

**THE DOMESTIC AGREEMENT**

**dated 1st February 1981**

**between**

**MOTOR INSURERS' BUREAU OF HONG KONG**

**and**

**AUTHORISED MOTOR INSURERS**

## DOMESTIC AGREEMENT

MEMORANDUM OF AGREEMENT made the 1st day of February One thousand nine hundred and eighty-one.

*BETWEEN:-*

- (1) MOTOR INSURERS' BUREAU OF HONG KONG (hereinafter referred to as "the Bureau"); and
- (2) EACH OF THOSE INSURANCE' COMPANIES AND LLOYD'S UNDERWRITERS AUTHORISED TO CARRY ON MOTOR VEHICLE INSURANCE BUSINESS IN HONG KONG by or on behalf of whom these presents are signed (hereinafter referred to as "the Insurers") of the other part,

and also BETWEEN each and all of the Insurers inter se so that each one of the Insurers binds himself severally to each and every other of the Insurers to perform this Agreement.

*WHEREAS* an Agreement dated 1st February, 1981 (hereinafter referred to as the "Annexed Agreement") between the Government of Hong Kong and the Bureau (a true copy whereof is hereto annexed with the intent that the same shall form part of the Recitals hereto) imposes on the Bureau certain obligations as therein defined.

AND WHEREAS the Insurers have all engaged themselves to become members of the Bureau.

AND WHEREAS Article 7 of the Articles of Association of the Bureau provides that the Insurers being members of the Bureau shall contribute to the Bureau such funds as may be required by the Bureau for the attainment of its objects.

AND WHEREAS all parties are desirous of carrying out the Annexed Agreement and of putting into effect the objects of the Bureau as defined in its Memorandum of Association and in accordance with its Articles of Association in the most efficient, expeditious and economical manner.

*NOW THEREFORE IT IS HEREBY AGREED between the parties hereto as follows:-*

### 1. Definitions

The words and phrases set out below shall for the purposes of this Agreement (including this Clause) have the meanings hereinafter in this Clause assigned to them, that is to say:-

"Compulsory Insurance Legislation" means the Motor Vehicles Insurance (Third Party Risks) Ordinance, (Cap. 272) of Hong Kong and any amendments thereto dealing with the compulsory insurance of liabilities relating to the death of or bodily injury to third parties arising out of the use of motor vehicles.

"Council" means the Council of the Bureau.

"Bodily Injury Liability" means any liability arising out of the death of or bodily injury to any third party which is required to be covered by a policy of Insurance under Compulsory Insurance Legislation.

"Insurer" means any Insurance Company or Lloyd's Underwriters who is or may become a party to this Agreement.

"Insurance" means insurance against Bodily Injury Liability effected by or under a policy of insurance, a cover note, correspondence, or any other means, whether or not a certificate of insurance as required by Compulsory Insurance Legislation has been issued or delivered.

"Judgment" means a judgment obtained at first instance in a court of competent jurisdiction in Hong Kong (or on appeal therefrom either to a superior court in Hong Kong or to the Privy Council) in respect of a Bodily Injury Liability.

"Judgment Debtor" means a person against whom Judgment has been obtained.

"Original Judgment Creditor" means the person or persons in whose favour Judgment was given and who is or are entitled to enforce it and has or have complied or is or are able and willing to comply with the conditions set out in Clause 8 of the Annexed Agreement.

"Satisfy the Original Judgment Creditor" means pay or cause to be paid to the Original Judgment Creditor such sum as is due and outstanding under the Judgment in respect of a Bodily Injury Liability (including any sum awarded by the court in respect of interest and taxed costs or such proportion of the taxed costs as is attributable to such liability) on terms that the judgment is ceded or assigned by the Original Judgment Creditor to the Insurer making the payment.

"Insurer Concerned" means the Insurer who at the time of the accident which gave rise to a Bodily Injury Liability was providing Insurance against such liability in respect of the vehicle the use of which gave rise to the liability in respect of which the Judgment was given. An Insurer is concerned within the meaning of this Agreement notwithstanding that:-

- (a) the Insurance was arranged after the accident but purported to be effective at the time of the accident; or
- (b) the Insurance has been obtained by fraud, misrepresentation, non-disclosure of material facts or mistake; or
- (c) some term, description, limitation, exception or condition (whether express or implied) of the Insurance or of the proposal form on which it is based expressly or by implication excludes the Insurer's liability whether generally or in the particular circumstances which gave rise to the liability in respect of which the Judgment was given; or
- (d) the Judgment Debtor was in unauthorised possession of the vehicle the use of which gave rise to the liability in respect of which the Judgment was given,

and only ceases so to be concerned:-

- (i) when the Insurance has been cancelled before the date on which the Bodily Injury Liability was incurred by agreement of the parties to the Insurance or under a power of cancellation contained therein; or
- (ii) when the Insurance has ceased to operate by reason of a transfer of interest in the vehicle which the Insurance purports to cover; or
- (iii) when before the date on which the Bodily Injury Liability was incurred the Insurer has obtained a declaration from a court of competent jurisdiction that the Insurance is void or unenforceable; or
- (iv) in any other case, from the date on which the Insurance by its term lapsed.

