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MOTOR VEHICLE INSURANCE (THIRD PARTY RISKS) LAW

(2007 Revision)

Law 12 of 1990 consolidated with Laws 7 of 1991, 36 of 2003 and 7 of 2006.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 12 of 1990-18th July, 1990
Law 7 of 1991-8th March, 1991
Law 36 of 2003-16th December, 2003
Law 7 of 2006-23rd March, 2006.

Consolidated and revised this 19th day of June, 2007.

Note (not forming part of the Law): This revision replaces the 2006 Revision which should now be discarded.

MOTOR VEHICLE INSURANCE (THIRD PARTY RISKS) LAW

(2007 Revision)

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MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) LAW

(2007 Revision)

1. This Law may be cited as the Motor Vehicle Insurance (Third Party Risks) (2007 Revision). Short title
2. (1) In this Law- Definitions and interpretation
- “driver” includes any person driving or in control of a motor vehicle;
- “insurer” means the holder of a Class “A” licence, granted under section 4 of the Insurance Law (2007 Revision), to carry on “general business” as defined in section 2 of that law; 2007 Revision
- “liability to the third party”, in relation to a person insured under any contract of insurance shall not include any liability of that person in the capacity of the insurer under some other contract of insurance;
- “motor vehicle” means any mechanically propelled vehicle intended or adapted for use on roads and includes agricultural or earth moving vehicles, motor cycles, scooters, wheeled trailers and autowheels;
- “owner” in relation to a motor vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement;
- “policy of insurance” includes a certificate of insurance or cover note; and
- “road” has the meaning assigned to it in section 2 of the Traffic Law (2003 Revision). 2003 Revision
- (2) In this Law, reference to a certificate of insurance in any provision relating to the surrender or the loss or destruction of a certificate of insurance shall, in relation to policies under which more than one certificate is issued, be construed as reference to all the certificates and shall, where any copy has been issued of any certificate be construed as including a reference to that copy.
3. (1) Subject to this Law, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road, unless there is in force, in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third party risks as complies with this Law. Users of motor vehicles to be insured against third party risks
- (2) Whoever contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for three months, and a person convicted of such an offence shall (unless the Court

2003 Revision

for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under the Traffic Law (2003 Revision) for twelve months from the date of the conviction.

(3) A person disqualified under subsection (2) or under an order made thereunder for holding or obtaining a licence shall, for the purposes of the Traffic Law (2003 Revision), be deemed to be disqualified by virtue of a conviction under that law, or any law amending or substituted for the same.

(4) Notwithstanding any law prescribing a time within which proceedings may be brought before the Court, proceedings for an offence under subsection (2) may be brought-

- (a) within a period of six months from the date of the commission of the alleged offence; or
- (b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed, nor one year from the date of the commission of the offence,

whichever period is the longer.

Requirements in respect
of policies

4. (1) In order to comply with this Law, the policy of insurance shall be a policy which-

- (a) is issued by a person who is an insurer;
- (b) insures such person, persons or classes of persons, as may be specified in the policy in respect of any liability specified in paragraph (d) which may be incurred by him or them in respect of the death of, or bodily injury to, any person or persons caused by, or arising out of, the use of the motor vehicle on a road;
- (c) insures such person, persons or classes of persons, as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the damage to any property caused by, or arising out of, the use of the motor vehicle on a road; and
- (d) covers liability-
 - (i) of not less than one million dollars in respect of the death of, or bodily injury to, any person; and
 - (ii) of not less than five million dollars in the aggregate in any one event:

Provided that such a policy shall not be required to cover-

- (i) liability in respect of the death arising out of, and in the course of his employment of a person in the employment of a person insured by the policy, or of bodily injury sustained by such a person arising out of, and in the course of his employment;
- (ii) any contractual liability;
- (iii) liability in respect of the first fifty dollars of any claim by any one person;
- (iv) liability exceeding in the aggregate two hundred and fifty thousand dollars in respect of the damage to any property arising out of any claim or claims in respect of any one event;
- (v) property in or on the motor vehicle insured by the policy;
- (vi) property belonging to, held in trust by, or in the custody or control of the person insured;
- (vii) liability in respect of damage to the motor vehicle insured by the policy;
- (viii) liability in respect of the death of or bodily injury to a passenger on a motor cycle arising out of the use on a road of the said motor cycle;
- (ix) liability in respect of the death of, or bodily injury to, the hirer or passenger in or on a motor vehicle which is let out on hire; or
- (x) liability in respect of the death of or injury to any person being a passenger in a vehicle, except such passenger is seated in a seat fitted to the vehicle by the manufacturer thereof for the purpose of accommodating passengers.

