

P.N.D.C.L. 141
MOTOR VEHICLES (THIRD PARTY INSURANCE)
(ECOWAS BROWN CARD) ACT, 1986

ARRANGEMENT OF SECTIONS

SECTION

1. Articles to have force of law.
2. Modifications of Act.

SCHEDULE

Protocol on the Establishment of an Ecowas Brown Card Relating to Motor Vehicle Third Party Liability Insurance

P.N.D.C.L. 141
MOTOR VEHICLES (THIRD PARTY INSURANCE)
(ECOWAS BROWN CARD) ACT, 1986¹

1. Articles to have force of law

Articles 1, 2, 3, 4, and 5 of the Cotonou Protocol (relating to the Structure of the Ecowas Brown Card Scheme, Participants in the Scheme, Responsibility of Participants, the Ecowas Brown Card and the National Bureau respectively) and as set out in the Schedule shall have the force of law in the Republic.

2. Modifications of Act

The Motor Vehicles (Third Party Insurance) Act, 1958 (No. 42 of 1958) shall be construed with the modifications that are necessary to give full effect to this Act.

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1. This Act was issued as the Motor Vehicles (Third Party Insurance) (Ecowas Brown Card) Law, 1986 (P.N.D.C.L. 141) made on the 9th day of January, 1986 and notified in the *Gazette* on 28th February, 1986. The Preamble reads as follows:

“WHEREAS a protocol entitled Protocol on the Establishment of an Ecowas Brown Card relating to Motor Vehicle Third Party Liability Insurance the fact of which is set out in the Schedule to this Act and in this Act referred to as ‘the Cotonou Protocol’ was signed on behalf of the Government of Ghana in Cotonou on the 29th day of May, 1982 and ratified by the Government on the 2nd day of March, 1985:

AND WHEREAS the Cotonou Protocol provided for the establishment of a common system for the settlement of claims arising in international motor vehicle traffic in the Economic Community of West African States, and for the harmonization between the member State parties to the Cotonou Protocol of the laws and regulations governing liability to third parties in respect of motor vehicle accidents:

AND WHEREAS it is decided to give effect to the Cotonou Protocol and to provide, so far as necessary, that its provisions shall have the force of law in Ghana.”

SCHEDULE

Protocol on the Establishment of an Ecowas Brown Card Relating to Motor Vehicle Third Party Liability Insurance

Preamble

THE GOVERNMENT OF MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES:

NOTING the rapid increase in international road traffic in ECOWAS Member States and the problems raised by such traffic in regard to motor vehicle liability insurance;

CONSCIOUS of the need to guarantee, for road accident victims, fair and prompt compensation for damage they may have sustained as a result of such accidents;

ANXIOUS to facilitate, for their nationals driving their vehicles within the Member States, payment of compensation due from them as a result of accidents they may have caused and to enable them to comply with their obligations under local law or regulations on the subject;

DESIROUS of encouraging the development of trade and tourist exchange between African countries;

CONVINCED that the establishment of a common system for the settlement of claims arising in international motor vehicle traffic will lead gradually to a desirable harmonisation between the parties to the present protocol of the laws and regulations governing liability in respect of motor vehicle accidents;

WISHING to offer their insurance markets an opportunity and a means to develop international links and exchanges, which will inevitably contribute to the extension of these markets;

AWARE of the satisfactory results obtained by the international insurance card scheme which has been in force for many years in Europe, and of the institution of similar schemes by the Arab countries;

DECIDE to establish, by this Protocol, an ECOWAS BROWN CARD covering motor vehicle liability when the vehicle insured is passing through the territories of the parties to this Protocol such cover providing at least the same guarantees as those required by the laws in force in the territory of each of the parties.

ARTICLE 1

Structure of the Scheme

1. The liability insurance scheme established by this Protocol shall have, as its legal, technical and financial basis, the guarantees which are afforded to motorists proceeding to an ECOWAS Member State by taking out an insurance policy on the usual terms with an insurer authorised to undertake this type of business in the country which is the point of departure for the journey.

2. The scheme shall be based materially on an ECOWAS BROWN CARD whose form, as well as the guarantees it affords, are defined in the provisions of Article 4 of this Protocol.

