THE MOTOR INSURERS' BUREAU OF SINGAPORE

WHAT IS AN MIB AND WHAT IS ITS ROLE?

To appreciate this it will be useful to take a look at the first Motor Insurers' Bureau (MIB) which was established in Great Britain in 1946. This became the model for Hong Kong, Malaysia and Singapore when these countries decided to establish their MIB. The reason is simple — these countries have basically the same laws and same legal systems as the British, one being a British colony and the others being former British territories who had imported and retained the laws and systems of the British when they became independent countries.

The MIB as first established in Great Britain and still in operation was set up as a central fund financed by all motor insurers to make compensation to road traffic accident victims who for some reason were unable to recover such compensation from any other source. Thus, the MIB is a social scheme set up for the benefit of the general population some of whom might be unfortunate to fall victim to traffic accidents and were unable to obtain compensation.

I AN OVERVIEW OF THE ORIGIN AND SCOPE OF THE BRITISH MIB

Compulsory third party motor insurance was introduced in Great Britain under the Road Traffic Act, 1930. By this law all motor vehicle owners/drivers (except vehicles owned by the Crown) must obtain insurance to cover their liability for personal injury or death caused to a third party arising out of the use of the motor vehicle. Their liability to a third party is based on the English common law system of tort liability. Simply stated, this means that if a motor vehicle owner/driver commits an act of negligence resulting in death/bodily injury to a third party, he is liable to pay compensation to the third party according to the degree of negligence. The motor insurer who insured the owner/driver is then called upon to pay the compensation on behalf of the insured. While this compulsory insurance law went a long way to ensure that victims can recover damages awarded to them by the courts, there remained many instances where the victims were unable to obtain compensation. These instances were:–

(a) where there is no insurance cover in existence at the time of accident;

(b) where there is an insurance policy but the cover is ineffective for various reasons, such as, the vehicle being used outside the scope of the policy coverage, breach of condition, unauthorised driver, etc.; and

(c) where the driver could not be traced — a "hit and run" case.

Such cases would fall within the ambit of the MIB and the victims would be compensated by the MIB.

In addition to these, the MIB would also meet any judgement which was not satisfied because the insurer concerned had become insolvent.

The first Agreement which was signed in 1946 did not include "untraced drivers" or "hit and run" claims but the MIB gave sympathetic consideration to such cases. It was only in 1969 that this was formally incorporated into the Agreement.

(A) How does the MIB operate?

The MIB is a corporation registered under the Companies Act and all insurers transacting compulsory motor vehicle insurance were required to be members of this Corporation.

The MIB as a corporate body then entered into an agreement called the **Principal Agreement** with the Minister of Transport, the obligations of which are essentially to satisfy any judgement which is not satisfied by any insurer and to pay compensation to victims of untraced drivers.

Simultaneous to signing the Principal Agreement, all members sign an agreement called the **Domestic Agreement** with the MIB, the underlying purpose of which can be better understood by the following explanation:–

(B) Underlying Purpose of the Domestic Agreement

Under the terms of the Principal Agreement, MIB is required to meet unsatisfied judgements in respect of liabilities imposed by the statute prescribing compulsory third party motor insurance, i.e., Act liabilities. Where there is no insurance the claim is obviously one for the Central Fund but different practical considerations apply where there is an insurer who for one reason or another would have been entitled in law to refuse an indemnity in respect of a claim.

In theory there is no distinction between the two categories referred to above, and technically both give rise to MIB claims. All payments under the Principal Agreement have to be financed by MIB members in one way or another and it is merely a question of how the burden is distributed. The Domestic Agreement introduced the concept of the insurer concerned. The insurer concerned concept is a practical measure designed to further administrative convenience and to save cost. It operates by reference to the "swings and roundabouts" principle and relieves the Central Fund of handling and settling claims within the Principal Agreement in those instances where a member is providing "insurance" according to the wide definition prescribed by the Domestic Agreement.

Under the Domestic Agreement, the term "Insurance" is given a very wide meaning, going beyond any contractually valid situation in law and embracing contracts which could legally be void or voidable from their outset at the instance of the insurer. Under the Domestic Agreement, the insurer who insured the use of the motor vehicle in question will, as the insurer concerned, handle and settle the claim made by a third party.

