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**THE ASEAN INSURANCE TRAINING AND RESEARCH INSTITUTE**  
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# **THE MOTOR INSURANCE LAWS & THEIR SUPERVISION IN SELECTED ASEAN COUNTRIES : A COMPARATIVE ANALYSIS**





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## **THE MOTOR INSURANCE LAWS & THEIR SUPERVISION IN SELECTED ASEAN COUNTRIES: A COMPARATIVE ANALYSIS**

### **Introduction**

The ASEAN Vision 2020 adopted by ASEAN leaders in 1997 had called for ASEAN Partnership in Dynamic Development aimed at forging closer economic integration within the region. Additionally, this vision statement had resolved to create a stable, prosperous and highly competitive ASEAN Economic Region, in which there is a *free flow of goods, services, investments, capital, and equitable economic development and reduced poverty and socio-economic disparities*.<sup>1</sup>

The Hanoi Plan of Action (HPA), adopted in 1998, serves as the first in a series of plans of action leading up to the realization of the ASEAN vision. The HPA lays down specific steps and measures to be taken during the years 1999-2004 to strengthen macroeconomic and financial cooperation, advance economic integration and promote social, science & technology and information technology infrastructure as well as human resources development.<sup>2</sup>

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<sup>1</sup> ASEAN Secretariat (2003). Overview: Association of Southeast Asian Nations at <http://www.aseansec.org/64.htm>

<sup>2</sup> *ibid.*



In addition to trade and investment liberalization, regional economic integration is being pursued through the development of Trans-ASEAN transportation network consisting of major inter-state highway and railway networks, principal ports and sea lanes for maritime traffic, inland waterway transport, and major civil aviation links. ASEAN is promoting the interoperability and interconnectivity of the national telecommunications equipment and services. The building of Trans-ASEAN energy networks, which consist of the ASEAN Power Grid and the Trans-ASEAN Gas Pipeline Projects, is also being developed.<sup>3</sup>

In response to the above plans, the Finance Ministers of ASEAN signed several key co-operation agreements. Those that particularly relate to the area of insurance cooperation are the ASEAN Framework Agreement on the Facilitation of Goods in Transit (Framework Agreement)<sup>4</sup>. The aforesaid Hanoi Plan of Action stipulates the operationalization of this Framework Agreement by the year 2000.<sup>5</sup> The Framework agreement has nine implementing Protocols wherein Protocol 5 is the ASEAN Scheme of Compulsory Motor Vehicle Insurance, which was signed in April 2001. As of December 2002, eight of the Member Countries, namely Brunei Darussalam, Cambodia,

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<sup>3</sup> ASEAN Secretariat (2003). Overview: Association of Southeast Asian Nations at <http://www.aseansec.org/64.htm>

<sup>4</sup> Signed in Hanoi on 16 December 1998 and entered into force in October 2000

<sup>5</sup> Protocol 5, **ASEAN Scheme of Compulsory Motor Vehicle Insurance**



Indonesia, Lao PDR, Malaysia, Singapore, Vietnam and Thailand have ratified/accepted Protocol 5.<sup>6</sup> This Protocol arose in response to the need to compensate victims of road traffic accidents caused by transit transport operators and road transit transport vehicles for the damages they may have sustained as a result of such accidents.

Various measures need to be undertaken by the member countries of ASEAN for the implementation of Protocol 5. Amongst them is the formalization of the respective National Bureaux, purchasing of longer-term policies by the transit transport vehicles, the signing of the Inter-Bureaux Agreement and the endorsement of the Blue-Card format, reviewing the compulsory motor vehicles insurance coverage, etc.<sup>7</sup>

The successful implementation of Protocol 5 is very much dependent on the carrying out of the necessary groundwork in order to harmonize the relevant motor insurance laws and regulations of the respective member countries. For this purpose a comparative analysis of the laws of selected member countries will be undertaken in relation to areas that may have an impact on the successful implementation of Protocol 5:

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<sup>6</sup> ASEAN Secretariat Information Paper (16 December 2002). **The Progress of Implementation of Protocol 5 through the Council of Bureaux and the Next Course of Action**

<sup>7</sup> *ibid.*



1. Limits and scope of cover
2. Organization work flow
3. Adjudication
4. Rights in terms of subrogation
5. Uninsured vehicles
6. Related issues

### **A Comparative Analysis of the Motor Insurance Laws and its Supervision in Selected ASEAN Countries**

Motor vehicles have increasingly gained popularity as a mode of transport in the past decade and with it, the risk of traffic accidents has also increased. A traffic accident could result in a variety of losses and injuries, ranging from:

- Damage to or loss of one's car; (Own Damage Claim)
- Personal injury or death to the driver
- Personal injury or death to passengers
- Damage to third party property and
- Personal injury or death to third party.



Traditional motor insurance policy generally provides two distinct covers namely:

- (i) Comprehensive Policy covers both damages to Insured vehicle as well as death and / or bodily injury and property damage to third party.
- (ii) Third Party Policy covers death of and / or bodily injury to any third party and damage to third party property.

The laws of many countries require all motor vehicles owners or users to obtain minimum third party insurance (death or bodily injury) before a motor vehicle is allowed on the road. It is an offence for the user or owner of the vehicle to be uninsured. Thus, the concept of compulsory motor insurance was conceived.<sup>8</sup>

Both Malaysia and Singapore reports the existence of compulsory third party liability insurance, namely Motor Third Party Death of and / or bodily injury. In Philippines and Brunei as well, compulsory motor vehicle liability insurance is a requirement under their respective legislations governing third party motor insurance schemes. In Indonesia, there is no statutory requirement to insure against bodily injury or death to third parties.

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<sup>8</sup> Goh & Loh (2001). Insurance Law, Butterworths Asia at pp 153-154.



The aim of compulsory motor insurance legislation is generally as follows<sup>9</sup>:

- Makes it compulsory for owner / user to insure against liability in respect of specified third party risks; thus compensation for road users is secured;
- Regulates the form and content of compulsory motor insurance contracts in order to safeguard the indemnity payable by the insurer;
- Grants rights of enforcement to third parties, enabling them to enforce payment against the motor insurer without any assistance or cooperation of the insured driver.

