Question 1:	**Licensing** **Does an Insurer wanting to insure the risk under the Convention mentioned above need a license?**
MLA	**Answer**
Argentina	Yes if it is an Argentine Insurer.
Belgium	The answer is affirmative although the criterion is not so clear: "doing insurance business in Belgium", i.e. marketing, conclusion and performance of the insurance contract (see art. 2§ 1 Insurance Supervision Act of 9 July 1975) or when "risk is situated in Belgium", i.e. the place of residence of the insured or the place of registration of the vessel (see art. 2§6,8° a) and c) Insurance Supervision Act) 1975 as amended by Royal decree 22-02-1991 Published MOn.Belge 11-04-1991 (amended sections : 2; 3; 4; 7; 16; 19; 20; 21; 22; 23; 24; 25; 26; 28; 28BIS-28OCTIES)
Canada	No. Whether the insurer need a license depends on their other insurance business activities in Canada. P&I Clubs provide the vast majority of the Certificates required by the Bunker Convention and CLC and are accepted by Canadian authorities. Other than one Club, which has a Canadian office, the International Group P&I Clubs are not required be licensed or otherwise authorized to handle this type of business in Canada.
China	According to Article 53 Paragraph 3 of Regulations on Administration of Anti-Pollution to the Marine Environment by Vessels, *Commercial insurance companies or mutual insurance bodies undertaking civil liability for vessel-induced oil pollution shall be determined and promulgated by the national maritime authorities after consulting with the insurance supervisory and regulating authorities of the State Council.* The maritime authorities of China have officially promulgated the name list of the insurance companies undertaking the aforesaid risk on March 1, 2010.
Croatia	Yes.
Finland	Yes

Germany	Yes, a license is obligatory for any insurer who wants to do business in Germany. There are no particular requirements for certification to insure Convention-risks if, however, a German insurer wants to insure those risks or if a foreign insurer wants to do business in Germany the certification according to German insurance supervision laws (Versicherungsaufsichtgesetz) may be required. The statutory source for answering questions regarding licensing of insurance companies is found in the German Act on the Supervision of Insurance Undertakings (VAG). For the question at hand the Sections 1, 5 and 7 are applicable. Section 1 Undertakings subject to supervision (1) Subject to supervision under this Act are undertakings which carry on insurance business and which are not social insurance institutions (insurance undertakings), as well as pension funds within the meaning of section 112 (1) below.
Germany (continued 1)	Section 5 Authorisation; application; documents to be submitted (1) Insurance undertakings may not carry on business without authorisation from the Supervisory Authority. Section 7 Permissible legal forms; non-insurance business (1) The authorisation may only be granted to public limited companies, mutual societies and corporations and institutions under public law. (1a) The head office must be located in Germany.
Ireland	Shipowners Liability Insurance in the area of the subject conventions is not written in the Irish Market. Where such insurance is in force for Irish Flagged vessels it is provided largely by the traditional UK P&I Clubs. However: Life and General Insurance Divisions of the Central Bank of Ireland are responsible for regulation inter alia of all Non Life Insurance Undertakings. A License is required for each and every class of Insurance (including Marine) underwritten in Ireland. See (Central Bank Reform Act 2010)
Italy	Yes, it does.
Japan	Yes. According to Act, the insurer shall meet with certain conditions, such as licenses. (Act. Art. (14)(2), Regulation Art. 3) (1) Insurance undertakings may not carry on business without authorisation from the Supervisory Authority.

Netherlands	The implementing legislation itself does not contain direct provisions on the need to have a licence. The implementing legislation requires the owner of a ship that is registered in the Netherlands or the owner of a ship that is registered in a non-Convention state or flies the flag of a non-Convention state to have insurance cover or other financial security from an insurer, a bank or other financial institution within the meaning of Article 1:1 of the Wet of het financieel toezicht (Wft) (Financial Supervision Act), or other person of whom the minister of Transport after consultation of the minister of Finance considers the financial capacity to be adequate to cover the liability under the relevant Convention. Under the general requirements of the Wft, however, a licence is indeed necessary to carry on business as in insurer, a bank or other financial institution in the Netherlands if that insurer, bank or financial institution is domiciled in the Netherlands, if it is domiciled in a non-EU country, or if it is domiciled in a EU country but not operating under a licence from the financial supervisory authority from that other EU country.
Netherlands (continued 1)	Where the insurer, bank or financial institution is domiciled in another EU country and operating under a licence from the financial supervisory authority from that other EU country no further Dutch licence as such is required. See for the latest English translation of the Wft:: http://www.minfin.nl/english/Subjects/Financial_markets/Financial_supervision/Publications.
New Zealand/Australia	No.
Norway	

Sweden	PREAMBLE TO ANSWERS Sweden is presently only party to the CLC Convention. Relevant legislation regarding obligation to maintain insurance or other financial security, and direct action, can be found in the Swedish Maritime Code. Legislation relating to insurance certificates (e.g. issuing and checking certificates) can be found in various Acts and Ordnances. It seems likely that the HNS Convention might be ratified in a not too far distant future, with necessary amendments of applicable national legislation to follow. The system in place for compulsory insurance and insurance certificates in relation to the CLC Convention is reportedly working well and it seems likely that this system will be copied if and when the HNS Convention is implemented into Swedish national legislation (cf. SOU 2006:92 pp. 144-153). Answer Yes.
Switzerland	Yes, according to Art. 3 (1) in combination with Art. 2 (1a) and (1b) Bundesgesetz betreffend die Aufsicht über die Versicherungsunternehmen (Versicherungsaufsichtsgesetz, VAG) a license is required. http://www.admin.ch/ch/d/sr/9/961.01.de.pdf
Turkey	Yes, Turkish law provides that insurers must be licensed (but the rule concerns only insurers being active in Turkey)
USA	Inapplicable- The United States has not ratified the Conventions

Question 1.1:	**If so, must it be a national license, or do your respective authorities accept licenses issued by foreign bodies?**
MLA	**Answer**
Argentina	If the insurance is issued by an Argentine Underwriter, it shall have a national license. Vessels flying Argentine flag should mandatorily be insured for Hull& Machinery in Argentine Companies. For P&I and other covers foreign Underwriters are accepted.
Belgium	The license must be issued by: - either Belgium (art. 3§1 Insurance Supervision Act) - or another EU member state (art. 64 and following Insurance Supervision Act) on the basis of the singlelicense principle in the internal European insurance market - or a WTO member state only for certain classes of liberalized (transport) insurance, i.a. marine third party liability cover (art. 2§4 and §5 INsurance Supervision Act. and art. 30ter Insurance Supervision Decree of 22 February 1991) - or am OECD member state only for certain classes of liberalized (transport) insurance, i.a. marine third party liability cover (art. 2§4 and §5 Insurance Supervision Act and art. 30quater Insurance Supervision Decree).
Canada	N/A
China	There is no such license issued in China, however, only the insurer which is issued on the name list promulgated by MSA can insure the risk.
Croatia	The Croatian authorities accept insurers with national licences and all P&I Clubs members of the International Group of P&I Clubs. Other providers of the relevant insurance coverage would be subject to an individual assessment at the discretion of the authorities. Minimum compliance for such an insurance provider would be that it is licensed to provide the relevant financial services under the national law of the state of its domicile.

Finland	A permit from the Finnish Financial Supervisory Authority (FSA) is needed in order for companies based in Finland to provide insurance products. In this regard the following information has been obtained from the FSA: Foreign companies licensed within the EU/EEA to operate an insurance business can conduct operations in Finland from a branch or agent (secondary establishment) or through cross-border operations after notifying the FSA. Insurers with a registered office outside the EU/EEA may, following an authorisation from the FSA, conduct operations in Finland from a branch or agent(secondary establishment). Companies offering financial services in Finland are required to apply for a licence issued by the FSA in order to operate a business. In a licence application, the company's capital situation is reviewed along with the business plan, owners and corporate management etc. The details of this are laid down in the Insurance Companies Act (2008/521)
Germany	Not applicable.
Ireland	It need not be a national license but the Holder must firstly be licensed in the class and there must then be compliance with the " passporting " procedures from a licensing perspective as set out in SI. 359 of 1994 and the related Sienna Protocol as agreed by EU Supervisory bodies in October 1997 and updated in 2008.

Italy	According to arts. 23 and 24 of the Italian Insurance Code (Law Decree 209/2005) "the taking up of life or non-life [insurance] business under the right of establishment" or under the freedom to provide services "in the territory of the Italian Republic, by an insurer with head office in another member State, is subject to the notification to ISVAP , by the supervisory authority of that State, of the information and conditions required under EU provisions". Meanwhile as per article 28 of the Italian Insurance Code, if an insurer with head office in a non EU Member State intends to insure risks in the territory of the Italian Republic, it shall first be authorised by ISVAP, with an order to be published in the ISVAP Bulletin. The authorisation shall be valid only within the national territory. The authorisation may not be granted when the home State does not comply with the principle of equality of treatment or of reciprocity vis-à-vis insurers with head office in the territory of the Italian Republic which have set up or propose to set up a branch in that State.
Japan	The authority accepts both national and foreign licenses subject to conditions in the Act. See, Act Art.4(2) and Regulation Art.3(1)-(4) of the
Netherlands	The Netherlands: See the reply under 1.
New Zealand/Australia	
Norway	As a starting point, a national licence is required to offer insurance in Norway, cf. Insurance company Act 2005/44 § 2-1. Foreign companies can offer insurance through agents if the company 1) has a licence from its homeland, 2) the insurance supervision in this country is acceptable and 3) cooperation between the foreign and the Norwegian supervision is established, cf. § 14-1.

Sweden	A permit from the Swedish Financial Supervisory Authority (FSA. Sw: Finansinspektionen, FI) is needed in order for companies based in Sweden to provide insurance products. In this regard the following information has been obtained from the FSA: Q U O T E FOREIGN INSURANCE OPERATIONS IN SWEDEN Companies with a registered office within the EEA Foreign companies licenced within the EEA to operate an insurance business can conduct operations in Sweden from a branch or agent (secondary establishment) or through cross-border operations after notifying Finansinspektionen. Companies with a registered office outside the EEA Insurers with a registered office outside the EEA may, after authorisation from Finansinspektionen, conduct operations in Sweden from a branch or agent(secondary establishment). They also have the opportunity, after authorisation from FI, to market insurances for risks located in Sweden. However, this applies on the condition that it occurs through mediation of an insurer licenced in Sweden and both the insurers belong to the same group or have cooperation agreements with each other.
Sweden (continued)	Apply for authorisation Companies offering financial services in Sweden are required to apply for a licence issued by FI in order to operate a business. In a licence application, we review the company's capital situation, business plan, owners and corporate management, among other things. The company's operating activities may require additional licences from FI. U N Q U O T E
Switzerland	A national license is required in principle, save for different stipulations in a treaty between states (no provisions however regarding the adoption of the CLC) (Art. 2 (1b) VAG).
Turkey	For liability insurances in respect of vessels, there is possibility to contract abroad (the rule takes into account the fact that the P&I cover is not offered by local insurers within Turkey). But there is no specific requirement that the foreign insurer be licensed.
USA	Inapplicable- The United States has not ratified the Conventions

Question 1.2:	What are the consequences if an insurer issues a policy without the respective license?
MLA	**Answer**
Argentina	The contract will be deemed null and void for the insurer, who will be impeded of collecting the premium, but if a covered casualty occurs, the insurer should pay the indemnification to the Assured.
Belgium	Consequence of cover by non-licensed insurer: - Insurance contract is void, but must be performed vis-à-vis insured of good faith (art. 3 §3 Insurance Supervision Act.) - criminal sanctions (art. 83 Insurance Supervision Act) Administrative fines (art. 82 Insurance Supervision Act) -Court injunction on the basis of the Market Practices (Procedures) Act dated 6 April 2010
Canada	N/A
China	Shipowners can not be approved to get Blue Card if they have a policy issued by an insurer who is not on the name list.
Croatia	The policy would not be accepted as a basis for issuing the relevant certificate, i.e. the authorities would refuse to issue the convention certificate.
Finland	Since these licenses are mandatory it follows that the FSA would issue an order to cease such activities.
Germany	Business without a license may be a criminal or an administrative offence under insurance supervision law but does not affect the validity of the insurance contract and the direct action as such.
Ireland	There are significant Financial and or Criminal Sanctions available to the Regulatory Authority for any breach of Financial Regulation. See " Administrative Sanctions Procedures of the Financial Regulator 2005 " and " Central Bank Enforcement Priorities 2013 " (effective 12 February 2013)

Italy	An insurance contract concluded with an unauthorised insurer or with an insurer prevented from concluding new business shall be null and void (art. 167of the Insurance Code). Furthermore "Anyone pursuing insurance or reinsurance business without authorisation shall be punished with imprisonment from two to four years and with a financial penalty varying from twenty thousand to two hundred thousand Euros" (art. 305 Insurance Code). This measure regards typically Italian insurers. In case of a foreign insurer who issues a policy without having the necessary license, ISVAP notifies to the supervisory authority of the member State or of the third State the facts and the lack of authorisation. The foreign authority will then take appropriate action against the insurer according with the applicable national regulation.
Japan	The authority does not issue the Certification if the insurer does not satisfy the conditions in the Act. Act Art14(2))
Netherlands	The Netherlands: The insurer will be subject to sanctions under administrative or criminal law. The insurance contract itself will, however, remain valid.
New Zealand/Australia	
Norway	Deliberate or negligent breach of the requirements in the Insurance Company act is punished with penalties or prison for one year.
Sweden	Based on information from the FSA there would be an order to cease such activities.
Switzerland	Intentional breach: Prison sentence of up to 3 years or fine (Art. 87 (1a) VAG), negligent conduct: fine of up to CHF 250,000 (Art. 87 (2) VAG).
Turkey	An insurance contract made with a Turkish person not being licensed is not enforceable. However this rule does not apply to contracts made with foreign insurance companies (otherwise Turkish law would harm Turkish citizens at least in cases where it is allowed to take out insurance abroad).
USA	Inapplicable- The United States has not ratified the Conventions

Question 1.3:	Is there an obligation of a licensed insurer to conclude insurance contracts?
MLA	**Answer**
Argentina	Not in the maritime insurance field.
Belgium	In principle: no, but on the basis of the anti-discrimination legislation an insurer who refuses to provide cover ill advised on a discriminatory basis will have to justify his refusal on objective grounds or else he has a case to answer.
Canada	N/A
China	No regulations are specified on this issue.
Croatia	No.
Finland	No.
Germany	There is no such obligation.
Ireland	There is no obligation on either party to conclude a marine insurance contract contract (such as might exist in motor insurance as a compulsory Class.)
Italy	There is no obligation of a licensed insurer to conclude insurance contracts.
Japan	The Authority demands the shipowner applicant, who is requesting the Certification, to demonstrate the terms and conditions of insurance as well as the submission of Blue Card.
Netherlands	No.
New Zealand/Australia	
Norway	Not an obligation to insure as such, but according to the Insurance Contract act (ICA) § 3-10 a licensed insurer may not deny a request for insurance without a legitimate reason.
Sweden	No.
Switzerland	If operations are discontinued for a period of 6 months or more, withdrawal of the licence is possible (Art. 61 (1) VAG). Hence, there is an obligation to conclude insurance contracts.
Turkey	For compulsory insurances, the insurer is obliged to contract.
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.1.1:	**Certification** **Will a certificate issued by a convention state be recognized in your state without any preconditions?**
MLA	**Answer**
Argentina	In principle it will be recognized. Vessels flying flags of non convention states may produce certificates issued by convention states.
Belgium	The supervision of financial services in Belgium has recently been entrusted to a double structure, on the one side the National bank of Belgium and on the other side the Financial Services and Markets Authority abbreviated as FSMA (see Royal Decree of March 3, 2011). Belgian law provides that certain formal requirement must be fulfilled for a certificate will be recognized.
Canada	Canadian authorities are entitled to investigate the adequacy of the security represented by the certificate. However, we are not aware of any actions that the Canadian authorities have taken to validate the required certificates or their issuer. We do not know of any circumstances under which the Canadian authorities have been provided with certificates not issued by Canadian licensed insurers OR by P&I Clubs that are members of the International Group.
China	According to Article VII 7 of the International Convention on Civil Liability for Oil Pollution Damage 1969, China, as a member of the aforesaid Convention, agrees to accept certificates issued by other convention states. That means a certificate issued by a convention state is regarded as having the same force as certificates issued by Maritime Safety Administration of the People's Republic of China.
Croatia	Yes.
Finland	Yes.
Germany	A certificate issued by a convention state will be recognized without any preconditions if it has been issued in accordance with Art. 7 Bunkers Convention (Art. 7 para 9).

Ireland	Normally Yes - the Marine Survey office of the Dept of the Marine would accept a certificate issue by a contracting state as prima facie evidence of compliance with convention regulation and would expect reciprocal recognition by a convention state of any Irish issued certificate One needs to look carefully at what the law requires in this regard. The requirement is not directly a requirement to have insurance. The requirement is to have a certificate of insurance. For example to comply with the CLC in Ireland (as set out in the 1988 Act) a ship registered in a convention state must have a certificate issued by or under the authority of that state. In relation to a ship registered in a non-convention state, the 1988 Act provides that she must have a certificate issued by a Convention state or a certificate certified by the [Irish] Minister as complying with such requirements as may be prescribed.
Italy	Yes, it will.
Japan	There is no precondition under the Act.
Netherlands	Yes
New Zealand/Australia	Yes
Norway	The Bunkersoil Convention and CLC convention are included in the Norwegian Maritime Code (MC) ch. 10. According to the MC § 186 (Bunkersoil Convention) and § 197 (CLC convention), a ship registered in a Convention State shall have certificate according to the Convention demonstrating that insurance or other security is effected. The certificate must be provided by or confirmed by the relevant authority in the Convention State (Regulation FOR-2008-06-07-607 § 7 and § 14). There are no further rules on preconditions for being recognized.
Sweden	Yes, but Swedish law provides that certain formal requirements must be fulfilled (Section 8 of Ordnance 1996:12).
Switzerland	Yes, according to Art. VII (7) of the "Internationales Übereinkommen über die zivilrechtliche Haftung für Ölverschmutzungsschäden "Haftungsübereinkommen 1992". (http://www.admin.ch/ch/d/sr/c0_814_291.html)
Turkey	In principle yes.
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.1.2:	**Will a certificate issued by a convention state be subject to investigation whether insurance satisfying the convention requirements actually exist?**
MLA	**Answer**
Argentina	In principle no.
Belgium	The certification will be examined by the FSMA: the control mechanisms are limited to document compliance; the supervision of the financial services industry of which the insurance industry is a part, lies now with the National bank of Belgium. Belgium will request consulation with the issuing or certifying state in case of doubt.
Canada	The Minister of Transport has the discretion pursuant to s. 74(5) of the Canadian Marine Liability Act to revoke a Bunker Convention certificate if the Minister believes that the guarantor providing the insurance or other security can no longer meet its obligations or that the insurance or other security no longer satisfies the requirements of the relevant convention.
China	Insurance policy must be showed.
Croatia	If there is a reason to doubt the validity of the insurance certificate the authorities may investigate the actual insurance conditions.
Finland	No, the control mechanism seems to be limited to documentary compliance on board the vessel. Finnish law (MC sections 20:9a and 9b) contains provisions on sanctions if insurance does not exist, or the vessel does not carry the required certificate. MC section 10: 15 (oil tankers) and 10a:10 (bunkers) provide that a ship that does not carry the required certificate may be detained and have its journey interrupted.
Germany	A certificate issued by a convention state will not be subject to investigation whether insurance satisfying the convention requirements actually exists. Germany will request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by the Bunkers Convention (Art. 7 para. 9).

