

## **1988 Agreement**

Text of an Agreement dated 21st December, 1988, between the Minister for the Environment and the Motor Insurers' Bureau of Ireland, extending, with effect from dates specified in the Agreement, the scope of the Bureau's liability, with certain exceptions, for compensation for victims of road accidents involving uninsured or stolen vehicles and unidentified or untraced drivers to the full range of compulsory insurance in respect of injury to person and damage to property under the Road Traffic Act, 1961.

MEMORANDUM OF AGREEMENT made the 21st day of December, 1988 between the MINISTER FOR THE ENVIRONMENT (hereinafter referred to as "the Minister") of the one part and MOTOR INSURERS' BUREAU OF IRELAND whose registered office is at 3/4 South Frederick Street in the city of Dublin of the other part SUPPLEMENTAL to an Agreement (hereinafter called "the Principal Agreement") made the 10th day of March, 1955 between the Minister for Local Government of the one part and Those Insurers Granting Compulsory Motor Vehicle Insurance in Ireland by or on behalf of whom the said Agreement was signed (thereinafter and hereinafter referred to as "the Insurers") of the other part,

WHEREAS in pursuance of the undertaking given by the Insurers in paragraph 1 of the Principal Agreement a Company stands incorporated under the Companies Act, 1963 with the name of Motor Insurers' Bureau of Ireland (being a party to these presents and hereinafter referred to as "M.I.B. of I.");

AND WHEREAS a memorandum of Agreement (hereinafter referred to as "the Agreement of 1955") was made between the Minister and M.I.B. of I. on the 30th day of November, 1955:

AND WHEREAS the Agreement of 1955 was amended by an Addendum thereto made between the Minister and M.I.B. of I. on the 12th day of March 1962:

AND WHEREAS a memorandum of Agreement (hereinafter referred to as "the Agreement of 1964") was made between the Minister and M.I.B. of I. on the 30th day of December, 1964:

AND WHEREAS the Agreement of 1955 was determined by the Agreement of 1964:

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

### Determination of Agreement of 1964

1. The Agreement of 1964 is hereby determined but without prejudice to the continued operation of the said Agreement in respect of accidents occurring before the 31st day of December, 1988.

### Enforcement of the Agreement

2. M.I.B. of I. hereby agrees that a person claiming compensation (hereinafter referred Agreement to as "the claimant") may seek to enforce the provisions of this Agreement by-

(1) making a claim to M.I.B. of I. for compensation which may be settled with or without admission of liability, or

(2) citing as co-defendants M.I.B. of I. in any proceedings against the owner or user of the vehicle giving rise to the claim except where the owner and user of the vehicle remain unidentified or untraced, or

(3) citing M.I.B. of I. as sole defendant where the claimant is seeking a court order for the performance of the Agreement by M.I. B. of I. provided the claimant has first applied for compensation to M.I.B. of I. under Sub-clause (1) of this Clause, and has either been refused compensation by M.I.B. of I. or has been offered compensation by M.I.B. of I. which the claimant considers to be inadequate.

#### Conditions Precedent to M.I.B.. of I.'s Liability

3. The following shall be conditions precedent to M.I.B. of I.'s liability:

(1) The claimant or the claimant's legal representative shall have given notice in writing, by registered post, of intention to seek compensation:

(a) in respect of personal injuries or death not later than three years from the date of the accident giving rise to the personal injuries or death;

(b) in respect of damage to property not later than one year from the date of the accident giving rise to the damage to property.

(2) The claimant shall furnish M.I.B. of I. with all material information reasonably required in relation to the processing of the compensation claim including information relating to the relevant accident, personal injuries or death, medical treatment, funeral expenses, damage to property, and legal, professional or other costs reasonably incurred by or on behalf of the claimant.

(3) The claimant shall furnish M.I.B. of I. with copies of all relevant documentation in relation to the accident and any subsequent legal proceedings relating thereto, including copies of all correspondence, statements and pleadings.

(4) The claimant shall endeavour to establish if an approved policy of insurance covering the use, in a public place, of any vehicle involved in the accident exists by demanding or arranging for the claimant's legal representative to demand, insurance particulars (including policy number if available) of the user or owner of the vehicle in accordance with the provisions of section 73 of the Act.

(5) The claimant shall furnish M.I.B. of I. with details of any claim of which the claimant is aware made in respect of the damage to property arising from the accident under any policy of insurance or otherwise and any report made of which the claimant is aware or

notification given to any person in respect of that damage or the use of the vehicle giving rise thereto, as M.I.B. of I. may reasonably require.

