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Statutory Instrument No. 65 of 2008

MOTOR VEHICLE ACCIDENT FUND ACT, 2007
(Act No. 15 of 2007)

MOTOR VEHICLE ACCIDENT FUND ACT
(DATE OF COMMENCEMENT) ORDER, 2008
(Published on 1st August, 2008)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Commencement of Act No. 15 of 2007

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 1 of the Motor Vehicle Accident Fund Act, 2007, the following Order is hereby made —

Citation
Commencement
of Act No. 15
of 2007

1. This order may be cited as the Motor Vehicle Accident Fund Act (Date of Commencement) Order, 2008.
2. The Motor Vehicle Accident Fund Act, 2007, shall come into operation on 1st August, 2008.

MADE this 24th day of July, 2008.

BALEDZI G. GAOLATHE,
*Minister for Finance and
Development Planning.*

L2/7/273 II

Statutory Instrument No. 59 of 2008

MOTOR VEHICLE ACCIDENT FUND ACT
(Act No. 15 of 2007)

MOTOR VEHICLE ACCIDENT FUND REGULATIONS, 2008
(Published on 11th July, 2008)

ARRANGEMENT OF REGULATIONS

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SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 32 of the Motor Vehicle Accident Fund Act, the following Regulations are hereby made —

PART I — *Preliminary*

Citation	1. These Regulations may be cited as the Motor Vehicle Accident Fund Regulations, 2008.
Interpretation	2. In these Regulations, unless the context otherwise requires — “bus” means a motor vehicle with a seating capacity of more than 18 persons, and includes vehicles used for the conveyance of persons in the tourist industry; “Debswana” means the Debswana Diamond Company (Proprietary) Limited under the Companies Act;
Cap. 42:01 Cap. 63:04	“drug” has the same meaning as in section 2 of the Drugs and Related Substances Act; “financial statements” in the case of a self employed individual includes income tax returns duly submitted and received under the Botswana Unified Revenue Service Act;
Cap. 53:03	“Medical Aid Schemes” means medical aid schemes set up by medical aid societies to provide medical insurance cover; “medical records” means a claimant’s medical records pertaining to injuries or the consequences thereof sustained as a result of a motor vehicle accident; “mini bus” means a motor vehicle used for the purpose of conveying passengers, and with a seating capacity of not more than 18 persons, and includes vehicles used for the conveyance of passengers in the tourist industry; “Private Practitioners Groups” means health practitioners in private practice; “third party insurance cover” means a motor vehicle insurance cover payable in terms of regulation 7, by a driver of a foreign registered vehicle.

PART II — *Petroleum Levy*

Rate of levy	3. (1) For the purposes of section 17 (2) of the Act, a levy of 9.5 thebe per litre shall be retained by — (a) a seller, on every litre of petroleum sold; and (b) an importer, of petroleum on every litre of petroleum imported. (2) A levy shall not be retained with respect to the resale of any petroleum for which a levy was retained under subregulation (1).
Exemption from levy	4. (1) Subject to subregulation (2), a petroleum levy shall not be payable in respect of petroleum utilised for the purpose of — (a) a grinding mill; (b) driving railway rolling stock; (c) operating stationary or fixed equipment; or (d) diamond mining operations conducted by Debswana (Pty) Ltd. (2) In this regulation, “railway rolling stock” means a vehicle designed for travel on rails, and “stationary or fixed equipment” includes an electricity generator or water pump that uses petroleum in order for it to operate.
Refund of levy	5. (1) If a seller or importer proves to the satisfaction of the Fund that petroleum was utilised for the purposes set out under regulation 4 (1) and the levy paid therefore, the Fund shall, upon an application being made to it, repay the levy. (2) An application made under subregulation (1) for a refund of the petroleum levy shall be made to the Fund —

- (a) in Form A set out in the Schedule;
- (b) accompanied by such evidence or proof that —
 - (i) the petroleum was utilised for the purposes stated under regulation 4 (1), and
 - (ii) the levy was paid to the Fund; and
- (c) within three months of the utilisation of the petroleum.

(3) If any of the requirements under subregulation (2) are not met, the right to claim under subregulation (1) shall lapse and any levy paid shall not be refunded.

(4) Any person aggrieved by the refusal of the Fund to refund a levy may, within 30 days after receiving notification of the decision, submit a written appeal to the Board setting out in detail the reasons why such refusal should be set aside and the specific relief claimed.

(5) The Board shall, within three months of receipt of an appeal under subregulation (4), make a determination and may uphold or dismiss the appeal in such terms as it considers just and proper.

6. (1) The certificate referred to in section 17 (4) of the Act shall contain the following information -

Audit of
seller's books

- (a) the number of litres of petroleum sold or imported by a seller or importer, as the case may be, for the periods January to June and July to December per calendar year;
- (b) the total amount payable as petroleum levy to the Fund by a seller or importer;
- (c) the total amount, if any, in respect of which a seller or importer claims to be exempted from payment of the petroleum levy;
- (d) the total amount paid to the Fund, in respect of the petroleum levy, for the immediate preceding six months; and
- (e) the total amount, if any, which remains unpaid to the Fund in respect of the petroleum levy for the periods of January to June and July to December per calendar year.