3. The ECOWAS BROWN CARD shall be issued by a National Bureau established by each party to this Protocol in accordance with the provisions of Article 5 of this Protocol. The card shall be issued to motorists through the insurers with whom they have taken out a liability insurance policy valid when driving in their own country.

4. Each National Bureau shall settle, on behalf of its member insurers, claims arising from accidents caused abroad by holders of the cards it has issued, and shall also handle claims arising from accidents caused in its country by holders of cards issued by the National

Bureau of other parties to this Protocol. It may also take over the settlement of claims under cover of a joint deposit, the ECOWAS BROWN CARD constituting proof of this deposit.

5. The legal, administrative and financial operation of the scheme established by this Protocol shall be co-ordinated and supervised by a Council of Bureaux of which all the National Bureaux of the parties to this Protocol shall be members in accordance with the provisions of Article 6 of this Protocol.

ARTICLE 2

Participants in the Scheme

1. Parties to this Protocol shall participate in the Scheme as principal participants.

2. Insurers, irrespective of their legal or financial structure, which are authorised by the competent authorities of their countries of activity to undertake insurance operations against liability risks in respect of motor vehicle accidents, shall participate in the scheme as subsidiary participants. The participation of such insurers in the present scheme shall be subject to their membership in the National Bureau of their countries of activity.

ARTICLE 3

Responsibility of the Participants

1. The responsibilities of a party to this Protocol shall be:

- (a) to recognise the ECOWAS BROWN CARD and to enact laws and regulations for the establishment of the card scheme, and particularly for the creation of its National Bureau;
- (b) to ensure that its National Bureau is established and functions in accordance with the provisions of this Agreement, and that it joins the Council of Bureaux and complies with the decisions of the Council;
- (c) to guarantee the solvency of its National Bureau;
- (d) to deposit at its National Bank or a designated Commercial Bank a letter of credit in the amount equivalent to 174,000 UA, to guarantee the performance by its National Bureau of the obligations under Article 5.
- (e) Drawing may be made under the West African Clearing Account to discharge any obligations under this scheme.

2. The responsibilities of a subsidiary participant shall be:

- (a) to issue to its policyholders ECOWAS BROWN CARDS guaranteeing such policy holders adequate cover against the motor vehicle third party risks they incur in the countries which they visit;
- (b) to undertake, by way of reimbursement to the National Bureau, payment of compensation for damages and any accessory or related expenses;
- (c) to contribute to the operating of the National Bureau and, through the Bureau, to the operating expenses of the Council of Bureaux.

ARTICLE 4

The Ecowas Brown Card

1. An ECOWAS BROWN CARD is hereby established.

2. This card shall be of a strictly uniform type to be determined by decision of the Council of Bureaux, which alone may alter the format, typographical layout, colour and content of the card.

3. The card shall include the following particulars: the name and address of the National Bureau which has issued it, particulars of the insurer insuring the motor vehicles, the identity of the policy holders, identification of the vehicle, period of validity of the card, its individual serial number, a list of countries in which it is valid and the name and address in each of those countries of the National Bureau which the policy holder shall notify in the event of an accident. The card shall be signed by the insurer and by the policy holder.

4. The guarantee provided by the ECOWAS BROWN CARD shall cover the liability incurred by the holder of the card in accordance with the laws of such member country which he visits.

5. Notwithstanding the terms of the insurance policy under which it is issued, the card shall provide all the guarantees required by the laws or regulations governing compulsory motor vehicle insurance in the country in which the accident occurred. Such guarantees shall be subject to the conditions and limitations contained in the insurance policy, if the said conditions and limitations are permitted by the laws or regulations of the party to this Protocol in which the accident has occurred.

6. The ECOWAS BROWN CARD shall be recognised as a valid certificate of insurance in the territories of the parties to this Protocol in which the production of such a certificate is required either within the national territory or at its frontiers, as a condition for the circulation of motor vehicles.

7. For a party in whose territory insurance is not compulsory by law, the guarantee provided by the ECOWAS BROWN CARD shall correspond to the third party liability on the motorist in accordance with the laws and regulations in force in the country where the accident occurred, as interpreted and applied by the local judicial or administrative authorities.

8. During the period of its validity, the ECOWAS BROWN CARD should constitute proof of the existence of an insurance policy. It will be effective only in the event that original cover is in force.