Ireland	By analogy with 2.1.1 – Normally No.
Italy	No, it will not.
Japan	The Act does not provide for such investigation.
Netherlands	No
New Zealand/Australia	No
Norway	No.
Sweden	Not to our knowledge. The control mechanism seems to be limited to documentary compliance onboard the vessel.
Switzerland	Yes, in that a contracting state may approach the issuing or the confirming state for clarifications if it has reason to believe that the insurer or provider of security (bond) are not in a position to live up to the financial responsibilities of the agreement (Art. VII (7) Haftungsübereinkommen 1992).
Turkey	If need is felt, yes.
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.1.3:	**Will a certificate issued by a convention state be rejected if there is evidence that there no valid insurance at all or that the insurance is not satisfying the convention requirements?**
MLA	**Answer**
Argentina	This is not contemplated neither in Argentine ratification of the 1992 CLC/Fund nor in the by laws. We were told by the Coast Guard - Environmental Department that the situation only could arise if there is a complaint and very convincing evidence is submitted.
Belgium	If a consultation with the issuing or certifying state leads to the conclusion that the insurer named in the insurance certificate is not financially capable of meeting the obligations imposed by the conventions, a certificate issued by a convention state will be rejected if there is evidence that there is no valid insurance at all.
Canada	The Minister of Transport has the discretion pursuant to s. 74(4) of the Canadian **Marine Liability Act** to refuse to issue a Bunker Convention certificate if the Minister believes that the guarantor providing the insurance or other security will be unable to meet its obligations or that the insurance or other security will not satisfy the requirements of the relevant convention.
China	Yes, it may be rejected in the situation mentioned above.
Croatia	Yes.
Finland	Same as above (No, the control mechanism seems to be limited to documentary compliance on board the vessel. Finnish law (MC sections 20:9a and 9b) contains provisions on sanctions if insurance does not exist, or the vessel does not carry the required certificate. MC section 10: 15 (oil tankers) and 10a:10 (bunkers) provide that a ship that does not carry the required certificate may be detained and have its journey interrupted.)
Germany	If a consultation with the issuing or certifying State has led to the result, that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by the Bunkers Convention a certificate issued by a convention state will be rejected if there is evidence that there is no valid insurance at all or that the insurance is not satisfying the convention requirements.

Ireland	If there was evidence of non compliance such as a lack of requisite Insurance then the Marine Survey office would act upon it and take issue with the certificate.
Italy	No, it will not.
Japan	The Act does not provide for the rejection on such ground.
Netherlands	The Netherlands: No, however such evidence may be reason to contact the issuing Convention State.
New Zealand/Australia	Yes
Norway	The regulation only asks for a certificate that is provided and confirmed.
Sweden	Logically Yes. Swedish law contains provisions as to sanctions if insurance does not exist.
Switzerland	Despite the fact that the statute does not hold the above explicitly, I may be concluded from art VII (7) Haftungsübereinkommen 1992 (e contrario).
Turkey	It depends on the appreciation of the relevant authorities. This would happen in extraordinary circumstances.
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.2.1:	**Does the authority in your state in charge of issuing the certificate require a license of your state or is it sufficient that the insurer is licensed in another state?**
MLA	**Answer**
Argentina	If the issuer is an Argentine Underwriter license will be required. If the issuer is a P&I Club Member of the International Group the evidence of insurance will be accepted.
Belgium	Belgium will only accept certificates issued under the supervision of the FSMA cover or accepted by it in compliance with the Belgian insurance supervision act (see our anser under number 1,1) yes
Canada	See the answer to 1.
China	According to the name list of the insurers mentioned in 1.1 above, not only Chinese insurers but also some foreign insurance companies and mutual insurance bodies are included. All of these insurers are administratively licensed to insure the risks under the Convention mentioned above. Then, a certificate shall be issued by the authority of China in charge of issuing the certificate, named Maritime Safety Administration of the People's Republic of China, when an insurance policy is issued by any one of aforesaid insurers. Foreign insurer should be on the name list.
Croatia	It is sufficient that the insurer is licensed in another state; see also answer to question no. 1.1. above.
Finland	There is no requirement of a license in Finland for this kind of insurance – only that the insurance covers the liability of the convention
Germany	In the application procedure, the competent German authority, Federal Office for Ocean Shipping and Hydrography (Bundesamt für Seeschifffahrt und Hydrography – BSH) will only accept insurance documents issued by insurers that are subject to supervision by the Federal Office for Financial Services Supervision (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin), which are members of the International Group of P&I Clubs, or in respect of which the BSH has received confirmation of the insurer's solvency from the insurance supervisory authority of the state in which the insurer is domiciled.
Ireland	Licensed Insurers from a contracting state are routinely involved in practice as this type of Liability cover is not provided currently in the Irish Market.

Italy	It is sufficient that the insurer is licensed in another convention State.
Japan	According the Act; - Either Japanese insures or non-Japanese insurers which are licensed in Japan: qualified - Non-Japanese insurer which is not licensed in Japan but qualified as the insurer for the Certification in other CLC state: qualified - Non-Japanese insurer who is not qualified for the Certification in other CLC state: qualified subject to recognition by the Authority. See, Act Art.14(2), Regulation Art. 2(1)-(4).
Netherlands	No, the certificate is issued by the minister of Transport (see also the reply to Question 1)
New Zealand/Australia	No
Norway	There is no requirement of a license in Norway for this kind of insurance – only that the insurance covers the liability of the convention
Sweden	License is required as discussed under 1.1.
Switzerland	Art. VII (7) Haftungsübereinkommen 1992 implicitly holds that it will be sufficient if the insurer is licensed in another state.
Turkey	It will not require a Turkish license if the insurance cover is granted by a foreign insurer (which is the normal case)
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.2.2:	**Does the authority in your state in charge of issuing the certificate investigate the insurance conditions before issuing a certificate?**
MLA	**Answer**
Argentina	Insurance conditions should comply with the international convention requirements.
Belgium	yes insurance conditions can be the object of such an investigation.
Canada	Under Canadian administrative practice, a financial responsibility certificate will not be issued unless the insurer undertakes that it will comply with the provisions of the Convention.
China	Yes.
Croatia	Normally, it does not. It just requires checks and accepts the commonly used "blue card" issued by the insurer as a valid evidence of the adequate existing insurance coverage. However, if the insurance provider is not one of the P&I clubs members of the International group, or alternatively one of the insurers licensed to provide the relevant type of insurance in Croatia, then the authority probably would engage into a thorough investigation of the insurance conditions (see answer no. 1.1. above).
Finland	As above (There is no requirement of a license in Finland for this kind of insurance – only that the insurance covers the liability of the convention)
Germany	The BSH investigates the details of the Blue Card but does not investigate the insurance conditions.
Ireland	MSO would satisfy itself in all material respects. A certificate is only issued on sight of the Insurance certificate
Italy	Yes it does. The authority shall check that the formal requirements of the insurance policy comply with the provisions of the international convention.
Japan	Yes. The applicants are required to submit to prove the existence and the contents of insurance contracts.
Netherlands	Yes
New Zealand/Australia	Yes
Norway	Not according to the regulation
Sweden	Yes, to the extent that an application to the FSA for a certificate shall be accompanied by a certificate from the relevant insurance company confirming that insurance is in place which covers the liability imposed by the Convention (Section 5 of Ordnance (1996:12)).

Switzerland	Art. VII (2) and (1) Haftungsübereinkommen 1992 provide for the competent authority to make sure that insurance or alternative security was arranged to meet the exposure according to Art. V (1) (limitation of liability according to tonnage of vessel). The statute does not provide for any other insurance conditions to be examined.
Turkey	Yes.
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.2.3:	**Does the authority in your state in charge of issuing the certificate investigate the financial standing of the insurer?**
MLA	**Answer**
Argentina	Regarding an Argentine Underwriter both it and the relevant policy should be authorized by the Argentine Superintendence of Insurance.
Belgium	yes, investigation by FSMA
Canada	The administrative practice of the Department of Transport in applications for financial responsibility certificates is to review the financial background of proposed insurers.
China	Yes.
Croatia	Normally it does not. However, if the insurance provider is not one of the P&I clubs members of the International group, or alternatively one of the insurers licensed to provide the relevant type of insurance in Croatia, then the authority probably would engage into a thorough investigation of the financial standing of the particular insurer (see answer no. 1.1. above).
Finland	In Regulation 72/2009, section 4, (on the Bunkers Convention), as amended by Regulation 1795/2009 it is specified that a certificate by the insurer about the validity of the insurance is among the information that has to be submitted to the Transport Safety Agency before it issues the certificate. In Regulation 852/1996 (on the CLC), as amended by Regulation 316/2009 it is stated in section 10 that the Maritime Administration shall request an opinion about the insurance company in question by the national body in charge for inspecting insurance companies, but does not have to do so "if it is obvious that the insurer is reliable and solvent" and that "if there are reasons to believe that the insurer is not capable of meeting its obligations, this can be taken into account when the sufficiency and acceptability of the insurance is assessed" (for the purpose of issuing a certificate).
Germany	The BSH investigates the financial standing of the insurer.
Ireland	Normally a reputable P&I Club will be involved and this would be accepted as prima facie evidence of compliance with convention requirements
Italy	No, it doesn't.
Japan	The Act does not provide for such investigation by Authority.

Netherlands	The Netherlands: In case of another person than an insurer, a bank or other financial institution within the meaning of Article 1:1 of the Wet of het financieel toezicht (Wft) (Financial Supervision Act), the minister of Transport after consultation of the minister of Finance considers whether the financial capacity is adequate to cover the liability under the relevant Convention.
New Zealand/Australia	Yes, in theory
Norway	Not according to the regulation
Sweden	Not to our knowledge.
Switzerland	Probably so, in that it would approach the issuing or confirming state if it had reason to believe that the insurer or provider of security were not in a position to live up to the financial responsibilities of the agreement (see 2.1.2 above)
Turkey	It may do so.
USA	Inapplicable- The United States has not ratified the Conventions

Question 2.2.4:	**Does the authority in your state in charge of issuing the certificate investigate the license of the insurer?**
MLA	**Answer**
Argentina	See answer to the previous question.
Belgium	yes.
Canada	Not that we are aware of.
China	Yes.
Croatia	Normally it does not. However, if the insurance provider is not one of the P&I clubs members of the International group, or alternatively one of the insurers licensed to provide the relevant type of insurance in Croatia, then the authority would thoroughly investigate the license of the insurer (see answer no. 1.1. above).
Finland	No.
Germany	The BSH Investigates the license of the insurer in individual cases.
Ireland	Likewise with 2.2.3. (Normally a reputable P&I Club will be involved and this would be accepted as prima facie evidence of compliance with convention requirements)
Italy	No, it doesn't. It will only investigate that the insurer is actually licensed in his home State.
Japan	The Act does not provide for such investigation by Authority.
Netherlands	The Netherlands: No (see also answer to Question 1).
New Zealand/Australia	No
Norway	Not according to the regulation
Sweden	Probably Yes. As mentioned under 2.2.3, in addition to issuing certificates the FSA is the authority responsible for granting licenses (permits) for insurances companies and such information should thus be readily available to the FSA.
Switzerland	Probably so, in that they would approach the issuing or confirming state in case of doubt (see 2.1.2 above).
Turkey	It may do so.
USA	Inapplicable- The United States has not ratified the Conventions

Question 3.1:	Statutory Law **Does your national law contain any provisions specifically designed to transform the above mentioned provisions in international conventions into your national law?**
MLA	**Answer**
Argentina	No.
Belgium	The P.I.L. (Private International law statute or the "conflict of laws" statute) provisions designating the applicable national law on mandatory insurance are found in: formerly art. 28quinquies-octies Insurance Supervision Act of 1975 as amended (transposing the 2nd generation EU insurance directives) and the Belgian PIL-code of 16 July 2004. To the extent that some articles of the statute would be incompatible, the latter are now superseded by the Rome I Regulation with universal application effect. A recent statute has radically changed the situtaion i.e. statute of January 20, 2012 by which the European directive 2009/20/EEC relating to the insurance of the vessel owners against maritime claims, has been implemented in Belgium. This law takes into account the following international treaties: CLC 1992, the HNS convention1996, the Bunker Oil Convention of 2001, the Nairobi Convention of 2007 and the Removal of the Wrecks, the European Regulation 392/2009 relating to the liability for the carriers of passengers by sea. In section 5 of the statute the Belgian vessel owners or foreign vessels entering into Belgian waters have to carry insurance cover to the maximum limits of liability provided by 1996 LLMC treaty.

Belgium (continued)	The insurance certificate must be available on board the vessel. The certificated has to mention: 1) the name of the vessel, her I.M.O. registration number, her home port 2) the name of the vessel owner and his principal place of business 3) the type and the period of cover provided 4)name and identity address and principal place of business of the insurance provider, and the address of the office where the insurance contract has been concluded. If the certificated is not made up in English or French or Spanish, a translation in one of these languages has to be included. The statute provides that the vessel ownerhas the burden of proof to establish the cover or the insurance conditions are adequate. The duly qualified agents of the Transport authority are entitled to ask for submission of all additional relevant information.
Canada	As noted, Canada is not a state party to, and has not enacte domestic law analogous to the HNS Convention, the Nairobi Wreck Removal Convention, or the Athens Protocol of 2002. As for the CLC Convention of 1992 and the Bunkers Convention, yes
China	Constitution of China does not provides how the relation between international conventions and domestic laws. However, many civil and commercial laws, such as General Principles of Civil Law, China Maritime Code, and etc, provides the principle of that the conventions shall prevail. That is said, if any international convention concluded or acceded to by our country contains provisions differing from those in our domestic laws, the provisions of the international convention shall apply. In principle, thus, international conventions can be adopted in China and be applied in domestic judgments directly without being transformed to domestic laws. China has submitted the instrument of accession to International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992CLC) to the International Maritime Organization. This Convention came into effect in China as of January 5th 2000 without any domestic laws to transform it. However, in practice, conventions only apply to the disputes involving foreign factors, but not apply to pure domestic disputes.

Croatia	It does in the case of CLC 1992 and Bunkers Convention to which Croatia is a party, but also in the case of WRC, although that convention is not in force.
Finland	provisions for damage caused by oil tankers (there is no official English translation available, but the text of the MC in this respect is virtually identical to the Swedish MC sections 10: 12-16, which has already been provided in the reply by the Swedish MLA). As far as insurance for pollution caused by bunker oil is concerned, the provisions are laid down in MC sections 10a: 6-9, which contain more details about the certificates to be issued by the Finnish Transport Safety Agency. The main difference between chapters 10 (CLC) and 10a (bunkers) is that the latter specifically authorises the Finnish Transport Safety Agency to issue certificate for Finnish ships and for non-convention ships. The relevant section includes details on what is to be included in the application for such a certificate (i.e.: 1) evidence that insurance covers the liability in question; and 2) evidence that its last day of validity cannot be less than three months following a written notification to that effect to the Agency) and the conditions for withdrawing it (i.e. if the conditions are no longer met). (MC Section 10a:8).
Germany	German domestic law contains provisions to transform the international conventions as a whole into German law (only CLC and Bunker Convention, not HNS, Nairobi or Athens). But German domestic law does not contain any provisions specifically designed to transform the licensing or certification orany other specific provisions of the international conventions into German law.

Ireland	CLC Convention – The Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 – 2005. HNS Convention – The Sea Pollution (Hazardous Substances) Compensation Act 2005 (Commencement Order 2007) Bunkers Convention – The Sea Pollution (Miscellaneous Provisions) Act 2006 Part 2. (Commencement Order 2008) Nairobi Wreck Removal Convention – No legislation. Athens Protocol 1974 (as amended) – The Merchant Shipping (Liability of Shipowners and others) Act 1996. (2002 Protocol) – no legislation but EU Regulation 392/2009 in force for member states currently implemented by national regulation (EUROPEAN UNION (LIABILITY OF CARRIERS OF PASSENGERS BY SEA) REGULATIONS 2012 S.I.552 of 2012) – based on the Protocol and the IMO guidelines)
Italy	Italy is not party to the Athens Protocol 2002, the HNS Convention and the Wreck Removal Convention. Italy ratified the CLC 1992 Protocol which was incorporated into the Italian legal system with Law 177/1999. Such Law makes reference to art. VII.8 of the Protocol but has no specific provision on direct action. With Law 19/2010 Italy has then authorized the ratification of the 2001 Bunker Convention which however has not yet entered into force. Here again the Law makes reference to art. 7.10 of the Bunker Convention but does not contain anything as regards direct action. The only specific provision is contained in art. 6 of Presidential Decree 504/1978 (as amended in 2010) relating to the duty for ships to carry on board the relevant insurance certificate. For sake of completeness it should be mentioned that pursuant to Directive 2009/20/EC of 23 April 2009 by 1st January 2012 Italy, as all other member States, shall need to have insurance for maritime claims covering ships flying its flag. The insurance is to cover maritime claims subject to limitation under the 1976/1996 LLMC.
Japan	Yes. The Act is promulgated for the purpose.
Netherlands	Yes, by means of the Wet aansprakelijkheid olietankschepen (Waot) (Oiltankers Liability Act). The Waot contains an almost verbal translation of the relevant substantial provisions CLC 1992 Convention.
New Zealand/Australia	Yes

Norway	The Bunkersoil Convention and CLC Convention are incorporated directly into the MC chapter 10, cf. § 186 and § 197 for duty to effect insurance and get a certificate. The MC chapter 11 is empty, but will incorporate the HNS convention when this is ratified by the Norwegian State The Athens Protocol 2002 art 4, 1 is not incorporated, but will be incorporated by EU/EEA Regulation 392/2009. Nairobi Wreck Removal Convention art 12 para 1 is not incorporated, and ratification of this Convention is not a priority issue in Norway.
Sweden	
Switzerland	No, no specific provisions pertinent to the CLC.
Turkey	No. International conventions to which Turkey is a party have force of law and the Judge is required to apply international rules ex officio.
USA	No. The United States of America is not a signatory to the subject international conventions.

