

MEMORANDUM OF AGREEMENT

(INTERNAL AGREEMENT)

made between

MOTOR INSURERS' FUND

(hereinafter referred to as "the Fund") of the one part, and each of those Insurance Companies and Lloyd's Underwriters transacting Compulsory Motor Vehicles Insurance Business in Cyprus 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 29th October 2007, (hereinafter referred to as the "Basic Agreement") between the Fund and the Minister of Finance (a true copy whereof is hereto annexed with the intent that the same shall form part of the present Agreement) imposes on the Fund certain obligations as therein defined.

AND WHEREAS the Insurers are all Members of the Fund.

AND WHEREAS Articles 6, 7, 8 and 9 of the Articles of Association of the Fund provide that the Insurers being members of the Fund shall subscribe the Fund certain funds required by the Fund.

AND WHEREAS the Fund has signed the Uniform Agreement with Bureaux of countries members of the Council of Bureaux, by virtue of which a liability is created to drivers and owners of motor vehicles to maintain into force proper insurance cover against third party risks when entering countries where insurance for such risks is compulsory.

AND WHEREAS the Fund has signed the Multilateral Guarantee Agreement and is bound towards all the parties to the above Agreement for its strict adherence from the date of the approval of the membership of Cyprus to the aforesaid Agreement by the European Commission, on the basis of which a liability is created for the Fund to satisfy claims arising as a result of the use of motor vehicles which are normally based in the Republic of Cyprus in any member-State of the Multilateral Guarantee Agreement, whether such vehicles have insurance cover in force or not.

AND WHEREAS the Fund shall be bound by the Directives issued from time to time by the European Union from the date of the accession of Cyprus to the Union.

AND WHEREAS all members desire the enforcement, in the most effective, prompt and economical manner of the Basic Agreement between the Fund and the Minister of Finance of the Uniform Agreement of the Multilateral Guarantee Agreement and, after accession of Cyprus to the European Union, the European Union Directives in force from time to time, as well as the observance of the Fund's objects as these appear in its Memorandum of Association and in accordance with its Articles of Association.

NOW THEREFORE IT IS HEREBY AGREED between all parties hereto as follows:

CLAUSE 1 - DEFINITIONS

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

"Law" means the Motor Vehicles (Insurance of third party liability) Law of 2000 or any Law amending or substituting the same and includes any Regulation issued as a result thereof.

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

"Insurance" means insurance against liability required to be insured by the Law effected by or under a policy of insurance, a cover note, correspondence, or any other means, whether or not a policy of Insurance has been issued or a certificate of insurance as required by the Law has been issued and delivered.

"Court judgment" means a judgment obtained in a Court of competent jurisdiction of the Republic of Cyprus.

"Judgment Debtor" means a person against whom a Court judgment has been obtained, in respect of a liability required to be insured by the Law.

"Judgment Creditor" means the person or persons in whose favour such judgment was issued 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 A4 of the Basic 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 liability required to be insured by the Law (including 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 liability required to be insured by the Law, was providing an insurance against such liability in respect of the vehicle arising out of the use of which the liability of the Judgment Debtor was incurred. 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 fact 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 in which

the Judgment Debtor's liability was incurred;

and only ceases so to be concerned -

- (i) when the insurance has been cancelled before the date on which the liability required to be insured by the Law was incurred by agreement of the parties to the insurance or under a power of cancellation contained therein provided that 7 days written notice with registered letter has been sent to his last known address and written proof of such cancellation has been produced to the Fund;
- (ii) when the insurance has ceased to operate by reason of a transfer of interest in the vehicle which the insurance purports to cover and the Insurer has proved to the Fund, by producing all necessary evidence, that such transfer had in fact taken place and provided that the Insurer has not been advised in writing of such transfer;

Provided that, the Insurance does not cease to operate for the purpose of this Agreement if the transfer has been effected:

- from one spouse to the other, or
- from parent to child and vice versa.

- (iii) when before the date on which the liability required to be insured by the Law was incurred, the Insurer has obtained a declaration from a Court of competent jurisdiction that the insurance is void or unenforceable;
- (iv) when the motor vehicle has been used as a hire car (taxi) or as a hire car, hirer driving (Z), or as Commercial Vehicle (General Cartage), contrary to the "Limitations as to use" of the motor vehicle, or has been used for any purpose specifically excluded in the Insurance by express reference in the limitations as to use, provided that such other use is proved by the Insurer.
- (v) when the person against whom a Court judgement has been obtained used the motor vehicle as a result of the use of which the liability against such person arose, following the theft of such vehicle or its taking with violent means from its legal owner.