ARTICLE 5

The National Bureaux

1. The status of each National Bureau shall be defined by the legal provisions in force, for this category of establishment, in the territory of a party to this Protocol. Its method of operation shall be determined by the legal instrument by which it is created.

2. In accordance with paragraph 2 of Article 2, each National Bureau shall be composed of insurers authorised by the local supervisory authorities for insurance against motor vehicle liability risks. The insurer shall apply for admission to the National Bureau and shall provide the Bureau with any guarantees it may require. In a country where one single state-owned insurance company has the monopoly of all insurance operations, the Government of that party to this Protocol may designate that company to act as the National Bureau of that country.

3. The National Bureau shall be financed by the contributions of members. The amount and method of payment of contributions shall be determined at the time of admission to membership.

4. The members shall undertake to place at the disposal of the National Bureau as advances, at its request, the sum necessary for its operation.

5. The dissolution of a National Bureau shall be at the initiative of the Government of the party to this Protocol which shall take the necessary decision, stating the conditions and modalities of the dissolution. The notification of this decision shall be made to the Council of Bureaux at least six months before the dissolution. The National Bureau shall act as an agency handling commitments under ECOWAS BROWN CARDS issued by other National Bureaux.

A. The National Bureau, as an issuing agency,

- (a) shall arrange for the printing of the cards and shall allocate to each of them a serial number in a single series; it shall issue the cards to insurers who are members of the Bureau and who request them. The said insurers shall keep a record enabling them to identify card-holders and the particulars appearing on their cards; the insurers shall undertake not to issue cards to persons other than their own policy-holders who have taken out a policy against motor vehicle liability risks;
- (b) shall give to each of the National Bureaus or other signatories to this Protocol, a general mandate authorising them to receive statements and claims concerning accidents caused in the territory of such other parties by the holders of the cards it has issued, to proceed with the investigation of such accidents and to pay compensation on request, supported by the usual documents of proof. It shall reimburse the National Bureau which has paid compensation as follows:
 - (i) the total amount paid by way of damages, expense, and disbursements or, where the settlement is made by amicable agreement, the amount agreed in the settlement including the agreed expenses. Fines shall on no account be reimbursed;
 - (ii) the expenses actually incurred in the investigation and settlement of the claim;
 - (iii) a handling fee calculated as a percentage of the amount of damages and legal costs or expenses agreed upon in a settlement by amicable agreement. This percentage shall be determined in advance and for all cases by the Council of Bureaux;
- (c) shall make reimbursement as calculated on the above-mentioned basis, including the minimum handling fee, even if the claim has been settled without any payment being made to an injured third party. Reimbursement shall be made to the requesting National Bureau, in the currency of its country and free of any exchange of transfer charges;
- (d) shall pay interest on the amount involved at the rate of 8 percent calculated from the date the claim is made up to the day it is paid, if, after a period of three months from the day the request for reimbursement is made, the settlement has not been received.

B. The National Bureau, as a handling agency,

- (a) shall as soon as it is informed of an accident caused in a country which is a party to this Protocol by the holder of an ECOWAS BROWN CARD issued by the National Bureau of another party to this Protocol, act in the best interest of the Bureau. On receiving a claim for damages, it shall undertake to attain the necessary verification concerning the circumstances of the accident and, on the basis of these verifications, it shall advise the issuing Bureau and take any administrative or non-judicial action which it deems necessary. At the judicial level, the Bureau, in its capacity as a handling agency, shall be entitled to take any steps to institute or contest an action. In the case of claims for damages below a certain amount established by agreement with each of the other issuing Bureaus the Bureau may agree to a settlement out of court. In the case of claims for damages exceeding the account so established, the Bureau shall obtain the prior consent of the issuing Bureau before agreeing to any settlement;

- (b) shall not knowingly entrust or relinquish the handling of a claim to an insurer or to any person who may have a financial interest in the accident which has given rise to the claim;
- (c) shall be entitled, in a case where the compensation payable is in excess of 8,696 UA, to require the issuing Bureau to instruct a bank or other financial establishment to place immediately at its disposal, at its registered office, a sum corresponding to the estimated amount of the compensation.