Question 3.1.1:	If so, could you summarize the main characteristics of those provisions?
MLA	**Answer**
Argentina	
Belgium	See summary above.
Canada	Articles I to XI, XII bis and XV of the CLC Convention of 1992 have the force of law in Canada - pursuant to section 48 of the Marine Liability Act, S.C. 2001, c. 6 as amended. Articles 1 to 10 of the Bunkers Convention have the force of law in Canada pursuant to section 69 of the aforementioned Marine Liability Act.
China	
Croatia	Firstly, it is important to keep in mind the provision of Art. 141 of the Croatian Constitution: «International treaties which have been concluded and ratified in accordance with the Constitution, publicised and which have entered into force shall make an integral part of the domestic legal order of the Republic of Croatia and shall have primacy over national laws. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law. » Croatia is a party to the CLC / IOPC Fund 1992 regime, including the Supplementary fund 2003. Croatia is also a party to the Bunkers convention 2001. Therefore, all the provisions of the respective international conventions are directly applicable in Croatia as they make an integral part of the Croatian domestic law.

Croatia (continued 1)	Nevertheless, certain provisions of the respective conventions, in particular the provisions regarding compulsory insurance and direct action, have been incorporated into the Croatian Maritime Code which is the main source of domestic maritime law. **CLC 1992** The Maritime Code provisions on shipowner's liability for oil pollution are contained in Articles 813-823. They generally reflect the respective provisions of the CLC 1992. Limits of shipowner's liability are prescribed in Article 816, and they correspond to the CLC 1992 limits as revised in 2000. The special provisions on compulsory insurance are contained in Art. 820 of the Maritime Code, whilst a special provision on direct action against insurer is contained in Art. 821. The compulsory insurance and direct action provisions apply to foreign and domestic ships carrying more than 2000 tons oil in bulk. Enforcement of compulsory insurance is ensured through the ship certification system prescribed in Article 820 para. 3-5.
Croatia (continued 2)	Furthermore, ships without a prescribed certificate of insurance and state ships without an adequate self-insurance, are not allowed to enter Croatian ports (Art. 62, para. 1 and 2). There are also sanctions (fines) prescribed for trespassing the provisions on certification (Art. 1001 and 1017). **Bunker convention 2001** The Maritime Code contains special provisions on compulsory insurance of liability for damage caused by bunker oil, which have been in force since 1st June 2009. According to the said provisions, the registered owner of a ship of more than 1000 GRT that is registered in the Republic of Croatia is obliged to maintain in force insurance or other financial security, such as a guarantee of a bank or a similar financial institution, covering liability for pollution damage caused by bunker oil (Maritime Code, Art. 823). Such insurance must be up to the limits of shipowner's liability for maritime claims as prescribed in Article 391 of the Maritime Code. Limits of shipowner's liability prescribed in Art. 391 of the Maritime Code are equal to those prescribed by Art. 6 of the LLMC 1976/1996.

Croatia (continued 3)	Furthermore, the registered owner of such ship is bound to request the competent port authority maintaining the ship registry to issue a certificate confirming that insurance or other financial security in accordance with the Bunker convention and the Maritime Code is in force (Maritime Code, Art. 823a, para. 2). Art. 823a para. 3 of the Maritime Code prescribe the form and contents of such certificate issued by the port authority on behalf of the Republic of Croatia as Flag State. The said provision is in accordance with the requirements under the Bunkers convention. However, the Maritime Code does not include any provisions on conditions for the validity of the compulsory insurance regarding cancellation of the coverage and possible changes in terms of coverage during the period of insurance. This is seen as a downside in the domestic regulation of the subject matter. Art. 62, para. 3 and 4 of the Maritime Code ensure the enforcement of the compulsory insurance of bunker oil pollution liability.
Croatia (continued 4)	Namely, it is provided that each domestic and foreign ship of more than 1000 GRT entering a Croatian port, must show an evidence that there is insurance or other financial security in force covering shipowner's liability for bunker oil pollution damage in the amount corresponding to the limits of liability prescribed by Art. 391 of the Maritime Code (Maritime Code, Art. 62 para. 3). Furthermore, it is expressly provided that each such ship must have a valid certificate issued by the competent authority of the ship's Flag State confirming that the insurance or other financial security is in force and in accordance with the provisions of Bunkers convention (Maritime Code, Art. 62, para 4). In Croatia, the provisions on compulsory insurance implementing the relevant Articles of Bunker convention are applicable to all the ships of over 1000 GRT, even when they are domestic ships navigating exclusively within the limits of national jurisdiction. This means that Croatia did not chose to rely on the right to a reservation provided by Art. 7, para. 15 of the Bunkers convention.

Croatia (continued 5)	Therefore, in Croatia the same rules on compulsory insurance apply to all ships of over 1000 GRT, including all such domestic ships, regardless of the limits of their navigation. The abovementioned provisions of Art. 62 of the Maritime Code are subject to some criticism. Firstly, Art. 62, para. 3 should also include ships calling at the offshore terminals in the Croatian territorial sea and in the Croatian ecological and fisheries protection zone (ZERP). Furthermore it is not correct to require that the ship have both the evidence of insurance or other financial security (Art. 62, para. 3) and the certificate of insurance issued in accordance with the Bunkers convention (Art. 62, para. 4). It is an unnecessary administrative burden. Moreover, it is not in line with the Bunker convention according to which the states parties are obliged to recognize each other's certificates. It is therefore superfluous to require any document (e.g. insurance policy, P&I certificate of entry, blue card, etc.) other than the Bunker convention certificate.
Croatia (continued 6)	There are three other problems with the Maritime Code provisions on compulsory insurance for bunker oil pollution liability: • it is provided that the certificate must be issued by a competent state body, whilst the Bunker convention allows that the states parties delegate this duty to the authorised organizations; • it is strictly required that the certificate be issued by the flag state, although it is possible that the flag state is not a party to the Bunkers convention and therefore it cannot issue a certificate according to that convention, • Art. 62 does not provide any specific rules regarding the financial security covering liability for bunker oil pollution damage of a public ship owned by a state. It should therefore be amended by inclusion of a specific provision similar to that of Art. 62, para. 2 relating to the compulsory insurance of oil pollution liability. In particular, it is a provision forbidding the entry in Croatian ports of a public ship that has no certificate attesting that it is owned by a state and that it has a valid self-insurance.

Croatia (continued 7)	Currently, Art. 62 of the Maritime Code is not in line with Art. 7, para. 14 of the Bunkers convention as it does not exclude the public ships from the application of the compulsory insurance provisions. Regarding the enforcement provisions, there is an omission in legal drafting of the Art. 1001 of the Maritime Code defining the lack of possession of a prescribed compulsory insurance certificate as a maritime offence. The said Art. 1001 currently relates only to the certification under CLC 1992 and there is no such respective provision relating to the certification under Bunkers convention (i.e. under Art. 823.a of the Maritime Code). By way of analogy there is a lack of legal drafting of Art. 1017 regulating the sanctions for the maritime offence of non-compliance with the compulsory insurance certification requirements. The discussed Maritime Code provisions on compulsory insurance covering bunker oil pollution liability only partly implement the Bunkers convention. In the writers' opinion, such partial implementation of conventional provisions into the domestic law is inadequate.
Croatia (continued 8)	The relevant provisions on the basis and scope of liability for bunker oil pollution damage which is the subject matter of the compulsory insurance have been left out. Oil pollution damage has not been defined and there is no special provision defining the persons liable for such damage. The question is how one defines the subject matter of the compulsory insurance of bunker oil pollution liability now prescribed by Maritime Code. Finally, the Maritime Code does not contain any specific provisions on direct action against the insurer of bunker oil pollution liability such as that of Art. 7, para. 10. of the Bunkers convention. On the other hand, Art. 821 of the Maritime Code adequately provides special provisions on direct action against the insurer of oil pollution liability in accordance with the CLC 1992. It is recommended that similar provisions be included regulating the direct action in accordance with the Bunkers convention.

Croatia (continued 9)	Although the only correct solution would be to find the answer to these questions in the provisions of the Bunker convention to which Croatia is a party, and which is directly applicable under Croatian law, the described lacuna in the Maritime Code still creates some legal uncertainty and opens more possibility of incorrect application of the relevant law. It is therefore recommended that the Bunkers convention be adequately and entirely implemented in the provisions of the Croatian Maritime Code. **WRC 2007** Although WRC 2007 has not entered into force, and although Croatia is neither a signatory nor a party thereto, certain provisions thereof on compulsory insurance were introduced in the Croatian Maritime Code and have been in force since 1st June 2009.
Croatia (contineud 10)	The Maritime Code provides that each domestic ship in international navigation and foreign ship, with gross tonnage of over 300, intending to enter in a Croatian port, or call at an offshore terminal situated in the territorial sea or on the continental shelf of the Republic of Croatia, must provide an evidence of insurance or other financial security, such as a guarantee of a bank or a similar institution, covering the costs of locating, marking and removal of wreck (Art. 62, para. 5). The amount of such compulsory insurance is prescribed by Art. 823.b, para. 2 and it corresponds to the Art. 6, para. 1), point b) of the LLMC 1976/1996. The owner of a ship in international navigation with the gross tonnage of over 300 registered in the register of ships in the Republic of Croatia is obliged to maintain in force such insurance or other financial security such as a guarantee of a bank or a similar financial institution (Art. 823.b, para. 1). It must be in the form that is generally accepted in the maritime practise (Art. 823.b, para. 3).

Croatia (contineud 11)	The certificate confirming the existence of a valid insurance that is in compliance with the respective provisions of the Code is issued by the port authority maintaining the ship registry at the request of the owner of the ship (Art. 823.b, para. 4.). The necessary particulars of the certificate are listed in the Art. 823.b, para. 5 which is in accordance with the respective provision of the WRC 2007. Although the introduction of the described provisions on compulsory insurance into the Maritime Code is generally a positive step towards a better promotion of safety of navigation and protection of marine environment, such partial implementation of WRC 2007 that is not yet in force into the domestic law has not been done adequately. All the relevant provisions on the basis and scope of liability of the shipowner for the costs of locating, marking and removal of wreck have been omitted.
Croatia (continued 12)	There are no provisions in the Maritime Code on limitation of liability for wreck removal, and since the general provisions on the limitation of liability for maritime claims under Croatian law do not apply to wreck removal, shipowners' liability for wreck removal under Croatian maritime law is unlimited. Furthermore there are no adequate provisions implementing Articles 6, 7, 8 and 9 of WRC 2007. Therefore it is not clear what should be the subject matter of compulsory insurance prescribed by Art. 823.b of the Maritime Code, i.e. the basis and scope of shipowner's liability that must be insured are simply not regulated under the Croatian maritime law and should therefore be interpreted in accordance with the general law provisions on torts. Finally, there is no specific statutory provision providing for the right to direct action against the insurer of the shipowner's liability for the costs of locating, marking and removal of wreck.

Croatia (continued 13)	**Athens protocol 2002** Croatia is a party to the Athens convention 1974, but not to the Protocol 2002. There are no statutory provisions under Croatian law providing for compulsory insurance of liability arising from death, personal injury or loss of or damage to their luggage in marine transport. There are also no provisions allowing direct action against the insurer of such liability. Therefore, insurance of liability for passengers and their luggage in marine transport is voluntary, and direct action against such liability insurer is not allowed. However, in the near future when Croatia joins EU, it will be bound by the Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents. Thereupon, Croatia will have to implement the provisions of the Athens Protocol 2002, including compulsory insurance and direct action in its national law.
Croatia (continued 14)	**HNS 1996/2010** Croatia is not a party to HNS. There are no statutory provisions under Croatian law providing for compulsory insurance of HNS pollution liability. There are also no provisions allowing direct action against the insurer of such liability. Therefore, insurance of liability for HNS pollution liability is voluntary, and direct action against such liability insurer is not allowed.
Finland	Finland has only implemented the CLC and Bunkers conventions. MC 10:10-15 contain the relevant provisions for damage caused by oil tankers (there is no official English translation available, but the text of the MC in this respect is virtually identical to the Swedish MC sections 10: 12-16, which has already been provided in the reply by the Swedish MLA). As far as insurance for pollution caused by bunker oil is concerned, the provisions are laid down in MC sections 10a: 6-9, which contain more details about the certificates to be issued by the Finnish Transport Safety Agency. The main difference between chapters 10 (CLC) and 10a (bunkers) is that the latter specifically authorises the Finnish Transport Safety Agency to issue certificate for Finnish ships and for non-convention ships. The relevant section includes details on what is to be included in the application for such a certificate (i.e.: 1) evidence that insurance covers the liability in question; and 2) evidence that its last day of validity cannot be less than three months following a written notification to that effect to the Agency) and the conditions for withdrawing it (i.e. if the conditions are

Germany	The respective acts of parliament only ratify and make applicable the mentioned international conventions.
Ireland	The enacting legislation above provides that the Conventions (unless otherwise provided) shall have the force of law in the state and that judical notice shall be taken of them
Italy	Art. 6 of Presidential Decree 504/1978 (as amended with Law 19/2010) states that ships which are within the scope of application of the law must carry an insurance certificate (within the meaning of the 1992 CLC Protocol and the 2001 Bunker Convention) in order to be allowed into Italian territorial waters and ports. It then put on shipowners the duty to give proper information to the Italian authorities about the certificate and sanctions the absence of such a certificate.
Japan	Main terms and conditions of the Act are as same as CLC/FC. Please note that the Act also covers bunker oil spills by non-tanker vessels although Japan is not a Contracting State to Bunker Convention.
Netherlands	The Netherlands: These provisions follow the main characteristics of the substantial provisions of the relevant Conventions.
New Zealand/Australia	Certain provisions of the Conventions are expressed to have the force of law in the relevant national statutes
Norway	To the extent the regulation is incorporated in the MC, it is done verbatim, but translated into Norwegian.
Sweden	
Switzerland	
Turkey	
USA	Not applicable.

Question 3.1.2:	If so, could you provide the IWG with an English translation of those provisions?
MLA	**Answer**
Argentina	
Belgium	See summary above.
Canada	See http://laws-lois.justice.gc.ca/eng/acts/M-0.7/
China	
Croatia	The relevant provisions of the Croatian Maritime Code are the following: Article 820 (1) A ship carrying more than 2.000 tons of oil in bulk as cargo shall have an insurance or other financial security, such as a guarantee of a bank or a certificate delivered by an international compensation fund, up to the limit of liability as prescribed in Article 816 of this Code, covering liability for oil pollution damage. (2) Insurance or other financial security under paragraph (1) of this Article shall be unconditional and irrevocable. (3) The owner of a ship described in paragraph (1) of this Article registered in the register of ships in the Republic of Croatia shall request the competent port authority maintaining the ship registry to issue a certificate confirming that an insurance or other financial security is in force and has been provided in accordance with the provisions of this Code and of the applicable international standards. (4) The certificate described in paragraph (3) of this Article shall be issued in Croatian and English languages and shall contain the following information: (a) name of ship and port of registration; (b) name and principal place of business of owner; (c) type of security;
Croatia (continued 1)	(d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; (e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security. (5) The certificate described in paragraph (3) of this Article shall be kept on board the ship, and a copy thereof shall be kept in the ship registry. (6) The validity of insurance or other financial security shall not end prior to the expiry of a three month period, calculating from the day when the Ministry is notified of the loss of validity of the insurance or other financial security, unless the insurance or other financial security is not concurrently substituted by another one. Article 821 (1) A lawsuit for compensation for pollution damage may be brought directly against the insurer or other person providing financial security according to Article 820 of this Maritime Code.
Croatia (continued 2)	(2) The insurer or the person providing financial security may avail himself of all the defences which the shipowner would have been entitled to invoke, other than the defence of bankruptcy or winding up. (3) By way of an exception to the provision of paragraph (2) of this Article, the insurer or the person providing financial security may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the shipowner himself. (4) The insurer or the person providing financial security shall have the right to require the shipowner to be joined in the proceedings. Article 823.a (1) The owner of a ship of over 1000 tons of gross tonnage registered in the register of ships in the Republic of Croatia shall maintain in force an insurance or other financial security such as a guarantee of a bank or a similar financial institution, covering liability for bunker oil pollution

Croatia (continued 3)	(2) The owner of a ship described in paragraph (1) of this Article shall request the competent port authority maintaining the ship registry to issue a certificate confirming that an insurance or other financial security is in force and has been provided in accordance with the provisions of the International convention on civil liability for bunker oil pollution damage, 2001 and of this Code. (3) The certificate described in paragraph (2) of this Article shall be issued in Croatian and English languages and shall contain the following information: (a) name of ship, distinctive number or letters and port of registry; (b) name and principal place of business of the registered owner; (c) IMO ship identification number; (d) type and duration of security; (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.
Croatia (continued 4)	Article 823.b (1) The owner of a ship in international navigation of over 300 tons of gross tonnage registered in the register of ships in the Republic of Croatia shall maintain in force an insurance or other financial security such as a guarantee of a bank or a similar financial institution, covering the costs of locating, marking and removal of a wreck. (2) The amount of insurance or other financial security from paragraph 1 of this Article shall be calculated in the following manner: a) 1 million of special drawing rights for a ship of tonnage that is not over 2.000 tons, b) for a ship of tonnage that is over 2.000 tons, the following amount shall be added to the amount mentioned under a): – for each ton from 2.001 to 30. 000 tons, 400 special drawing rights, – for each ton from 30.001 to 70.000 tons, 300 special drawing rights, – for each ton in excess of 70.000 tons, 200 special drawing rights.
Croatia (continued 5)	(4) After establishing that the requirements prescribed by the preceding paragraphs of this Article are complied with, the port authority maintaining the ship registry shall at the request of the owner of ship issue a certificate confirming that insurance or other financial security is in force. (5) The certificate described in paragraph (4) of this Article shall be issued in Croatian and English languages and shall contain the following information: a) name of ship, distinctive number or letters and port of registry, b) ship's gross tonnage, c) name and principal place of business of the owner, d) IMO ship identification number, e) type and duration of security, f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or