Most common law countries such as Malaysia and Singapore, have laws on motor insurance, which are, modelled after the laws in the United Kingdom, in particular the *Road Traffic Act*. From 1930 onwards, every person in the United Kingdom who used a vehicle on the road, or were permitting others to use the vehicle, were required by the *Road Traffic Act* to have some form of motor insurance policy. This had to be at the minimum, a third party cover for death or bodily injury. This was the origination of motor insurance in the United Kingdom,<sup>10</sup> which eventually influenced the *Road Transport Act 1987 (Act 333)* of Malaysia and the *Motor Vehicles (Third Party Risks And*

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<sup>9</sup> *Ibid.* at p.154

<sup>10</sup> UK Motor Insurance at <http://laws-united-kingdom.motor-insurance.uk.net>



*Compensation) Act (Chapter 189)* of Singapore respectively. While the basic requirements of compulsory motor insurance legislation in most Commonwealth jurisdictions are broadly similar, they differ in details<sup>11</sup> according to the historic background and the specific needs of the respective jurisdictions.

### *1. Limits and scope of cover*

#### *Scope of compulsory cover*

Generally, all compulsory motor insurance legislations ascertain the minimum scope of compulsory cover with regard to liability for causing death or bodily injury to others.

The scope of the Malaysian legislation is in relation to all 'motor vehicles' classified under *section 5 of the Road Transport Act*. Section 90(1) of the said Act has made it a compulsory requirement for the user of the motor vehicle or the person he permits to use the vehicle to have at least a policy of insurance in respect of third party risks.

The scope of the Singapore legislation *i.e. Motor Vehicles (Third Party Risks And Compensation) Act (Chapter 189)*, referred to hereafter as the *Motor Vehicles Act*, is in relation to motor vehicles in

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<sup>11</sup> Goh & Loh (2001). Insurance Law, Butterworths Asia at p.154



Singapore or those that are registered in Singapore in any territory specified in the Schedule<sup>12</sup> i.e., West Malaysia. The act has also provided that it is unlawful for any person to use or cause or permit any other person to use motor vehicles unless there is at least a policy of insurance in respect of third party risks.

The scope of Philippines legislation is in accordance to the *Insurance Code* wherein *Chapter VI* (Section 373 – 389) deals with compulsory motor vehicle liability insurance. The code makes it compulsory for land transportation operators and motor vehicle owners to secure an insurance policy OR surety bond issued by an authorized insurance company and posted with the Insurance Commissioner OR cash deposit made to the Insurance Commissioner.<sup>13</sup>

Thus, all three acts have adopted the standard minimum norm of compulsory cover for death or bodily injury to third parties. However, the Malaysian and Singapore acts make reference to “users” of vehicles whilst the Philippines act makes reference to “owners” only. This is a vital distinction, as the user/driver of the vehicle does not necessarily have to be its owner. Thus, an insurance policy indemnifies the ‘user’ rather than the ‘owner’. Hence, in accordance to both the Malaysian and Singapore acts, one needs to be insured by law in order

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<sup>12</sup> Sections 3(1(a) & (b) *Motor Vehicles Act*

<sup>13</sup> Sec. 377 of the *Insurance Code*



to have “the use of a motor vehicle” when on the road. However, in the Philippines, one needs to be an actual legal owner of a motor vehicle.

However, there are areas of differences in terms of types of liability, which have been made compulsory by statute. In Singapore (similar to the UK legislation), liability to passengers in a traffic accident is compulsory but liability to employees in respect of death or bodily injury arising out of and in the course of employment is not required as per section 4(4) of the *Motor Vehicles Act*. In contrast, both types of liability are not required in the compulsory cover in Malaysia via sections 91(1)(aa) and (bb). However, vehicles licensed to carry passengers are required to have passenger liability cover. The compulsory insurance coverage of Malaysia and Singapore does not include third party property damage unlike the United Kingdom. Similarly, policies of insurance in Malaysia as well as Singapore are not required to cover any contractual liability.<sup>14</sup>

In Brunei, the scope of compulsory cover is stipulated in Section 4 of the *Laws of Brunei, Motor Vehicles Insurance (Third Party Risk) Act Chapter 90*. The provisions contained therein are synonymous to the wordings found in Part IV of the *Road Transport Act 1987 (Malaysia)* in particular Section 91 of the same.

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<sup>14</sup> Section 91(1)(cc) of Road Transport Act and Section 4(4) Motor Vehicles (Third Party Risks and Compensation Act).



In Philippines, liability to passengers in traffic accidents only arises in relation to land transportation operators. Liabilities to passengers in traffic accidents are only compulsory in relation to use of vehicles by land transportation operators.<sup>15</sup> The code does not have specific provisions in relation to liabilities to employees with respect to death or bodily injuries arising out of or in the course of employment. The compulsory insurance coverage of Philippines does not include third-party property damage just like Malaysia and Singapore.<sup>16</sup>

In Indonesia, motor third party bodily injury liability is not compulsory. To compensate in some small measure, a modest personal accident cover for drivers and passengers is available within the cost of an annual driving licence. Furthermore, there is some degree of Personal Accident cover included in the cost of a ticket for public transport passengers on buses, trains and aircraft<sup>17</sup>.

In Thailand, *The Protection for Motor Vehicle Accident Victims Act* B.E 2535 (1992) requires compulsory third party liability insurance for bodily injury and death for all motor vehicles.

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<sup>15</sup> Sec. 377(1) of the Insurance Code

<sup>16</sup> Sec. 374 of the Insurance Code

<sup>17</sup> AXCO Report (December 2001), Insurance Market Report on Indonesia – Non Life



In Vietnam, the scope of cover is stipulated in *Decision No 23/2003/QD-BTC of February 25* which requires compulsory third party liability insurance for bodily injury, death and property damage for all motorized vehicles. Additionally, third party liability insurance for bodily injury, death and property damage for owner of motorized passengers transport vehicles.

In Cambodia, the provisions for compulsory third party liability for bodily injury, death and property damage are contained in the *Insurance Law Act 2000* and the *Sub Decree on Insurance 2001* which requires compulsory third party liability insurance for vehicles used for commercial purposes, carriage of passengers, for vehicles owned by companies, enterprises and factories, all motor vehicles owned by Non Governmental Organizations, International Organizations and Associations, for Cement Mixers moved from one place to another by its direct machine or by dragging and for Tricycles used for commercial purposes or for transporting goods or passengers



### *Basis of Liability*

Liability for causing death or personal injury to third parties is ascertained in accordance to the principles of the law of 'tort' in Malaysia, Singapore and Brunei. Liability incurred can be either intentional or, as is more often the case, negligent liability. To establish negligence, the driver must have owed a duty of care to the third party, breached the said duty of care by failing to meet the standard of care required of a reasonably competent driver under the circumstances and thereby caused death or personal injury to the third party.<sup>18</sup> In Indonesia, the concept of negligence is also accepted. However, in Philippines there is no need to prove fault or negligence of any kind for claims up to ten thousand pesos per victim.<sup>19</sup> Principles of tort (negligence) are only applicable for claims from ten thousand pesos up to fifty thousand pesos.