In case there is no conviction for such theft or taking with violent means, there should be satisfactory evidence from the police why no charges were preferred and that if charges were so preferred, this would most likely lead to the conviction of the suspect for theft or taking with violent means.

- (vi) in any other case, from the date on which the insurance by its terms lapsed.

CLAUSE 2 – LIABILITIES OF INSURERS CONCERNED

- (a) If a Judgment is obtained against any person in respect of liability required to be insured by the Law, the Insurer Concerned will satisfy the original Judgment Creditor if and to the extent that the Judgment has not been satisfied by the Judgment Debtor within forty five

days from the date upon which the person in whose favour it was given is entitled to enforce it.

Provided that in case an appeal is filed then such Insurer's liability to make payment under this paragraph will arise 7 days after Judgment to such an appeal is delivered.

- (b) Where Judgment is obtained in respect of a liability arising out of the use of a vehicle of a particular class which by reason only of a provision in the Law is not required to be insured and there is in fact a Policy purporting to cover 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 liability required to be insured by the Law and a vehicle of the particular class 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.
- (c) Where the Fund is liable or may become liable, by virtue of the Internal Regulations (Uniform Agreement and Multilateral Guarantee Agreement) or any other Agreement which has been signed by the Fund or any European Union Directive, to pay any amount following a submission of a claim to the Fund by a foreign Bureau, and the Fund does pay such amount, the Fund shall have the right to recover this amount, either in accordance with the provisions of the Law, or in accordance with the provisions of this Agreement, from the Insurer who granted or who purported to grant cover in relation to the use of the Insured car as a result of which the liability of the Fund as mentioned above has arisen:

Provided that, the amount that the Fund will be entitled to recover, shall include, apart from the amount of compensation, any legal or other expenses and interest.

The procedure for the payment of the above amounts to the Fund, shall be determined from time to time by the Fund's Council and shall be strictly adhered to by its members.

CLAUSE 3 – “INSURER CONCERNED” IN RELATION TO MOTOR TRADE VEHICLES

For the purposes of this Agreement an Insurer being an Insurer concerned in respect of Motor Trade Road Risks policy covering unspecified vehicles shall in relation to such vehicles and irrespective of the basis of the policy 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;
- (2) in respect of vehicles which are the property of the insured, at all times, unless such vehicles are expressly exempted from the policy or are insured in the name of the Motor Trader with another Insurer.

Where an Insurer Concerned under such a Motor Trade Policy and an Insurer Concerned under a specified vehicle Policy are both involved in circumstances in which neither Insurer is liable under its Policy any claim in respect of a liability required to be Insured by the Compulsory Insurance Legislation shall be handled by agreement between the Insurers Concerned each being liable for one half of the damages and costs.

CLAUSE 4 – PAYMENT BY “INSURER CONCERNED” DISCHARGES THE FUND FROM ITS LIABILITIES UNDER THE BASIC AGREEMENT

All payments made by an Insurer under Clauses 2 and 3 hereof shall be deemed to be made in discharge of the liability of the Fund under the Agreement with the Minister of Finance (Basic Agreement) to make the same.

CLAUSE 5 – LIABILITY OF THE FUND WHERE NO INSURER CONCERNED IS LIABLE

If a Judgment is obtained against any person in respect of a liability required to be insured by the Compulsory Insurance Legislation and none of the Insurers is liable to satisfy the same under Clauses 2 and 3 hereof, the Fund will, after the expiry of forty five days from the date upon which the Judgment Creditor became entitled to enforce such Judgment, itself satisfy the same.

Provided that in case an appeal is filed, then the Fund's liability to make payment under this paragraph shall arise 7 days after written notice of the issue of the judgment of the Appeal Court was given to the Fund.

CLAUSE 6 – RIGHT OF THE FUND TO MEET LIABILITIES OF AN INSURER AND THEN TO SEEK RECOVERY

If in any case it appears to the Council of the Fund expedient the Fund may itself satisfy any Judgment, which under the terms of Clauses 2 and 3 hereof an Insurer is obliged to satisfy and in such case the Fund shall be entitled to recover from such Insurer the sum paid by it.

This provision applies also in cases where the Fund pays any amount in relation to the Fund's liability or the liability of any Insurer incurred by virtue of the Internal Regulations (Multilateral Guarantee Agreement and Uniform Agreement) as well as any other agreement, which the Fund might sign in the future, or any European Union Directive.