(6) Notice of proceedings shall be given by the claimant by registered post before commencement of such proceedings:-

(i) to the insurer in any case in which there was in force at the time the accident occurred an approved policy of insurance purporting to cover the use of the vehicle and the existence of which is known before the commencement of proceedings to the person bringing same;

(ii) to M.I.B. of I. in any other case.

(7) If so required by M.I.B. of I. and subject to full indemnity from M.I.B. of I. as to reasonable costs, the person bringing the proceedings (hereinafter called the Plaintiff) shall have taken or shall take all reasonable steps against any person against whom the Plaintiff might have a remedy in respect of or arising out of the injury or death or damage to property provided that any dispute as to the reasonableness of a requirement by M.I.B. of I. that any particular step should be taken to obtain judgment against any such person shall be referred to the Minister whose decision shall be final.

(8) The judgment or judgments (including such judgments as may be obtained under Sub-clause (7) of this Clause) shall be assigned to M.I.B. of I. or its nominee.

(9) The Plaintiff shall give credit to M.I.B. of I. for any amounts paid to him by or on behalf of the defendant in respect of any liability for injury to person or property arising out of the event which occasioned the claim against M.I.B. of I.

#### Satisfaction of Judgements by M.I.B. of I.

4. (1) Subject to the provisions of Sub-clause (2) of this Clause, if judgment in respect of any liability for injury to person or damage to property which is required to be covered by an approved policy of insurance under Section 56 of the Act is obtained against any person or persons in any court established under the Courts (Establishment and Constitution) Act, 1961 (No.38 of 1961) whether or not such person or persons be in fact covered by an approved policy of insurance and any such judgment is not satisfied in full within 28 days from the date upon which the person or persons in whose favour such judgment is given become entitled to enforce it then M.I.B. of I. will so far as such judgment relates to injury to person or damage to property and subject to the provisions of these presents pay or cause to be paid to the person or persons in whose favour such judgment was given any sum payable or remaining payable thereunder in respect of the aforesaid liability including taxed costs (or such proportion thereof as is attributable to the relevant liability) or satisfy or cause to be satisfied such judgment whatever may be the cause of the failure of the judgment debtor to satisfy the same.

(2) Where a person has received benefit or compensation from any source in respect of damage to property, M.I.B. of I. may deduct from the sum payable or remaining payable under Sub-clause (1) of this Clause an amount equal to the amount of that benefit or compensation in addition to the deduction of any amounts by virtue of Sub-clauses (4) or (5) of Clause 7.

(3) Where a person applies to the M.I.B. of I. for compensation and no judgment has been obtained or is obtainable, M.I.B. of I. shall, as soon as is reasonably practicable, give a decision on the application and shall give reasons for the decision.

(4) Where M.I.B. of I. and the claimant agree an amount in respect of compensation, M.I.B. of I. shall pay such amount to the claimant within 28 days of such agreement being reached.

#### Exclusion of certain user and passenger claims

5. (1) Where at the time of an accident, the vehicle had been stolen or obtained by violence or threats of violence or used or taken possession of without the consent of the owner of the vehicle or other lawful authority, the liability of M.I.B. of I. shall not extend to any judgment or claim in respect of injury, death or damage to property sustained while the person injured or killed or the owner of the property damaged was the person or one of the persons who stole or obtained by violence or threats of violence the vehicle or who was in or on such vehicle in collusion with such person or persons, or knew it was stolen, taken by violence or threats of violence or without the consent of the owner.

(2) Where at the time of the accident the person injured or killed or who sustained damage to property knew, or ought reasonably to have known, that there was not in force an approved policy of insurance in respect of the use of the vehicle, the liability of M.I.B. of I. shall not extend to any judgment or claim either in respect of injury or death of such person while the person injured or killed was by his consent in or on such vehicle or in respect of damage to property while the owner of the property was by his consent in or on the vehicle or the property was in or on the vehicle with the consent of the owner of the property.

(3) Where a vehicle, the use of which is not covered by an approved policy of insurance, collides with another vehicle and the use of that other vehicle is also not covered by an approved policy of insurance, the liability of M.I.B. of I. shall not extend to any judgment or claim in respect of injury, death or damage to the property of the user of either vehicle.

#### Unidentified or untraced vehicle owner or user

6. In the case of an accident occurring on or after the 31st day of December, 1988, the liability of M.I.B. of I. shall extend to the payment of compensation for the personal injury or death of any person caused by the negligent driving of a vehicle in a public place, where the owner or user of the vehicle remains unidentified or untraced.