(C) To Sum up the Operation of the MIB

Where there is a policy — It will not be necessary for the victim to take any special steps to secure himself the benefit of the scheme, even though the insurers concerned may be in a position to repudiate liability under their policy for the reason that its conditions have been breached or it was obtained by improper methods or that due notice of claim has not been given. Insurers agree to regard their policies as effective so far as road victims are concerned although this is without prejudice to any rights they may have against their policyholders.

Where there is no policy — In cases where there is no policy, the victim or those acting on his behalf must notify the Bureau of the claim. It is a condition of the Bureau's liability that it should receive notification before or within 21 days after the commencement of proceedings against the alleged tort-feasor.

Funding of the MIB — The MIB operates through a Central Fund. All authorised motor insurers contribute to this Fund via a levy which is based on the annual premium income of the insurer.

(D) Management and Claims Administration

These are entrusted to a Council consisting of representatives drawn from among the members (motor insurers).

II MIB OF SINGAPORE (MIBS)

The scope of the Singapore MIB is exactly the same as the British MIB before legislation in United Kingdom made insurance compulsory for liability for damage to third party property. As a consequence of this the British MIB now covers damage to third party property caused by uninsured vehicles or untraced drivers.

Compulsory third party insurance was introduced in Singapore in 1938 and it was not until January 1975 that the MIBS was established. Like its British counterpart the MIBS is a Corporation registered under the Companies Act and all insurers transacting motor vehicle insurance are required to be members of the Corporation.

The Principal Agreement signed by MIBS and the Singapore government represented by the Minister for Finance, and the Domestic Agreement signed by all insurers *inter-se* are the same as those of the original British agreements.

The affairs of the MIBS are administered by a Council consisting of representatives drawn from among the members as well as from public authorities like the Insurance Department of the Monetary Authority of Singapore, the Land Transport Authority and the Public Trustee. A representative from the Traffic Police is also invited to MIBS's Council meetings to offer assistance to the MIBS in its deliberations on claims matters. The presence of the representative from the Traffic Police has been very helpful to the MIBS especially on "hit and run" cases in determining whether a case is genuine or otherwise as it is easy to allege but almost impossible to disprove in the absence of eye witnesses or other evidence. Investigations carried out by the Traffic Police do sometimes throw light or cast doubts on the genuineness or otherwise of an alleged "hit and run" case.

As with the British MIB, the MIBS operates through a Central Fund. All authorised motor insurers contribute to this Fund through a levy based on the annual motor premium income of the insurer.

From the inception of the MIBS in 1975 up to December 1997, the MIBS disbursed a total of $13.98 million involving 558 claims with 56 outstanding claims estimated at $7.40 million. The majority of the claims were in respect of untraced motorists and only 38 claims involved uninsured motorists. In addition to claims disbursed directly by the MIBS, the insurers concerned disbursed $6.95 million over the last 22 years and made provisions of $1.47 million for outstanding claims.

(A) Insolvency of Insurers Covered by MIBS

Under the terms of the Principal Agreement with the Minister for Finance, the MIBS undertakes to satisfy any judgement for bodily injury obtained in a Singapore court by a claimant if the Insurer concerned fails to satisfy the judgement within 28 days of the judgement having been obtained. Where the insurer concerned is unable to pay the third party because of the insurer's insolvency, MIBS will satisfy the judgement obtained by the third party.

Some years ago a Malaysian insurance company was declared insolvent and was put into liquidation. There was a large number of claims lodged in the Singapore courts arising from accidents in Singapore caused by the use of motor vehicles insured by the Malaysian insurance company. MIBS had to satisfy all the judgements amounting to S$1.42 million. There are some claims which have yet to be resolved. Critics may point out that it seems unfair that Singapore insurers should be made to bear the financial burden of an insolvent foreign insurance company.

While this criticism is not unjustified if viewed strictly from a commercial standpoint, there is, however, a different dimension when viewed against the central objective of creating the MIB, which is to protect the interest of every innocent road accident victim in Singapore regardless of the domicile of the insurer and/or the vehicle owner/driver.