Croatia (continued 6)	Article 62 (1) Any domestic or foreign ship carrying more than 2.000 tons of oil in bulk as cargo, which does not have a certificate of insurance or other financial security covering legal liability for oil pollution damage prescribed by Article 820 of this Code, shall not be allowed to enter a Croatian port, nor shall it be allowed to leave a Croatian port, nor to load or discharge oil therein. (2) The provision of paragraph (1) of this Article applies also to a ship carrying more than 2.000 tons of oil in bulk as cargo, owned by a state, and which is not covered by insurance or other financial security, if it does not have a certificate of the state where it is registered as owned by the state, confirming that its liability is covered within the limits prescribed by Article 816 of this Code. (3) Domestic and foreign ship with gross tonnage of over 1000 intending to enter a Croatian port shall provide an evidence of insurance or other financial security covering liability for bunker oil pollution damage in the amount corresponding to the limits of liability prescribed in Article 391 of this Code for claims arising from death or personal injury and for other
Croatia (continued 7)	(4) Ship described in paragraph 3 of this Article shall have a valid certificate confirming that insurance or other financial security is in force in accordance with the provisions of the International convention on civil liability for bunker oil pollution damage, 2001, issued by the competent authority of the state whose flag the ship is entitled to fly. (5) Domestic ship in international navigation and foreign ship with gross tonnage of over 300 intending to enter a Croatian port, or call at an offshore terminal situated in the territorial sea or on the continental shelf the Republic of Croatia shall provide an evidence of insurance or other financial security such as a guarantee of a bank or other similar institution, covering the costs of locating, marking and removal of wreck in the amount prescribed by Article 823.b of this Code. Article 1001 (1) Master of a ship, yacht or a boat, or crewmember replacing the master shall be penalized for a maritime offence by a fine from 2.000,00 to 15.000,00 kunas: 1) if the ship carrying more than 2000 tons of oil in bulk does not have a certificate of insurance or other financial security covering legal liability for oil pollution damage upon entering or leaving a port in the Republic of Croatia or upon loading or discharging oil (Article 62), [...]
Croatia (continued 8)	Article 1017 Legal person shall be penalized for a maritime offence by a fine from 300.000,00 to 1.000.000,00 kunas, and the liable natural person in the legal person by a fine from 50.000,00 to 200.000,00 kunas, in case that a maritime offence from Article [...] 1001 [...] of this Code results in an environmental accident, meaning an extraordinary event or a kind of event
Finland	Finland has only implemented the CLC and Bunkers conventions. MC 10:10-15 contain the relevant provisions for damage caused by oil tankers (there is no official English translation available, but the text of the MC in this respect is virtually identical to the Swedish MC sections 10: 12-16, which has already been provided in the reply by the Swedish MLA). As far as insurance for pollution caused by bunker oil is concerned, the
Germany	Not applicable.
Ireland	Copies of relevant legislation as above available on line.

Italy	Art. 6 of Presidential Decree 504/1978 (as amended in 2010) "Vessels having gross tonnage over 1,000.- tons may enter and stay into Italian ports and terminals in Italian territorial waters for commercial operations and can pass through Italian territorial waters only if they have the insurance certificate. The master must take care that when entering, staying and passing through as per first paragraph, the insurance certificate mentioned in the first paragraph is kept on board. The registered owner must lodge a copy of the insurance certificate with the port of registry of the vessel. Prior to access to the port or terminal, the registered owner, the shipowner or the ship agent of the vessel referred to in the first paragraph must report the maritime authority of the port with the details of the insurance certificate which must be exhibited by the master soon after the arrival. In case of absence or irregularity of the insurance certificate, the maritime authority of the port refuses the access or departure of the vessel, forbidding or suspending the loading and unloading operations, and reporting to Customs as regards implementation of the said measures."
Japan	Please refer to following URL. http://www.japaneselawtranslation.go.jp/law/detail/?printID=&re=02&ky=requirement+to+duly+assert+against+third+parties&page=13&la=01&vm=02
Netherlands	The Netherlands: There is no English translation readily available. In view of the short time until the Buenos Aires Colloquium it was thought best not to wait with submitting our reply until a translation was prepared. The Waot contains an almost verbal translation of the relevant substantial provisions CLC 1992 Convention.
New Zealand/Australia	Attached
Norway	We have an unofficial translation, see http://folk.uio.no/erikro/WWW/NMC.pdf.
Sweden	As mentioned, Sweden has only implemented the CLC Convention. To this end, The Maritime Code contains the following provisions: Insurance duty for Swedish vessels Chapter 10 Section 12: The owner of a Swedish vessel carrying more than 2,000 tons oil as bulk cargo shall take and maintain an insurance or provide other satisfactory security to cover his liability according to the provisions of this chapter or corresponding legislation in any other Convention State up to the amounts stated in section 5 first paragraph. The Swedish State is not, however, subject to such obligation. An insurance or security according to the first paragraph shall be approved by the Government or the authority which the Government nominates. If the owner has fulfilled his duty according to the first paragraph, the authority which the government nominates shall issue a certificate indicating this. For a vessel owned by the Swedish State, the authority which the Government nominates shall issue a certificate indicating that the vessel is owned by the Swedish state and that its liability is covered up to the liability amount mentioned in section 5 first paragraph. The Government shall determine the form of the certificate mentioned in the third paragraph. The certificate shall be carried on board the vessel.

Sweden (continued 1)	*Insurance duty for foreign vessels* Chapter 10 Section 13: For a foreign vessel which enters or leaves a Swedish port or a mooring place on Swedish maritime territory and which on the occasion is carrying more than 2,000 tons of oil as bulk cargo there shall be an insurance or other satisfactory security which covers the owner's liability according to this chapter or the corresponding legislation in any other Convention State up to the liability amount mentioned in section 5 first paragraph. This does not apply to a vessel owned by a foreign State. The vessel shall carry on board a certificate indicating the existence of such insurance or other satisfactory security as is mentioned in the first paragraph. For a vessel not registered in a Convention State the certificate may be issued by the authority nominated by the Government. If the vessel is owned by a foreign State it shall carry on board a certificate indicating that the vessel is owned by that State and that its liability is covered up to the liability amount applicable according to section 5 first paragraph. Further provisions on certificates mentioned in the second paragraph shall be issued by the Government or by the authority which the Government nominates. Claims against the insurer
Sweden (continued 2)	Chapter 10 Section 14: An insurance mentioned in sections 12 or 13 shall entitle any claimant to compensation directly from the insurer. The insurer shall however be free from liability if the vessel owner is free from liability or caused the damage with intent. The insurer's liability shall in no case exceed the liability amount stated in section 5 first paragraph. Except as follows from the second paragraph, the insurer may not invoke defences against any one other than the owner which he might have invoked against the owner. Chapter 10 Section 15: Subject to special reservation by the insurer, the insurance shall inure for the owner's benefit in respect of his liability according to the provisions of this chapter or corresponding legislation in any other Convention State. Act (1995:1081). Other security Chapter 10 Section 16: What is provided in sections 14 and 15 on insurance shall be applicable also in respect of such other security as is provided in sections 12 or 13.
Switzerland	
Turkey	
USA	Not applicable.

Question 3.2:	**If your national law does not contain any provisions specifically designed to transform the above mentioned provisions in international conventions into your national law, does your national law then contain general provisions on mandatory insurance, which also apply to the mentioned provisions in the international conventions?**
MLA	**Answer**
Argentina	Not regarding maritime law.
Belgium	See our answer is provided under number 3.1
Canada	Not applicable
China	Chinese laws do have provisions in respect of compulsory liability insurance for vessel-induced oil pollution damage. By those provisions the category of ships being required compulsorily of liability insurance against oil pollution and the regime of civil liability insurance of ship's oil pollution damage is preliminarily founded. But there are no regulations specially relating to the matters such as jurisdiction of compulsory liability insurance disputes, the legal proceedings, and etc. Main laws and regulations are as follows: a. Article 66 of Marine Environment Protection Law of the People's Republic of China *The State shall make perfect and put into practice responsibility system of civil liability compensation for vessel-induced oil pollution, and shall establish vessel-induced oil pollution insurance, oil pollution compensation fund system in accordance with the principles of owners of the vessel and the cargoes commonly undertaking liabilities for vessel-induced oil pollution compensations.* *Specific measures for the implementation of vessel-induced oil pollution insurance and oil pollution compensation fund system shall be formulated by the State Council.* b. Article 53 of Regulations on Administration of Anti-Pollution to the Marine Environment by Vessels *The owner of a ship sailing within the waters of People's Republic of China, except for a ship carrying less than 1,000 tons of non-oil materials in bulk, shall be required to maintain insurance or other financial security according to the regulations promulgated by communication authority of the State Council.* *The owner of the said ship shall apply civil liability insurance of vessel-induced oil pollution damage or maintain financial security in the sums no less than that fixed by applying the limits of liability for oil pollution claims prescribed in China Maritime Code and the relevant convention concluded or acceded to by the People's Republic of China.*
China (continued)	*Commercial insurance companies or mutual insurance bodies undertaking civil liability for vessel-induced oil pollution shall be determined and promulgated by the national maritime authorities after consulting with the insurance supervisory and regulating authorities of the State Council.* Article 54 of Regulations on Administration of Anti-Pollution to the Marine Environment by Vessels *The owner of a ship with Chinese nationality covered by civil liability insurance of vessel-induced oil pollution damage or maintained financial security according to Article 53 of this Regulation shall apply for a certificate attesting civil liability insurance of vessel-induced oil pollution damage or financial security, maintaining ship's certificate of nationality, civil liability insurance contract of vessel-induced oil pollution damage or the evidence of financial security.*

Croatia	As it has already been stated, Croatia is a party to Bunkers convention and CLC 1992. According to the Croatian Constitution, such international conventions, concluded and ratified in accordance with the Constitution, publicised and which have entered into force make an integral part of the domestic legal order of the Republic of Croatia and have primacy over national laws. It means that inter alia the relevant compulsory insurance and direct action provisions of the respective conventions are directly applicable under Croatian law. Athens Protocol 2002 and HNS are not in force and Croatia is not a party to them, neither are there any general provisions of Croatian domestic law on mandatory insurance and direct action which would apply to the HNS pollution liability or liability for passengers and their luggage in marine transport.
Croatia (continued 1)	WRC 2007 compulsory insurance provisions have been partially implemented in the Croatian domestic maritime law, but there is no specific provision allowing direct action against the wreck liability insurer. However, there is a general provision of the Maritime Code (Art. 743) allowing direct action against the liability insurer whenever the insurance is compulsory by law. Therefore, the same provision of Art. 743 would apply in the case of insurance of the shipowner's liability for the costs of locating, marking and removal of wreck, as such insurance is prescribed as compulsory.
Finland	The provisions of the MC are the only rules on mandatory insurance that incorporate the rules of the conventions.
Germany	No, there are no such general provisions on mandatory insurance which would also apply to the provisions in the international conventions.
Ireland	Not applicable
Italy	The Italian legal system does not have any general provision on mandatory insurance, which could apply to the above mentioned provisions.
Japan	
Netherlands	
New Zealand/Australia	N/A
Norway	There are no rules on mandatory insurance except for those provided in the MC that incorporate the rules in the Conventions.
Sweden	No.
Switzerland	No, no general provisions on mandatory insurance.
Turkey	Yes Turkish law has special provisions on mandatory insurances. But in case of international conventions those provisions will apply only as complementary rules where the international convention did not regulate.
USA	No. The United States is not a signatory to the subject international conventions.

Question 3.2.1:	If so, could you summarize the main characteristics of those provisions?
MLA	**Answer**
Argentina	
Belgium	See our answer is provided under number 3.1
Canada	
China	
Croatia	General provision allowing direct action against liability insurer is contained in Art. 743 of the Maritime Code. For the purposes of this questionnaire, that provision is relevant only in the context of compulsory insurance covering the costs of wreck removal, as it has already been explained under point 3.2 above (since direct action for oil pollution and bunker oil pollution claims is governed by the special provisions of the respective international conventions and/or of the Maritime Code, whilst in respect of liability towards passengers there is no compulsory insurance). Article 743 of the Maritime Code prescribes that in case where liability insurance is compulsory (mandatory by law), the injured party may claim for the indemnity / compensation directly against the insurer of the person liable, but only up to the limit of the insurer's obligation. If under the contract of insurance there is an insured amount agreed as limit of insurer's liability, the insurance proceeds may be paid only up to the insured amount. The right of the insurer to rely on certain defences in response to a direct claim is not specifically regulated. The courts in Croatia, interpreting this statutory provision do not allow the insurers to rely on any defences arising from the insurance contract (pay to be paid, unpaid premium, deductibles, arbitration clauses, etc.) except the defence that the insurer's liability is limited to the insured amount, nor do they allow for the defence of bankruptcy / liquidation of the assured. The liability insurer is therefore regarded as the guarantor of the insured liable party. He therefore can rely on the defences available to the liable party. The defence of the wilful misconduct of the insured has not been tested in Croatian courts, but in the writer's opinion it should be accepted as a valid insurer's defence against direct claim, because wilful misconduct is uninsurable and according to the Maritime Code it is *ius cogens*.
Finland	
Germany	Not applicable.
Ireland	Not applicable.

Italy	
Japan	N.A.
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	
Switzerland	
Turkey	The domestic rules provide for direct action, impossibility to invoke against the victim of the defences available under the insurance contract or provisions governing the insurance contract, restriction in invoking the termination of the contract against the victim (right to invoke cannot be used before one month from the announcement of the termination to the relevant public authority), prohibition to deduct the outstanding premium from the indemnity to be paid.
USA	The United States is a federal republic made up of fifty states. The national law of the United States is that of the federal government. Federal law applies uniformly throughout the United States. Each of the fifty states also has its own laws that are separate and distinct from the other states' laws and from federal law. State laws do not apply uniformly throughout the United States. An exhaustive fifty state survey is beyond the scope of this response. Instead, this response focuses on United States federal law and, where appropriate, gives examples of relevant state law. Although United States law does not contain provisions on mandatory insurance that apply to the mentioned provisions in the international conventions, some United States federal laws contain provisions pertaining to mandatory insurance and / or financial responsibility requirements similar to those in the above-mentioned provisions. By way of analogy to the subject international conventions, we will discuss a few of those federal laws. For instance, the Oil Pollution Act of 1990 ("OPA-90") and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") generally require – with limited exceptions – that owners, operators and / or demise charterers of vessels using the navigable waters of the United States (or any port or other place subject to the jurisdiction of the United States) establish and maintain evidence of financial responsibility. See 33 U.S.C.A. § 2716 (reprinted in Appendix below); 42 U.S.C.A. § 9608 (reprinted in Appendix below). The requirements are designed to ensure that "responsible parties of the vessel are financially able to meet their potential liability for costs and damages" that may arise under OPA-90 and / or CERCLA. 33 C.F.R § 138.30.
USA (continued 1)	To establish evidence of financial responsibility under OPA-90 and CERCLA, an Application for Vessel Certificate of Financial Responsibility (and other supporting documents) must be submitted to the United States Coast Guard National Pollution Funds Center. 33 C.F.R. § 138.45. Evidence of financial responsibility may be established pursuant to one or more of the following methods: 1) insurance; 2) surety bond; 3) self insurance; 4) financial guaranty; and 5) "other evidence." 33 C.F.R. § 138.80. Any person that fails to comply with the financial responsibility requirements may be subject to civil penalties. 33 C.F.R. § 138.140. In addition, failure to comply with the requirements may render the vessel subject to seizure and / or forfeiture, as well as denial of entry to any port or place in the United States. Id. Likewise, in the context of carriage of passengers, evidence of financial responsibility is required under United States federal law in certain circumstances. For instance, a commercial vessel that embarks passengers at a port in the United States and has accommodations for fifty or more passengers must provide evidence or proof of financial responsibility to: 1) reimburse passengers in the event of nonperformance, and 2) meet liability in the event of death or injury to passengers or other individuals on a voyage to or from a port in the United States. See 46 U.S.C.A. § 44102 (reprinted in Appendix below); 46 U.S.C.A. § 44103 (reprinted in Appendix below). Violations can lead to civil penalties assessed by the United States Federal Maritime Commission. See 46 U.S.C.A. § 44104.

Question 3.2.2:	If so, could you provide the IWG with an English translation of those provisions?
MLA	**Answer**
Argentina	
Belgium	See our answer is provided under number 3.1
Canada	
China	
Croatia	Article 743 (1) In insurance of liability of the assured for damage caused to third parties, insurance compensates for the amounts that the assured is obliged to pay to those parties in relation to his liability covered by insurance and for the expenses that are necessary to establish the level of the assured's liability. (2) In case where the insurance from paragraph (1) of this Article is compulsory, as well as in the case of liability for death, personal injury and impairment of health of a member of ship's crew, the injured party may claim directly from the insurer for the compensation of damages suffered as a consequence of an event for which the assured is liable, but maximum up to the limit of the insurer's liability. (3) Insurance also covers costs of measures taken at the request of insurers or their agents or in agreement with them, for the defence against unreasonable or unjustifiable claims of third parties, as well as costs of reasonable measures taken by the assured for the same purpose without the insurers' or their agents' consent if such consent could not have been timely obtained. (4) If in the contract of insurance there is an agreed amount up to which liability is insured, the compensation from paragraph (1) of this Article shall be payable only up to the insured amount.
Finland	
Germany	Not applicable.
Ireland	Not applicable.
Italy	
Japan	N.A.
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	
Switzerland	

Turkey	II - Compulsory Liability Insurance 1. Obligation of Contracting Article 1483-(1) Subject to the provisions of other legislation, insurers shall not refrain from granting cover for compulsory insurances in the insurance classes, in which they are active. 2. Obligation of Performance as against the Victim Article 1484-(1) In case the insurer is totally or partially discharged of its obligation of performance towards the insured, its obligation of performance as against the victim shall remain effective up to the sum insured under the compulsory insurance. (2) The termination of the insurance relationship shall become effective as against the victim after one month following the notification by the insurer to the competent authorities that the contract has expired or is about to expire. (3) The liability of the insurer shall cease to the extent that the loss is compensated by Social Security Institutions.
USA	See Appendix.