#### Damage to Property

7. (1) The provisions of this Agreement extending the liability of M.I.B. of I. to damage to property shall apply only to an accident occurring on or after the 31st day of December, 1992.

(2) The liability of M.I.B. of I. for damage to property shall not extend to damage caused by a vehicle the owner or user of which remains unidentified or untraced.

(3) The liability of M.I.B. of I. for damage to property shall not exceed the minimum property damage cover required by section 56(2)(a) of the Act applying at the time of the event giving rise to the claim.

(4) In the case of an accident occurring on or after the 31st day of December, 1992 and before the 31st day of December, 1995, the liability of M.I.B. of I. shall not extend to the first £1,150 (€1,460) of damage to property suffered by any one property owner.

(5) In the case of an accident occurring on or after the 31st day of December, 1995 the liability of M.I.B. of I. shall not extend to:

(a) the first £175 (€222) of damage to property suffered by any one property owner due to the negligent use of a vehicle stolen or obtained by violence or threats of violence or used or taken possession of without the consent of the owner of the vehicle or other lawful authority;

(b) subject to the provisions of the foregoing paragraph, the first £350 (€444) of damage to property suffered by any one property owner due to the negligent use of a vehicle, the use of which is not covered by an approved policy of insurance.

#### Period of Agreement

8. This Agreement shall be determinable by the Minister at any time or by M.I.B. of I. on two years' notice, without prejudice to the continued operation of the Agreement in respect of accidents occurring before the date of termination.

#### Recoveries

9. Nothing in this Agreement shall prevent any vehicle insurer from providing by conditions in its contracts of insurance or by collateral agreements that all sums paid by it on behalf of M.I.B. of I. or by M.I.B. of I. by virtue of the Principal Agreement or of these presents in or towards the discharge of the liability of its policyholders shall be recoverable by it or by M.I.B. of I. from the policyholder or from any other person.

#### Offers in Satisfaction

10. When notice of proceedings has been given under Clause 3 it shall be competent for M.I.B. of I. not later than fourteen days after the closing of the pleadings to offer to the Plaintiff in full satisfaction of the obligation of M.I.B. of I. such sum as it considers sufficient in respect of damages together with the equivalent of the taxed costs to date and if in that action the Plaintiff

is awarded in respect of damages a sum (exclusive of any amounts for which M.I.B. of I. would not be liable under this Agreement) which is not more than the sum offered under this Clause (exclusive of the sum for such taxed costs) then in satisfaction of this Agreement M.I.B. of I. shall not be required to pay more than the total of such damages awarded less any amounts for which it would not be liable under this Agreement and the sum offered in respect of costs and shall be entitled to set off any costs incurred by them after the date of the offer. M.I.B. of I. reserves the right to vary the amount offered in satisfaction.

#### State Vehicles and Exempted Persons

11. (a) M.I.B. of I.'s acceptance of liability in respect of vehicles the use of which is required to be covered by an approved policy of insurance shall extend to vehicles owned by or in possession of the State or of an "exempted person" as defined in section 60 of the Act only so long as there is in force an approved policy of insurance purporting to cover the use of the vehicle.

(b) For the purpose of this clause a vehicle which has been unlawfully removed from the possession of the State or from an "exempted person" shall be taken to continue in that possession whilst it is so removed.

#### Domestic Agreement

12. The Agreement entered into between M.I.B. of I. and the insurers of even date with the Agreement of 1955 and referred to in the Agreement of 1955 as "the Domestic Agreement" or any subsequent or amended agreement made in renewal or replacement of the said Domestic Agreement shall not discharge M.I.B. of I. from its liabilities or obligations under these presents.

#### Operation

13. This Agreement shall come into operation on the 31st day of December, 1988 in respect of claims arising out of the use of a vehicle in a public place on or after that date.

#### Definitions

14. In this Agreement, "the Act" means the Road Traffic Act, 1961 (No.24 of 1961): "Injury to person" does not include any injury by way of loss of services of the person injured.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals on the day and year first herein written.

GIVEN under the Official Seal of the Minister for the Environment in the presence of:-

ALICE MULLEN

MICHAEL I. MURPHY Civil Servants, Custom House, Dublin.

PADRAIG FLYNN Minister for the Environment

Present when the Common Seal of the Motor Insurers' Bureau of Ireland was affixed hereto:-

N.S. MULVIN Chairman

Q I. DOOLIN Council Member

JAMES V. DOYLE Council Member