

RECUEIL DES INSTRUMENTS JURIDIQUES ET INSTITUTIONNELS
DE FACILITATION DU TRANSPORT ET DES ÉCHANGES
EN AFRIQUE SUBSAHARIENNE

ANNEXE VI-10

**PROTOCOL ON THE ESTABLISHMENT OF A THIRD PARTY
MOTOR VEHICLE INSURANCE**

(LUSAKA 1981)

ANNEX XIV
PROTOCOL ON THE ESTABLISHMENT OF A
THIRD PARTY
MOTOR VEHICLE INSURANCE SCHEME

Addis Ababa, Ethiopia
3rd December, 1986

PREAMBLE

THE HIGH CONTRACTING PARTIES

RECALLING the provisions of paragraph (e) of Article 3 of the Protocol on Transport and Communications, Annex VII to the PTA Treaty, to the effect that Member States shall adopt minimum requirements for the insurance of goods and vehicles;

BEARING in mind the decision of the Council of Ministers at its Sixth Meeting held in Bujumbura, Republic of Burundi, from July 9-12, 1985 on the establishment of a compulsory Third Party Motor Vehicle Insurance scheme;

HEREBY AGREE AS FOLLOWS:

CHAPTER ONE

GENERAL PROVISIONS

ARTICLE 1

Definitions

For the purpose of this Protocol, the following terms and expressions shall have the meaning hereby assigned to them.

"Motor Vehicle" means any motor vehicle which is constructed or adapted for the use of carriage of persons or goods by road, and any trailer or semi-trailer designed to be drawn by such a vehicle;

"Insurance Policy" means a document issued by the insurer evidencing an agreement to insure and containing the conditions of the agreement concluded whereby the insurer undertakes for a specific fee to indemnify the insured for the losses arising out of the perils and accidents specified in the contract;

"Policy Holder" means a legal or a natural person holding an insurance policy on account of premium paid for the coverage of the liability in respect of insured motor vehicle;

"Accident" means a happening related to a motor vehicle causing personal injuries and or material damages and therefore engages the third party liability of the policy holder;

"The Yellow Card" means the insurance card that shall be issued by the National Bureau of Member States and shall be evidence of a third party liability cover obtained in accordance with the laws and regulations in force in the country where the accident occurred;

"National Bureau" means a government designated agency in each Member State that shall be responsible for the management and control of the PTA Yellow Card;

"Council": means the Council of Bureaux which shall co-ordinate and supervise the activities of the National Bureaux.

ARTICLE 2

Objective

The contracting parties undertake to establish by this Protocol a compulsory third party motor vehicle insurance scheme providing at least minimum guarantees as those required by the laws in force in the territories of the parties to this Protocol when the vehicles insured are transiting the territories of other contracting parties.

ARTICLE 3

Structure of the Scheme

1. The third party motor vehicle liability insurance scheme established by this Protocol shall have, as its legal, technical and financial basis, the guarantees which are afforded to motorists proceeding to PTA Member States by taking out an insurance policy on the usual terms with an insurer authorised to undertake this type of business in the country which is the point of departure for the journey.
2. The scheme shall be based materially on a PTA Yellow Card as defined in the provisions of Article 6 of this Protocol.
3. The PTA Yellow Card shall be issued by a National Bureau in accordance with the provisions of Article 13 of this Protocol. The card shall be issued to motorists through the insurers with whom they have taken out a valid liability insurance policy when driving in their own country.
4. Each National Bureau shall settle, on behalf of its member insurers, claims arising from accidents caused abroad by holders of the cards it has issued, and shall also handle claims arising from accidents caused in its country by holders of cards issued by the National Bureaux of other parties to this Protocol.
5. The legal, administrative and financial operation of the scheme established by this Protocol shall be co-ordinated and supervised by a Council of Bureaux of which all the National Bureaux of the parties to this Protocol shall be members in accordance with the provisions of Article 16 of this Protocol.

CHAPTER TWO
REGULATIONS CONCERNING THE PTA YELLOW CARD

ARTICLE 4

Participants in the Scheme

1. Parties to this Protocol shall participate in the scheme as principal participants.
2. Insurers, irrespective of their legal or financial structure, which are authorised by the competent authorities of their countries of activity to undertake insurance operations against liability risks in respect of motor vehicle accidents, shall participate in the scheme as subsidiary participants. The participation of such insurers in the present scheme shall be subject to their membership in the National Bureau of their countries of activity.