In Vietnam, third party liability as prescribed by the sub decree is based on the *Vietnamese Civil Code* and provides for conciliation between the parties before being brought before the courts. The sub decree also provides that damages for bodily injury will include reasonable expenses for treatment, funeral expenses and for income actually lost, and for property damage, the damages would be the actual damage suffered, but both are subject to the extent of the vehicles owners fault.

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<sup>18</sup> Goh & Loh (2001). Insurance Law, Butterworths Asia at p.155

<sup>19</sup> Sec. 378 of the Insurance Code



In Thailand, the motor third party bodily injury liability is a combination of no fault liability up to 15,000 Baht and fault based on the civil and commercial code for claims above that.

The third party liability for vehicle owners in Cambodia is based on their civil law (fault based) but the sub decree prescribes that the parties should attempt to agree between themselves based on the local traffic police findings prior to it being brought before the courts.



## *2. Organizational workflow*

### *Distribution Network*

Insurance contracts are generally negotiated through insurance intermediaries who play a useful role in the sale and marketing of insurance products. There are two types of intermediaries in the insurance industry - agents and brokers. Insurance agents are those that are commissioned by the insurer to market insurance products, canvass sales for the insurer and generally act on behalf of the insurer and receive commission on sales. However, insurance brokers generally act on behalf the insured, are independent of any one insurer and are under a legal obligation to find the most appropriate cover on behalf of their client. Thus, he is directly answerable to the insured for negligence in the performance of his duty. On the other hand, an agent represents the insurer. He has to be licensed and receives commissions from the insurer for introducing business to the company. So in general, insurance agents act for the insurer whereas insurance brokers act for the insured.

In Philippines, every person, partnership, association or corporation duly authorized to transact insurance business in accordance to the Insurance Code may be an insurer<sup>20</sup> provided that

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<sup>20</sup> Sec.6 and Sec 184 of the Insurance Code



they possess the capital and assets required of an insurance company doing the insurance business. Otherwise, any person, partnership, association of persons can only transact any insurance business as an agent of a person or corporations authorized to do the said business in the Philippines.<sup>21</sup> This is in contrast with the Malaysian and Singapore provisions, whereby individuals are not allowed to apply for a license to carry out insurance business or insurance broking or adjusting business. In Malaysia, only a public company or corporate body can apply for a licence whereas in Singapore the applicant has to be a company as defined in the Companies' Act (Cap 50) or a company incorporated outside Singapore which has established base of business in Singapore or a society registered Co-operative Societies Act (Cap. 62).

In the Philippines, insurance agents and brokers, as well as non-life company underwriters are required to obtain licenses before they can act as such. In Malaysia, licenses are issued for insurer, insurance brokers, adjustors and reinsures whereas in Singapore licenses are issued for direct insurers, reinsures, captive insurers and insurer brokers.

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<sup>21</sup> Sec. 186 of the Insurance Code



In Brunei, the insurance intermediaries are registered agents and brokers. For registered agents that represent general insurance, their general conduct comes within the purview and supervision of General Insurance Association of Negara Brunei Darussalam and the Ministry of Finance. Brokers are under the purview and supervision of the Ministry of Finance.

In Thailand, insurers, agents and brokers are licensed by the Ministry of Commerce, and supervision is carried out by the Department of Insurance under the Ministry of Commerce. Insurance agents and brokers, as well as non-life company underwriters are required to obtain licenses before they can act as such in Philippines.

In Indonesia, individual agents and corporate agents act as intermediaries. Individual agents are allowed to represent one principal whereas corporate agents may represent up to maximum of three principals. Apart from the agents, insurance brokers are also available whose interests are represented by the The Asosiasi Broker Asuransi Indonesia (ABAI).<sup>22</sup> The relevant provisions governing these intermediaries are stipulated in the *Law No. 2, Year 1992 of the Republic of Indonesia and Implementation Rules on Insurance Business*.

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<sup>22</sup> AXCO Report (December 2001), Insurance Market Report on Indonesia – Non Life



In Vietnam, Insurance Enterprises, agents and brokers are required to obtain licenses from the Ministry of Finance before they can operate. The supervision is also carried out by the Ministry of Finance. In Cambodia, the Insurance companies, agents and brokers are required to be registered and licensed by the Ministry of Economy and Finance and is supervised by the Financial Industry Department of the Ministry.

The insurance industry in Malaysia has established the Malaysian Motor Insurance Pool (MMIP) to ensure the availability of motor insurance covers. Since the risks underwritten by the MMIP are the risks, which have been rejected by the insurers in Malaysia, the imposition of additional loading and the application of excess above market levels are allowed. In Singapore, in view that there are certain risks with high level of hazards, the insurance industry has set up a Special Risks Pool to provide at least compulsory insurance coverage for motor tankers and other specialized motor risks which individual insurers are not willing to take up.<sup>23</sup>

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<sup>23</sup> OECD Proceedings (1999). Insurance Regulation & Supervision in Asia, p.65



### Acceptability of policies

In terms of formalities, compulsory motor insurance legislation requires that there be a valid policy of insurance that complies with statutory requirements and that a certificate of insurance be issued by the insurer and delivered to the insured policyholder.

The policies must have been issued by an authorised motor insurer who is lawfully carrying on the business of motor insurance within the jurisdiction. Section 91(1) of the *Malaysian Act* provides that a policy of (motor) insurance must be a policy which is issued by a person who is an “authorized insurer” within the meaning of the Act. Similarly, section 4(1) of the *Singapore Act* provides that a policy of insurance must be a policy, which is issued by a person who is an “authorized insurer” in accordance to the meaning of the said Act. A person issuing a policy under the Act shall be liable to indemnify the persons or class of persons specified in the policy in respect of any liability arising therein.<sup>24</sup>

In Brunei, Section 4(a) *Motor Vehicle Insurance (Third Party Risks) Act, Chapter 90* requires an Insurer to be approved by the relevant Minister. However, if the Insurer does not reside within Brunei, no approval shall be given unless the Minister is satisfied that provision

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<sup>24</sup> Section 91(3) of the Road Traffic Act and section 4(8) of the Motor Vehicles Act



of subsection (1) and (2) of Section 18 *Motor Vehicle Insurance (Third Party Risks) Act, Chapter 90* is complied with. In Indonesia, any person or legal entity intending to carry out insurance business activity must obtained a licence from the Minister as *Article 9 of the Law No. 2 Year 1992 of the Republic of Indonesia and Implementation Rules on Insurance Business*.