Question 3.3.1:	What does you private international law provide for as the applicable law, if the claimants are national persons or companies, but if the insurer is a foreign company?
MLA	**Answer**
Argentina	Our private international law does not take into account the nationality of the parties to determine the applicable law. Pursuant Section 609 of the ArgentineNavigation Law states that the contract of insurance is ruled by the law of the insurer's domicile.
Belgium	The P.I.L. (Private International law statute or the "conflict of laws" statute) provisions designating the applicable national law on mandatory insurance are found in: formerly art. 28quinquies-octies Insurance Supervision Act of 1975 as amended (transposing the 2nd generation EU insurance directives) and the Belgian PIL-code of 16 July 2004. To the extent that some articles of the statute would be incompatible, the latter are now superseded by the Rome I Regulation with universal application effect.
Canada	See comments at 3.3.3
China	
Croatia	
Finland	
Germany	If the above-mentioned international conventions (CLC or Bunker) apply, then their provisions regarding direct actions apply (art. 7 par. 8 CLC and art. 7 par. 10 Bunker Convention). Other than that, German domestic private international law does not provide for an applicable law to direct actions in any statute. However, the European regulation no. 864/2007 of 11 July 2007 on the law applicable to noncontractual obligations (Rome II) which is mandatorily applicable by German courts provides in its article 18 that the person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides. The law applicable to the non-contractual obligation is then also determined by the regulation Rome II; it is usually the lex loci delicti; if the person having suffered damage and the person liable both have their habitual residence or seat in the same country, then the law of that country shall apply. The law applicable to the insurance contract on the other hand is determined by the European regulation no.: 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) which is also mandatorily applicable by German courts; for insurance contracts covering a "large risk" the law applicable to such insurance contract can generally be chosen by the parties.
Germany (continued 1)	As under German domestic law there is no direct action of the person having suffered damage against the insurer of the liable person, a German court could only accept such direct action if either the law applicable to the noncontractual obligation or the law applicable to the insurance contract is a foreign law and such foreign provides for a direct action. Neither the nationality of the person or company having the suffered damage nor the nationality of the insurer is directly of relevance.
Ireland	CLC Convention – The Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 – 2005. HNS Convention – The Sea Pollution (Hazardous Substances) Compensation Act 2005 (Commencement Order 2007) Bunkers Convention – The Sea Pollution (Miscellaneous Provisions) Act 2006 Part 2. (Commencement Order 2008)

Ireland	Not applicable.
Italy	
Japan	
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	There is a lack of sources, but the law of the insurance company would most likely be applied in all the situations below in the very unlikely situation when there is no explicit regulation in he insurance contract.
Switzerland	It provides for the application of the law of the country where the wrongful act was committed. If the country of the act and effect of the wrongful act are not the same, the law of the country where the effect becomes visible will be applicable, provided that the wrongdoer had to take into account that effects would become visible in that country Art. 133 (2) Bundesgesetz über das Internationale Privatrecht – IPRG. If the wrongful act violates an existing legal relationship between tortfeasor and harmed party, the law applicable to the existing legal relationship also applies to the wrongful act (Art. 133 (3) IPRG). http://www.admin.ch/ch/d/sr/2/291.de.pdf
Turkey	In respect of claims in tort, the rule Lex Loci Delicti applies. If the law applicable to the tort or if the law applicable to the insurance contract allows, the liability insurer can be sued directly. Turkish law grants direct action in all liability insurances (compulsory or not). So in cases where Turkish law applies to the claim brought by the victim, the liability insurer of the person who is liable for the tort would be sued directly before Turkish courts. In respect of claims in contract (arising out of carriage of persons for instance) Turkish International Private Law does not contain any similar rule in respect of direct action against the liability insurer. It is not clear whether an application per analogy is possible.
USA	In general terms, the court system of the United States is made up of two parts. First, there is the federal court system that is a branch of the United States government. The United States district courts are the trial courts of the federal court system. Within certain limits, the district courts have jurisdiction to hear nearly all categories of federal cases and, under certain circumstances, state cases. There is at least one district court in each of the fifty states. The procedural rules that govern the federal court system apply uniformly throughout the fifty states and are a matter of federal law. Federal courts apply federal law and, under certain circumstances, state law. Second, each of the fifty states has its own court system that is a branch of each state's government. The state court systems are separate and distinct from each other and from the federal court system. While there are similarities, the procedural rules that govern each state's court system differ from state to state and are a matter of state law. State courts apply state law and, under rare circumstances, federal law. This response focuses on the federal court system. (a) Jurisdiction If a national person or company wished to sue a foreign insurer in a United States federal court, subject matter jurisdiction would first have to be established. In United States federal courts, subject matter jurisdiction can be established in the following ways: a) federal question jurisdiction; b) diversity jurisdiction; or c) admiralty jurisdiction.

USA (continued 1)	In regard to federal question jurisdiction, if the national claimant can point to a treaty or federal law of the United States (e.g., OPA-90 or CERCLA) pursuant to which the claimant's action against the foreign insurer arose, subject matter jurisdiction would be satisfied. See 28 U.S.C.A. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."). If the controversy exceeds $75,000, exclusive of interest and costs, the national claimant could also rely on diversity jurisdiction to satisfy subject matter jurisdiction against a foreign insurer because the controversy would be between a citizen of the United States and a citizen of a foreign state. See 28 U.S.C.A. § 1332. Finally, if the national claimant's suit invoked admiralty jurisdiction of United States federal courts (e.g., on the basis of a maritime tort or contract), subject matter jurisdiction for the action against the foreign insurer would also be satisfied. See 28 U.S.C.A. § 1333.
USA (continued 2)	Aside from subject matter jurisdiction, personal jurisdiction over the foreign insurer would also have to be satisfied for the national claimant's action to proceed. As stated by the United States Supreme Court, "[j]urisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them." Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577 (1999). Thus, under United States law, for personal jurisdiction over the foreign insurer to exist, it would have to be shown that the insurer purposefully availed itself of the benefits and protections of the forum state by establishing minimum contacts' [there appear to be missing quotation marks in this sentence] within that state; and also that the assertion of personal jurisdiction would comport with "traditional notions of fair play and substantial justice." Mink v. AAAA Dev. L.L.C., 190 F.3d 333, 336 (5th Cir. 1999) (citations omitted). (b) Private International Law Choice-of-law rules in the United States do not depend solely upon the domicile of the parties involved. In United States federal courts, the basis of subject-matter jurisdiction determines the applicable choice-of-law rules. In state courts, choice-of-law rules differ from state to state.

USA (continued 3)	(i) Diversity Jurisdiction To determine which substantive law will apply in a diversity jurisdiction action, a United States federal court must apply the choice of law rules of the forum state. See Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). For example, if an action were brought in federal court in New York based on diversity jurisdiction or in state court in New York, New York's choice of law rules would apply. New York state courts apply a "center of gravity," or "grouping of contacts," analysis to choice of law issues involving contracts. See In re Allstate Ins. Co., 81 N.Y.2d 219, 226, 597 N.Y.S.2d 904, 907 (1993). Under this approach, a "spectrum of significant contacts" may be considered, including: "the place of contracting, negotiation and performance; the location of the subject matter of the contract; and the domicile of the contracting parties." Id. at 227, 597 N.Y.S.2d at 908; see also Brink's Ltd. v. South African Airways, 93 F.3d 1022, 1030-31 (2d Cir. 1996). "In cases involving insurance contracts, New York courts have looked principally to the following factors: the location of the insured risk; the insured's principal place of business; where the policy was issued and delivered; the location of the broker or agent placing the policy; where the premiums were paid; and the insurer's place of business." Olin, 743 F. Supp. 1044, 1049 (S.D.N.Y. 1990); see also Northwestern Mut. Life Ins. Co. v. Wender, 940 F. Supp. 62, 66-67 (S.D.N.Y. 1996).
USA (continued 4)	Where the contract between the parties contains a choice-of-law provision, New York law provides that, absent fraud or violation of public policy, a contractual choice-of-law clause is generally determinative so long as the state selected has sufficient contacts with the transaction. See, e.g., Int'l Minerals and Resources, S.A. v. Pappas, 96 F.3d 586, 592 (2d Cir. 1996). With regard to tort actions (e.g., for negligence), New York's tort choice-of-law analysis provides that " 'the law of the jurisdiction having the greatest interest in the litigation will be applied and . . . the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict.' " Intercontinental Planning, Ltd. v. Daystrom, Inc., 24 N.Y.2d 372, 382 (1969) (quoting Miller v. Miller, 22 N.Y.2d 12, 15-16 (1968)). " "Under this formulation, the significant contacts are, almost exclusively, the parties' domiciles and the locus of the tort.' " AroChem Int'l Inc. v. Buirkle, 968 F.2d 266, 270 (2d Cir. 1992) (quoting Schultz v. Boy Scouts of Am., Inc., 65 N.Y.2d 189, 197 (1985)). If, "conflicting conduct-regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders." Cooney v. Osgood Mach., Inc., 81 N.Y.2d 66, 72 (1993).
USA (continued 5)	(ii) Admiralty Jurisdiction The United States Supreme Court has stated that maritime law resolves choice-of-law questions "by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved." Lauritzen v. Larsen, 345 U.S. 571, 582 (1953). (1) Maritime tort With regard to maritime torts, the United States Supreme Court has set forth eight points of contact to be considered: 1) Place of the Wrongful Act; 2) Law of the Flag; 3) Allegiance or Domicile of the Injured; 4) Allegiance of the Defendant Ship-owner; 5) Place of Contract; 6) Inaccessibility of Foreign Forum; 7) The Law of the Forum; and 8) The Shipowner's Base of Operations. Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306, 309 (1970); Lauritzen, 345 U.S. at 583-90.

USA (continued 6)	(2) Maritime contract Maritime contracts are generally governed and controlled by the general maritime law of the United States. See, e.g., Advani Enters., Inc. v. Underwriters at Lloyds, 140 F.3d 157, 162 (2d Cir. 1998); Sundance Cruises Corp. v. American Bureau of Shipping, 7 F.3d 1077, 1080 (2d Cir. 1993). However, in the absence of both 1) a well-established federal admiralty rule and 2) a determination by the court that a new rule should be fabricated, federal courts apply state law in construing a marine insurance policy. See Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 315-16 (1955). Where state law is to govern the scope and validity of the marine insurance policy, a federal court sitting in admiralty must apply federal choice-of-law rules to determine which state's law applies. See Sundance Cruises, 7 F.3d at 1080; State Trading Corp. of India, Ltd. v. Assuranceforeningen Skuld, 921 F.2d 409, 414 (2d Cir. 1990); Royal Ins. Co. of Am. v. Sportwear Group, LLC, 85 F. Supp. 2d 275, 278 (S.D.N.Y. 2000). Within the jurisdiction of the United States Court of Appeals for the Second Circuit, courts:
USA (continued 7)	. . . determine which state law to use by ascertaining and valuing points of contact between the transaction [giving rise to the cause of action] and the states or governments whose competing laws are involved. More concretely, this choice-of-law analysis should include an assessment of the following contacts: (1) any choice-of-law provision contained in the contract; (2) the place where the contract was negotiated, issued, and signed; (3) the place of performance; (4) the location of the subject matter of the contract; and (5) the domicile, residence, nationality, place of incorporation, and place of business of the parties. Advani, 140 F.3d at 162 (internal citations omitted).

Question 3.3.2:	**What does you private international law provide for as the applicable law, if the claimants are foreign persons and companies, but if the insurer is a national company?**
MLA	**Answer**
Argentina	See answer to point 3.3.1.
Belgium	The P.I.L (private International law statute or the "conflict of laws" statute) provisions designating the applicable national law on mandatory insurance are found in: formerly art. 28quinquies-octies Insurance Supervision Act of 1975 as amended (transposing the 2nd generation EU insurance directives) and the Belgian PIL-code of 16 July 2004. To the extent that some articles of the statute would be incompatible, the latter are now superseded by the Rome I Regulation with universal application effect.
Canada	See comments at 3.3.3
China	
Croatia	
Finland	
Germany	See 3.3.1. above.
Ireland	Not applicable.
Italy	
Japan	
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	
Switzerland	see above
Turkey	As direct action is recognized in Turkish law, foreign claimants can sue directly the Turkish insurer in Turkey.
USA	Similar to the response to Question 3.3.1, the foreign claimant suing a national insurer would have to establish subject matter jurisdiction and personal jurisdiction for the suit to proceed. The choice-of-law analysis would be the same as for a suit brought by a national person against a foreign insurer in United States federal court.

Question 3.3.3:	**What does you private international law provide for as the applicable law, if the claimants and the insurer are foreign companies?**
MLA	**Answer**
Argentina	See answer to point 3.3.1.
Belgium	same as above.
Canada	Generally, any choice of law provision in the applicable insurance policy will be given effect. In the absence of a choice of law provision in the applicable insurance policy will be given effect. In the absence of a choice of law provision in the applicable policy, under general principles of conflicts of laws respecting contractual obligations, the law of the place having the closest and most real connection to the policy will be applied. IN the absence of an explicit choice of law clause in the policy, where there is a range of jurisdictions whose law might be applicable to the policy, and some of these jurisdictions are state parties to relevant conventions giving rights of direct action in respect of marine pollution, a Canadian court would be inclined to apply the law of a relevant convention state party jurisdiction in order to give commercial efficacy to the parties' intentions. Because of the administrative practice of Transport Canada not to issue Financial responsibility certificates unless the insurer undertakes that it will comply with the Conventions, the applicable choice of law in the policy is unlikey to affect the obligation of the insurer to comply with the direct action provisions of the Conventions.
China	With respect to application of law, General Principle of Civil Law provides as follows: *The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes. If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.* *The law of the place of tort is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.* According to the judicial interpretation issued by the Supreme People's Court, the place of tort contains the place where the tort is acted and the place of where the result caused by tort is incurred and the court may choose to apply the law of either place where the two places are in different legal area. Claims brought up by the victim for oil pollution damage comes to an action of tort in nature. We understand that the conventions and laws allow direct claim against the insurer or other person providing financial security is for purpose of helping the victim get fully compensated and of protecting his legal profit. There is no contractual relation between the victim and the insurer and the applicable law shall be determined as that of a claim basing on tort.

Croatia	General rules of PIL regarding the law applicable to the contract of marine insurance are contained in Art. 981 of the Maritime Code and they are as follows: Art. 981 (1) Contract of marine insurance and the legal relationships arising there from shall be governed by the law chosen by the contract parties. If the parties did not contract the applicable law, the law of the principal place of business of the insurer shall apply. (2) By way of an exception to the provision of paragraph (1) of this article, the legal relationships arising from the contract of marine insurance shall be governed by Croatian law if all the interested parties from that contract are citizens of the Republic of Croatia with the habitual residence in the Republic of Croatia or domestic legal persons with the principal place of business in the Republic of Croatia, and if the subjects of insurance are exposed to the risks exclusively limited to the territory of the Republic of Croatia. General PIL rule regarding the availability of direct action under Maritime Code is as follows:
Croatia (continued 1)	Article 982 Availability of direct action shall be determined according to the law applicable to the underlying claim or according to the law applicable to the contract of insurance. Once the availability of direct action is established either under the law governing the underlying claim, or by the law governing the insurance contract, the direct claim would be subject to the both applicable laws. In particular, matters relating to the contract of insurance would be subject to the law governing the contract of insurance, whilst the underlying claim matters would be subject to the law governing the underlying claim (typically tortious liability). General PIL rules regarding the law governing tortious liability (out of which the underlying claim arises) are contained in the following provisions of the Croatian Conflict of Laws Act (in further text - PIL Act): Article 28 (1) Unless otherwise provided for individual cases, the law governing tortious liability is the law of the place where the act has been performed or the law of the place where the consequences have occurred, depending on which is most favourable for the injured party. (2) [left out as irrelevant] (3) [left out as irrelevant] Article 29 If an event from which liability for damages arises has occurred on a ship on the high seas or on an airplane, the law of the state of the nationality of the ship or the law of the state where the airplane was registered is considered as the law of the place where the acts have occurred which have created the liability for damages.

Finland	Generally speaking, the question of applicable law is decided on the basis of the choice of law rules of the forum state. A distinction has to be made between contractual and non-contractual claims (for which in the EU, different instruments apply, i.e. the so-called Rome I and Rome II Regulations). Since the CLC and bunkers conventions do not include provisions on applicable law, this question is arguably fully governed by the Rome II Regulation. Article 4.1 of the latter refers to the law of the place where the damage occurs (lex loci damni), whereas article 7 (on environmental damage) provides a choice between lex loci damni and the place where the event causing the damage has taken place (lex loci delicti commissi). Damage would hence normally be governed by the rules of the state in which the damage has occurred, which is also in line with the jurisdiction provisions of the conventions. These rules do not distinguish between the nationality of the parties involved as referred to in the questions. Questions relating to the choice of law in contractual relationships, such as between the insurer and the insured, are governed by the Rome I Regulation and by general principles, neither of which seem to exclude choice of law provisions in an insurance contract.
Germany	See 3.3.1. above.
Ireland	Not applicable.
Italy	In all the above cases, under Italian law, as dictated by Art. 7 of EC Regulation 593/2008, the law governing the insurance contract for such large insurance risks is the law chosen by the parties to the contract or, in case of lack of choice, the law of the country where the insurer has his habitual residence. However, the following additional rules apply to insurance contracts covering risks for which an EU State imposes an obligation to take out insurance: (a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the EU State that imposes the obligation. Where the law of the EU State in which the risk is situated and the law of the EU State imposing the obligation to take out insurance contradict each other, the latter shall prevail; (b) by way of derogation, an EU State may lay down that the insurance contract shall be governed by the law of the EU State that imposes the obligation to take out insurance. Pursuant to the above, art. 180.3 of the Italian Insurance Code states that the special provisions of a State law imposing an obligation to take out insurance override the provisions of the law governing the contract and if such insurance is meant to operate in more than one State the special provisions of the interested State apply.
Japan	The nationality of the claimants, insurer or the carrier is not a connecting factor to decide applicable law.