PART III — Requirements for Foreign Registered Vehicles

7. (1) A person who is not a resident of Botswana and who drives a foreign registered motor vehicle into Botswana shall, upon entry into Botswana, pay a third party insurance cover of the sum of —

Foreign
registered
vehicle levy

- (a) P50 for any vehicle, except a bus or mini bus;
- (b) P100 for a mini bus; or
- (c) P200 for a bus.

(2) The third party insurance cover payable in terms of subregulation (1) shall be paid to the Botswana Unified Revenue Services which shall, in turn, pay the total of the third party insurance cover received by it to the Fund by the twenty fifth day of the month following receipt of payment.

(3) A third party insurance cover paid under subregulation (1) shall be valid for a period of 90 days from the date of payment.

(4) A driver of a foreign registered motor vehicle who fails to pay and obtain a third party insurance cover commits an offence and is liable to a fine not exceeding P5, 000 or to imprisonment for a term not exceeding six months, or to both.

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Recovery of compensation from driver of foreign registered vehicle

8. Where a driver of a foreign registered vehicle fails to pay for and obtain a third party insurance cover in terms of regulation 7 and such driver negligently causes a motor vehicle accident giving rise to a claim, the Fund shall have the right to recover from such driver an appropriate sum as compensation for the loss or damage resulting from the accident.

PART VI — Determining Liability and Compensation

Claim for compensation and incidental expenses

9. (1) A claim for compensation against the Fund shall be made in Form B as set out in the Schedule.

(2) A claim for payment of incidental expenses shall be made in Form C as set out in the Schedule.

Determination of liability

10. (1) At any time after receiving a claim for compensation, the Fund shall satisfy itself of the extent of its liability.

(2) Where the Fund is liable, it shall determine the compensation or benefits due to the claimant.

(3) The value of the compensation or benefits under subregulation (2) shall be limited to the sum applicable to each type of compensation as provided for under this Part.

(4) The Fund may require a medical examination to be conducted on a claimant, at the expense of the Fund, by a medical practitioner appointed by the Fund for that purpose.

Benefit for loss of income

11. (1) The Fund may require a claimant to whom instalment payments are made in terms of section 20 (2) (a) of the Act, to submit to the Fund financial statements for the duration of the instalment payments.

(2) If, at any time during the payment of instalments under section 20 (2) (a) of the Act, the claimant's current income equates to or exceeds that which was claimed for loss of income, duly adjusted for inflation, the Fund may cease or reduce further payments to the claimant if it has been medically proved that the claimant is fit to be gainfully employed.

Benefit for loss of support

12. (1) For the purposes of section 20 (2) (c) of the Act, the total benefits payable to a dependant by the Fund in respect of loss of financial support shall not exceed the sum of P300, 000.

(2) If, at any time during the payment of instalments under section 20 (2) (c), the dependant's current income equates to or exceeds that which was claimed for loss of support, duly adjusted for inflation, the Fund may cease or reduce further payments to the dependant.

Benefit for enhancement of quality of life

13. (1) For the purposes of section 20 (2) (d) of the Act, the benefits paid by the Fund for the enhancement of quality of life of a claimant shall be reviewed by the Fund from time to time and, if necessary, increased or reduced so as to accord with the needs of the claimant and the provisions of the Act.

(2) Prior to the Fund determining its liability under section 20 (2) (d), the Fund shall obtain quotations for the items or services necessary to enhance the quality of the post accident life of a claimant, which assistance shall be as determined by a health practitioner under section 20 (2) (d) of the Act.

Payment of incidental expenses

14. For the purposes of section 20 (2) (h) of the Act, the Fund shall pay benefits for incidental expenses that are considered to be reasonable in the circumstances of each particular case.

15. For the purposes of section 22 (1) of the Act, the total benefits payable by the Fund, including, but not limited to, all medical expenses, loss of income, incidentals and funeral expenses payable under the Act shall not exceed P1,000,000 for an injured party or a dependant of a person killed in a vehicle accident.

Maximum total benefits

16. (1) For the purposes of section 22 (9) of the Act, and pending the consultation referred to in section 32 (c) and the publishing of a tariff thereafter, the tariff applicable shall be the tariff as agreed between the Private Practitioners Group and the Medical Aid Schemes operating in Botswana, from time to time, and the equivalent tariff in such other country at which the treatment or rehabilitation is received.

Tariff for medical expenses

(2) The Fund shall not be liable to pay any amount in respect of medical expenses where any drug or treatment is experimental.

17. For the purposes of section 22 (12) of the Act, the benefits payable by the Fund in respect of any funeral, including burial, shall not exceed the sum of P7,500.

Benefits for funeral expenses

18. The minimum amount claimable for either reimbursement for incidentals or reimbursement for medical expenses or both at any given time by a claimant or his or her family shall be P225.