ARTICLE 5

Obligations of the Participants

1. The responsibilities of a party to this Protocol shall be, *inter-alia*:
 - (a) to recognise the validity of the PTA Yellow Card in its country and to enact laws and regulations for the establishment of the card scheme, and particularly for the designation of its National Bureau;
 - (b) to ensure that its National Bureau is established and functions in accordance with the provisions of this Protocol and that it joins the Council of Bureaux and complies with the decisions of the Council;
 - (c) to guarantee the solvency of its National Bureau;
 - (d) to ensure that either the government or the National Bureau deposits with its Central Bank or a designated Commercial Bank a minimum of UAPTA 200,000 in the form of either a letter of credit or security, to guarantee its performance.
2. The obligations of a subsidiary participant shall be:
 - (a) to issue to its policy holders PTA Yellow Cards guaranteeing such policy holders adequate cover against motor vehicle third party risks they incur in the countries which they visit;
 - (b) to undertake, by way of reimbursement to the National Bureau, payment of compensation for damages and any accessory or related expenses; and
 - (c) to contribute to the operating expenses of the National Bureau and, through the Bureau, to the operating expenses of the Council of Bureaux.

ARTICLE 6

1. A PTA Yellow Card is hereby established.
2. The Council of Bureaux shall determine from time to time matters of form related to the Yellow Card which shall be uniform.
3. The PTA Yellow Insurance Card shall include but not be limited by the following particulars:
 - Name and address of the issuing National Bureau;
 - Name and address of the insurer;
 - Identification of the vehicle;
 - Name and address of the policy holder;
 - Date of issue and of expiry of the card;
 - Name and address, in each contracting party, of the National Bureau which the policy holder is to notify in the event of an accident;
 - Number of the insurance policy;
 - Serial number of the card;
 - List of countries in which it is valid;
 - Signature and stamp of the insurer; and
 - Signature of the policy holder.
4. The PTA compulsory motor vehicle third party liability Yellow Insurance Card shall be printed in the English, French and Portuguese languages.
5. The guarantee provided by the PTA Yellow Card shall cover the liability incurred by the holder of the card in accordance with the laws of each member country which he visits.
6. Notwithstanding the terms of insurance policy under which it is issued, the card shall provide all the guarantees required by the laws or regulations governing compulsory motor vehicle insurance in the country in which the accident occurred.
7. The PTA Yellow Card shall be recognised as a valid certificate of insurance in the territories of the parties to this Protocol in which the production of such a certificate is required, either within the national territory or at its frontiers, as a condition for circulation of motor vehicles.
8. For a party in whose territory insurance is not compulsory by law, the guarantee provided by the PTA Yellow Card shall correspond to the third party liability on the motorist in accordance with the laws and regulations in force in the country where the accident occurred.

ARTICLE 7

Validity of the PTA Yellow Card

1. The PTA Yellow Card shall be issued for a period of time determined in advance, irrespective of the number of journeys to be performed, the period in question not exceeding one year.

2. The PTA Yellow Card shall be valid for one specific vehicle and shall in no circumstances be transferable to another vehicle.
3. During the period of its validity, the PTA Yellow Card shall constitute proof of the existence of an insurance policy.

CHAPTER THREE

THE NATIONAL BUREAU

ARTICLE 8

Designation of the National Bureau

The designation of each National Bureau shall be determined by the legal provisions in force in the territory of a party to this Protocol. Its mode of operation shall be determined by the legal instrument by which it is designated.

ARTICLE 9

Composition of National Bureau

In accordance with paragraph 2 of Article 4, each National Bureau shall be composed of insurers authorised by the local supervisory authorities for insurance against motor vehicle liability risks. In a country where one single State-owned insurance company has the monopoly of all insurance operations, the Government of that party to this Protocol may designate that company to act as the National Bureau of that country.

ARTICLE 10

Financing of the National Bureau

1. The National Bureau shall be financed by the contributions of members. The amount and method of payment of contributions shall be determined by the National Bureau at the time of admission to membership.
2. The members shall undertake to place at the disposal of the National Bureau as advances, at its request, the sum necessary for its operation.

ARTICLE 11

Withdrawal of Designation and Replacement of the National Bureau

The withdrawal of designation of a National Bureau shall be at the initiative of the Government that is a party to this Protocol, provided that before the withdrawal becomes effective, such Government shall notify

the Council of Bureaux at least six months prior to such withdrawal; and the notification shall be accompanied by the conditions and modalities of such withdrawal and replacement of the National Bureau with a new designated one.

ARTICLE 12

Functions of the National Bureau

The National Bureau shall undertake the functions of issuing and handling agencies.