Netherlands	Not applicable.
New Zealand/Australia	In all cases our private international law provides either for a valid choice of law clause or for the proper law of the contract to govern.
Norway	
Sweden	Arguably, the law agreed for in the contract should apply on the assumption that a direct action is an action pursued pursuant to the terms of the insurance contract (Chapter 9 Section 7 of the Insurance Contract Act).
Switzerland	see above
Turkey	If the tort is more closely connected to another state, the law of that state shall apply (and if according to the law of that another state no direct action against the liability insurer were provided, the liability insurer would not be sued directly.
USA	The authority of United States federal courts to adjudicate controversies between foreign companies is problematic due to jurisdictional and other concerns. First, a suit between two foreign companies cannot be brought in federal court based on diversity jurisdiction. See, e.g., Lee v. Trans American Trucking Service, Inc., 111 F.Supp.2d 135, 137 (E.D.N.Y. 1999) (stating, while examining whether diversity jurisdiction was present, that "federal courts do not possess subject matter jurisdiction over lawsuits between aliens . . ."); Trinanes v. Schulte, 311 F. Supp. 812, 813-14 (S.D.N.Y. 1970) (stating that "[t]his Court is ... without subject matter jurisdiction under 28 U.S.C. 1332 since federal diversity jurisdiction does not extend to controversies among aliens"). Federal courts do, however, have admiralty jurisdiction over marine insurance disputes between two aliens. Although subject matter jurisdiction may be established in a suit between two foreign companies on the basis of a federal question (see, e.g., Chengfan Hsu v. Philippine Air Lines, 98 F. Supp. 805 (N.D. Cal. 1951)) or admiralty jurisdiction, concerns of dismissal due to lack of personal jurisdiction and / or forum non conveniens would nonetheless be present. In regard to the latter concern, United States "federal courts retain the inherent power to refuse jurisdiction of cases ... which should have been brought in a foreign jurisdiction, rather than in the United States." Spencer v. Alcoa S.S. Co., 221 F. Supp. 343, 345-46, 346 (E.D.N.Y.); see also Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 429 (2007) (stating the circumstances where a "federal court has discretion to dismiss a case on the ground of forum non conveniens . . .).
USA (continued 1)	If subject matter jurisdiction and personal jurisdiction can be established, the choice-of-law analysis would be the same as for any other suit brought in a United States federal court. All state courts have subject matter jurisdiction over marine insurance disputes between two aliens. However, many state courts have discretion to decline to hear such actions either on forum non conveniens grounds or under statutes that close state courts to small suits arising from events that have nothing to do with the state where the action is brought.

Question 4.1:	Jurisdiction/Proceedings **Does your national law contain provisions on jurisdiction of courts for direct claims against Insurers?**
MLA	**Answer**
Argentina	No. Only in case of civil liability insurance the victim has a direct action against the insurer, but it is not an autonomous one. The victim should file a lasuit against the Defendant, and within this procedural frame the civil liability insurer could also be sued.
Belgium	In a pure Belgian Marine Insurance Law setting, claimants do not have a direct action right against third party liability insurers. The Belgian Act of 25 June 1992 on land based Insurance, (which provides the possibility of direct action against a liability insurers), does not apply to marine insurance. But international treaties such as the CLC 1969 and the CLC 1992 have been implemented by law into the Belgian legal system and these treaties provide for the possibility of direct action against the liability insurers and as a consequence on account of these enabling statutes implementing these international treaties, direct actions are a possible in this limited framework. Statute of August 10, 1998. - (Wet houdende instemming met het Protocol van 1992 tot wijziging van het Internationaal Verdrag inzake de burgerlijke aansprakelijkheid voor schade door verontreiniging door olie, 1969, en de Bijlage, gedaan te Londen op 27 november 1992.)
Canada	The right of direct action found in the two Conventions is regarded for Canadian constitutional purposes either as a matter of navigation and shipping or more specifically as a matter of marine insurance. In either case, the Federal Court or the superior courts of the provinces have plenary jurisdiction to determine such issues unless jurisdiction is specifically reserved to a particular court. It is not reserved to any specific court with respect to direct actions, except to the extent to whicha direct action may relate to the constitution and distribution of a limitation fund, which is within the exclusive jurisdiction of the Federal Court (s. 52 Marine Liability Act)
China	Yes. It is provided in Paragraph 1, Article 97 of Special Maritime Procedure Law that, *An party suffered oil pollution damages caused by a ship may claim either against the owner of the ship causing oil pollution damage or directly against the insurer who covers the liabilities of the owner of the ship or the person who provides financial security for the owners.*
Croatia	The PIL provisions on jurisdiction of courts for direct claims against insurers contained in the relevant international conventions that have been accepted, ratified and publicised in accordance with the Croatian Constitution (i.e. Bunkers Convention and CLC 1992) are directly applicable under Croatian law and shall prevail over any other domestic rules governing jurisdiction of courts for direct claims. Otherwise, general rule is contained in the provision of Art. 53 of the Croatian PIL Act, and it is as follows: Article 53 (1) As regards proceedings for tortious liability the court of the Republic of Croatia has jurisdiction if that jurisdiction exists by virtue of the provisions of Article 46 [omitted as irrelevant] of this Act or if the damage has occurred on the territory of the Republic of Croatia.

Croatia (continued 1)	(2) Paragraph (1) of this Article shall be applied also to proceedings against the insurer of third party liability on the basis of the rule of direct liability of insurer, and to proceedings involving a right of recourse against debtors on the basis of the liability for damages. Whereby, Art. 46 of the PIL Act contains general rules on jurisdiction of Croatian courts in cases with an international element, and they are as follows: Article 46 (1) The court of the Republic of Croatia has jurisdiction if the defendant is domiciled or has its principal place of business in the Republic of Croatia. (2) [Omitted as irrelevant.] (3) [Omitted as irrelevant.] (4) If there is more than one "material" defendant, the court of the Republic of Croatia has jurisdiction also when one of the defendants is domiciled or has its principal place of business in the Republic of Croatia. (5) [Omitted as irrelevant.]
Finland	Yes. Claims against an insurer for oil pollution damage should be filed with a Maritime Court in Finland pursuant to MC Chapter 21 Sections 3a and 3c.
Germany	German national law does not contain provisions on jurisdiction of courts for direct claims against insurers. However, Article 11 (2) of the Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgement in civil and commercial matters ("Jurisdiction Regulation"), which is mandatorily applicable by German courts in civil and commercial matters, expressly refers to direct claims by the injured party against the insurer, where such direct actions are permitted. In the following, when answering questions on national law, this shall include stipulations in the Council Regulation (EC) No. 44/2001 ("Jurisdiction Regulation").
Ireland	There is no Third party rights against Insurers Act in Ireland such as ixists in neighbouring jurisdictions though as pointed out in the introductory remarks the provision of shipowners liability cover to Irish Flagged vessels in the area of the subject conventions is via those shipowners P&I clubs and those contracts would be subject to English Law and Practice and thus the relevant legislation in the UK - Third Party Rights against Insurers Act 2010 would presumably be relevant. There is in Ireland the Civil Liability Act 1961 which provides at S62; 62.-Where a person (hereinafter referred to as the insured) who has effected a policy of insurance in respect of liability for a wrong, if an individual, becomes a bankrpt or dies of, if a corporate body, is wound up or, if a partnership or other unincorporated association, is dissolved

Ireland (continued 1)	Without a definitive judgement at this point there is some doubt as to whether S 62. per se creates a direct right of action against an Insurer in Ireland though there is a supreme Court judgement in 1989 which suggests that by logical extension the Section does confer a direct right of action. Of course to the extent that the Conventions themselves confer a direct right of action then by virtue of their incorporation into Irish Law that right exists whether or not one considers it to be part of the National law - for example; CLC - Art VII Liability of guarantor provisions (Insurers or other providers of security as guarantors) **has been transposed into Irish law by the** 1988 CLC Act and provides a direct right of action against the guarantor (i.e. the insurer) at section 17 as follows:
Ireland (continued 2)	Liability of guarantor. **17.**-(1) Where it is alleged that the owner of a shi Is liable under *section 7* for pollution damage as a result of any discharge of oil, and there is, at that time, in force in respect of that ship a contract of insurance or other security to which a certificate referred to in *section 16* relates, proceedings to enforce a claim in respect of any damage caused by the discharge of oil may be brought against the guarantor. (2) In any proceedings brought against a guarantor under this section, it shall be a defence, in addition to any defence affecting the liability of the owner, for the guarantor to establish that the discharge of oil in respect of which the proceedings are brought was due to the wilful misconduct of the owner of the ship. (3) A guarantor may limit his liability under this section in like manner
Ireland (continued 3)	**While this section makes the guarantor (i.e. the Insurer) jointly liable with the shipowner in Irish law, it is not at all clear if the Irish court would have jurisdiction to hear a claim brought against a foreign guarantor.** (Without legislative clarity on this issue though we feel that speculative answers to the remaining questions at 4 and 5 in the questionnaire would be of little assistance to the working group)
Italy	We should perhaps make it clear that under Italian law no general provisions on jurisdiction regarding direct claims against insurers are in force, whilst some rules relate to matters of venue (e.g., in the field of motor insurance, Art. 140 of the Decree 7 September 2005, n. 209 expressly states that, if more than one person is injured in the same road accident, all the deriving proceedings must be disposed of by the same Court ("litisconsorzio necessario", Art. 102 Code of Civil Procedure) In general, Italian law does not allow direct claims by the damaged party against the liability insurer. Although Art. 1917 Civil Code provides that "...the Insurer ...is obliged to pay directly [to the damaged party] on the Insured's request", it is plain that this does not vest the damaged party with any kind of direct claim. That said, under Italian law direct claims against the Insurers are allowed for a number of specific sectors (motor and pleasure boats insurance, passengers carried by air, damages to third parties on the surface, etc.), and in some cases rules on jurisdiction are provided for (e.g. art. 20 of the Rome Convention, 1952, on damages caused by foreign aircrafts to third parties on the surface).
Japan	Yes. (Act Art.16)
Netherlands	Yes (District Court of Rotterdam).
New Zealand/Australia	Australia - national law gives the force of law to article VII para 8 of the CLC Convention and to article 7 para 10 of the Bunkers Convention; NZ - national law gives the force of law to article VII para 8 of the CLC Convention
Norway	Yes, the Lugano Convention 2007 art 11(2) is incorporated. Norwegian law will be applied as overriding mandatory law to determine that direct action is allowed. In addition, the jurisdiction provisions of the relevant maritime conventions are part of Norwegian law.
Sweden	Yes. Claims against an insurer for oil pollution damage should be filed with a Maritime Court in Sweden pursuant to Chapter 10 Section 18, Chapter 21 Sections 5 and 6 of the Maritime Code

Switzerland	Yes, the CLC 1992 was adopted in the "Internationales Übereinkommen von 1992 über die zivilrechtliche Haftung für Ölverschmutzungsschäden (Haftungsübereinkommen von 1992)". Article VII (8) of the above statute allows for direct claims against insurers. CLC 1969 http://www.admin.ch/ch/d/sr/c0_814_291.html CLC 1976 http://www.admin.ch/ch/d/sr/c0_814_291_1.html CLC 1992 http://www.admin.ch/ch/d/sr/c0_814_291_2.html
Turkey	Yes
USA	There is no uniform national law of insurance in the United States that is directly responsive to the question. Rather, the regulation of insurance is generally a matter of state law. See McCarren-Ferguson Act, 15 U.S.C.A. §§ 1011 – 1015. Accordingly, this question is governed by state law and, therefore, the answer will differ from state to state. Historically, no right existed under state common law for an injured party to maintain an action directly against a liable party's insurer. See, e.g., Major v. National Indem. Co., 229 S.E.2d 849, 850 (S.C. 1976) (stating that "[a]t common law, no right to maintain suit directly against the insurer existed absent privity of contract....") (citation omitted). Nonetheless, certain states have abrogated the traditional common law rule and now allow direct actions against insurance companies in certain circumstances. See, e.g., id. ("Because direct actions against the insurer contravenes common law, such a right must be expressly sanctioned by the legislature and not merely inferentially deduced."); Richards v. Select Ins. Co., Inc., 40 F. Supp. 2d 163, 167 (S.D.N.Y. 1999) (stating that "there is no dispute that [the state direct action statute at issue] creates a cause of action on behalf of the injured party against the insurer in derogation of common law."). Accordingly, whether a right to directly claim against an insurer is largely dependent upon the state law that governs the action.
USA (continued 1)	There are two types of direct actions, one in which the insurer is sued before judgment and the other in which the insurer is sued after judgment. Although an exhaustive fifty state survey is beyond the scope of this response, the following is a brief discussion of some United States state laws, as well as some United States federal laws, under which direct actions against insurance companies are permissible. (a) Louisiana Under Louisiana's direct action statute, a third party may proceed directly against an insurer to recover for losses occasioned by an insured. See La. Rev. Stat. Ann. § 22:1269(B)(1). The liability of the insurer under the statute is based upon the liability of the insured. Zeno v. ADM Mill. Co., No. 06-4326, 2008 WL 4974876, at *2 (E.D. La. Nov. 20, 2008). In other words, the basic issues for trial under Louisiana's direct action statute "concern the extent of the insured's liability." Goar v. Compania Peruana de Vapores, 686 F.2d 417, 422 (5th Cir. 1982). To directly recover from the insurance company, at least two elements must be established: "[t]he first is that the insured caused the injury by a tortious act; the second is that the insurer has issued a policy to the insured which covers his liability for such acts." Breitenbach v. Green, 186 So.2d 712, 720 (La. Ct. App. 1966).

USA (continued 2)	(b) Puerto Rico Pursuant to Puerto Rico's direct action statute, "[a]ny individual sustaining damages and losses shall have, at his option, a direct action against the insurer under the terms and limitations of the policy . . . ." San Miguel v. Nesco Redondo, S.E., 394 F.Supp.2d 416, 421 (D.P.R. 2005) (citation omitted). The statute creates a substantive claim against an insurer that is separate and distinct from any claim the third party may have against the insured. Id. (citing De Leon Lopez v. Corporación Insular de Seguros, 931 F.2d 116, 122 (1st Cir. 1991)). The purpose of the law is to "allow rights against the insurer generally co-extensive with a third-party's rights against the insured." Ramos v. Continental Ins. Co., 493 F.2d 329, 332 (1st Cir. 1974). (c) New York New York's direct action statute provides a limited right for injured third parties to proceed directly against insurers. See N.Y. Ins. Law § 3420 (McKinney 2007). First, the statute "permits a judgment creditor to sue an insurer directly on an unpaid judgment." Richards v. Select Ins. Co., Inc., 40 F. Supp. 2d 163, 165 (S.D.N.Y. 1999). An injured party may bring a direct action against an insurer only if it: 1) first obtains a judgment against the tortfeasor (i.e., the insured), 2) serves the insurance company with a copy of the judgment and 3) awaits payment for thirty days. See, e.g., Lang
USA (continued 3)	v. Hanover Ins. Co., 3 N.Y.3d 350, 820 N.E.2d 855 (2004); N.Y. Ins. Law § 3420. Second, with respect to a claim arising out of death or personal injury, if the insurer disclaims liability based upon the failure of the insured to provide timely notice to the insurer, the direct action statute provides that the injured person may bring a declaratory judgment action directly against the insurer. See N.Y. Ins. Law § 3420(a)(6). The declaratory judgment action is limited to the sole issue of whether the insurer's disclaimer based on the failure to provide timely notice was valid. See Id. However, "New York law [] bars direct actions by claimants against marine indemnity insurers." In re Prudential Lines Inc., 158 F.3d 65, 74 (2d Cir. 1998); see also American Steamship Owners Mutual Protection and Indemnity Ass'n., Inc. v. Alcoa Steamship Co., No. 04CIV.4309LAKFM, 2005 WL 427593, at *5-*7 (S.D.N.Y. Feb. 22, 2005); Becker v. Allcity Ins. Co., Nos. 99 CV 2371 RML, 99 CV 2372 RML, 2000 WL 33179289, at *5, 2000 A.M.C. 2541 (E.D.N.Y. Jun. 02, 2000). New York's Insurance Law expressly precludes certain kinds of marine insurance described in § 2117 of the Insurance Law from direct action suits. See N.Y. Ins. Law § 3420(i). Among others, § 2117 describes insurance "in connection with ocean going vessels against any of the risks specified" in § 1113(a)(21) of the Insurance Law. N.Y. Ins. Law § 2117(b)(3)(B). These risks include marine protection and indemnity insurance against:
USA (continued 4)	loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. N.Y. Ins. Law § 1113(a)(21). (d) Federal Law Some United States federal laws allow direct actions against insurers to proceed in certain circumstances. For instance, evidence of financial responsibility under OPA-90 and CERCLA must contain an acknowledgment by the insurer or guarantor that an action may be brought by a claimant directly against the insurer or guarantor for costs or damages arising under OPA-90 or CERCLA. See 33 C.F.R. 138.80(d); see also Appendix below.