(2) Notwithstanding any rule of law or anything in any other law to the contrary, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy, in respect of any liability which the policy purports to cover, in the case of these persons or classes of persons.

(3) A policy shall be of no effect for the purposes of this Law unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate (in this Law referred to as a “certificate of insurance”) in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed in relation to different cases or circumstances.

5. (1) Any condition in a policy issued or given for the purposes of this Law, providing that no liability shall arise under the policy or that any liability so arising shall cease, in the event of some specified thing being done or omitted to

Certain conditions in policies to be of no effect

be done after the happening of the event giving rise to a claim under the policy, shall be of no effect in connection with such claims as are mentioned in paragraph (b) of section 4(1):

Provided that nothing in this subsection shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

(2) Where a certificate of insurance has been issued under section 4(3) in favour of the person by whom a policy has been effected, so much of a policy as purports to restrict the insurance of the persons insured thereby by reference to -

- (a) the age or physical or mental condition of persons driving vehicles;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the times at which or the areas within which the vehicle is used;
- (f) the horsepower or value of the vehicle;
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Traffic Law (2003 Revision),

2003 Revision

shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of section 4(1), be of no effect:

Provided that nothing in this subsection shall require an insurer to pay any sum in respect of-

- (a) the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person; or
- (b) a liability in respect of the death of, bodily injury of, or damage to the property of, any person who, at the time the liability arose, was a willing passenger in or upon the motor vehicle and knew or had reason to believe that it was being driven without the permission of the owner, not being a person who first had such knowledge or belief after he entered in or upon the vehicle and who could not in the circumstances reasonably have been expected to have alighted therefrom.

6. A person applying for a licence in respect of a motor vehicle under the Traffic Law (2003 Revision) shall attach to the application a certificate of insurance in his name, in the name of an insured who has included the applicant as a driver of that vehicle for purposes of insurance or in the name of both, or shall produce such evidence as may be prescribed by regulations that-

Production of certificate of insurance on application for motor vehicle licence
2003 Revision

- (a) on the date when the licence comes into operation there will be in force the necessary policy of insurance in relation to the user of the motor vehicle by the applicant or any other persons on his order or with his permission; or
- (b) the motor vehicle is a vehicle to which this Law does not apply.

7. (1) Any person driving a motor vehicle on a road shall, on being required by any member of the Royal Cayman Islands Police Force, give his name and address and the name and address of the owner of the vehicle and produce his certificate, and whoever fails so to do is guilty of an offence and liable on summary conviction to a fine of five hundred dollars:

Requirements as to production of certificate of insurance

Provided that such person shall not be prosecuted if he produces his certificate of insurance at a police station or police post within a period of two days.

(2) In any case where, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person, or damage to any property, the driver of the vehicle shall at the time produce his certificate to any member of the Royal Cayman Islands Police Force on demand and to any other person who, having reasonable grounds for so doing, has required its production; and the driver shall also, as soon as possible, and in any case within twenty-four hours of the occurrence of the accident, report the accident to a police station and thereupon produce his certificate, and whoever fails to do so is guilty of an offence and liable on summary conviction to a fine of five hundred dollars:

Provided that a person shall not be convicted of an offence under this subsection by reason only of failure to produce his certificate if, within five days after the occurrence of the accident, he produces the certificate in person at such police station or at one of such police stations as may have been specified by him at the time its production was demanded or required or at the time the accident was reported.

(3) It is the duty of the owner of a motor vehicle to give such information as may be required, by or on behalf of an officer of the Royal Cayman Islands Police Force above the rank of Inspector, for the purposes of determining whether the vehicle is not or was not being driven in contravention of section 3, on any occasion when the driver was required under this section to produce his

certificate, and if the owner fails to do so he is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

(4) In this section-

“produce his certificate” means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle is not or was not being driven in contravention of section 3.