Minimum amount claimable for reimbursement

PART V — Miscellaneous

19. (1) The order of precedence for the discharge of benefits payable in the case of an injured party shall be as follows —

- (a) medical and rehabilitative benefits;
- (b) enhancement of quality of life benefits;
- (c) incidental expenses; and
- (d) loss of income.

Order of precedence of benefits

(2) In the case of a claim pertaining to a deceased person, the order of precedence shall be as follows —

- (a) funeral expenses; and
- (b) loss of financial support.

20. If a claimant is represented by an attorney or such other lawfully appointed representative, such attorney or representative shall prove his or her mandate to the Fund by submitting to the Fund an appropriate power of attorney or mandate together with the claimant's Claim Form (Form B as set out in the Schedule).

Requirement for power of attorney

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

Subrogation

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

- (a) the furnishing of all documents and evidence relating to the accident in the possession of such person;
- (b) the giving of evidence in a court of law by such person and any other witnesses; and
- (c) the rendering of any assistance which may reasonably be required by the Fund for the institution of legal proceedings.

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(3) In the event that the Fund makes a written request for assistance from any person to whom compensation has been paid by the Fund, and the person fails, without reasonable cause, to render such assistance to the Fund, the person commits an offence and is liable to a fine not exceeding P500 or to imprisonment not exceeding 30 days, or to both.

Revocation
of S.I. No.
56 of 2000

22. The Motor Vehicle Accident Fund Regulations, 2000, are hereby revoked.

SCHEDULE

FORM A

APPLICATION FOR LEVY REBATE
(regulation 5 (2) (a))

IMPORTANT: Please attach all receipts. Claims without receipts will not be paid.

Name: Tel:

Address:

.....

.....

PURCHASES			
Supplier	Purpose for which used* (see below)	Receipt No./date	Litres
1.			
2.			
3.			
4.			
5.			
6.			

*Stationery equipment, *grinding mill, *railway rolling stock, *borehole engine, *farm vehicles (state registration number), *electricity generator.

I, of do hereby certify that the above information is true and correct and that there is no duplication in amounts claimed. I certify that the fuel was utilized for the purpose stated above.

Dated at on this day of

Signature of deponent

.....

FOR OFFICIAL USE

Claim number:

.....

Checked by

Date

.....

Approved by

Date

FORM B

CLAIM FORM
(regulation 9 (1))

CLAIM FOR COMPENSATION

SECTION 1 DETAILS OF PERSON CLAIMING COMPENSATION

(a) Surname	
(b) First Names	
(c) Date of birth	Place of birth
(d) Omang or ID Number	Passport Number
(e) Status Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/>	
(f) Residential Address:	
(g) Postal Address:	
(h) Telephone: _____ (H) _____ (W) Mobile: _____	

SECTION 2 DETAILS OF PERSON INJURED OR DECEASED

(a) Surname	
(b) First Names	
(c) Date of birth	Place of birth
(d) Omang or ID number	Passport Number
(e) Status Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/>	
(f) Residential Address:	
(g) Postal Address:	
(h) Telephone: _____ (H) _____ (W) Mobile: _____	

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SECTION 3 DETAILS OF CLAIM (for information only)

Below is a list of benefits/compensation items payable by the Fund upon proof.

- (i) Past loss of Income
 - Attach copies of most recent pay slip
- (ii) Future loss of Income
 - Attached copies of most recent pay slip
- (iii) Past Medical Expenses
 - Attached copies of receipts for medical expenses you incurred for treatment of injuries suffered in the accident by the injured or deceased.
- (iv) Future Medical Expenses
- (v) Loss of Support
 - If deceased was self employed attach copy of bank statement of balance over period of one year before death.
 - If deceased was employed was employed, attach copy of most recent pay slip
 - List names of dependents and their relation to the injured or deceased, i.e. child, spouse, parent.
 - Birth certificates of all minor dependents (certified copies)
 - Marriage Certificate or letter from Chief or parents to certify that you are married under customary law (certified copy)
 - If married attach pay slip of the surviving spouse

I certify that the information set out in this claim form is true to the best of my knowledge and belief. I understand that deliberately giving false information may result in loss of my right to compensation.

Signed thisat.....

.....
Signature of claimant/legal guardian

.....
Witness

.....
Legal Representatives

.....
Witness

FORM C
(regulation 9 (2))

INCIDENTAL EXPENSES

DETAILS OF PERSON CLAIMING REIMBURSEMENT

(a) Surname	First Name(s)
(b) Claim Number	Date of Accident
(c) Date of birth	Place of birth
(d) Omang or ID Number	Passport Number
(e) Residential Address:	
(f) Postal Address:	
(g) Telephone: _____ (H) _____ (W) Mobile: _____	

I am claiming reimbursement for:

Service/ Product	Service Provider	Receipt Number	Cost
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
Total amount claimed			

I confirm that the items above relate to my road traffic accident injuries and these expenses are not for any pre-accidental costs or unrelated medical conditions or any other purpose.

..... Date.....
 Signature of claimant/Legal guardian

..... Date.....
 Checked by

..... Date.....
 Approved by

MADE this 26th day of June, 2008.

BALEDZI GAOLATHE,
*Minister for Finance and
 Development Planning.*