



LAWS OF KENYA

INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) ACT

CHAPTER 405

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CHAPTER 405

INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) ACT

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CHAPTER 405

INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) ACT

[Date of commencement: 1st October, 1946.]

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

[Act No. 12 of 1945, Cap. 233 of 1948, Act No. 27 of 1949, Act No. 46 of 1960, Act No. 28 of 1961, L.N. 462/1963, L.N. 2/1964, Act No. 21 of 1966, Act No. 5 of 1971, Act No. 14 of 1978, Act No. 6 of 1987, Act No. 10 of 2006, Act No. 8 of 2009.]

1. Short title

This Act may be cited as the Insurance (Motor Vehicles Third Party Risks) Act.

2. Power to suspend operation of Act

The Minister may, by notice in the *Gazette*, suspend or restrict the operation of this Act.

[L.N. 462/1963, Sch.]

3. Interpretation

In this Act, unless the context otherwise requires—

“**driver**”, where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the word “**drive**” shall be construed accordingly;

“**Minister**” means the Minister for the time being responsible for matters relating to finance;

“**motor vehicle**” means a mechanically propelled vehicle intended or adapted for use on roads, but does not include a steam traction engine, a steam roller or a vehicle constructed and intended for use exclusively on rails;

“**owner**”, in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession under that agreement;

“**policy of insurance**” *deleted by Act No. 14 of 1978, s. 2;*

“**road**” means any public road within the meaning of the Public Roads and Roads of Access Act (Cap. 399), and includes any other road or wharf to which motor vehicles are capable of being driven.

[Act No. 14 of 1978, s. 2, Act No. 10 of 2006, s. 33.]

4. Motor vehicles to be insured against third party risks

(1) Subject to this Act, no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both, and such person upon a first conviction for such offence may, and upon a second or subsequent conviction for any such offence shall, unless the court for special reason thinks fit to order otherwise, be disqualified from holding or obtaining a driving licence or provisional licence under the Traffic Act (Cap. 403) for a period of twelve months from the date of such conviction or for such longer period as the court may think fit.

(3) This section shall not apply to any motor vehicle owned by the Government, or to a motor tractor or other motor vehicle used solely or mainly for agricultural purposes, if the use of such motor tractor or other motor vehicle on a road consists only of moving it by road from one part of the land of the owner thereof to another part of the land of such owner.

[Act No. 27 of 1949, s. 2, Act No. 28 of 1961, Sch., L.N. 462/1963, Sch., Act No. 21 of 1966, First Sch., Act No. 5 of 1971, s. 8.]

5. Requirements in respect of insurance policies

In order to comply with the requirements of section 4, the policy of insurance must be a policy which—

- (a) is issued by a company which is required under the Insurance Act, 1984 (Cap. 487) to carry on motor vehicle insurance business; and
- (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road:

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

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

[Act No. 46 of 1960, s. 48, Act No. 10 of 2006, s. 34.]

6. Requirements in respect of securities

(1) In order to comply with the requirements of this Act a security must—

- (a) consist of an undertaking by the giver of the security to make good, subject to any conditions specified therein, and up to an amount

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

(2) Whenever such a security is approved by the Minister and deposited with him, the Minister shall give to the owner of the vehicle concerned a certificate (hereinafter referred to as a certificate of security) in the prescribed form, subject to such fee and containing such particulars of any conditions subject to which the security is given as may be prescribed; and where the owner owns more than one vehicle in respect of which such a security has been approved, the Minister shall issue a separate certificate of security or a copy of the original certificate in respect of each vehicle; and where the owner owns more than one vehicle in respect of which such a security has been approved, the Minister shall issue a separate certificate of security or a copy of the original certificate in respect of each such vehicle.

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

(4) *Deleted by Act No. 10 of 2006, s. 35.*

[Act No. 28 of 1961, Sch., Act No. 14 of 1978, s. 3, Act No. 10 of 2006, s. 35.]

7. Certificate of insurance

(1) A certificate of insurance shall be issued by the insurer to the person by whom a policy of insurance is effected.

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

[Act No. 14 of 1978, s. 4.]

8. Certain conditions in policies of insurance of no effect

Any condition in a policy of insurance providing that no liability shall arise under the policy, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall, as respects such liabilities as are required to be covered by a policy under section 5, be of no effect:

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

[Act No. 14 of 1978, s. 5.]