Saving of rights in case of death of person insured

8. (1) The rights of any person in respect of any liability incurred by an insured shall, in the event of the death of the insured, and notwithstanding any other law to the contrary, be preserved to and be enforceable by such person against the personal representatives of the insured in the same manner and to the same extent as such rights would have been enforceable against the insured if he had survived, and section 4(2) shall apply accordingly.

(2) In this section-

“insured” means a person who is insured under a contract of insurance against liabilities to third parties in accordance with this Law.

Transfer of rights of insured against insurer on bankruptcy

9. (1) Where, under any contract of insurance, a person (hereinafter referred to as “the insured”) is insured against liabilities to third parties which he may incur, then -

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a company, in the event of a winding up order being made, or a resolution for voluntary winding up being passed, with respect to the company, or of a receiver or manager of the company’s business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any other law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

1997 Revision

(2) Where an order is made, under section 66 of the Bankruptcy Law (1997 Revision), for the administration of the estate of a deceased debtor according to the law of bankruptcy then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being liability to a third party, the deceased debtor’s

rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said law, be transferred to and vest in the person to whom the debt is owing.

(3) Insofar as any contract of insurance made after the 8th May, 1991, in respect of any liability of the insured to third party purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or (b) of subsection (1) or upon the making of an order under section 66 of the Bankruptcy Law (1997 Revision) in respect of his estate, the contract shall be of no effect. 1997 Revision

(4) Upon a transfer under subsection (1) or (2), the insurer shall, subject to section 12 be under the same liability to the third party as he would have been under to the insured, but -

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Law shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Law shall affect the rights of the third party against the insured in respect of the balance.

(5) This section and sections 11 and 12 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company.

10. Where a certificate of insurance has been issued under section 4(3) in favour of the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in section 9(1) or (2) shall, notwithstanding anything in this Law, not affect any such liability of that person as is required to be covered by a policy under paragraph (b) of section 4(1), but nothing in this section shall affect any rights against the insurer conferred by this Law on the person to whom the liability was incurred.

Bankruptcy, etc., of insured persons not to affect certain claims by third parties

11. (1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors or in the event of an order being made under section 66 of the Bankruptcy Law (1997 Revision), in respect of the estate of any person, or in the event of a winding up order being made, or a resolution for a voluntary winding up being passed, with respect to any company, or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject

Duty to give necessary information to third parties

to the charge, it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor or company, is under a liability to him, such information as may be reasonably required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Law, and for the purpose of enforcing such rights, if any, and any contract of insurance insofar as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or to prevent the giving thereof in the said events, shall be of no effect.

(2) If the information given to any person under subsection (1) discloses reasonable ground for supposing that there have or may have been transferred to him, under this Law, rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said subsection on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

(4) Whoever, without reasonable excuse, fails to comply with this section, or wilfully makes any false statement in reply to any such request as aforesaid is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

Settlement between
insurers and insured
persons

12. Where the insured has become bankrupt or where, in the case of the insured being a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured after the liability has been incurred to a third party and after the commencement of the bankruptcy or winding up, as the case may be, nor any waiver, assignment or other disposition made by, or payment made to the insured, after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Law, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment has been made.

Duty of persons against
whom claims are made
to give information as to
insurance

13. (1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 4(1) shall, on demand by or on behalf of the person making the claim, or by the Clerk of any Court, state whether or not he was insured in respect of that liability

by any policy having effect for the purposes of this Law, or would have been insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under section 4(3).

(2) Whoever, without reasonable excuse, fails to comply with subsection (1) or wilfully makes any false statement in reply to any such demand as aforesaid, is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

14. Where a certificate of insurance has been issued under section 4(3) in favour of the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person in whose favour the certificate was issued shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and whoever fails to comply with this section is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

Duty to surrender
certificate on
cancellation of policy

15. (1) If, after a certificate of insurance has been issued under section 4(3) in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 4(1) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any law relating to interest on judgments.

