

**Dated 13 August 2009**

**THE INSOLVENCY FUND AGREEMENT**

**between**

**MOTOR INSURERS' BUREAU OF HONG KONG**

**and**

**THE GOVERNMENT OF HONG KONG**

**Deacons**

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**THIS AGREEMENT** is made the 13th day of August Two thousand and nine.

*BETWEEN:-*

- (1) **THE GOVERNMENT OF HONG KONG** (“Government”); and
- (2) **MOTOR INSURERS’ BUREAU OF HONG KONG**, a company limited by guarantee incorporated in Hong Kong under the Companies Ordinance (Cap. 32) and having its registered office at 22nd Floor, Prince’s Building, Hong Kong (“M.I.B.”).

*WHEREAS:-*

- (A) Pursuant to an Agreement (the “First Fund Agreement”) dated 1st February 1981 and made between (1) Government and (2) M.I.B., M.I.B. has established and operated a scheme for the satisfaction of certain unsatisfied judgments in respect of relevant liabilities (as therein defined) for death or bodily injury arising out of the use of motor vehicles in Hong Kong (the “First Fund Scheme”).
- (B) The First Fund Scheme has, at the entire discretion of M.I.B., been operated also to satisfy on an ex gratia basis certain otherwise unsatisfied claims in respect of relevant liabilities (as so defined) where no judgment has been obtained.
- (C) In accordance with the First Fund Agreement the First Fund Scheme does not operate (either by obligation or by exercise by M.I.B. of its discretion) to satisfy any claim in respect of a relevant liability (as so defined), whether or not a judgment in respect thereof has been obtained, where the policy (as therein defined) is ineffective because of the inability of an insurer to pay its debts by reason of its insolvency.
- (D) Pursuant to the Original Insolvency Fund Agreement, M.I.B. on 1st November 1985 established and commenced operating a second scheme (the “Original Insolvency Fund Scheme”) with a view to satisfying the claims described under (C) above.
- (E) Government and M.I.B. have agreed to revise the Original Insolvency Fund Scheme (the “Insolvency Fund Scheme”) to be operated on the terms and subject to the conditions of this Agreement.

*NOW IT IS HEREBY AGREED* as follows:-

## **1. INTERPRETATION**

1.01 In this Agreement, in addition to the words and expressions defined above:-

“Council”	means the Council of M.I.B.
“Effective Date”	means 1st January 2009.
“final claim”	means (a) a judgment; and (b) a settlement.
“First Fund Domestic Agreement”	means the agreement dated 1st February 1981 between (1) M.I.B. and (2) the persons named therein as Insurers relating to the First Fund Scheme, as from time to time amended.
“Hong Kong”	means the Hong Kong Special Administrative Region of

the People's Republic of China.

“ineffective”	means, in relation to a policy, that payment thereunder in respect of claims cannot be made in full.
“Insolvency Fund Domestic Agreement”	means an agreement dated 1st November 1985 and entered into between (1) M.I.B. and (2) the persons named therein as Insurers, as amended by a supplemental domestic deed of even date entered into between the same parties and as from time to time amended, relating to the Insolvency Fund Scheme
“Insurance Authority”	means the public officer appointed by the Governor as the Insurance Authority under Section 4 of the Insurance Companies Ordinance (Cap. 41) or such other person as may be nominated by Government for the purposes of this Agreement.
“Insurer”	means each of those insurers authorized or approved to carry on motor vehicle insurance business in Hong Kong (which shall include Lloyd's (as defined in the Insurance Companies Ordinance) and associations of underwriters).
“Insurer Concerned Principle”	shall have the meaning assigned to it by Clause 3 of the First Fund Domestic Agreement.
“judgment”	means a liquidated judgment in damages (including an order for an interim payment in respect of damages) obtained against any person or persons at first instance in a court of competent jurisdiction in Hong Kong (or on appeal therefrom to a superior court) on a claim in respect of a relevant liability in favour of the person who suffered bodily injury, or who is the dependant or personal representative of a person suffering death.
“Ordinance”	means the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), or any enactment amending or replacing the same, dealing with the compulsory insurance of liabilities for the death or bodily injury to third parties arising out of the use of motor vehicles.
“Original Insolvency Fund Agreement”	means an agreement dated 1st November 1985 and entered into between (1) Government and (2) M.I.B., as amended by a supplemental agreement dated 24th June 2002 and entered into between the same parties, relating to the Original Insolvency Fund Scheme.
“policy”	means a policy of insurance in respect of third party risks which complies with the requirements of the Ordinance, but only in so far as it insures a relevant liability.
“relevant liability”	means a liability arising out of the death of or bodily injury to any third party in respect of which a policy must insure the use of a motor vehicle by a person in order to