9. Display, etc., of certificates of insurance

(1) Any person driving a motor vehicle on a road or owning a motor vehicle so driven, in respect of which a policy of insurance is required to be in force under this Act, shall carry and display or cause to be carried and displayed on the vehicle a certificate of insurance in the prescribed form, place and manner.

(2) If, in any case, owing to the presence of a motor vehicle on a road an accident occurs whereby injury is caused to any person, and a certificate of insurance required under this Act is not inspected by a police officer at or near the site of the accident, the driver or the owner of that vehicle shall as soon as reasonably possible, and in any case within twenty-four hours of the occurrence of the accident, show or cause to be shown at a police station or to a police officer the certificate of insurance in force in respect of that vehicle either on the vehicle or, if the vehicle cannot reasonably be produced, detached from the vehicle.

(3) Any person who fails to display a certificate of insurance in accordance with subsection (1) or to comply with the requirements of subsection (2) shall be guilty of an offence.

(4) The owner of a motor vehicle shall, within seven days after having received an oral or a written request to that effect, give such information as he may be required to give by a police officer for the purpose of determining whether the vehicle was or was not being driven in contravention of section 4, and if the owner fails to do so he shall be guilty of an offence.

[L.N. 462/1963, Sch., Act No. 21 of 1966, First Sch., Act No. 5 of 1971, s. 9,
Act No. 14 of 1978, s. 6.]

9A. Provision with regard to foreign vehicles

(1) Notwithstanding the provisions of section 5, where there is in existence in respect of any motor vehicle a valid certificate issued under any law in force in any country specified by the Minister by notice in the *Gazette*, no person using that motor vehicle on any road in Kenya shall be required to produce a policy of insurance or a security in respect of third party risks required under section 4.

(2) It shall be the duty of the person to whom the provisions of this section apply to give such information as he may be required to give to, or on behalf of, the Commissioner of Police for the purpose of determining whether the vehicle was or was not being driven in contravention of section 4.

[Act No. 6 of 1987, s. 2.]

10. Duty of insurer to satisfy judgments against persons insured

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

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

- (a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

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- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connexion with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
 - (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
 - (ii) after the happening of the event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or
 - (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.

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

(4) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

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

(5) *Deleted by Act No. 8 of 2009, s. 41.*

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

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

[Act No. 14 of 1978, s. 7, Act No. 8 of 2009, s. 41.]

11. Penalty for false statement or act causing avoidance of policy

If any person, for the purpose of obtaining a policy of insurance as required by section 5, makes any false statement in consequence whereof the policy is liable to be avoided, or does or omits to do anything by virtue of which he becomes disentitled to claim under the policy, he shall be guilty of an offence.

[Act No. 14 of 1978, s. 8.]

12. Duty of person against whom claim made to give information

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

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence.

13. Duty to surrender certificate of insurance on cancellation of policy

Where a certificate of insurance has been issued under section 7 to the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate was issued shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and if he fails so to do he shall be guilty of an offence.

14. Production of certificate of insurance on application for motor vehicle licence

A person who applies for a licence or the renewal of a licence in respect of a motor vehicle under the Traffic Act (Cap. 403) shall produce such evidence as may be prescribed that either—

- (a) a certificate of insurance stating that on the date when the licence comes into operation there will be in force the necessary policy of insurance or the necessary security in relation to the user of the vehicle by the applicant or by other persons on his order or with his permission; or
- (b) the vehicle is a vehicle to which subsection (3) of section 4 of this Act applies.

15. Rights of third parties against insurers on bankruptcy, etc., of insured

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

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

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

(2) Where an order is made under section 121 of the Bankruptcy Act (Cap. 53) for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in that Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the making of an order under section 121 of the Bankruptcy Act (Cap. 53) in respect of his estate, the contract shall be of no effect.

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

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

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

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

16. Avoidance of restrictions on scope of policies

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

- (a) the age or physical or mental condition of persons driving the vehicle; or
- (b) the condition of the vehicle; or
- (c) the number of persons that the vehicle carries; or
- (d) the weight or physical characteristics of the goods that the vehicle carries; or
- (e) the times at which or the areas within which the vehicle is used; or
- (f) the horse-power or value of the vehicle; or
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Traffic Act (Cap. 403),

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

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

17. Penalty

Any person who is guilty of an offence under this Act or any rules made thereunder, and any person who contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is specifically provided, shall be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three months or to both.

[Act No. 5 of 1971, s. 10, Act No. 14 of 1978, s. 9.]

18. Rules

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

[Act No. 28 of 1961, Sch.]