Both the Acts of Malaysia and Singapore has provided that the insured should ensure that he receives a certificate of insurance in the prescribed form containing the conditions subject to which the policy is issued and other prescribed matters, failing which the policy is rendered ineffective.<sup>25</sup>

In the Philippines, a valid policy of insurance or surety bond may only be issued by the insurance companies approved by the Insurance Commissioner. Additionally, any land transportation operator or owner of a motor vehicle has the option of making a cash deposit to the Insurance Commissioner in such amount as required by the Insurance Code to indemnify the death, body injury of a third party or passenger.<sup>26</sup>

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<sup>25</sup> Section 91(4) of the Road Traffic Act and section 4(9) of the Motor Vehicles Act

<sup>26</sup> Sec 374 to Sec 377 of the Insurance Code



In Thailand, the legislation requires all motor vehicle owners and users including foreign owned vehicles to purchase the compulsory coverage from an authorised insurer in Thailand.

In Vietnam, only insurance certificates issued by insurance enterprises registered and approved by the Ministry of Finance are accepted.

The act and sub decree in Cambodia requires that the compulsory motor liability insurance is issued by an insurance company which is duly registered and licensed to operate in Cambodia and there is currently only the state owned Cambodia National Insurance company.

Policies of insurance issued in Malaysia covers the geographical area of Malaysia, Singapore and Brunei. However those policies issued in Singapore cover all of Singapore and West Malaysia and that part of Thailand within 50 miles (80.5km) of the West Malaysian border (not the whole of Malaysia alone). On the other hand, policies, which are issued in Brunei, extend to cover the geographical area of Sabah, Sarawak and Labuan in Malaysia. In respect of Indonesia the policies are domestic.



### 3. Adjudication

#### Enforcement of Laws (Jurisdiction, reciprocity)

In view of the reciprocal enforcement of the *Commonwealth Judgement Act* between Commonwealth countries, judgements awarded by Superior Courts<sup>27</sup> in Malaysia would be enforceable in any of the commonwealth countries including Singapore and vice-versa provided the same is registered at the respective Superior Courts. However, at present all claims in Malaysia involving death or bodily injury comes within the jurisdiction of the Session Courts, which is a Subordinate Court. Likewise in Singapore they are heard in a similar way by the District Courts.<sup>28</sup> Given this, judgments obtained in respect of these claims are not enforceable by reason of reciprocity. In Brunei, claims arising from death or bodily injuries to third parties are filed and heard in either the Magistrate, Intermediate or High Court depending on the amount claimed and as such there is a possibility for the provisions of the *Reciprocal Enforcement of Foreign Judgment Act Chapter 177* to apply where it relates to High Court judgments.

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<sup>27</sup> Superior Court judgments are defined as judgments of High Court and above

<sup>28</sup> The lower courts are not Court of Records therefore judgments obtained in lower courts cannot be registered in another commonwealth country.



In view of the changes effected in relation to subject matter and monetary jurisdiction of the Courts in these countries, perhaps the definition of 'superior courts' judgments ought to be reviewed.

In Philippines, the court judgements awarded by other countries are not enforceable. Only judgements awarded by the courts of Philippines are acceptable in the Philippines jurisdiction.

In Indonesia court, judgments awarded by other countries are not enforceable. Moreover, Indonesia, like Philippines is not a signatory to the reciprocal arrangement for the purposes of enforcing judgments. Chapter 32 Law No.14 Year 1992 dealing with Road Traffic and Transport provided that each public transport shall be insured: either the vehicle itself or for any loss suffered by third party caused by the vehicle's operation. After the reform era in 1997, many improvements have been made in terms of the enforcement of the laws of Indonesia.

Notwithstanding this, P.T. Jasa Raharja, a state-owned company administers two main insurance programs: (a) Insurance for public transport passengers in the event of traffic accidents under the Law No. 33 Year 1964 on the Mandatory Insurance Fund for Passenger Accidents; and (b) Third party legal liability insurance against motor vehicle accidents under the Law No.34 Year 1964 on the Fund for Road Traffic Accidents. The benefits under the said laws are



provided in the form of reimbursements for medical treatment and compensation for invalidity and death. Claims arising therein are generally administered and settled by this state owned company.

The Indonesian legal system has evolved over the years through a system introduced during their colonized period by the Dutch together with a mixture of unwritten indigenous and Islamic laws respectively. Whilst interestingly, the concept of negligence is accepted, strictly liability and punitive damages to date remain unrecognized and the enforcement of court judgments awarded by other countries unlike that which is seen between Malaysia and Singapore is not recognized nor enforceable.

Singaporean accident victims may lodge their claims against Malaysian insurers. The General Insurance Association of Malaysia may render assistance should there be any difficulty in respect to such claims. Similarly, claims against Singaporean insurers can be lodged by the Malaysian accident victims and the General Insurance Association of Singapore will assist the claimants by liaising with the General Insurance Association of Malaysia.

In Vietnam, Thailand and Cambodia the legislation provides that only decisions made by the courts in the respective countries are recognised.



### Limitations

(i) Limitation Period: There are statutory rules limiting the time within which civil actions must be brought in respect of claims arising from death or personal injury. However, it is apparent that periods stipulated vary, based on the types of claim and applicable jurisdiction.

In West Malaysia, the limitation period for an action founded on tort is governed by *Limitation Act 1953 (Act 254)*. The provisions therein provide an aggrieved party to institute legal proceedings within 6 years from the date of accrual of cause of action. Whereas in East Malaysia, the *Limitation Ordinance* provides a period of 3 years for the same cause of action. Additionally, the *Civil Law Act 1956 (Act 67)* has further classified death claims into two categories with differing limitation period:

- (i) Claims filed by the dependants of deceased third party<sup>29</sup> – 3 years from the date of accrual of cause of action.
- (ii) Claims filed by the estate (non dependants) of deceased third party<sup>30</sup> – 6 years from the date of accrual of cause of action.

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<sup>29</sup> Section 7 of the *Civil Law Act 1956 (Act 67)*

<sup>30</sup> Section 8 *Civil Law Act 1956 (Act 67)*



In Singapore, the *Limitation Act (Chapter 163)* provides that an action shall not be brought after the expiration of 3 years for such claims. The position in Brunei appears to be the same as in Singapore bearing in mind both their respective legislations governing the limitation period is based on the United Kingdom model.

In Philippines, claims relating to bodily injuries must be made within reasonable time from the date of the accident, otherwise the claim will be deemed waived. The Insurance Code also provides provisions for action on suit for recovery of damage due to injury to be brought with the Insurance Commissioner or the Courts. However, this action must be filed within one year from denial of the claim.<sup>31</sup>

In Indonesia, civil cases are deemed time barred after 30 years from the date of an occurrence, which appears to be an exceptionally long period compared to their ASEAN counterparts. The implications, therefore, are obviously far and wide. Whilst there are however a few known exceptions to this rule, for instance, commercial cases have a limitation period of 5 years, further study is required in this area before a comprehensive comparative analysis can be sufficiently provided.