ARTICLE 6

The Council of Bureaux

1. The Council of Bureaux (hereinafter referred to as "the Council") is hereby established.

2. The Council shall consist of one full-fledged representative and one alternate representative selected from each National Bureau. It shall appoint on rotatory basis its Chairman and Vice-Chairman from among the representatives in alphabetical order and for a period of one year. In absence of both the Chairman and Vice-Chairman, the members present shall elect one representative to preside over the meeting.

3. The Council shall hold its first meeting not later than two months after the entry into force of this Protocol at the Executive Secretariat of ECOWAS which shall be the temporary headquarters of the Council until such time the Council may decide on the location of its headquarters.

4. The Council shall meet at least once a year at a place and on a date which it shall determine. On the initiative of its Chairman or at the request of at least one third of its members, a meeting of the Council may be summoned by invitation to members at least 30 days before such a meeting.

5. The Council shall itself establish the agenda for its meetings, and only items included in the agenda shall be discussed. Items proposed in writing to the Chairman by at least a quarter of the members not less than ten days before the meeting shall be included in the agenda.

6. Each member of the Council shall have one vote. With the exception of decisions under paragraph 12 of Article 6 decisions of the Council shall be by a simple majority vote; decisions shall require the presence of the representatives of at least half the members.

7. The Council shall appoint the Chairman who shall hold office for one year and co-ordinate the activities of the Council.

8. The Council shall establish its annual budget and shall fix the annual contributions to be paid by members which shall be an equal amount as among the members.

9. The Council shall have a general function of orientation, co-ordination and supervision over the whole of the ECOWAS Insurance Scheme established by this Protocol.

10. The Council shall determine the form and content of the ECOWAS BROWN CARD.

11. The Council shall co-ordinate the operation of the National Bureaux for this purpose, it shall prepare a standard inter-Bureaux contract which shall be signed by all Bureaux and which the Council alone shall be entitled to amend. This contract shall in particular determine the maximum amounts for the delegation of owners of settlement by one National Bureau to another, and the minimum handling fee payable for each case handled by them.

12. Any dispute between two or more National Bureaux as to the interpretation on application of this Protocol shall be referred to the Council. The Council shall decide the dispute on absolute majority. The decision pronounced shall be final and binding on the parties to the

dispute. The decision shall be notified to all the National Bureaux and the Council shall see to its execution.

13. The Council shall, on its own initiative or on the initiative of any Government Party to this Protocol, consider and, if it deems it advisable, propose changes in the laws or regulations of the parties to this Protocol with a view to improving the functioning of the ECOWAS BROWN CARD scheme, or to harmonising the systems of compensation for damages occasioned by road traffic accidents, or to improving accident prevention.

ARTICLE 7

Withdrawals and Exclusions

1. A Party to this Protocol may withdraw from it any time after the expiration of a period of one year from the date on which this Protocol has entered into force by means of notification in writing addressed to the Executive Secretariat of ECOWAS. The withdrawal shall take effect twelve months after the date of receipt of the notification by the Executive Secretariat, during which period the withdrawing Party shall remain liable for its financial obligation under this Protocol.

Any insurer member ceasing for any reason to be a member of the National Bureau shall remain bound by the undertakings assumed by the Bureau during the period of its membership.

2. If any Party is in breach of its obligations under this Protocol and such breach substantially impairs the operation of this Agreement the Heads of States and Government may by a resolution exclude such a Party from this Protocol.

3. The Council of Bureaux shall determine any settlement of accounts with a withdrawing or excluded Party. A withdrawing or excluded Party shall not be discharged from its obligations until the extinction of all its existing liabilities.

ARTICLE 8

Revision and Amendment

1. Any Party to this Protocol may submit proposals for amendment or revision of this Protocol.

2. Any such proposal shall be submitted to the Executive Secretariat of ECOWAS which shall communicate them to other Member States not later than thirty days after receipt of such proposals. Amendment or revisions shall be considered by the heads of State and Government after Parties have given on month's notice thereof.

ARTICLE 9

Entry into Force

1. The present Protocol shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitely upon ratification by at least seven (7) signatory states in accordance with the constitutional procedure applicable to each Member State.

2. This Protocol and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies of this Protocol to all Member States informing them of dates on which the Instruments of Ratification have been deposited. This Protocol shall be registered with the Organisation of African Unity, the United National Organisation and such Organisations as the Heads of State and Government of ECOWAS shall determine.