Question 4.1.1:	**If so, does your national law allow foreign claimants to directly sue national insurers in your national courts?**
MLA	**Answer**
Argentina	
Belgium	Yes.
Canada	Yes, subject to choice of venue or arbitration clauses in the policy
China	Yes. Article 2 of Special Maritime Procedure Law provides that, *Civil Procedure Law of the People's Republic of China and this Law shall be applicable to maritime actions brought in the People's Republic of China.* And Paragraph 1, Article 97 provides that, *An party suffered oil pollution damages caused by a ship may claim either against the owner of the ship causing oil pollution damage or directly against the insurer who covers the liabilities of the owner of the ship or the person who provides financial security for the owners.* Paragraph 1, Article 5 of Civil Procedure Law of PRC provides that, *Foreign citizens, stateless persons, foreign enterprises, or organizations, which initiate or respond to lawsuits in people's courts, shall have the same litigation rights and obligations as the citizens, legal persons, or other organizations of the People's Republic of China.* On these grounds, foreign claimants suffering from vessel-induced oil pollution damage are allowed to directly sue national insurers in Chinese courts。.
Croatia	Yes.
Finland	
Germany	German national law does not prohibit foreign claimants from directly suing German insurers in German courts. Foreign nationality of a claimant is generally irrelevant as regards jurisdiction of German courts.
Ireland	(Without legislative clarity on this issue though we feel that speculative answers to the remaining questions at 4 and 5 in the questionnaire would be of little assistance to the working group)

Italy	Yes, it does. The right to sue a person domiciled in Italy (the right to jurisdiction is in general granted by Art. 24 of the Italian Constitution) according to Art. 3 of Law 31 May 1995, n. 218 (on the reform of the Italian system regarding international private law) and the EC rules on jurisdiction, applies to foreign claimants. Such a right is not avoided by the rule on reciprocity established by Art. 16 of the Preleggi (General Provisions on the Law) since it is plain that "The reciprocity condition set forth by Art. 16 of Preleggi is relevant only as far as the merits of the claim is concerned but has no incidence on jurisdiction as such" (Supreme Court of Cassation 4 May 2000, n. 5583).
Japan	The Act makes no distinction between foreign and domestic claimants with respect to the direct action against Japanese insurer.
Netherlands	Yes.
New Zealand/Australia	Yes
Norway	Yes
Sweden	
Switzerland	• Yes, according to Article 131 in combination with Art. 141 IPRG (Bundesgesetz über das internationale Privatrecht) as well as Art. 8 (1) and Art. 8 (2) LugÜ (Übereinkommenüber die gerichtliche Zuständigkeit und die Vollstreckung gerichtlicher Entscheidungen in Zivil- und Handelssachen – Lugano Übereinkommen - LugÜ). • In the context of the CLC 1992 however, the following has to be taken into consideration: in case of pollution damage or in case measures are undertaken to prevent such pollution in the territory/EEZ of a contracting state, the courts of the respective contracting states are solely competent to judge on claims for indemnification (Art. IX Haftungsübereinkommen 1992). The above compentence of Swiss courts will hence be derogated by the above. • In case of the establishment of a fund according to Article 5 (3) of the Haftungsübereinkommen 1992 the courts of the country where the fund was established are solely compentent (Art. IX (3) Haftungsübereinkommen 1992).

Turkey	Yes
USA	Question 4.1.1 raises jurisdictional concerns previously addressed throughout Question 3.3. Further, because a right to a direct action is dependent upon whether a particular state or federal law allows for such claims, foreign claimants that wish to sue national insurers in courts of the United States must carefully examine the statutory text – and interpreting case law – of any direct action statute that may apply. For instance, pursuant to Louisiana's direct action statute, foreign claimants may potentially sue national insurers as long any one of the following conditions are satisfied: 1) the accident occurred in Louisiana, 2) the policy was written in Louisiana, or 3) the policy was delivered in Louisiana. Thuy Hoa Ngo v. Bach Van Ha Thi, No. 08-00758, 2010 WL 2772507, at *5 n.12 (W.D. La. July 12, 2010) (citing Landry v. Travelers Indem. Co., 890 F.2d 770, 772 (5th Cir.1989)).

Question 4.1.2:	**If so, does your national law allow foreign and national claimants to directly sue foreign insurers in your national courts?**
MLA	**Answer**
Argentina	
Belgium	Yes.
Canada	Yes, subject to choice of venue or arbitration clauses in the policy.
China	Yes. Article 7 of Special Maritime Procedure Law provides that, *The following maritime actions shall be under the exclusive jurisdiction of maritime courts specified in this Article respectively: (1) ...; (2) an action brought against pollution damage to sea areas caused by discharge, spill or dumping of oil or other hazardous substances from ships, by production or operation at sea or by ship demolition or repair shall be under the jurisdiction of the maritime courts of the place where the pollution occurred, the place that is suffering from the harmful consequences or the place where pollution prevention measures were taken.* Accordingly, as long as the place where the pollution occurred, the place that is suffering from the harmful consequences, or the place where pollution prevention measures were taken is located in China, our country shall have the jurisdiction, no matter whether the interested party's domicile is located within jurisdiction of the court or not. Therefore, the exertion of jurisdiction on this kind of case does not depend on the domicile of the liable party or the insurer.
Croatia	Yes.
Finland	Yes, provided the oil pollution damage occurred within Finnish territory or the Finnish EEZ or involves measures to prevent such damage.

Germany	Yes, if the foreign insurer is domiciled in a Member State of the European Union and the claimant is domiciled in Germany or the event took place in Germany. According to Article 60 of the Jurisdiction Regulation, for the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its (a) statutory seat, or (b) central administration, or (c) principal place of business. An insurer who is not domiciled in a Member State of the EU but has a branch, agency or other establishment in one of the Member States shall in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
Italy	Yes, it does, in compliance however with the governing rules (Sect. 2, 3, 4 – Ch. 2) of Council Regulation (EC) n. 44/2001 (esp. Art. 11) which are extended to non EU States by Art. 3 of Law n. 218/1995 which also extends to jurisdiction the criteria set forth for territorial venue.
Japan	As far as the Japanese court has a jurisdiction, they can sue foreign insurer.
Netherlands	Yes.
New Zealand/Australia	Yes
Norway	Yes, if the Norwegian courts otherwise have jurisdiction.
Sweden	Yes, provided the oil pollution damage occurred within Swedish territory or the Swedish EEZ.
Switzerland	A1) Foreign and national claimants to sue foreign insurers in national courts (which are domiciled in state which is not a contracting party to the Lugano Übereinkommen – basically: Non-European Insurers): Article 131 IPRG provides that Swiss courts would be competent if Switzerland is country where wrongful act was committed (potential application: ships flying the Swiss flag) or where effects of wrongful act showed (unlikely in the context of CLC 92, given that Switzerland is landlocked). A2) Foreign and national claimants to sue foreign insurers in national courts (which are domiciled in state which is a contracting party to the Lugano Übereinkommen – basically: European Insurers): If the claimant is the insured, the insurer can be sued in front of the court of the country where the insured is domiciled (Article 8 (2) LugÜ). If a co-insurer should be sued, this can be done at the domicile of the leading insurer (Art. 8 (3) LugÜ).

Switzerland (continued 1)	The insurer can furthermore be sued in the country of its branch, agency or alternate subsidiary if the claim is based on the relationship with the branch, agency or subsidiary (i.e. if they issued the policy) (Art. 8 (3) LugÜ). Last but not least, Article 9 LugÜ provides that the insurer may be sued in front of Swiss courts if Switzerland is the country where the effects of the wrongful act show (unlikely in the context of CLC 92, given that Switzerland is landlocked). A3) In the context of the CLC 1992 however, the following has to be taken into consideration: in case of pollution damage or in case measures are undertaken to prevent such pollution in the territory/EEZ of a contracting state, the courts of the respective contracting states are solely competent to judge on claims for indemnification (Art. IX of Haftungsübereinkommen von 1992). The above competence of Swiss courts might hence be derogated by the above. In case of the establishment of a fund according to Article 5 (3) of the Haftungsübereinkommen 1992 the courts of the country where the fund was established are solely compentent (Art. IX (3) Haftungsübereinkommen 1992).
Turkey	Yes (provided that there is a competent Turkish court according to rules about territorial competence). There is no special rule in respect of territorial competence for claims against foreign liability insurers. According to the general rule, the court of the insurer's centre of business is competent (but that court is not within Turkey). However when a claim is brought against several defendants, the competent court for one of them is also competent for the others. Although debated, in my opinion it is possible to sue the liability insurer before the court where the insured (the person liable) is sued. Turkish law although containing a clear rule about direct action, did not provide special rules for designating "where" (before which court) this direct action should be brought. (No specific rule neither to the competence of the court where the loss engendering liability occurred nor as to the competence of that court for claims against the liability insurer).

USA	Question 4.1.2 likewise raises jurisdictional concerns previously addressed throughout Question 3.3. Also, similar to the response to Question 4.1.1, the right of foreign and national claimants to directly sue foreign insurers is generally dependent upon whether such action is permissible under the governing law. For instance, in Louisiana, foreign and national claimants may sue foreign insurers because all foreign insurers that wish to do business within Louisiana must consent to direct action claims. See La. Rev. Stat. Ann. § 22:333 ("The transacting of business in this state by a foreign or alien insurer pursuant to a certificate of authority ... shall constitute a consent to being sued by the injured person or his or her heirs in a direct action as provided in R.S. 22:1269...."). Similarly, in the federal context, if a foreign insurer is utilized to evidence financial responsibility under OPA-90 or CERCLA, that foreign insurer must consent to direct suit in courts of the United States for costs or damages arising under OPA-90 or CERCLA. See 33 C.F.R. § 138.80(d).

Question 4.3:	Does a judgement against the liable party bind the courts of your country in a direct action against an insurer as regards the merits and quantum?
MLA	**Answer**
Argentina	
Belgium	In principle, a Court decision has only binding authority between the litigating parties in the Court case. For this reason, a tort feasor may force his insurer to intervene in the pending Court proceedings for the sole goal of rendering the decision legally binding on his insurer("impleader") in case there is no direct action right available against the third party liability insurer. But one has also to take into account the following: According to the fair trial principle expressed by art. 6 of the European Human Rights Treaty, a party in Court can never be denied the right to challenge the claim by its own arguments. One has also to take into account the existence of a special procedural remedy; the "Tierce Opposition" by which any party can challenge a decision if that decisionhas caused prejudice to his rights. (Sections 1122 through 1131 of the Belgian Code on Civil Procedure)
Canada	Not explicitly, although the courts would be reluctant to permit an insurer to re-litigate the liability of the insured (unless there appeared to be collusion between the claimant and the shipowner). The Conventions also provide that the insurer may invoke the defence thatthe pollution damage resulted from the wilful misconduct of the shipowner. This provision would permit an insurer to raise this as a new defence even if judgement was taken against the liable party.

China	a. In respect of pure domestic lawsuit, Ne bis in idem is established in every country as a principle of civil lawsuit, that is, no legal action can be instituted twice for the same cause of action once the suit is heard and enforceable decision is made by the Court. This principle is provided indirectly in Section 5, Article 111 of Civil Procedure Law, which reads that, *Where one side of the parties file lawsuits against the same cases in which their judgments or orders have become legally effective, the people's courts shall notify the plaintiffs to go to the re-trial proceedings, except those cases in which the orders rendered by the people's courts is to allow the lawsuits to be withdrawn.* Accordingly, judgment on an oil pollution accident will come into force between the victim and the party liable once the judgment has become legally enforceable, upon which the parties have to enforce the judgment and the other courts shall respect the judgment. Therefore, there is no need for a court to hear the issue of the legal relationship between the victim and the party liable where a direct action against the insurer is filed. b. Whether a judgment made by a foreign court binds the courts of our country in a direct action against an insurer depends on whether the judgment is recognized by the courts of our country. If recognized, the judgment binds the courts.

China (continued 1)	Article 265 of Civil Procedure Law provides that, *If a legally enforceable judgment or ruling made by a foreign court needs the recognition and enforcement of a people's court of the People's Republic of China, the party may directly apply to the intermediate people's court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement, or the foreign court may, according to the provisions of the international treaties concluded or acceded to by the People's Republic of China or the principle of reciprocity, request a people's court for recognition and enforcement.* And Article 266 of Civil Procedure Law provides that, *After a people's court of the People's Republic of China reviews an application or pleading for the recognition and enforcement of a legally effective judgment or ruling rendered by a foreign court according to the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, if the court considers that such a judgment or ruling does not contradict the basic principles of the laws of the People's Republic of China nor violates the national, social, and public interest of China, the court may render a ruling to recognize its force. Where the enforcement is necessary, the court may issue an order to enforce a foreign judgment according to the relevant provisions of this Law.*
China (continued 2)	*If a legally effective judgment or ruling rendered by a foreign court contradicts the basic principles of the law of the People's Republic of China or the national, social, and public interest of China, the people's court shall reject the application of recognition and enforcement.*
Croatia	No.
Finland	It does not bind the courts trying the direct action but it has evidentiary value in that action.
Germany	There exists no statutory law on this aspect in Germany. It is an open question whether in marine liability insurance the court deciding on insurance aspects is bound to what has been decided on liability.
Ireland	
Italy	Yes, it does.

Japan	It is binding except for the following case. (Act Art.12) 1) When the judgment in question was obtained through fraud 2) When a defendant has not received the summons or an order required for the commencement of a lawsuit and was not given a fair opportunity to make his/her assertion.
Netherlands	No.
New Zealand/Australia	Yes
Norway	No
Sweden	It does not bind the courts trying the direct action but it has evidentiary value in that action.
Switzerland	• Swiss judgement against liable party: Yes, however only if the insurer was brought into proceedings (Streitverkündung according to Art. 80 in combination with Art. 78 Zivilprozessordnung – ZPO). http://www.zpo.ch/images/docs/D.pdf • Foreign judgement against liable party: Article X of the Haftungsübereinkommen 1992 requires the following for a verdict to be binding upon the insurer (see Art. X): o A competent court in the sense of Art. IX (see 4.1.1. above) o A final verdict of such a competent court o Unless - the insurer has never been informed about the proceedings in due course and was not able to duly defend the claim (Art. X (1b) Haftungsübereinkommen 1992) - the verdict was handed down based on fraudulent undertakings (Art. X (1a) Haftungsübereinkommen 1992)
Turkey	Yes. This would constitute "irrefutable evidence" that the liable party has incurred liability. According to Turkish Civil Proceedings Act article 204, court decisions are regarded as conclusive evidence until their falsification is proven.

USA	This question is governed by state law and, therefore, the answer will differ from state to state. In New York, if the insurer was not given notice of the underlying action until after judgment was entered against its insured, there is a strong argument that the insurer should not be bound because the insurer was not given "a full and fair opportunity to contest the decision now said to be controlling." Jimenez v. New York Cent. Mut. Fire Ins. Co., 897 N.Y.S.2d 143, 146 (N.Y. App. Div. 2010) (citations omitted). Moreover, the insurer may not be bound as to those issues that were not actually litigated and / or determined in the former action. Kaufman v. Eli Lilly and Co., 482 N.E.2d 63, 68 (N.Y. 1985) (stating that estoppel effect will only be given to matters actually litigated and determined in a prior action). In any event, the insurer would likely only be liable up to an amount equal to the applicable limit of coverage under the policy. See, e.g., N.Y. Ins. Law § 3420(a)(2).

Question 4.2:	**Does your national law allow that the direct claims against an insurer are subject to an arbitration clause?**
MLA	**Answer**
Argentina	
Belgium	The stipulation of an arbitration clause in a third party liability insurance contract is not forbidden. If the contract contains such a clause in favor of the victim, the latter could invoke the arbitration clause. But given the contractual nature of arbitration, is it questionable whether the arbitration exception could be invoked against the victim who is not a party to the insurance contract.
Canada	Yes, under the Commercial Arbitration Act (Canada), incorporating provisions of the UNCITRAL Model Law on Commercial Arbitration 1985. However, that generality is subject to the exclusive jurisdiction given to the courts of the states where the pollution damage was caused or preventive measures were taken, pursuant to Article IX para. 1 of CLC and Article 9 para. 1 of the Bunkers Convention
China	No regulations are specified on this issue. It is still disputed in practice.
Croatia	There are no such specific statutory rules under Croatian law. The court practice shows that the interpretation of the relevant matter by the courts in Croatia is that the third party claimant when claiming directly against the insurer is not bound by the arbitration clauses potentially included in the respective contract of insurance.
Finland	No.
Germany	Yes, generally speaking a direct claim against an insurer may be subject to an arbitration clause. However, since the injured person will generally not be a party to the Insurance Contract, the arbitration agreement needs to be concluded after the incident.
Ireland	

Italy	Italy is party to the 1958 New York Convention and in general Italian case law is now quite favourable to arbitration in dubious cases. We doubt, however, that an arbitration clause agreed between the Insurer and the Insured might affect the latter's right to act in Court. Quite apart from the problem whether an arbitration clause may bind a third party, there may be reasons of public policy against subjecting the right to direct claim to such an arbitration clause.
Japan	Although there is no case on this issue, the arbitration clause would not prevent the otherwise possible direct action against the insurer when the action was brought in Japanese courts.
Netherlands	No.
New Zealand/Australia	Yes
Norway	There is no ban on this.
Sweden	Yes, although it seem to be disputed by some authors.
Switzerland	• Insurers which are domiciled in state which is a contracting party to the Lugano Übereinkommen – basically: European Insurers: Yes, due to the fact that the insurance has to be qualified as liability insurance of seagoing ships (see Art. 12 (5) LugÜ in combination with Art. 12a (2a) LugÜ) • Insurers which are domiciled in state which is not a contracting party to the Lugano Übereinkommen: No provisions – hence allowed. • The adoption of the CLC 1992, the Haftungsübereinkommen 1992 is silent on the topic.
Turkey	Turkish law does not regulate specifically this issue. In my opinion the arbitration clause at least in the mandatory insurance contracts cannot be invoked against the third party victim unless the third party agrees to be bound by it. In mandatory liability insurances the rule is that the defences arising out of the insurance contract or the legal provisions regulating the insurance contract having the consequence that the insurer is relieved partly or wholly from liability are not opposable to the third party victim. The situation here is similar (arbitration can be detrimental to the victim as compared to civil courts).

USA	The answer to this question is both unsettled and likely dependent upon individual state law principles. See Todd v. Steamship Mut. Underwriting Ass'n (Bermuda) Ltd., 601 F.3d 329 (5th Cir. 2010). In Todd, a third party claimant filed a lawsuit against an insurer pursuant to Louisiana's direct action statute. The insurer attempted to stay the proceedings and compel the third party to arbitrate the claims due to an arbitration clause in the policy of insurance. The insurer argued, in part, that because the third party essentially derived his rights to sue the insurer from the policy of insurance, the third party should be bound by the arbitration clause in that policy. Id. at 331. On one hand, the court of appeals recognized that two prior federal appellate decisions concluded that direct action claimants (in analogous circumstances) were not bound to arbitration clauses because they were not parties to the insurance policies creating the obligation. Id. at 334 (citing Zimmerman v. International Companies & Consulting, Inc., 107 F.3d 344 (5th Cir. 1997) and In re Talbott Big Foot, Inc., 887 F.2d 611 (5th Cir. 1989)).
USA (continued 1)	Nonetheless, the court found that the reasoning of those prior cases had been recently effectively overruled by the United States Supreme Court decision of Arthur Andersen LLP v. Carlisle, 129 S.Ct. 1896 (2009): In Carlisle . . . the Supreme Court rejected the reasoning in Zimmerman and Big Foot, concluding instead that nonsignatories to arbitration agreements (such as direct action plaintiffs) may sometimes be compelled to arbitrate. The Supreme Court ... explained that traditional principles of state law allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel. As such, Carlisle overrules our determination in Zimmerman and Big Foot that direct action plaintiffs need never arbitrate . . . because they are not parties to the insurance policies creating an obligation to arbitrate. Todd, 601 F.3d at 333-34 (internal citations omitted). As a result, without directly answering whether or not the third party was bound to arbitrate, the court of appeals remanded the action to the lower court for further proceedings. At the time of this response, no formal decision has been rendered by that lower court.