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<sup>31</sup> Sec 384 of the Insurance Code



In Thailand, the victim is required to submit his application for preliminary compensation within 180 days from the date the injury occurs and the insurers have to make the payment within 7 days of receiving the application. The legislation, however, does not stipulate any limitation period in respect of claims for sums above the preliminary compensation.

In Vietnam, the vehicle owners must make their claims within one year from the date of the accident. *Decision 23/2003/QB-BTC* also provides that the statute of limitation for initiating lawsuits regarding the insurance compensation is 3 years from the date the insurance enterprise pays or refuses to pay the indemnity.

In Cambodia the Insurance law states that the statute of limitation must be stated in the insurance policy but shall not exceed 3 years from the date of the occurrence of the risk.



(ii) Limits of Liability: Both in Malaysia and Singapore, there is unlimited liability for claims in respect of third party bodily injury or death in accordance to the principles of tort law. However, the provision of cover for third party property damage in Malaysia is limited to RM 3 million with the option to extend the limit up to RM 20 million with respect to commercial vehicles. In Brunei, there are no limits for claims involving death and/or bodily injury.<sup>32</sup> The policies carry limits in respect of third party property damage for commercial vehicle minimum BD100,000 and private vehicle minimum BD200,000.

Sec 378 of the Insurance Code of Philippines set a limit of 10,000 pesos per person for claims related to death or injury to any passenger or third party without the necessity of providing fault or negligence by the parties involved. If no agreement can be reached between the insurer and the claimant, with the regards to the extent and truth of the claim, the insurer is only require to pay the “no fault” indemnity in accordance to Sec 378. This, however, does not prevent the claimant from pursuing his claim further through the Insurance Commissioner or the Courts.<sup>33</sup> The maximum amount which can be claim for third party bodily injuries<sup>34</sup> and for passenger liability is 50,000

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<sup>32</sup> Motor Vehicle Insurance (Third Party Risks) Act, Chapter 90

<sup>33</sup> Sec 384 and 385 of the Insurance Code.

<sup>34</sup> Sec 377(2) of the Insurance Code.



pesos respectively.<sup>35</sup> The Insurance Commissioner may set the limits of liability via the schedule of indemnity for the payment of claims for death or bodily injuries<sup>36</sup> set forth in the motor vehicle policy.

This is another area where clearly there is much disparity in the laws amongst ASEAN countries. Whilst Malaysia, Singapore and Brunei have an unlimited liability for claims in respect of third party bodily injury or death in accordance to the principles of tort law, Philippines, Indonesia, Thailand and Vietnam, all appear to have some form of framework limiting liability.

In Indonesia, there are legislative provisions limiting liability. The limits of liability are generally determined by the terms of the insurance contract, if at all.

In Thailand, the *Protection for Motor Vehicle Accident Victims Act* B.E.2535 (1992) provides that the maximum liability for bodily injury is limited to 80,000 Baht per person, and 5 million Baht per accident. The provisions in Cambodia do not specify any maximum or minimum limits of liability.

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<sup>35</sup> Sec 377(1) of the Insurance Code.

<sup>36</sup> Sec 377(2) of the Insurance Code.



In Vietnam, the maximum liability for third party liability as prescribed by legislation i.e., *Decision No.23/2003/QD-BTC* is VND 12 million per person for bodily injury, VND 30 million per case for property damage.



#### 4. *Rights in terms of subrogation*

In an indemnity contract, the insurer is entitled to every right of the insured, including his rights against third parties who might be responsible for the loss. After the insurer has paid the insured for the loss, he can proceed to sue the third party in the name of the insured or take an assignment of the insured's right of action and sue the third party in his own name. This is the principle of subrogation, that is, the insured's rights are subrogated to the insurer who can make use of the remedies available to him. Subrogation is a well-known doctrine in insurance law, which gives the rights to the insurer to step into the shoes of the insured to pursue recovery against the party responsible for the loss suffered, arising from an accident. Subrogation may have its origins in the common law contract. However, its equitable nature cannot be denied as it seeks to prevent unjust enrichment of the insured and may compel the insured to allow his name to be used by the insurer in a legal proceeding against a wrongdoer.<sup>37</sup>

There are several aspects relating to subrogation. The first aspect deals with a situation where the claimant may have received compensation for his loss, from his insurer, as well as a third party. In this case he is obliged to account to his insurer for the extra amount. The second aspect looks at the rights of the insurer vis-à-vis a wrongful

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<sup>37</sup> Goh & Loh (2001). Insurance Law, Butterworths Asia at pp.215-216



third party wherein the insurer that has fully indemnified the insured, obtains the right to step into the insured's shoes and in his name pursue any legal action against the third party who has caused the loss.

The right of subrogation currently enjoyed by the insurer is now entrenched as a legal principle. The standard insurance policy will invariably confirm the insurer's rights but specific contractual terms may also be included to extend these rights. In addition, statutes may require the right of subrogation to be given such as the *Singapore Workmen's Compensation Act*<sup>38</sup> and the *Malaysian Workmen's Compensation Act*<sup>39</sup>

Both the Singapore and Malaysian provisions in relation to motor insurance does not specifically provide for the rights of subrogation. Specific insurers or groups of insurers have taken the initiative to waive their subrogation rights in certain circumstances. In Singapore, these groups were participants in the Knock-for-Knock Agreement which was later dissolved on 31 May 2003 and replaced with the Barometer of Liability Agreement (BOLA) on 1 August 2003. Alternatively, the courts have limited these rights on equitable grounds where it would not be just and equitable to do so.

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<sup>38</sup> Goh & Loh (2001). Insurance Law, Butterworths Asia at pp. 217-218

<sup>39</sup> Section 20 of the Workmen's Compensation Act



In the Philippines, the principle of subrogation is applied on the basis of equity wherein the insurer who pays claim is subrogated to the right of the insured to proceed against the wrongdoer. Said principle is provided under Article 2207 of the New Civil Code of the Philippines.

Although the rights of subrogation is a well entrenched doctrine of insurance law in Indonesia, it is not known whether its legal principle and practice are widely invoked or part of any governing laws or insurance contracts. Further research and analysis in this area is required.

In Vietnam, the rights of subrogation are stated in *Article 7 of Decision 23*. While in Cambodia, it is stated under Article 28 of the *Insurance Law Act 2000*. *Section 31 of The Protection for Motor Vehicle Accident Victims Act* provides the Insurer the right to recover the preliminary compensation paid where the injury is caused by a third party or the wilful negligence of the vehicle owner, driver or persons in the vehicle or even the victim from the person concerned.