comply with the Ordinance.

“settlement”	means a claim (including a claim the subject of an unliquidated judgment) in respect of a relevant liability which has been agreed both as to liability and as to quantum (including liability for, and the amount of, an interim payment) either by an Insurer before it became insolvent or by or at the procurement of M.I.B. pursuant to this Agreement.
“subrogated liability”	means a liability to indemnify, make contribution to, or pay damages to a person in respect of a relevant liability or a TPPD liability where another party has satisfied or is obliged to satisfy that liability in whole or in part pursuant to a policy of insurance or other legal obligation to do so.
“subrogation judgment”	means a liquidated judgment in damages obtained against any person or persons at first instance in a court of competent jurisdiction in Hong Kong (or on appeal therefrom to a superior court) on a claim in respect of a subrogated liability.
“TPPD liability”	means a liability for damage to property of any third party caused by or arising out of the use of a motor vehicle in Hong Kong which, at the time such damage occurred, was insured by a TPPD policy.
“TPPD judgment”	means a liquidated judgment in damages obtained against any person or persons at first instance in a court of competent jurisdiction in Hong Kong (or on appeal therefrom to a superior court in Hong Kong) on a claim in respect of a TPPD liability.
“TPPD policy”	means a policy of insurance issued by an Insurer in respect of third party risks in so far as it covers liability for damage to property caused by or arising out of the use of a motor vehicle in Hong Kong.

1.02 For the purposes of this Agreement and the Insolvency Fund Scheme, and the purposes of the First Fund Agreement and the First Fund Scheme, an Insurer shall be regarded as insolvent if and only if:-

- (a) an order for the winding up of the Insurer has been made by the court in Hong Kong on the ground (whether with or without any other grounds) that the Insurer is unable to pay its debts; or
- (b) an order for the winding up of the Insurer has been made by the court in Hong Kong on any ground other than the ground that the Insurer is unable to pay its debts and the Insurance Authority is satisfied that the Insurer in liquidation is unable or unlikely to pay in full claims in respect of relevant liabilities and/or TPPD liabilities and/or subrogated liabilities as they fall due and has notified M.I.B. in writing accordingly; or
- (c) the Insurer has publicly declared that it cannot by reason of its liabilities

continue its business and the Insurance Authority is satisfied that the Insurer is unable or unlikely to pay in full claims in respect of relevant liabilities and/or TPPD liabilities and/or subrogated liabilities as they fall due and has notified M.I.B. in writing accordingly; or

- (d) a receiver of the whole or any part of the assets of the Insurer has been duly appointed by the court or under the provisions of any instrument to which the Insurer is party or by which it is bound on the grounds that the Insurer has failed to pay any relevant sum when due (after taking into account any grace period) and the Insurance Authority is satisfied that the Insurer is unable or unlikely to pay in full claims in respect of relevant liabilities and/or TPPD liabilities and/or subrogated liabilities as they fall due and has notified M.I.B. in writing accordingly; or
- (e) a resolution has been duly passed for the winding up of the Insurer or a winding up of the Insurer has commenced pursuant to S.228A of the Companies Ordinance, and that winding up is, or was at its commencement, a voluntary winding up, and the Insurance Authority is satisfied that the Insurer is unable or unlikely to pay in full claims in respect of relevant liabilities and/or TPPD liabilities and/or subrogated liabilities as they fall due and has notified M.I.B. in writing accordingly; or
- (f) in the case of any Insurer which is not a corporation any event analogous to any of (a) to (e) above occurs; or
- (g) in any jurisdiction in which the Insurer is incorporated or carries on business outside Hong Kong any event analogous to any of (a) to (f) above occurs, and the expression "insolvency" in relation to an Insurer shall be construed accordingly.