ARTICLE 13

The National Bureau as the Issuing Agency

As an issuing agency, the National Bureau

- (a) shall provide the PTA Yellow Card forms to insurers which are members of the Bureau and which request them; the Bureau shall arrange for the printing of the cards and shall allot to each of them a serial number. The insurers shall keep a record of card holders and shall undertake not to issue cards to persons other than their own policy holders;
- (b) shall arrange with each of the National Bureaux of the contracting parties for the receipt of statements and claims concerning accidents caused in the territory of such other contracting parties by its policy holders, to proceed with the investigation of such accidents and to pay compensation on request, supported by the usual documents of proof. In the case of claims for damages expected to exceed the amount to be determined by the Council of Bureaux, the Bureau shall obtain prior authorisation from the issuing Bureau before agreeing to any settlement;
- (c) shall reimburse free of transfer or exchange charges a handling agency which has paid compensation in the currency of its own country;
 - (i) the total amount paid by way of damages, expenses and disbursement or, where the settlement is made by amicable agreement, the amount agreed in the settlement including agreed expenses. Fines shall on no account be reimbursed;
 - (ii) the expenses actually incurred in the investigation and settlement of the claim; and
 - (iii) the handling fee which shall be determined in advance and for all cases by the Council of Bureaux.
- (d) may use the services of the PTA Clearing House to effect such transfers.

ARTICLE 14

The National Bureau As a Handling Agency

As a handling agency, the National Bureau shall perform the following operations:

- (a) It shall act in the best interests of the issuing Bureau as soon as it is informed of an accident caused in its country by the holder of a PTA yellow card issued by the National Bureau of another contracting State. In processing the claim, it shall undertake necessary verification concerning the circumstances of the accident and, on the basis of the findings, take any administrative or non-judicial action that it deems necessary. As indicated in Article 13, paragraph (b) of this Protocol, it may without the prior authorization of the issuing Bureau, settle claims up to a limit to be fixed by the Council of Bureaux. It shall, in any case, advise the issuing Bureau of any claims it is handling on the latter's behalf. At the judicial level, the Bureau, in its capacity as the handling agency, shall be entitled to take any steps to institute or to contest a legal action. In the case of claims for damages below a certain amount established by agreement with each of the other issuing Bureaux, the Bureau may agree to a settlement out of court;
- (b) It shall not knowingly entrust or relinquish the handling of a claim to one or more persons having interest in the settlement of the claim without the written consent of the issuing Bureau; and
- (c) When the compensation is equal or higher than the amount expected to be fixed by the Council of Bureaux, the handling Bureau can instruct the issuing Bureau to request its Bank to place immediately at its disposal an amount corresponding to the figure of compensation.

CHAPTER FOUR

THE COUNCIL OF BUREAUX

ARTICLE 15

Creation of a Council of Bureaux

The contracting parties agree to set up a body known as the Council of Bureaux whose functions are defined in Article 18.

ARTICLE 16

Composition of The Council of Bureaux

The composition of the Council of Bureaux shall comprise one representative and an alternate representative designated by each National Bureau.

A chairman and Vice-Chairman shall be elected on a rotatory basis from among the representatives, for a period of one year.

ARTICLE 17

Meetings of The Council of Bureaux

The Chairman shall convene the meetings of the Council of Bureaux. The council shall meet not later than 2 months after the entry into force of this Protocol.

The Council of Bureaux shall meet once a year. Extraordinary meetings shall be held at the request of any one of the National Bureaux.

Half the number of members of the Council of Bureaux will constitute a quorum for both ordinary and extraordinary meetings.

The items to be proposed for the agenda shall be submitted in writing to the Chairman not later than 20 days before the meeting. Only items on the agenda shall be discussed.

The PTA Secretariat shall provide secretarial services to the Council of Bureaux until such time as the Council of Bureaux shall have decided to have its own Secretariat.

Each member of the Council shall have one vote and decisions of the Council shall be by simple majority.

ARTICLE 18

Functions of the Council of Bureaux

The Council of Bureaux shall:

- (a) have, as a general function, orientation, co-ordination and supervision over the whole of the PTA Insurance Scheme established by this Protocol;
- (b) orientate, co-ordinate and supervise the legal, technical, administrative and financial operations of the National Bureaux;
- (c) prepare an inter-Bureaux contract which shall be signed by all Bureaux and which the Council above shall be entitled to

amend. This contract shall in particular determine the maximum amounts for the delegation of the powers of settlement by one National Bureau to another, and the minimum handling fee payable for each case handled by them;

- (d) settle disputes between two or more Bureaux as to the implementation of the provisions of this Protocol. The decisions of the Council shall be notified to the National Bureaux and the Council shall see to their execution. The decisions of the Council shall be taken by simple majority. If no agreement is reached, the matter shall be referred to the Policy Organs of the PTA;
- (e) on its own initiative or on the initiative of any government party to this protocol, shall consider and, if it deems it advisable, propose changes in laws or regulations of the parties to this protocol with a view to improving the functioning of the PTA Yellow Card Scheme, or to harmonising the systems of compensation for damages occasioned by road traffic accident, or to improving accident prevention; and
- (f) establish its annual budget and shall fix the annual contributions to be paid by members which shall be an equal amount among its members.

ARTICLE 19

Annex to the Treaty

This Protocol shall form an integral part of the PTA Treaty to which it shall be annexed as Annex XIV.