CLAUSE 7 – PAYMENT BY THE INSURER DOES NOT ENTITLE HIM TO RECOVER FROM THE FUND

The making of any payment to a third party by an Insurer either under this Agreement or otherwise, shall not entitle such Insurer to any reimbursement in respect thereof from the Fund, unless the consent of the Fund had been secured in writing before the making of such payment.

CLAUSE 8 – LIABILITY OF THE FUND TO MEET THE LIABILITY OF THE UNINSURED ONLY

When judgment is obtained against two or more joint tortfeasors in circumstances under which an Insurer and the Fund could be held jointly liable to meet the judgment, the Fund, shall reimburse the Insurer to the extent of its liability, provided that:

- (a) the liability of each tortfeasor in clearly specified in such Court judgment, and
- (b) the Fund was given the opportunity to take part in any prior negotiations or proceedings.

Provided that in the above case the Fund pays only the part of the legal expenses, which relates to the part of the Court judgment, which relates to its liability.

**CLAUSE 9 – PROCEDURE THAT SHOULD BE FOLLOWED BY AN INSURER
CLAIMING RECOVERY FROM UNINSURED BY VIRTUE OF A RIGHT
OF SUBROGATION**

Where an Insurer pays compensation to his insured in relation to damage to property as a result of his liability arising from his policy and on the basis of the application of the insurance principle of subrogation established under the Common Law, the following procedure shall be followed in such a way so as to guarantee everything agreed with the Minister of Finance which have been incorporated in the Basic Agreement (A3(f)):

- (a) If the insured chooses to be compensated by his Insurer, then the same procedure for making a claim, as envisaged in the Basic Agreement, shall be followed, as if the insured had not been paid and in such a way so as to safeguard the Fund's right to recover from the uninsured or any other person responsible, any amount that the Fund will be asked to pay.
- (b) The Fund does not incur liability to pay any amount greater than the amount that it would have been liable to pay on the basis of the Basic Agreement or the Law. For this purpose the Fund shall be entitled to invoke any defences, exemptions or conditions that would have existed under other circumstances.
- (c) The Fund shall treat persons claiming on behalf of an Insurer in the same way as if they were not compensated and for this purpose it should be clearly explained to such persons that upon payment to them of their compensation by their Insurer, they undertake:
 - (i) to give regular notice to the Fund both for the inspection of the damage, as well as for the bringing of the legal action (Basic Agreement A4(a) and (b));
 - (ii) to complete a claim form, as well as any other form required by the Fund;
 - (iii) to submit any documents or particulars required by the Fund which are considered as reasonably necessary for the investigation of the claim;
 - (iv) if they are so asked by the Fund, to proceed to the taking of legal steps against any person responsible;
 - (v) upon collection of the compensation from the Fund, to return the same to their Insurer in return for the necessary discharge;
 - (vi) to render to the Fund any necessary assistance for the recovery of the amount to be paid.

CLAUSE 10 – FINANCING OF THE FUND – SURCHARGE AND PROCEDURE FOR ITS COLLECTION

For the purpose of financing the Fund, the Insurers shall collect the surcharge to be fixed from time to time by the Minister of Finance under the provisions of the Basic Agreement. Commissions or discounts shall not be deducted from such surcharge and the members of the Fund shall pay to the Fund quarterly all sums collected by them for this purpose.

Any Insurer who fails to pay the amounts collected, as described above, within two calendar months from the end of each quarter shall be liable to pay to the Fund interest at a rate of 8% on the amount due.

The Fund's Council may, at any time after the expiry of this period, proceed to the taking of any measures they think necessary for the collection of the amount due, plus interest on this amount.

If during any year the amounts collected by the Fund are considered as insufficient for the covering of its liabilities envisaged under the Basic Agreement, with the exceptions of liabilities arising from the insolvency of an Insurer, the Fund has the right to ask from time to time the Insurers to contribute and to pay rateably between them such sum or sums considered necessary for this purpose, in accordance with the method envisaged under the Fund's Constitution.

Any such sum or sums paid shall be taken into account during next revision and shall be refunded to the Insurers the soonest practicable.

Subject to the above provisions, for the purpose of the carrying out and furthering of the Fund's objects set forth in the Fund's Articles of Association, the Fund may from time to time call upon Insurers to contribute and pay rateably between them such sum or sums that might be considered necessary for this purpose, in the manner provided under the Fund's Articles of Association.

CLAUSE 11 – PAYMENT OF AMOUNTS AND GIVING INFORMATION TO THE FUND – DUTY TO CO-OPERATE WITH THE FUND

Each Insurer undertakes and binds himself to the Fund and severally to each of the other Insurers promptly to make any payment which is demanded of him under Clauses 7 and 11 hereof and at all times to furnish the Council or the Secretary of the Fund such particulars of his premium income as it may require.