1.03 Subject to Clause 1.04 below, for the purposes of this Agreement and the Insolvency Fund Scheme, and the purposes of the First Fund Agreement and the First Fund Scheme, and in addition to any other circumstances in which it is so ineffective, a policy shall be deemed ineffective by reason of the insolvency of an Insurer even if, upon such insolvency, a liquidator of such Insurer validly disclaims any liability arising solely by virtue of the Insurer Concerned Principle.

1.04 Clause 1.03 shall not apply where the claim is in respect of a TPPD liability or a subrogated liability.

1.05 References to Clauses are to clauses of this Agreement.

## **2. ESTABLISHMENT AND OPERATION OF THE INSOLVENCY FUND SCHEME**

2.01 M.I.B. shall establish and operate the Insolvency Fund Scheme by creating a fund consisting of assets (the "Insolvency Fund") separate from its other assets and from the assets of any other fund similarly held and making relevant payments out of the Insolvency Fund. M.I.B. shall accordingly hold the Insolvency Fund on trust for the purposes of the Insolvency Fund Scheme. The perpetuity period of this trust shall be 80 years from the date of this Agreement. No Insurer shall be entitled to participate in any part of the Insolvency Fund. The management of the Insolvency Fund shall be entirely the responsibility of the Council, who may delegate all or any part of such responsibility to one or more investment managers, whose proper charges may be paid out of the Insolvency Fund.

- 2.02 Where any final claim in respect of a relevant liability is not paid in full by the relevant Insurer by reason of the insolvency of the relevant Insurer, M.I.B. shall, subject to the provisions of this Agreement, pay to the person or persons entitled to payment under the final claim any sum payable thereunder and remaining unpaid (including any interest awarded or agreed, and any costs taxed or agreed, in respect thereof). Such payment shall be made out of the Insolvency Fund and, having regard to Clause 2.05, M.I.B. shall not be under any obligation in relation thereto if and to the extent that the Insolvency Fund is insufficient for the purpose.
- 2.03 Where any claim in respect of a TPPD liability or a subrogated liability is not paid in full by the relevant Insurer solely by reason of the insolvency of the relevant Insurer, M.I.B. may, at its absolute discretion and subject to the provisions of this Agreement, pay to any person or persons entitled to payment under the claim and, if M.I.B. shall decide to make payment under the claim, the amount to be paid up to the sum payable thereunder and remaining unpaid (including any interest awarded or agreed, and any costs taxed or agreed, in respect thereof), and in such manner and on such terms and conditions as M.I.B. at its absolute discretion shall deem appropriate. If M.I.B. shall decide to make any payment under this Clause 2.03, such payment shall be made out of the Insolvency Fund. In exercising its discretion, MIB may take into account as one of the relevant factors the then resources of the Insolvency Fund and the claims made or anticipated to be made on it.
- 2.04 When notice of proceedings has been given under Clause 7, it shall be competent for M.I.B. at any time before the date set down for the hearing of the action to offer to the claimant in full satisfaction of the obligation of M.I.B. such sum as it considers sufficient in respect of any claim made together with the equivalent of the taxed costs and interest to the date of such offer. If such offer is not accepted and in any ensuing action the claimant is awarded in respect of his claim for death of or injury to any person not more than the sum offered under this Clause 2.04 (exclusive of the sum for such costs and interest), then in satisfaction of its undertaking under this Agreement M.I.B. shall not be required to pay more than the total amount awarded together with the sum offered in respect of costs and interest and shall be entitled to set off any costs incurred by it after the date of the offer against any amount awarded to the claimant.
- 2.05 Sums payable pursuant to Clause 2.02 in respect of final claims shall be paid out, with due diligence and as soon as practicable, and in any event within the agreed period (as defined below), in the order in which the relevant claims become final claims, and for these purposes claims become final claims on the respective dates on which:-
- (a) in the case of a judgment, the judgment (whether at first instance or on any appeal) is given or, if later, the damages awarded thereunder are assessed; and
  - (b) in the case of a settlement, the settlement is made, and in any case of doubt the decision of the Council shall be final. Final claims which remain unsatisfied because the Insolvency Fund is for the time being insufficient for the purpose shall rank in like order for payment out of future assets of the Insolvency Fund as and if those assets arise. For these purposes the agreed period shall be 28 days after whichever is the later of (a) the date on which the claim becomes a final claim and (b) the date which is 70 days after the date on which written notice of the claim is given to M.I.B. pursuant to Clause 7(a).
- 2.06 In making any payment pursuant to the Insolvency Fund Scheme in respect of a relevant liability M.I.B. (a) shall not take into account any money which has been or may be paid from the fund maintained under the Traffic Accident Victims (Assistance Fund)