## *5. Uninsured vehicles*

In Malaysia, in relation to third party bodily injury or death for accidents in Malaysia caused by uninsured vehicles or vehicles with ineffective insurance, the Motor Insurers' Bureau was established to secure compensation for third party victims of such road accidents. Where there is third party property damage caused by uninsured vehicles, the existing mechanism to compensate accident victims is to pursue claims against the owner of the vehicle.

In Singapore, the gap in the efficacy of the insurance law to ensure compensation for accident victims was eventually filled by the setting up of a scheme of social insurance, wherein a fund is set up to provide compensation to victims of road accidents who are unable to recover damages either from the negligent driver, or his motor insurer. The Motor Insurers' Bureau (MIB) manages the fund, the members of which are authorised motor insurers who contribute to the MIB fund on the basis of a levy on their annual motor insurance premium income. In order to enforce a claim against MIB where the driver is uninsured, the victim must first obtain judgement against the negligent driver and show that there is no compulsory insurance or the policy is ineffective for any reason (including the inability of the insurer to make payment).



The MIB also compensates victims who are unable to trace any person responsible (or partly responsible) for death or injury.<sup>40</sup>

In Philippines, the only mechanism to compensate accident victims in the cases where there is third party property damage caused by uninsured vehicles is to pursue claims against the owner of the offending vehicle.

In Indonesia, there is no bad risk pool and victims of either hit and run accidents or uninsured vehicles are not provided for in any way through legislation although a limited scheme by PT. Jasa Raharja Putera, provides personal accident cover for the vehicle driver and passengers.

In Brunei, Vietnam and Cambodia there are no mechanisms within their respective legislations to compensate accident victims in cases where there is third party bodily injury or death for accidents caused by uninsured vehicles or vehicles with ineffective insurance.

In Thailand, the legislation however provides that *The Victims Compensation Fund* will pay preliminary compensation up to 15,000 Baht to victims of uninsured vehicles.

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<sup>40</sup> Ibid. at pp146-147



## *6. Related Issues*

### *Insurance Industry Associations and Alternative Dispute Resolution (ADR) mechanism*

The General Insurance Association of Singapore (GIA) and the Insurance Authority of Singapore which is the Monetary Association of Singapore (MAS) impose regulations on their members in carrying out their obligations. Singapore also has the office of the Insurance Ombudsman which handles insurance complaints. Recently, in Singapore the Insurance Dispute Resolution Organization (IDRO) was set up to cater to ever rising consumer expectations by focusing on customer service and fair dealings. It ultimately provides customer with a one-stop service center for insurance-related enquires and complaints. It is jointly set up by Life Insurance Association of Singapore (LIA) and General Insurance Association of Singapore (GIA) on 7 February 2003. IDRO has now replaced the Insurance Ombudsman Bureau and the Tribunal for Motor Third Party Property Damage Claims. IDRO has a broadened scope of handling complaints and disputes on both market conduct and claims matters. In the case of any dispute, insurance companies are bound by IDRO findings, whereas consumers are still free to pursue other resolution options if they so choose.<sup>41</sup>

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<sup>41</sup> MAS Insurance Report 2002 at <http://www.mas.gov.sg/singfinsec/download/InsRpt2002.pdf>



In the same way in Malaysia, the General Insurance of Malaysia (PIAM) and the Insurance Association of Malaysia which is Bank Negara Malaysia (BNM) impose guidelines and standards on insurers. The Insurance Mediation Bureau attends to direct claims, which are in dispute. Both BNM and PIAM also have facilities to address complaint.

In Brunei, the General Insurance Association of Negara Brunei Darussalam (GIAB) regulates the standards and performance of insurance contracts. GIAB acts as a mediator on matters which are in dispute within the insurance industry.

In Philippines, the Philippines Insurance Rating Association is a licensed organization for non-life insurance. It sets premium rates and policy wording of non-life insurance subject to the provisions of the Insurance Code.

In Indonesia, Dewan Asuransi Indonesia (DAI), which is the Insurance Council is responsible for the setting of standard policy form, setting up of adequate premium rate for motor and fire insurance and arbitration settlement. They also operate as the complaints division which handles disputes relating to insurance.

Despite the infancy of the Indonesian insurance framework compared to other ASEAN countries, it is surprising to note that there exists an arbitration law and a national arbitration board. Although



decision reached at arbitration is binding on parties involved, it is not a popular resolution forum as there is insistence within the governing quarters for Insurers to amend their contract to provide an avenue for complainants to opt for legal redress rather than be obliged to submit to arbitration if they so choose.

### *Policy Wordings & Scope*

Taking into consideration that the official languages of the respective countries are different, it is not surprising that the policy wordings in the different languages is bound to have different shades of meaning which has a direct impact on the interpretation of the policy. Besides the scope and the extent of which these policies purport to cover may also vary from country to country.



## **Summary and Findings**

This study examines the motor insurance laws and their supervisions in 8 countries of the ASEAN region namely: Malaysia, Singapore, Brunei, Philippines, Indonesia, Thailand, Vietnam and Cambodia. A comparative analysis shows that there are variations in key areas of motor insurance laws and practices across these countries which amongst others include:

(a) *Scope of compulsory cover:*

- (i) Out of the eight countries, all but Indonesia have compulsory motor vehicles third party liability cover.
- (ii) The minimum cover required by legislations in the said countries is for third party bodily injury and death.
- (iii) In Singapore the scope of compulsory cover has been extended to all passengers whereas; in Malaysia and Brunei, the passenger cover is limited to passengers travelling for hire/reward or by reasons of/or in pursuance of contract of employment. In the Philippines, Cambodia, Vietnam and Thailand land transport operators are required to obtained cover for passengers' liability.



- (iv) Two out of the eight countries namely Cambodia and Vietnam also require third party property damage to be part of the compulsory insurance scheme.
  
- (b) *Basis of liability:* The basis of liability to third party in most countries is founded on the law of negligence. However, in Philippines and Thailand there is a provision for no fault liability which is determined by the limit of the value of the claim. Claims in excess of this limit are determined on the basis of the law of negligence.
  
- (c) *Organizational workflow:*
  - (i) *Distribution network:*

The distribution network consists of insurers, brokers and agents in all countries of study. However, the definition of 'insurer' varies in each country.
  
  - (ii) *Acceptability of policy:*

In all the countries of study, policies of insurance are only acceptable if issued by an authorized insurer of the respective countries.



