apply mutatis mutandis in respect of any right of recourse by the **[Fund]** Administrator or the agent against any person who, at the time of the accident which gave rise to the payment of the compensation, was driving the motor vehicle concerned with or without the consent of its owner. |
| Act No. 9 of 2017 | Financial Sector Regulation Act, 2017 | 2. The amendment of subsection (5) of section 301 by the substitution for "Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993)"of" Financial Supervision of the Road Accident Benefit Scheme Act, 2017.”. |
| Act No. 8 of 1993 | Financial Supervision of the Road Accident Fund Act, 1993 | 1. The insertion in section 1 above the definition of "Authority" of the following definition:"‘Administrator means the administrator established in terms of section 3 of the Road Accident Benefit Scheme Act, 2017;2. The deletion in section 1 of the definition of "Fund". 3. The substitution for sections 2,3 and 4 of the following sections:**"Insurance Act, 1943, to apply** **2.** (1) Subject to any directions of the executive officer, the provisions of the Insurance Act, 1943 (Act No. 27 of 1943), in relation to an insurer registered in terms of that Act to carry on short-term insurance business, shall apply to the **[Fund]** Administrator. (2) The **[Fund]** Administrator shall furnish to the executive officer such returns as may by virtue of the provisions of [subsection (1)](#g1) be required by the executive officer. (3) The **[Fund]** Administrator shall obtain the opinion of an actuary as defined in section 1 of the Insurance Act, 1943, or of a registered accountant and auditor, whenever required, by virtue of the provisions of [subsection (1)](#g1), by the executive officer in respect of such aspects of the business of the **[Fund]** Administrator as the executive officer may determine.**Returns** **3.** The returns mentioned in section 2 (2) may include returns as from a date determined by the executive officer in respect of—*(a)* the assets and liabilities in respect of any business carried on by the **[Fund]** Administrator before the said date; and*(b)* the assets and liabilities in respect of any new business carried on by the **[Fund]** Administrator after that date.**Reports by executive officer** **4.** The executive officer shall within six months after the end of every financial year of the **[Fund]** Administrator submit a report on the business of the **[Fund]** Administrator carried on during the financial year concerned to the Minister, and the Minister shall within 14 days after receipt of such submission lay the report upon the Table in Parliament, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.7. The amendment of section 6 by the substitution for "Financial Supervision of the Road Accident Fund Act, 1993"of "Financial Supervision of the Road Accident Benefit Scheme Act, 2017". |
| Act No. 15 of 2012. | Road Accident Fund (Transitional Provisions) Act, 2012. | 1. The insertion in section 1 above the definition "Fund" of the following definition:"’Administrator’ means the administrator established in terms of section 3 of the Road Accident Benefit Scheme Act, 2017;"2. The deletion in section 1 of thedefinition "Fund". 3. The substitution in section 1 for the definition of "third party" of the following definition:**" 'third party'** means a person who has a right to claim compensation from the **[Fund]** Administrator in terms of section 17 of the old Act, whose claim is subject to the limitations imposed by section 18 (1) or (2) of that Act, and whose claim has, upon this Act taking effect, not prescribed or been finally determined by settlement or judgment.".4. The substitution in section 2(1) for the word preceding paragraph (a) of the following words: “ (1) Unless the third party expressly and unconditionally indicates to the **[Fund]** Administrator on the prescribed form, within one year of this Act taking effect, to have his or her claim remain subject to the old Act, the claim of such third party is subject to the new Act under the following transitional regime—".5. The substitution in section 2(1) for paragraph *(d)* of the following paragraph:"(e) The third party must make a written declaration under oath on the prescribed form to the **[Fund]** Administrator regarding any compensation he or she may have received as indicated in [paragraph *(c)*](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/txsg/34tuc/54tuc/0s5wc&ismultiview=False&caAu=#g12)."6. The substitution in section 2(1) for paragraph *(e)* of the following paragraph:"A third party who has, prior to this Act coming into operation—(i) lodged a claim with the **[Fund]** Administrator on the prescribed claim form in terms of the old Act, shall not be required to lodge an RAF1 form in terms of the new Act; and(ii) instituted an action against the **[Fund]** Administrator in a Magistrate’s Court, may withdraw the action and, within 60 days of such withdrawal, institute an action in a High Court with appropriate jurisdiction over the matter: Provided that no special plea in respect of prescription may be raised during that period.". |