(B) Theft of Motor Vehicles — Unauthorised Driver

One of the early problems encountered by the MIBS in determining whether a claim has to be met by an insurer concerned was in respect of the theft of a motor vehicle where the thief knocked down someone and disappeared from the scene. Interpreting the law strictly, the incident would be regarded as a criminal act. There was doubt as to whether the insurer concerned would have to meet such a claim as it would appear that under the terms of the Principal Agreement and Domestic Agreement there is no provision for such a claim to be met by the insurer concerned. However, by a mutual agreement between the MIBS and the insurers, the latter agreed that they would not deny meeting any claim from victims arising out of the driving of a motor vehicle by a thief. Thus, the spirit rather than the letter of the Principal Agreement and the Domestic Agreement was brought to bear so that innocent victims would not be deprived of compensation.

III RECIPROCAL ARRANGEMENT BETWEEN MIB WEST MALAYSIA AND MIB SINGAPORE

The MIB of West Malaysia was established in 1968, seven years before Singapore's MIB. Like all other MIB's, the central purpose and scope of MIB West Malaysia (Malaysian MIB) are similar except that the Malaysian MIB does not cover "hit and run" cases and insolvency of insurers. Upon its establishment the Malaysian MIB approached insurers in Singapore who were not registered to transact insurance business in Malaysia to individually enter into a Special Agreement (see Appendix I) with Malaysian MIB. This Special Agreement consists of an undertaking given by the Singapore insurer to the Malaysian MIB. Under the Special Agreement, a Singapore insurer agrees that if the Malaysian MIB has to pay any claim arising from the negligent use of a Singapore registered motor vehicle in West Malaysia, the Singapore insurer of the vehicle would reimburse the Malaysian MIB and agree to be bound by the Articles of Association of the Malaysian MIB and the Principal Agreement entered into between the Malaysian MIB and the Malaysian Minister of Transport.

A similar Special Agreement was entered into between Malaysian insurers who were not registered in Singapore and the MIBS when the MIBS was established in 1975.

Every new authorised motor insurer in Singapore and West Malaysia is obliged to sign the Special Agreement with MIBS or the Malaysian MIB, as the case may be.

In cases where Singapore registered motor vehicles entering West Malaysia do not have any insurance cover at all, the Malaysian MIB will have to meet any judgement which is unsatisfied by the tortfeasor. As for motor vehicles registered in West Malaysia entering Singapore without any insurance cover at all, the MIBS will have to meet any judgement that is unsatisfied by the tortfeasor.

Why is this Special Agreement Necessary?

Before the political separation of Singapore from Malaysia in 1965, insurers in Singapore and Malaysia were deemed 'approved' insurers in each other's territory. As a normal practice, insurers on both sides of the Causeway issued policies covering both territories.

After Singapore became an independent country the legal position changed in that insurers in Singapore not registered in Malaysia were not 'approved' insurers and legally could not issue policies covering the use of motor vehicles on Malaysian soil. The same legal position applied to Malaysian insurers covering motor vehicles coming into Singapore.

Whether or not both the Singapore and Malaysian authorities took cognizance of this legal impediment at that time is unclear but the fact remains that insurers in both territories continued to issue policies covering both territories up to this day with impunity. On the other hand, if the law had been applied it would have meant that the free flow of traffic between the two territories would have been impeded if not stopped completely.

As both insurers in Malaysia and Singapore were insuring motor vehicles going into each other's territory, in a sense illegally, it was felt, and rightly so, that they should be subscribers to the respective MIBs as otherwise the MIBs could be paying claims of the insurers concerned without recourse to the insurers.

The value of this arrangement was well demonstrated in one instance where a Malaysian insurance company refused to satisfy a judgement against them obtained in a Singapore court on the ground that the insurance policy issued by it did not cover that liability. The claimant who had obtained judgement against the tortfeasor then turned to MIBS to satisfy the judgement, which the MIBS was obliged to do under the terms of the Principal Agreement. MIBS then sought recovery from the Malaysian insurer concerned (i.e., the Malaysian insurance company) under the terms of the Special Agreement. After protracted arguments the Malaysian insurer concerned reimbursed MIBS for the full amount of the claim, with the assistance of Malaysian MIB.

