

**Dated 24th June 2002**

**SUPPLEMENTAL MEMORANDUM OF AGREEMENT**

**between**

**MOTOR INSURERS' BUREAU OF HONG KONG**

**and**

**THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION**

**relating to a  
Memorandum of Agreement  
dated 1st February, 1981**

**Deacons**

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## SUPPLEMENTAL MEMORANDUM OF AGREEMENT

**THIS SUPPLEMENTAL MEMORANDUM OF AGREEMENT** is made the 24th day of June Two thousand and two.

*BETWEEN:-*

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** ("**Government**"); and
- (2) **MOTOR INSURERS' BUREAU OF HONG KONG**, a company duly formed and registered under the Companies Ordinance having its registered office at 22nd Floor, Prince's Building, Hong Kong ("**M.I.B.**").

*WHEREAS:-*

- (A) Pursuant to the First Fund Agreement, M.I.B. has established and operated the First Fund by way of the First Fund Scheme.
- (B) At the request of Government, the M.I.B. has now agreed that with effect from the Effective Date, that M.I.B. will make available a limited facility from out of the First Fund to satisfy the claims of third parties who have suffered death or bodily injury caused by a Terrorist Act (as defined below) through the use of a motor vehicle on a road in Hong Kong upon and subject to the terms and conditions of the First Fund Agreement as supplemented by this Supplemental Memorandum of Agreement.

*WHEREBY IT IS AGREED as follows:-*

### **1. INTERPRETATION**

- 1.01 Words and expressions defined in the First Fund Agreement shall have the same meanings when used in this Supplemental Memorandum of Agreement.
- 1.02 Unless the context requires otherwise, in this Supplemental Memorandum of Agreement the following expressions shall have the following meanings:-

**"Bill"** means the United Nations (Anti-Terrorism Measures) Bill which has been presented to the Hong Kong Legislative Council and which received its first reading on 17th April, 2002, as the same may be amended from time to time prior to its enactment, and in the event of its enactment, by whatever title the Ordinance shall be known, references herein to "**Bill**" shall be construed instead as references to the enacted Ordinance, as the same may be amended from time to time;

**"Effective Date"** means 1st January, 2002;

**"First Fund"** means the fund established by the M.I.B. pursuant to the terms of the First Fund Agreement;

- “First Fund Agreement”** means an agreement dated 1st February 1981 and made between (1) Government and (2) M.I.B. (as amended by an undertaking issued by M.I.B. to the Government dated 29th June, 1995);
- “First Fund Scheme”** means a scheme for the satisfaction of certain unsatisfied judgments in respect of relevant liabilities (as defined in and established pursuant to the First Fund Agreement);
- “Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China; and
- “Terrorist Act(s)”** shall have the meaning ascribed thereto in the Bill (as amended from time to time), which, as at the date of this Supplemental Memorandum of Agreement, is as follows:-
- (a) subject to paragraph (b), means the use or threat of action where:-
    - (i) the action:-
      - (A) involves serious violence against a person;
      - (B) involves serious damage to property;
      - (C) endangers a person’s life, other than that of the person committing the action;
      - (D) creates a serious risk to the health or safety of the public or a section of the public;
      - (E) is designed seriously to interfere with or seriously to disrupt an electronic system; or
      - (F) is designed seriously to interfere with or seriously to disrupt an essential service, facility or system, whether public or private; and
    - (ii) the use or threat is:-
      - (A) designed to influence the Government of Hong Kong or

to intimidate the public or a section of the public; and

(B) made for the purpose of advancing a political, religious or ideological cause;

(b) in the case of paragraph (a)(i)(F), does not include the use or threat of action in the course of any advocacy, protest, dissent or stoppage of work.

1.03 References to Clauses are to clauses of this Supplemental Memorandum of Agreement, unless otherwise stated.

1.04 The Recitals to this Supplemental Memorandum of Agreement are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of this Supplemental Memorandum of Agreement.