Duty of insurers to
satisfy judgments
against persons insured
in respect of third party
risks

(2) No sum shall be payable by an insurer under subsection (1)-

- (a) liability for which is exempted from the cover granted by the policy under any proviso to section 4(1);
- (b) in respect of any judgment, unless before or within thirty days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; such notice to be deemed to be given by the posting of a registered prepaid envelope containing the notice to the address of the insurer given in the certificate of insurance and such notice being deemed to have reached the insurer within fourteen days of the time at which it was posted;

- (c) in respect of any judgment, so long as execution thereof is stayed pending an appeal; or
- (d) in connection with any liability, if before the happening of the event which was the cause of the death, bodily injury or damage to property giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein and-
 - (i) before the happening of the said event, the certificate was surrendered to the insurer or the person, in whose favour the certificate was issued, made a statutory declaration stating that the certificate had been lost or destroyed;
 - (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer or the person in whose favour the certificate was issued made such a statutory declaration as aforesaid; or
 - (iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Law in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under subsection (1), if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular, or if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration in an action shall not thereby become entitled to the benefits of this subsection as respects any judgment contained in proceedings commenced before the commencement of that action, unless before or within ten days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given, shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount for which an insurer becomes liable under this section to pay in respect of a liability of the person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the

policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section -

“material” means of such a nature as to influence the judgment of a prudent insurer in determining whether he would take the risk, and if so, at what premium and on what conditions;

“liability covered by the terms of the policy” means a liability which is covered by the policy or which would be covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled the policy; and

“judgment” does not include a judgment of any court which does not have jurisdiction in the Islands, or the judgment of a court having jurisdiction in the Islands enforcing or giving effect to such a judgment enforced under the Foreign Judgments Reciprocal Enforcement Law (1996 Revision).

1996 Revision

16. The Clerk of the Court shall, within ten days of the commencement, by a third party injured or whose property has been damaged by a motor vehicle required to be insured by this Law, of any proceedings in any such Court, give notice to the insurer of such proceedings:

Clerk of Court to give notice to insurer

Provided that every insurer shall notify the Clerk of the Court of his address and shall inform the Clerk of the Court of any change therein.

17. Notwithstanding anything contained in any other law or in any rule of law or equity, no action shall be brought in any court by or on behalf of any person after the end of the period of three years from the date on which a cause of action accrued for any injury or damage against or in respect of which a motor vehicle is required to be insured under this Law.

Limitation of actions

18. (1) Whoever, with intent to deceive-

Forgery of certificate

- (a) alters or uses, or lends to or allows to be used, by any other person, a certificate of insurance under this Law; or
- (b) makes or has in his possession any document so closely resembling such a certificate as to be calculated to deceive,

is guilty of an offence and liable on conviction on indictment to imprisonment for two years.

(2) Whoever, for the purpose of obtaining the issue of a certificate of insurance under this Law, knowingly makes any false statement or knowingly withholds any material information, is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months, and in default of payment of such fine to imprisonment for six months.

(3) Whoever issues a certificate of insurance which to his knowledge is false in any material particular is guilty of an offence and liable on summary conviction to a fine of four thousand dollars and to imprisonment for six months, and in default of payment of such fine to imprisonment for six months.

(4) If any member of the Royal Cayman Islands Police Force has reasonable cause to believe that any certificate of insurance produced to him under this Law by the driver of a motor vehicle is a document, in relation to which an offence under this section has been committed, he may seize the document, and when any document is so seized, the person from whom it was taken shall, unless the document has been previously returned to him or he has previously been charged with an offence under this section, be summoned before a summary court to account for his possession of the said document, and the court shall make such order respecting the disposal of the said document and award such costs as the justice of the case may require.

(5) In this section-

“certificate of insurance” includes any document issued under regulations made by the Governor in Cabinet under section 6 to prescribe evidence which may be produced in lieu of a certificate of insurance.

Regulations

19. The Governor in Cabinet may make regulations for prescribing anything which may be prescribed under this Law and generally for the purpose of carrying this Law into effect, and in particular, but without prejudice to the generality of the foregoing, may make regulations-

- (a) as to forms to be used for the purposes of this Law;
- (b) as to the applications for and the issue of certificates of insurance and any other documents which may be prescribed, and as to the keeping of records of documents, and the furnishing of particulars thereof, or the giving of information in respect thereto, to the Commissioner of Police;
- (c) as to the issue of copies of any certificates or other documents which are lost or destroyed;
- (d) as to the custody, production, cancellation and surrender of any such certificates or other documents; and
- (e) for providing that any provision of this Law shall, in relation to vehicles brought into the Islands by persons making only a temporary stay therein, have effect, subject to such modifications and adaptations as may be prescribed.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 19th day of June, 2007.

Carmena Watler
Clerk of Cabinet

(Price \$ 4.00)