The issue of insurers on both sides issuing policies to cover vehicles in each other's territory when they are not legally authorised to do so is being addressed by the respective governments in consultation with one another. A change or an amendment to the relevant law to regularise what is now an anomaly could be forthcoming soon.

IV DIFFERENCE IN LAW REQUIRING COMPULSORY THIRD PARTY INSURANCE BETWEEN SINGAPORE AND MALAYSIA

Until 1981, the law governing compulsory third party insurance between Singapore and Malaysia were identical. However, in 1981, Singapore amended the Motor Vehicles (Third-Party Risks and Compensation) Act to make it compulsory for private vehicle owners to insure liability to passengers carried in or on the vehicle. Malaysia did not make a similar amendment. This difference in law has thus created some problems involving claims by passengers.

Firstly, in the case of Singapore registered vehicles going into Malaysia, the question raised was: are passengers covered and protected by the Motor Vehicles (Third-Party Risks and Compensation) Act (the Singapore statute) or would the Malaysian Road Transport Act 1987 (the Malaysian statute) apply? In a recent case;[1] the Singapore High Court ruled that the Singapore statute applied and that the insurer had to satisfy the judgement despite their repudiation of liability on various grounds. The matter went before a Court of Appeal, which reversed the decision of the court below and ruled that the Singapore statute did not extend to Malaysia.

Secondly, in the case of a Malaysian registered vehicle coming into Singapore, Malaysian insurers may not have provided cover for passenger liability, although the Singapore statute is cited in their insurance policy. This was the position with the case mentioned earlier where the Malaysian insurance company refused to meet the claim of the third party on the ground that the Malaysian insurance policy did not cover passenger liability.

These issues have a bearing on the operation of MIBS.

In the first case, had the Court of Appeal not reversed the decision of the court below, the insurer would have to satisfy the judgement within 28 days and if they failed to do so, MIBS would have to satisfy the judgement and seek recovery from the insurer. With the Court of Appeal's decision, the insurer concerned was not obliged to satisfy the judgement as it was not a claim covered by the Singapore statute. MIBS was also not obliged to satisfy the judgement on similar consideration.

1 *Nippon Fire & Marine Insurance Co Ltd* v *Sim Jin Hwee* [1998] 2 SLR 806.

In the second case, although MIBS was successful in obtaining recovery from the Malaysian insurer concerned under the terms of the Special Agreement, the question remains whether Malaysian insurers are liable under the Singapore statute when such cover is not granted under their insurance policy. If the answer is 'no' then MIBS would be placed in a very invidious position of having to satisfy any and every such claim and then seek to recover from the Malaysian insurer concerned under the terms of the Special Agreement.

Singapore has amended the Motor Vehicles (Third-Party Risks and Compensation) Act, in the light of the Court of Appeal's decision, to extend the statutory protection to passengers in Singapore vehicles going into Malaysia.

Whether Malaysia will bring its compulsory third party insurance law in line with Singapore is left to be seen but so long as the laws are not harmonised, difficulties will continue to be encountered in the area of claims involving Malaysian vehicles coming into Singapore.

V MAKING A CLAIM AGAINST MIBS

The procedure is relatively simple. The claimant, usually through his lawyer, makes an application in the prescribed form to the MIBS Secretariat together with medical reports and other relevant documents and stating the amount of compensation demanded. The Council of the MIBS will study the claim and decide whether to meet the claim in full or in part or to reject it totally, taking all factors into consideration. The Council may appoint investigators to investigate into the circumstances of the accident, the nature and seriousness of the applicant's injury, his monthly earnings, etc. before making its award, including legal costs. Where the MIBS has made a final award and the applicant is aggrieved by the amount awarded, an appeal may be made to the Minister for Finance whose decision is final, as provided under the terms of the Principal Agreement.

Criticisms have been levelled against the MIBS by the press sometime ago that applicants could not make applications directly to the MIBS and had to be represented by lawyers. This is far from the truth. Applicants can apply directly to the MIBS but by doing so, the applicant may be greatly disadvantaged as without legal advice he may not be in a position to know if the compensation awarded is fair. Since the award would usually include the applicant's legal costs, there is no good reason why an applicant should deprive himself of legal representation.

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