Each Insurer further undertakes to co-operate fully with the Fund and its officers and to render to them every possible assistance in investigating claims against the Fund, making available to them all documents, information and evidence considered necessary for the discharge of the Fund's obligations.

In addition, every Insurer, where he receives notice in relation to a claim falling to be dealt with by the Fund and which such Insurer believes that, for any reason, he is not responsible to meet, either under the provisions of the Law or those of this Agreement, undertakes to notify the Fund, as well as the claimant, of its intentions, the soonest possible and in any case not later than 15 days from receiving such notice.

CLAUSE 12 – DISPUTES BETWEEN FUND AND INSURERS - ARBITRATION

All disputes or differences whatsoever which shall at any time hereafter whether during the continuance in effect of this agreement or upon or after its discharge or determination arise between the Fund and one or more of the Insurers touching or concerning this Agreement or its construction or effect or as to any other matter in any way connected with or arising out of or in relation to the subject matter of this Agreement, which dispute or difference cannot be settled by agreement, shall be referred to a single arbitrator to be agreed upon by the Fund and the Insurer or Insurers involved in the dispute or difference, or in default of agreement, to be nominated by the President of the District Court of Nicosia for the time being in accordance with and subject to the provisions of the Arbitration Law, Cap. 4 or any statutory modification or re-enactment thereof for the time being in force and the award of such arbitrator whether appointed by agreement or by the President of the District Court of Nicosia as aforesaid, shall be final and binding on the parties.

CLAUSE 13 – DISPUTES BETWEEN INSURERS - ARBITRATION

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 of the Fund and his decision shall be final and binding on all the parties. For the purpose of avoiding such disputes and facilitating their settlement the parties hereto agree that all questions or 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 the parties hereto.

CLAUSE 14 – PROCEDURE FOR THE PAYMENT OF CLAIMS SUBMITTED TO ARBITRATION

In case a judgment is issued either before the dispute or difference is referred to Arbitration by virtue of the provisions of clauses 12 or 13 of this Agreement or during such Arbitration proceedings, such judgment shall be paid by the parties to the dispute after the expiry of the 45 day period, each party paying an equal proportion of the amount awarded by the Court.

An adjustment will be made within 7 days after the issue of the Arbitrator's Award, in such a way, so that the Arbitrator's Award will be fully satisfied. The amount to be finally repaid from the one party to the other will carry interest estimated at the rate of 8%, for the period starting from the actual payment to the judgment creditor until the actual repayment to the successful party.

The above shall also apply mutatis mutandis in case any amount is paid to a claimant by agreement of the parties, before a judgment is issued.

CLAUSE 15 – SIGNATURE OF THIS AGREEMENT IS CONSIDERED AS 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 Fund if application and registration has not already been made

and shall take effect from the date the Insurer is granted licence or permission to transact motor insurance business.

CLAUSE 16 – WITHDRAWAL OF MEMBERS AND LIABILITIES UNDER THIS AGREEMENT

Every Insurer shall remain a member of the Fund until he ceases to be such in terms of Article 4 of the Articles of Association of the Fund 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 Fund.

CLAUSE 17 – THE RIGHTS OF INSURERS FOR COMPENSATION OR CONTRIBUTION FROM OTHER INSURERS ARE NOT AFFECTED

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 or cession 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.

CLAUSE 18 – TRANSITIONAL PROVISIONS

This Agreement shall apply and be binding on signatories only as regards causes of action, which have arisen on or after the 7th July 2000.

The Internal Agreement dated 6th March 1969 (as amended) shall remain in force for any liability, which the said Agreement purported to cover and which was incurred prior to the 1st January 1992. Similarly the Internal Agreement dated 1st January 1992 shall remain in force for any liability which the said Agreement purported to cover and which was incurred between 1st January 1992 and 30th September 1995, both dates included. The Internal Agreement dated 1st October 1995 shall remain in force for any liability which this Agreement purports to cover and which has arisen between the 1st October 1995 and the 6th July 2000.

Notwithstanding the provisions of this clause and irrespective of the provisions of the Law, as regards accidents occurring between the 7th July 2000 and the 26th March 2001, the provisions of the Internal Agreement dated 1st October 1995 shall be binding.

Following a resolution reached during the Extraordinary General Meeting of members which was held on the 6th July 2007, this Agreement shall be interpreted on the basis of the provisions of the Basic Agreement dated 29th October 2007, which was implemented with retroactive effect as from the 22nd June 2007.