Ordinance (Cap. 229) in respect of the accident giving rise to the relevant liability in question, and (b) may in its discretion take into account any amount recovered by the victim from a person seeking payment under Clause 2.03 above, and (c) subject to (b) above shall take into account any other amount recovered by the claimant, or by persons claiming through the claimant, or by persons (other than reinsurers) capable of benefiting from the claimant's claim, in respect of the death or bodily injury giving rise to the relevant liability in question.

- 2.07 The Insurer Concerned Principle shall apply also in relation to the Insolvency Fund Scheme in respect of a relevant liability and in particular shall continue to apply after an Insurer has become insolvent and shall, for the purposes of the Insolvency Fund Scheme in respect of a relevant liability, be considered to bind the liquidators or other agents and/or successors in title of such an Insurer in its insolvency, except that the principle embodied in Clause 2 of the First Fund Domestic Agreement shall not operate in the case of an insolvent Insurer. Accordingly in operating the Insolvency Fund Scheme M.I.B. shall proceed in a relevant case on the basis that the insolvent Insurer would, if not insolvent, have given effect to the Insurer Concerned Principle.

### **3. APPLICATION OF THE INSOLVENCY FUND SCHEME**

- 3.01 The Insolvency Fund Scheme and the First Fund Scheme are mutually exclusive. If and to the extent that there is any inconsistency between the First Fund Agreement and this Agreement, the provisions of this Agreement shall prevail.
- 3.02 It shall be the Insolvency Fund Scheme which shall apply, to the exclusion of the First Fund Scheme, in the case of any accident occurring after the commencement of the insolvency of an Insurer resulting in a relevant liability which at the time the liability was incurred was covered by a policy issued by that Insurer which would not be ineffective had the Insurer not been insolvent, and/or in respect of which the Insurer, if it had not been insolvent, would have been liable by virtue of the application of the Insurer Concerned Principle.
- 3.03 The Insolvency Fund Scheme shall also apply in the case of any accident occurring after the commencement of the insolvency of an Insurer resulting in a TPPD liability or a subrogated liability which at the time such liability was incurred was covered by a TPPD policy or a policy (as the case may be) issued by that Insurer which would not be ineffective had the Insurer not been insolvent.
- 3.04 No payment shall be made pursuant to the Insolvency Fund Scheme by reference to an insolvency if and to the extent that the relevant liability and/or the TPPD liability and/or the subrogated liability of the Insurer (as the case may be) is novated in favour of, or otherwise agreed to be taken up directly or indirectly by, a third party acceptable to the Insurance Authority. Where such novation or agreement has been arranged to the satisfaction of the Insurance Authority, he shall forthwith notify M.I.B. in writing of that fact, and upon receipt of such notification M.I.B. shall cease to make any further payment under the Insolvency Fund Scheme in respect of final claims as regards relevant liability and/or claims as regards TPPD liability and/or subrogated liability attributable to the relevant Insurer concerned. Any such cessation shall be without prejudice to the respective rights or obligations of M.I.B. or persons whose claims have already been paid under the Insolvency Fund Scheme before the cessation.
- 3.05 Where a final claim in respect of a relevant liability has been paid in full or in part by the insured of the insolvent Insurer and such claim would otherwise have fallen to be paid by the Insolvency Fund Scheme without there being a subsequent recovery by M.I.B. from the insured of the insolvent Insurer, then the Insolvency Fund Scheme shall