Provided always that for the purpose of this Agreement an Insurer being an Insurer Concerned in respect of a Motor Trade Road Risk Insurance covering unspecified vehicles shall in relation to such vehicles and irrespective of the basis of the Insurance be the Insurer Concerned

- (1) in respect of vehicles not the property of the Insured, if and only if the vehicle in respect of which the claim arises was in the custody or control of the Insured or was only removed from that custody or control without the authority of the Insured; and
- (2) in respect of vehicles which are the property of the Insured, at all times, except that such Insurer shall not be the Insurer Concerned in respect of any vehicle specifically excluded from the cover of the Insurance by reference to its registration mark and number or specifically insured in the name of the motor trader with another Insurer.

Where an Insurer Concerned under such a Motor Trade Road Risk Insurance and an Insurer Concerned under a specified vehicle Insurance are both involved in circumstances in which neither Insurer is liable under its Insurance, any claim in respect of a Bodily Injury Liability shall be handled by agreement between the Insurers Concerned, each being liable for one half of the damages and costs.

## 2. Visitors to Hong Kong

Where a visitor entering Hong Kong is insured or holds a policy purporting to provide Insurance against Bodily Injury Liability and such Insurance has been issued outside Hong Kong by an Insurer, or a subsidiary or associated company of an Insurer, such Insurer shall be the Insurer Concerned in the event of such visitor becoming a Judgment Debtor.

## 3. Insurer Concerned Principle

- (a) If a Judgment is obtained against any person, the Insurer Concerned shall satisfy the Original Judgment Creditor if and to the extent that the Judgment has not been satisfied by the Judgment Debtor within twenty-eight days from the date upon which the person in whose favour it was given is entitled to enforce it.

- (b) Where judgment is obtained in respect of a liability for death or injury which by reason only of the provisions of sub-Section (4) of Section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance is not required to be insured and there is in fact a policy or contract of insurance which covers the use of the vehicle giving rise to such liability, the judgment shall for the purposes of this Agreement be deemed to be a Judgment obtained in respect of a Bodily Injury Liability and a vehicle referred to in the said sub-Section (4) which has been unlawfully removed from the possession of the lawful owner or user shall be deemed to continue in that possession while it is so removed.

4. Discharge of Bureau's Liability

All payments made by an Insurer under Clause 3 hereof shall be deemed to be made in discharge of the liability of the Bureau under the Annexed Agreement to make the same.

5. Bureau shall satisfy certain Judgments

If in Hong Kong a Judgment is obtained against any person in respect of a Bodily Injury Liability and none of the Insurers is liable to satisfy the same under Clause 3 hereof, the Bureau will after the expiry of twenty-eight days from the date upon which the Original Judgment Creditor become entitled to enforce such Judgment against the Judgment Debtor itself satisfy the same.

6. Bureau may satisfy certain Judgments

If in any case it appears to the Council expedient, the Bureau may itself satisfy any Judgment which under the terms of Clause 3 hereof an Insurer is obliged to satisfy and in such case the Bureau shall be entitled to recover from such Insurer the sum paid by it.

7. Contributions to Bureau

(i) The contributions to be made by the Insurers to the Bureau of the funds required by the Bureau for attainment of its objects (to be made pursuant to Article 7 of the Articles of Association of the Bureau), including but not limited to funds out of which it may meet its expenses and its liabilities under Clause 5 hereof, make payments under Clause 6 hereof and make ex gratia payments under Note 6 of the notes annexed to the Annexed Agreement, shall in the first instance be made in the following manner.

- (a) by an initial levy of an amount to be determined by the Council and notified to the Insurers, each Insurer paying that proportion thereof which the Gross Premium Income received or receivable by him for such period as the Council shall specify bears to the aggregate Gross Premium Income of all the Insurers for such period, and such levy shall, in the case of each Insurer, be treated as a payment on account of the first payment or payments to be made by such Insurer pursuant to (b) below;
- (b) by the payment by each Insurer to the Bureau of an amount equal to a surcharge of such amount as the Council shall from time to time determine on the Gross Premium Income received or receivable by

such Insurer from such date as the Council shall specify, such amount to be paid, in respect of the Gross Premium Income received or receivable in respect of each period ended 31st March, 30th June, 30th September and 31st December in each year, within thirty days after the end of the relevant period; and

- (c) by the payment of such additional calls or levies as the Council may require to be paid, each Insurer paying that proportion thereof which the Gross Premium Income received or receivable by him for the accounting period of the Bureau in respect of which the call or levy is made bears to the aggregate Gross Premium Income of all the Insurers for that year.