(d) *Adjudication:*

(i) Enforcement of laws:

Current legal framework within each jurisdiction is based on their respective historical origins. With the exception of Thailand, all of these countries had been colonised by the

British, the Dutch, the French or the Americans and as such have inherited or have been largely influenced by their legal systems. By reason of such diversity, reciprocity in terms of enforcement of judgments, among others, may not exist between jurisdictions.

(ii) Limitation period:

Each jurisdiction has distinct limitation period with some jurisdictions sharing common time frame within which an action must be instituted. The limitation period is largely governed by the nature of claims.



(iii) Limits of liability:

The limits on the liabilities of insurers are generally determined by the terms of the policy save for Philippines, Thailand and Vietnam where it is incorporated in their respective legislations.

(e) *Rights in terms of subrogation:*

These rights are generally provided for within the terms of the policy. In Philippines, Vietnam and Cambodia these rights are additionally recognised within the respective legislations.

(f) *Uninsured vehicles:*

With the exception of Thailand, legislation in the remaining countries under study does not provide for uninsured vehicles. However some of the countries do have mechanisms which protect victims involved in road accidents with vehicles that are uninsured or have ineffective cover through the relevant associations.



**(g) Policy Wordings:**

Interpretation of policies is subject to the language and legislation of the country of origin.



### **Conclusion & Recommendations**

The main aim of this comparative study is to provide an overview of the current motor insurance laws and practices in selected countries of the ASEAN region in order to facilitate the implementation of the ASEAN Scheme of Compulsory Motor Vehicle Insurance otherwise known as Protocol 5. With this in mind, the harmonization of laws, regulations and practices in this area is inevitable. However, to embark on the process of harmonization it is imperative to reconcile the differences that exist across the borders to overcome the impediments and constraints that may obstruct the successful implementation of Protocol 5.

It should also be noted that the scope and objectives of the Protocol 5 in its current form is confined to Transit Transport Operators and Road Transit Transport Vehicles in respect to death or bodily injuries and/or property damage arising from road traffic accidents in the respective member countries. It is recommended that the scope of Protocol 5 be extended to include all classes of motor vehicles crossing the borders.



The successful implementation of Protocol 5 necessitates the establishment of a common system for motor vehicle liability insurance applicable throughout the member countries of the region. The proposed system requires standardization of minimum compulsory cover, effective coordination and integration of the administrative and legal machineries in general and the insurance industries in particular of the respective jurisdictions. Notwithstanding this, it is imperative that any changes to be instituted ought not to disrupt the current operations and should require minimal legal and administrative changes only.

In view of this, some of the issues that need to be addressed are:

- ❖ Applicable law: law of the country where the accident occurred (*lex loci*) OR law of the country of the residence of the victim (*lex damni*);
- ❖ Availability and Scope of the Blue Card: Is the card available only to nationals of member countries or is it also extended to nationals of non-ASEAN member countries;
- ❖ Scope of cover: It is necessary to consider compulsory cover for passenger liability and third party property damage.



- ❖ Basis of liability: There is a need to decide on whether to adopt the concept of fault (negligence) or no fault;
- ❖ Limits to liability: To determine and standardize the limits for third party death, bodily injury and property damage;
- ❖ Limitation period of claims instituted: standard time frame to be determined;
- ❖ To consider the creation of a Schedule of Injuries with pre-determined quantum;
- ❖ To create a tariff for premiums to be charged;
- ❖ National Bureaux to set up an authorised workshop scheme;
- ❖ Create standard guidelines on claims procedures and settlements.

The issues raised herein are pertinent in so far as it relates to the implementation of Protocol 5. Whilst harmonization of laws and practices governing cross border traffic and motor insurance scheme is necessary, the logistic aspects on introducing a Blue card must be



carefully considered bearing in mind the uniqueness of the national features of each country in the ASEAN region.

Presently the Council of Bureaux has been set up to coordinate and supervise the legal, technical, administrative and financial operations of the national bureaux of member countries who are signatories to Protocol 5. However it would seem that their functions are limited to making recommendations in respect to the ASEAN Scheme of Compulsory Motor Vehicle Insurance. In order to establish a common system for motor vehicle liability insurance, the broader issues such as those identified above will have to be addressed. However the Council of Bureaux is not empowered to ensure compliance of their recommendations by the respective signatories to Protocol 5. Consequently a body clothed with the necessary authority should be established for the purposes of issuing of directives, regulations and guidelines resulting from the deliberations of the recommendations made by the Council.

The spirit and objectives of Protocol 5 can only be realised by addressing the key areas identified herein with particular reference to the integration of the respective motor insurance industries and their governing laws and regulations with a view to establish a common insurance market within the ASEAN region. To this end in-depth research should be undertaken to ascertain a suitable model for the region akin to that of the European experience.



## **MATRICES**

### **THE MOTOR INSURANCE LAWS & THEIR SUPERVISION IN SELECTED ASEAN COUNTRIES: A COMPARATIVE ANALYSIS**

# Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

	<i>Areas of Study</i>	<b>Malaysia</b>	<b>Singapore</b>	<b>Philippines</b>	<b>Brunei</b>	<b>Indonesia</b>	<b>Thailand</b>	<b>Vietnam</b>	<b>Cambodia</b>
1	a) Scope and limits and types of cover	1) Compulsory cover for third party bodily injury and death for all motor vehicles.	1) Compulsory cover for third party bodily injury and death for all motor vehicles.	1) Compulsory cover for third party bodily injury and death for all motor vehicles.	1) Compulsory cover for third party bodily injury and death for all motor vehicles.	1) No compulsory coverage except for passenger carrying vehicles.	1) Compulsory cover for victim bodily injury and death for all motor vehicles.	1) Compulsory cover for third party bodily injury (TPBI) or death and property damage (TPP) liability.	1) Compulsory cover for third party bodily injury and death for all motor vehicles.
		2) Compulsory passenger liability required for vehicles used for hire/reward.	2) Compulsory passenger liability for all vehicles.	2) Compulsory passenger liability for land transportation operators.	2) Compulsory passenger liability required for vehicles used for hire/reward.			2) Passenger bodily injury (PBI) or death liability.	2) Compulsory insurance for Contractor's General Liability.
									3) Compulsory Insurance of Passenger Transports.

## Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

Areas of Study	Malaysia	Singapore	Philippines	Brunei	Indonesia	Thailand	Vietnam	Cambodia
b) Basis of liability	According to the Principles of the Law of Tort i.e. negligence.	According to the Principles of the Law of Tort i.e. negligence.	‘No-fault’ basis for claims up to 10,000 pesos (USD182). Principles of the Law of Tort for claims with the maximum statutory limit of 50,000 pesos (USD 912).	According to the Principles of the Law of Tort i.e. negligence.	According to the Principles of the Law of Tort i.e. negligence.	‘No-fault’ basis by paying preliminary compensation for claims up to 15,000 Baht (USD359) for bodily injury and 35,000 Baht (USD 838) for death. Fault based on Civil and Commercial Code for claims in excess of 15,000 Baht(USD 359) up to 50,000 Baht (USD 1,197) for bodily injury and in excess of 35,000 Baht (USD 838) up to 100,000 Baht (USD 2,393) for permanent disability and death (already included 50,000 Baht for bodily injury).	To conform with the regulation of the Civil Law.	Fault based.

## Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

	<b>Areas of Study</b>	<b>Malaysia</b>	<b>Singapore</b>	<b>Philippines</b>	<b>Brunei</b>	<b>Indonesia</b>	<b>Thailand</b>	<b>Vietnam</b>	<b>Cambodia</b>
2	a) Organizational workflow: distribution network	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> <li>3) MMIP</li> <li>4) General Insurers</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> <li>3) General insurers</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> <li>3) Non-life company underwriters</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> </ul>	<ul style="list-style-type: none"> <li>1) Brokers</li> <li>2) Agents</li> </ul>
	b) Issuance of policies	Only those issued by licensed insurer.	Only those issued by an authorized insurer.	Only those issued by insurance companies approved by the Insurance Commissioner.	Only those issued by an authorized insurer.	Only those issued by an authorized insurer.	Only those issued by an authorized insurer.	All vehicle owner including foreign vehicles must have the compulsory insurance of civil liabilities issued by insurer licensed by the Ministry of Finance to provide insurance services.	Only those issued by an authorized insurer.
	c) Geographical area / territorial limits	Policies of insurance issued covers Singapore and Brunei.	Policies of insurance issued covers West Malaysia and that part of Thailand within 50 miles of the Malaysian border.	Policies of insurance issued covers only Philippines	Policies of insurance issued covers Sabah, Sarawak and Labuan.	Policies of insurance issued covers only Indonesia.	Policies of insurance issued covers only Thailand.	Policies of insurance issued covers only Vietnam	Policies of insurance issued covers only in the Kingdom of Cambodia

## Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

	<b>Areas of Study</b>	<b>Malaysia</b>	<b>Singapore</b>	<b>Philippines</b>	<b>Brunei</b>	<b>Indonesia</b>	<b>Thailand</b>	<b>Vietnam</b>	<b>Cambodia</b>
3	Adjudication a) Relevant legislation	1) Road Transport Act 1987 (Act 333)	1) Motor Vehicles (Third-party Risks and Compensation Act) (Chapter 189)	1) Chapter VI, Insurance Code & Land Transportation and Traffic Code.	1) Motor Vehicle Insurance (Third Party Risks) Act, Chapter 90	1) Law No.33 and 34 1964	1) Protection for Motor Vehicle Accident Victims Act B.E.2535 (1992)	1) Government Decree 1997	1) Insurance Law Act 2000 (6 <sup>th</sup> .July 2000)
								2) Decision of the Minister of Finance 2003.	2) Sub Decree on Insurance 2001 (6 <sup>th</sup> October 2001)
									3) Instruction Circular on Issuance of Temporary Insurance License.
	b) Enforcement of laws	Only enforceable in Commonwealth countries provided it is a Superior Court Judgment.	Only enforceable in Commonwealth countries provided it is a Superior Court Judgment.	Only enforceable in Philippines.	Only enforceable in Commonwealth countries provided it is a Superior Court Judgment.	Only enforceable in Indonesia.	Only enforceable in Thailand.	Only enforceable in Vietnam.	Only enforceable in Cambodia.

# Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

Areas of Study	Malaysia	Singapore	Philippines	Brunei	Indonesia	Thailand	Vietnam	Cambodia
c) Limitations: i) Period	6 years for claim in tort (W. Malaysia and 3 years in E. Malaysia)	3 years for claims relating to personal injuries or death	To be filed within one year from denial of the claim by the insurer.	3 years for claims relating to personal injuries or death.	30 years	180 days for preliminary compensation from the date of incident;	One year	3 years.
	In cases of death, 3 years for dependency claim & 6 yrs for estate claims.	6 years for property damage		6 years for property damage		2 years for claims relating to personal injury or death beyond preliminary compensation based on Civil and Commercial Code from the date of incident.		

## Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

Areas of Study	Malaysia	Singapore	Philippines	Brunei	Indonesia	Thailand	Vietnam	Cambodia
ii) Liability	Under the law unlimited liability with respect to TPBI / death	Unlimited liability with respect to TPBI / death	50,000 pesos (USD 912) for death to TPBI / death	Unlimited liability with respect to TPBI / death	No maximum limit is prescribe under the law.	Maximum liability for bodily injury 50,000 Baht (USD 1,197) per person and maximum liability for permanent disability and death and death 100,000 Baht (USD 2,393) per person and 5 million Baht (USD 119,666) per accident for motor vehicle not exceeding 7 seats and 10 million Baht (USD 239,332) per accident for motor vehicle exceeding 7 seats.	i) TPBI: 30 million VN dong ii) TPP: 30 million VN dong iii) PBI: 30 million VN dong	No maximum liability limit is prescribed under the law.  Minimum Passenger and Third party Libilites for bodily injury or death is US\$5,000.

## Comparative Analysis of Current Motor Insurance Legislation in the ASEAN Region

	<b>Areas of Study</b>	<b>Malaysia</b>	<b>Singapore</b>	<b>Philippines</b>	<b>Brunei</b>	<b>Indonesia</b>	<b>Thailand</b>	<b>Vietnam</b>	<b>Cambodia</b>
4	Rights in terms of subrogation	Provided for in the policy	Provided for in the policy	Not Provided for in the policy but in the Insurance Code.	Not Provided for in the policy	Provided for in the policy	Provided for in the statute.	Provided for in the statute	Provided for in the statute
5	Uninsured vehicles	May claim compensation through the Motor Insurers' Bureau of West Malaysia (MIB).	May claim compensation through the Motor Insurers' Bureau, (MIB)	Compensation can only be obtained by instituting action against the owner of the uninsured vehicle	No mechanism to compensate victims of uninsured vehicles.	No mechanism to compensate victims of uninsured vehicles.	Victims Compensation Fund will pay the preliminary compensation up to 35,000 Baht (USD 838) for death and 15,000 Baht (USD 359) for bodily injury.	Under the present regulations/ Civil Law in Vietnam, the vehicle owner must be responsible for compensating these victims.  At present, there are no funds to aid accident victims caused by uninsured vehicle. This issue shall be resolved in accordance with the Civil Law	No mechanism to compensate victims of uninsured vehicles.