reimburse such insured for the amount so paid.

- 3.06 Where a claim in respect of a TPPD liability or a subrogated liability has been paid in full or in part by the insured of the insolvent Insurer, then M.I.B. may, at its absolute discretion and on like terms as set out in Clause 2.03 above, reimburse out of the Insolvency Fund such insured for any amount paid by the insured.

#### **4. FINANCE**

- 4.01 The Insolvency Fund shall be funded by the payment of the amount of the surcharge prescribed by Clause 4.02.
- 4.02 Each Insurer shall add to every premium included in his Gross Premium Income in respect of all and any periods from 1st December 1985 a surcharge of such percentage of the Gross Premium Income represented by that premium as may from time to time be determined by M.I.B. in consultation with Government. Each Insurer shall as collection agent hold the amount of each such surcharge (upon receipt) and the right to receive the same (until receipt) on trust for payment into the Insolvency Fund.
- 4.03 Payments into the Insolvency Fund of or on account of such surcharge shall be made in respect of Gross Premium Income of each period ending 31st March, 30th June, 30th September and 31st December in each year, starting with the period commencing 1st December 1985 and ending 31st March 1986. Payment of each such contribution shall be made within thirty days after the end of the relevant period.
- 4.04 For the purposes of this Clause 4.
- (a) "Gross Premium Income" in respect of any period means gross premium received or receivable during that period in respect of all Motor Vehicle Insurances effected by the relevant Insurer in Hong Kong less:-
- (i) cancellations and returns;
  - (ii) the surcharge prescribed by Clause 4.02;
  - (iii) the surcharge applicable to the First Fund Scheme,
- 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) "Motor Vehicle Insurances" includes 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 the Ordinance and whether comprehensive or limited to third party liability or otherwise.
- 4.05 Each Insurer shall undertake at all times to furnish the Council with such particulars in relation to the calculation of its Gross Premium Income as the Council may require and to submit to such audit as the Council may from time to time think necessary.

#### **5. RECOVERIES**

M.I.B. shall be entitled (but not bound) to exercise all such rights as it may have in consequence of any payment out of the Insolvency Fund pursuant to Clause 2.02 or 2.03 or 2.04 and/or any ancillary matters against (i) the insolvent Insurer; (ii) in the



specified circumstances, the insured of the insolvent Insurer; or (iii) any other person. Any net amount recovered as a result of the exercise of any such rights or otherwise in respect of sums paid out in respect of final claims as regards relevant liability and/or claims as regards TPPD liability and/or subrogated liability pursuant to the Insolvency Fund Scheme shall be paid into and form part of the assets of the Insolvency Fund. For the purposes of (ii) above, the "specified circumstances" are circumstances in which the Insurer would, if solvent, have had rights of recourse against the insured, where:-

- (a) rights of recourse exist by virtue of Section 10(4) of the Ordinance; or
- (b) the Insurer would have been able to avoid payment had it not been for the existence of the First Fund Scheme and the application thereunder of the Insurer Concerned Principle; or
- (c) there are any additional specified circumstances relating to a specific case as may be agreed with the Insurance Authority.

## **6. EXPENSES OF OPERATION**

The proper costs and expenses of M.I.B. (including those of its agents and including its legal costs and disbursements) attributable to the establishment, financing and operation of the Insolvency Fund Scheme (including an appropriate proportion of M.I.B.'s general overhead) shall be payable out of, and shall be a first charge on, the Insolvency Fund and shall be paid in arrears on a monthly basis, provided that nothing in this Agreement shall in any way limit the right of M.I.B. to recover from an insolvent Insurer the full amount of any legal costs and expenses that have been charged against the Insolvency Fund in connection with or arising out of that Insurer's insolvency.