## 2. LIMITATION OF LIABILITY FOR TERRORIST ACTS

2.01 With effect from the Effective Date, the liability of the M.I.B. under Clause 2 of the First Fund Agreement is to be extended to include any judgment in respect of relevant liability arising out of Terrorist Acts and that the liability of M.I.B. to satisfy any of such judgments shall be limited to the maximum aggregate amount of HK\$200 million (or such other amount as may be agreed in writing from time to time between the Government and M.I.B.) provided that:-

- (i) in the event that the actual amount as shall stand to the credit of the First Fund in the books of account of M.I.B. as at midnight on the 28th day after a judgment (whether in respect of a Terrorist Act or any other claim) (the “**Relevant Judgment**”) is obtained (after making all appropriate provisions and reductions for actual liabilities of M.I.B. under the First Fund Agreement which have been notified to M.I.B. prior to the date of Relevant Judgment), is less than the amount for which the Relevant Judgment has been given; and
- (ii) in respect of a Relevant Judgment relating to a Terrorist Act, but not in any other case, the aggregate amount in respect of all judgments in respect of one or more Terrorist Acts given prior to the Relevant Judgment for which the M.I.B. is liable, is less than HK\$200 million,

the liability of the M.I.B. for the time being in respect of the amount of the Relevant Judgment shall be limited to the amount of the credit referred to in paragraph (i) (after making all appropriate provisions and reductions as referred to therein), until such time as further funds shall at any time thereafter have been credited to the First Fund in which event (which shall be a condition precedent to any further liability of the M.I.B. in respect of the Relevant Judgment) and as from that time, the M.I.B. shall become liable for the unsatisfied portion of the Relevant Judgment. For clarity, subject only to any amendment to this Supplemental Memorandum of Agreement to increase the amount of the M.I.B.’s liability to an amount in excess of HK\$200 million, once the M.I.B. has satisfied claims made against the First Fund in respect of one or more Terrorist Acts amounting in aggregate to the sum of HK\$200 million, the M.I.B. shall have no further liability thereafter whatsoever to satisfy any additional claims made against the First Fund in respect of any Terrorist Acts.

- 2.02 All claims made against M.I.B. in respect of the First Fund (including claims for one or more Terrorist Acts) shall be satisfied by the M.I.B. strictly in accordance with the date of judgment given in relation to each claim. In the event that the dates of the judgments for two or more claims are the same, the claims the subject of those judgments shall rank *pari passu* as regards their satisfaction from out of the First Fund, and in respect of such claims if the amount standing to the credit of the First Fund is insufficient to satisfy each of them in full, they shall be satisfied in part only by applying the amount of the First Fund in the proportion that each claim bears to the aggregate amount of all of such claims.
- 2.03 For the purposes of this Supplemental Memorandum of Agreement, the determination as to whether any use or threat of action constitutes a "Terrorist Act" shall be made by the Council of the M.I.B. acting in its sole discretion but having regard to the meaning ascribed in this Supplemental Memorandum of Agreement to the phrase "Terrorist Act", and, in the event (following enactment of the Bill) that the Chief Executive of Hong Kong has published a notice in the Hong Kong Government Gazette specifying the name or names of the person who he has reasonable grounds to believe is a "terrorist" or a "terrorist associate" (both as defined in the Bill), having regard also to such name or names and to any use or threat of action that has been or could have been brought about, directly or indirectly, by such person or persons.

**3. SUPPLEMENTAL EFFECT**

This Supplemental Memorandum of Agreement shall take effect so as to supplement and to add to the terms of the First Fund Agreement. Subject to the provisions of this Supplemental Memorandum of Agreement, the First Fund Agreement shall remain in full force and effect.

**4. EFFECTIVE DATE**

This Supplemental Memorandum of Agreement shall take effect as from, and as if the parties hereto had signed this Supplemental Memorandum of Agreement on, the Effective Date.

**5. GOVERNING LAW**

This Supplemental Memorandum of Agreement is governed by and shall be construed in accordance with the laws of Hong Kong.

**IN WITNESS** whereof the hands of the duly authorised representatives of the parties hereto the day and year first above written.

**SIGNED** by )  
**THE COMMISSIONER OF INSURANCE** )  
for and on behalf of )  
**THE GOVERNMENT OF THE** ) Benjamin Tang (Sd.)  
**HONG KONG SPECIAL** )  
**ADMINISTRATIVE REGION** )  
in the presence of: )

*Witness:* (Sd.)

*Name:* H.Y. Mok (Sd.)

*Address:* (17A, Block 10, Parc Royale, Shatin, N.T.)

*Occupation:* (Government servant)

**SIGNED** by

for and on behalf of

**THE MOTOR INSURERS'  
BUREAU OF HONG KONG**

in the presence of:

)  
)  
)  
)  
)  
)

Nicholas Donne (Sd.)

*Witness:* (Sd.)

*Name:* Keith Bernard Land (Sd.)

*Address:* (NS21, Las Pinadas 33 Shason Hill Road, HK)

*Occupation :* (Insurance)