The Bureau may in the first instance retain for its own benefit funds so contributed which are in excess of its requirements, but, if and to the extent that the amount of any call, levy or payment made pursuant to (b) above remains in excess of the requirements of the Bureau at the expiry of the period of twelve months after it was paid to the Bureau (as to which the Council's decision shall be conclusive), it shall as soon as practicable thereafter be repaid without interest to or for the account of the Insurer paying the same. The Council shall take into account the amount of such excess, or (as the case may be) the balance thereof (if any) remaining after any such repayment or repayments, in reviewing in each year pursuant to (ii) below the amount of the surcharge referred to in (a) above.

- (ii) The accounting period of the Bureau in respect of such surcharge shall terminate on 31st December in each year commencing 31st December 1981. The Council shall during, but before the end of, each such accounting period lay before the Bureau accounts setting out in respect of that accounting period, all moneys disbursed in respect of that accounting period, all moneys disbursed in respect of the expenses, liabilities and payments specified above together with an estimate in respect of out-standing claims and applications. In the light of such accounts the Bureau shall review the amount of the surcharge to be applied for the succeeding accounting period and the amount of the surcharge required shall likewise thereafter be further reviewed from year to year. The Bureau shall nevertheless be empowered to revise the amount of the surcharge at any time if circumstances so warrant.
- (iii) For the purpose of (i) (c) above, where at the time the call or levy is made the relative amounts of Gross Premium Income for the accounting period are unknown, the Council shall determine the proportion to be paid by each Insurer after taking into account the comparable amounts of Gross Premium Income for the preceding accounting period and, so far as then known, for the accounting period to date, and adjustments shall be made as soon as practicable after the relative amounts of Gross Premium Income for the accounting period in question are known.
- (iv) In this Clause
  - (a) the term "Gross Premium Income" shall mean gross premium received or receivable in respect of all Motor Vehicle Insurances effected by the relevant Insurer or Insurers in Hong Kong, less cancellations and returns only, and without any deduction in respect of

brokerages, discounts and/or commissions. Reinsurances accepted shall not be included nor shall reinsurances ceded be deducted; and

- (b) the term "Motor Vehicle Insurances" shall be deemed to include all insurances against loss of, or damage to or arising out of or in connexion with the use of, motor vehicles whether or not rendered obligatory by Compulsory Insurance Legislation and whether comprehensive or limited to third parties or otherwise.

8. Insurers to pay

Each Insurer undertakes and binds himself to the Bureau and severally to each of the other Insurers promptly to make any payment which is demanded of him under Clauses 3, 6 and/or 7 hereof and at all times to furnish to the Council such particulars of his motor premium income as it may require and to submit to such audit as the Bureau may from time to time deem necessary.

9. Insolvency of Insurer

In the event of the insolvency of an Insurer all calls and levies made upon such Insurer by the Bureau which are not paid shall be contributed by the other Insurers, provided that only Insurance Companies shall contribute if the insolvent Insurer is an Insurance Company and only Lloyd's Underwriters shall contribute if the insolvent Insurer is Lloyd's Underwriters.

10. Disputes with Bureau

In the event of any dispute arising between the Bureau and one or more of the Insurers touching these presents the dispute, if it cannot be settled by agreement, shall be referred to an Arbitrator to be nominated by the Chairman of the Bar Council of Hong Kong. The award of an Arbitrator shall be final and binding on all the parties.

11. Disputes among Insurers

In the event of a dispute arising between two or more of the Insurers arising out of or concerning the application of this Agreement the same shall be referred to an arbitrator to be appointed by the Council and his decision shall be final and binding on all the parties. For the purposes of avoiding such disputes and facilitating their settlement the parties hereto agree that all questions of interpretation and construction of this Agreement arising between Insurers (including such questions arising during an arbitration between Insurers) shall be submitted to the Council whose ruling shall be final and binding on all parties hereto.

12. Application for Membership

The signing of this Agreement by or on behalf of an Insurer shall be deemed to be an application for registration as a member of the Bureau if such application has not already been made.

13. Continuing Obligations of Insurers

Every Insurer shall remain a member of the Bureau until he ceases to be such in terms of Article 4 of the Articles of Association of the Bureau and this Agreement

shall remain in force and binding upon every Insurer until he ceases to be a member as aforesaid, and thereafter in respect of obligations arising under this Agreement before he ceased to be a member of the Bureau.

14. Rights of Indemnity and Contribution

Nothing herein contained shall affect or be deemed to affect any right of an Insurer to indemnity or contribution from another Insurer whether such right arises at common law, by statute, from a claims sharing or other agreement, by subrogation or by assignment of the Original Judgment Creditor's judgment and all such rights shall be determined according to the facts and circumstances of each particular case without reference to this Agreement.

IN WITNESS WHEREOF these presents have been signed by the duly authorised representatives of the parties.

*Signed by the Motor Insurers' Bureau of Hong Kong, and by the Insurers, in the presence of Stewart Smith, Solicitor, Hong Kong.*