## **7. CONDITIONS PRECEDENT TO LIABILITY**

No liability on the part of M.I.B. or the Insolvency Fund shall arise pursuant to the Insolvency Fund Scheme in respect of a relevant liability unless:-

- (a) written notice of the claim on the Insolvency Fund is given to M.I.B. by registered post by or on behalf of the claimant after the Insurer becomes insolvent; and
- (b) where proceedings were issued in respect of an alleged relevant liability before the Insurer became insolvent:-
  - (i) written notice of such proceedings was given to the Insurer or M.I.B. by registered post by or on behalf of the claimant before or within seven days after the commencement of such proceedings; and
  - (ii) a copy of any writ of summons which may be issued was supplied to the Insurer or M.I.B. and the claimant did not seek to obtain judgment within thirty days thereafter except only where, within that period, any person against whom such proceedings were taken had issued process which would have led to the dismissal of such proceedings for want of prosecution; and
- (c) if so required by M.I.B. and subject to full indemnity by M.I.B. (to the extent of the Insolvency Fund for the time being, but not otherwise) as to reasonable costs, the claimant takes all reasonable steps to obtain judgment against any person against whom he might have a remedy in respect of or arising out of the

relevant liability in question; and

- (d) the claimant complies with all requirements of M.I.B. which are in the circumstances reasonable in relation to any matter which might give rise to a liability on the part of the Insolvency Fund pursuant to the Insolvency Fund Scheme, and in the event of any dispute as to the reasonableness of any such requirement relating to the supply of information or the taking of any particular step to obtain judgment against other persons the matter shall be referred to the Insurance Authority, whose decision shall be final and binding on all parties concerned; and
- (e) the benefit of all entitlements (including any judgments in respect thereof) of the claimant against the Insurer, the Insurer's insured and other persons shall (if and to the extent required by M.I.B., and if and to the extent that M.I.B. does not become subrogated thereto) be assigned to M.I.B. or its nominee and the claimant shall in any event (if and to the extent required by M.I.B.) lend his name and do everything necessary or conducive to the enforcement of such entitlements, provided that, where M.I.B. shall have such an entitlement against the estate of the Insurer, M.I.B. shall only rank as an ordinary, non-preferential, creditor against that estate and that, where M.I.B. shall have such an entitlement against the Insurer's insured, M.I.B. shall not exercise such an entitlement except in the specified circumstances as set out in Clause 5.

## **8. CONDITIONS PRECEDENT TO M.I.B. EXERCISING ITS DISCRETION REGARDING TPPD LIABILITY AND SUBROGATED LIABILITY**

8.1 M.I.B. shall only consider whether to exercise its discretion to make payment out of the Insolvency Fund Scheme in respect of a TPPD liability or a subrogated liability pursuant to Clause 2.03 if: -

- (a) the relevant Insurer became insolvent on or after the Effective Date; and
- (b) written notice of the claim on the Insolvency Fund in respect of a TPPD liability or a subrogated liability is given to M.I.B. by registered post by or on behalf of the claimant after the Insurer becomes insolvent within a reasonable time and in any event not later than (i) six months after any matter set out in Clause 1.02 above shall have been publicly announced by the Insurance Authority in the press or otherwise or (ii) six months of the date of the relevant accident or (iii) six months of the date of this Agreement, whichever is the latest.

8.2 M.I.B. shall only make payment out of the Insolvency Fund Scheme in respect of a TPPD liability or a subrogated liability pursuant to Clause 2.03 if the benefit of all entitlements (including any TPPD judgments or subrogation judgments in respect thereof) of the claimant against the Insurer, the Insurer's insured and other persons shall (if and to the extent required by M.I.B., and if and to the extent that M.I.B. does not become subrogated thereto) be assigned to M.I.B. or its nominee and the claimant shall in any event (if and to the extent required by M.I.B.) lend his name and do everything necessary or conducive to the enforcement of such entitlements, provided that, where M.I.B. shall have such an entitlement against the estate of the insolvent Insurer, M.I.B. shall only rank as an ordinary, non-preferential, creditor against that estate and that, where M.I.B. shall have such an entitlement against the Insurer's insured, M.I.B. shall not exercise such an entitlement except in the specified circumstances as set out in Clause 5.

## **9. EXEMPTION**

- 9.01 The Insolvency Fund shall not incur any liability under the Insolvency Fund Scheme in respect of a relevant liability in a case where at the time of the accident the person suffering death or bodily injury in respect of which the claim is made was allowing himself to be carried in a motor vehicle and knew or had reason to believe that the motor vehicle had been taken without the consent of the owner or other lawful authority except in a case where:-
- (A) he believed or had reason to believe that he would have had the owner's consent if the owner had known of his being carried and the circumstances of his carriage; or
  - (B) he had learned of the circumstances of the taking of the motor vehicle since the commencement of the journey and it would be unreasonable to expect him to have alighted from the motor vehicle.
- 9.02 This exemption shall apply only in a case where the relevant claim is in respect of a liability incurred by the owner or a person using the motor vehicle in which the person who suffered death or bodily injury was being carried.
- 9.03 For the purposes of this exemption:-
- (a) references to a person being carried in a motor vehicle include references to his being carried in or upon or entering or getting on to or alighting from the motor vehicle; and
  - (b) "owner", in relation to a motor vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession of the motor vehicle under that agreement.

## **10. GOVERNMENT'S UNDERTAKINGS**

Government undertakes with M.I.B.:-

- (a) to ensure that every person authorised to carry on motor vehicle insurance business in Hong Kong will undertake to become a member of M.I.B. as a condition for such authorisation; and
- (b) when an Insurer has become insolvent, to take steps to ensure that adequate publicity is given to that fact.

## **11. COMMENCEMENT AND TERMINATION**

- 11.01 The Insolvency Fund Scheme shall operate and replace the Original Insolvency Fund Scheme as from the date hereof. With effect from the date of this Agreement, all claims, including future claims and claims not yet disposed of on the date of this Agreement, shall be dealt with in accordance with the provisions of this Agreement.
- 11.02 This Agreement, and the Insolvency Fund Scheme, may be terminated by Government at any time by notice in writing to M.I.B., or by M.I.B. on two years' notice in writing to the Insurance Authority (on behalf of Government), without prejudice to the continued operation of this Agreement and the Insolvency Fund Scheme in respect of insolvencies of Insurers occurring before the date of termination.

## **12. PRIOR AGREEMENTS**

This Agreement supersedes any previous agreements between the parties in relation to the Original Insolvency Fund Scheme and/or the Insolvency Fund Scheme, including the Original Insolvency Fund Agreement.

**13. GOVERNING LAW**

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

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AS WITNESS the hands of the duly authorised representatives of the parties the day and year first before written.

SIGNED by  
**THE COMMISSIONER OF INSURANCE**  
for and on behalf of  
**THE GOVERNMENT OF THE  
HONG KONG SPECIAL  
ADMINISTRATIVE REGION**  
in the presence of:

Clement Cheung (Sd.)

*Witness:* (Sd.)

*Name:* (Ros Lam)

*Address:* (21/F, Queensway Government Offices, 66 Queensway, Hong Kong)

*Occupation:* (Civil Servant)

SIGNED by  
for and on behalf of  
**THE MOTOR INSURERS'  
BUREAU OF HONG KONG**  
in the presence of:

Philip Kent (Sd.)

*Witness:* (Sd.)

*Name:* (Cheng Kwok Ping)

*Address:* (19/F, Wing An Plaza, 8 Sunning Road, Causeway Bay, Hong Kong)

*Occupation :* (Chartered Insurer)