Question 4.3.1:	If so, does this also apply to judgements in default?
MLA	**Answer**
Argentina	
Belgium	Yes, certainly.
Canada	This would depend upon the procedural requirements of the court in which the default judgment was obtained. In some provincial superior courts, it is sufficient only to provequantum of the claim after noting the ship owner in default. Under the Federal COurts Rules, an apllicant for a default judgment is required to still prove both liability and quantum. The more extensive the requirements for obtaining the underlying default judgment, the less a court would be inclined to permit the insurer to re-litigate issues. As well, if there appeared to be collusion between the claimant and liable party an insurer may be permitted to dispute the liability of the shipowner. The Conventions also provide that the insurer may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner. This provision would permit an insurer to raise this as a new defence even if judgment was taken against the liable party.
China	Yes. The above answer also applies to judgment in default. In respect of domestic default judgments, the default liable party is deemed to have waived its right to challenge the jurisdiction of the court. However, the default liable party can invoke the latter two excuses to apply for retrial of the case against the liable party. In respect of default judgments by foreign courts, it depends on whether the foreign default judgment can be recognized by Chinese court or not. The above three excuses can be used to object the claimant's application for recognition of foreign judgments.
Croatia	
Finland	
Germany	See 4.3 above.
Ireland	
Italy	Yes, it does.
Japan	Judgement in default might fall in the category of subparagraph 2) of the above answer in respect of Q4.3 depending on the facts of the case.

Netherlands	Not applicable.
New Zealand/Australia	Yes but subject to issues of procedural fairness
Norway	
Sweden	Yes.
Switzerland	• Swiss judgement: Yes, if process was duly served according to Art. 136 ZPO and if the insurer still was in a position to duly defend or attack according to Art. 80 in combination with Art. 77 ZPO. • Foreign judgement: see 4.3.
Turkey	In principle, yes.
USA	If there were no issues actually litigated and determined in the prior action, the insurer is not necessarily bound by the default judgment. See, e.g., Rourke v. Travelers Ins. Co., 678 N.Y.S.2d 195, 196 (N.Y. App. Div. 1998). In Rourke, a claimant collected a judgment by default against an insured in a negligence action. Thereafter, the claimant commenced a direct action against the insurer to recover on the unsatisfied judgment and argued that estoppel should apply as to the issue of the insured's negligence. The New York appellate court, however, had little difficulty finding that the defendant insurer was not bound: Defendant is not estopped from asserting that its insured acted intentionally by virtue of the finding of negligence in the prior action. Because the judgment was entered on default, the issue of negligence was not actually litigated in the prior action, and the finding of negligence therefore has no collateral estoppel effect. Id. (citations omitted); see also Robbins v. Michigan Millers Mut. Ins. Co., 653 N.Y.S.2d 975, 977 (N.Y. App. Div. 1997) ("Nor was the issue of whether plaintiff's injuries were intentionally caused or resulted from negligence actually litigated in the underlying action and, therefore, the default judgment has no collateral estoppel effect on that issue.").

USA (continued 1)	Other state laws differ. For example, in California, "[w]here an insurer has failed to intervene in the underlying action or to move to set aside the default judgment, the insurer is bound by the default judgment." Reliance Ins. Co. v. Superior Court, 100 Cal.Rptr.2d 807, 810 (Cal. Ct. App. 2000) (citation omitted). Similarly, a default judgment entered against an insured in Arizona may be conclusive against the insurer as to "all issues which were or could have been litigated and is not subject to collateral impeachment at a subsequent time." Dairyland Ins. Co. v. Richards, 492 P.2d 1196, 1198 (Ariz. 1972) (citations omitted).

Question 4.3.2:	**If so, can the insurer invoke that the court having decided on the claim against the party liable has not had jurisdiction?**
MLA	**Answer**
Argentina	
Belgium	Yes.
Canada	While the Conventions provide that the insurer can avail itself of defences which the shipowner itself would have been entitled to invoke, it is highly unlikely the court hearing the claim against the insurer would permit the insurer to re-litigate an issue of jurisdiction of the original court if this jurisdictional issue had been raised before or decided by the original court.
China	Yes. The above answer also applies to judgment in default. In respect of domestic default judgments, the default liable party is deemed to have waived its right to challenge the jurisdiction of the court. However, the default liable party can invoke the latter two excuses to apply for retrial of the case against the liable party. In respect of default judgments by foreign courts, it depends on whether the foreign default judgment can be recognized by Chinese court or not. The above three excuses can be used to object the claimant's application for recognition of foreign judgments.
Croatia	
Finland	
Germany	See 4.3 above.
Ireland	
Italy	We think he can not. Should Italian Courts lack jurisdiction to decide a case, jurisdiction would however be established if the defendant does not object in his first defence (Art. 4 law 218/1995 and Art. 24 of Council Regulation (EC) n. 44/2001. See, in any case, art 9, 10, 11, 12,13 and 14 of the aforesaid Regulation).
Japan	So far as the judgement in question is "the final and binding judgment of a foreign court which has jurisdiction pursuant to paragraph 1 of Article 9 of CLC", the insurer cannot invoke the wrong jurisdiction defence.
Netherlands	Not applicable.
New Zealand/Australia	Yes
Norway	
Sweden	Yes.

Switzerland	• National judgement against liable party if conditions under 4.3 were met: No. The court which adjudges against the liable party is competent to adjudge against the insurer as well (Art. 81 ZPO). • Foreign judgement: Yes, he could argue that the court was not competent as per Art. IX of the Haftungsübereinkommen 1992 (see 4.1.1. above)
Turkey	In principle, no.
USA	This question is governed by state law and, therefore, the answer will differ from state to state. There is some authority in the United States to support the contention that an insurer cannot be bound by a judgment that is void for lack of jurisdiction. See, e.g., Rogan v. Liberty Mut. Ins. Co, 25 N.E.2d 188 (Mass. 1940). In Rogan, the court recognized that "where there has been a valid final judgment against the insured wrongdoer, establishing his liability to the injured plaintiff, the insurer also must accept it as conclusively establishing that liability." However, the court also found that the "so called judgment" relied upon was one in name and form only, because the liable party (i.e., the insured) never properly submitted himself to the jurisdiction of the court that had previously entered the judgment. Thus, because there was no valid judgment, the insurer was not bound in the latter proceedings. Id. at 189. The holding in Rogan comports with the well-established principle that in order for preclusive doctrines to apply under United States law, there must have been a right, question or fact that was "distinctly put in issue and directly determined by a court of competent jurisdiction...." Montana v. U.S., 440 U.S. 147, 153 (1979) (citing Southern Pacific R. Co. v. United States, 168 U.S. 1, 48-49 (1897)) (emphasis added).

USA (continued 1)	Nevertheless, the insurer should be cautioned that collateral attacks for want of jurisdiction may not always be available under United States law, especially if a court finds that the insurer previously had an opportunity to litigate and / or raise the jurisdictional question. "A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not ... reopen that question in a collateral attack. ... It has long been the rule that principles of res judicata apply to jurisdictional determinations-both subject matter and personal." Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n. 9 (1982) (citations omitted).

Question 4.3.3:	**If so, can the insurer invoke that the party liable has not been properly served with proceedings and no opportunity to defend itself?**
MLA	**Answer**
Argentina	
Belgium	Yes.
Canada	The Conventions provide that the insurer can avail itself of defences which the shipowner itself would have been entitled to invoke. If there is an issue whether the shipowner wasproperly served, Canadian courts would apply the test whether the shipowner had reasonable notice of the proceedings brought against it.
China	Yes. The above answer also applies to judgment in default. In respect of domestic default judgments, the default liable party is deemed to have waived its right to challenge the jurisdiction of the court. However, the default liable party can invoke the latter two excuses to apply for retrial of the case against the liable party. In respect of default judgments by foreign courts, it depends on whether the foreign default judgment can be recognized by Chinese court or not. The above three excuses can be used to object the claimant's application for recognition of foreign judgments.
Croatia	
Finland	
Germany	See 4.3 above.
Ireland	
Italy	We would say no, but to our knowledge this is a largely unexplored field of our law. Italian law has approached the problems concerning direct action without care for coordination (in the absence, as we have already said, of any general rule) and we are not aware of any decided case concerning this question.
Japan	Yes. Act Art.12(1)(ii). See the sub-paragraph 2) in the answer in respect to Q4.3
Netherlands	Not applicable.
New Zealand/Australia	Yes
Norway	
Sweden	Yes.
Switzerland	• National verdict: Yes, if this is being done in due time (Art. 80 in combination with Art. 76 ZPO). • Foreign judgement: see 4.3.

Turkey	In principle, no.
USA	This question is governed by state law and, therefore, the answer will differ from state to state. Similar to the analysis and concerns addressed in the response to Question 4.3.2, there is some authority in the United States to support the contention that an insurer may not be bound by a judgment where the insured was not properly served and thus, potentially, did not have an adequate opportunity to defend itself. See, e.g., Conner v. Miller, 96 N.E.2d 13 (Ohio 1950); Rogan, 25 N.E.2d at 189 (refusing to find insurer bound by a prior judgment against its insured where the insured was never properly served with process); Dimmitt v. Campbell, 151 N.W.2d 562 (Iowa 1967) (insurer not bound because prior judgment found void for lack of jurisdiction on the basis of improper service).

Question 4.3.4:	If so, can the party liable invoke that the party liable has not defended itself properly?
MLA	**Answer**
Argentina	
Belgium	Yes.
Canada	No, because the Conventions provide that the insurer cannot invoke defences available to the insurer if it had been sued by the shipowner, such as improvident conduct of a defence by the shipowner.
China	Yes. The above answer also applies to judgment in default. In respect of domestic default judgments, the default liable party is deemed to have waived its right to challenge the jurisdiction of the court. However, the default liable party can invoke the latter two excuses to apply for retrial of the case against the liable party. In respect of default judgments by foreign courts, it depends on whether the foreign default judgment can be recognized by Chinese court or not. The above three excuses can be used to object the claimant's application for recognition of foreign judgments.
Croatia	No.
Finland	
Germany	See 4.3 above.
Ireland	
Italy	This question seems to make sense only if we read "the insurer" instead of "the party liable" where this expression appears for the first time. That said, if we stay with the insurer/insured relationship, the general rule is that the insured is liable to the insurer for the prejudice caused by his not taking care to minimize the damage (Art. 1914 and 1915 Civil Code). In the case, however, of a direct claim from the damaged party we would think that a previous poor defence from the insured ("the party liable") should not affect the damaged party's rights against the insurer, without prejudice for any "internal" recourse between the insurer and the insured.
Japan	Yes. Act Art.12(1)(ii). See the sub-paragraph 2) in the answer in respect to Q4.3
Netherlands	Not applicable.
New Zealand/Australia	Yes
Norway	
Sweden	Yes.

Switzerland	• National verdict: No, the insurer can however invoke that the liable party intentionally or gross-negligently omitted to present pleadings of defence or attack of which the insurer was not aware (Art. 80 in combination with Art. 77 (b) ZPO). The insurer is allowed to present all timely arguments to support the liable party himself (Art. 80 in combination with Art. 76 (1) ZPO). • Foreign judgement: see 4.3.
Turkey	In principle, no.
USA	This question is governed by state law and, therefore, the answer will differ from state to state.

Question 4.5:	**Can the claimant under your national law sue the person liable and the insurer in the same proceedings?**
MLA	**Answer**
Argentina	Yes. In case of civil liability insurance, as it was explained in the answer to 4.1.
Belgium	Yes, these claims can be combined in one legal action before one and the same Court.
Canada	The claimant can seek to do so. However, under Canadian Maritime Law, courts may give effect to any insurance policy provision that no action for indemnity under a marine insurance policy can be brought until there is first a determination of the insured's liability. For constitutional reasons, it is unlikely that certain provincial statutory provisions nullifying such contractual terms would be applicable to contracts of marine insurance. Under general principles of insurance law, it may be permissible to seek a declaration that an insurer is liable to indemnify before there is a judgment against the insured. However, courts retain a procedural discretion to control the joinder of insurers as co-defendants in actions against tortfeasors.
China	Yes. Paragraph Article 97 2 of Special Maritime Procedure Law provides that, *Where the insurer for oil pollution damage or the person who provides financial security therefore is sued, such insurer or persons are entitled to demand the owner of the ship causing oil pollution damage to join the proceedings.* And it is prescribed in Article 69 of Legal Interpretation on Issues of Special Maritime Procedure Law of the People's Republic of China promulgated by the Supreme People's Court that, *The maritime court may notify the shipowner to attend the proceeding as an intervenor with no independent right to claims upon the request of the insurer or the persons providing financial security.*
Croatia	Yes.
Finland	Yes.
Germany	Yes, if the court has jurisdiction for both defendants according to the German Code on Civil Proceedings or the Jurisdiction Regulation as the case may be.

Ireland	
Italy	Yes. Special rules are provided in specific cases (e.g. motor insurance).
Japan	Yes. Act Art.16
Netherlands	Yes.
New Zealand/Australia	Yes
Norway	As a general rule: Yes
Sweden	Presumably Yes, pursuant to Chapter 14 Section 2 of the Code of Judicial Procedure.
Switzerland	Yes according to Art. 71 (1) ZPO.
Turkey	Yes.
USA	In some jurisdictions where direct action is available, a joint action may be brought against both the insured and the insurer. See, e.g., Brown v. Quinn, 68 S.E.2d 326, 327 (S.C. 1951) (stating that under a long line of South Carolina decisions, "[t]he right of joinder of insurer and insured under policies of compulsory indemnity or liability insurance, in actions by third persons, has been sustained...."); La. Rev. Stat. Ann. § 22:1269(B)(1) (providing that under Louisiana's direct action statute, the action "may be brought against the insurer alone, or against both the insured and insurer jointly....") (emphasis added).

Question 4.5.1:	If so, are there any requirements as to the domicile of the party liable or the insurer?
MLA	**Answer**
Argentina	If the liable party is the registered owner or disponent owner of a vessel, service on the Maritime Agent is accepted pursuant Section 195 of the Argentine Navigation Law. The insurer domiciled out of Argentina should be served in ist domicile, but if a P&I Club issued a letter of undertaking through a local Correspondent, it was declared that the Club could be served in the Correspondent's domicile.
Belgium	There must be a jurisdictional ground of a territorial nature (residence of the defendants or a place where the right of action arose) against at least one of the defendants; if one of the defendants has his domicile within the jurisdiction of the Court, ana action can be brought against that defendant before the Court and other defendants can be joined in that action.
Canada	While the Federal Court has putative jurisdiction over any maritime obligation regardless of its location, Canadian superior courts generally require some connection between Canada and the cause of action before accepting jurisdiction. The fact that damages are suffered in Canada will generally be sufficient to permit a court to exercise juisdiction. Therefore, Canadian courts will not force an insured to seek indemnity in a foreign insurer's domoicile unless there was a clear foreign choice of forum or venue clause or a foreign arbitration clause in the policy. The utility of having all defendant parties which may be affected by determinations of fact or law before the same court is taken into account in deciding whether a court will stay an action on the basis of *forum non conveniens* or other reasons. However, Canadian superior courts will generally give greater weight to contructual choice of venue clauses then the convenience of having all possibly relevant parties before one court.

China	No, there are not. Article 7 of Special Maritime Procedure Law provides that, *The following maritime actions shall be under the exclusive jurisdiction of maritime courts specified in this Article: ... (2) an action brought against pollution damage to sea areas caused by discharge, spill or dumping of oil or other hazardous substances from ships, by production or operation at sea or by ship demolition or repair shall be under the jurisdiction of the maritime courts of the place where the pollution occurred, the place that is suffering from the harmful consequences or the place where pollution prevention measures were taken.*
Croatia	There are no particular requirements prescribed. General PIL rules on jurisdiction apply. See answers to the questions no. 4.1, 4.1.1 and 4.1.2 above.
Finland	No, but the court must have jurisdiction pursuant to MC Chapter 21.
Germany	The domicile of the party liable or the insurer may be relevant for the question of jurisdiction for either defendant.
Ireland	
Italy	We would refer to Art 11 of Council Regulation (EC) n. 44/2001 and the general rules provided by Art. 3 of Law n. 218/1995.
Japan	No.
Netherlands	No.
New Zealand/Australia	Yes unless there is a valid choice of forum clause
Norway	The courts must have jurisdiction against the liable party, on the basis of domicile or otherwise.
Sweden	No.
Switzerland	• In a purely domestic context, Art. 81 (1) ZPO holds that the court is competent to hear the dispute against the insurer if competent to hear the dispute against the liable party. • If a claim is made against insurers which are domiciled in a state which is a contracting party to the Lugano Übereinkommen – basically: European Insurers see 4.1.2. A2) and A3). • For insurers which are domiciled in state which is not a contracting party to the Lugano Übereinkommen – basically: Non-European Insurers: see 4.1.2. A3) and A1).
Turkey	No. It suffices that the court be territorially competent in respect of one of the defendants.

USA	To bring suit against the party liable and the insurer, the claimant must, as discussed in the response to Question 3.3, establish that the court has personal jurisdiction over the liable party and the insurer.

Question 4.5.2:	**If so, does your national law contain provisions on what has to happen if the insurer requires that the party liable is joined as a further defendant?**
MLA	**Answer**
Argentina	
Belgium	If an insurer wants to join the party liable, he will have to bring suit against i.e. serve writ on that person; such an action is called "an action for forced intervention/impleader". The liable party can also join by ist own initiative and ist own free will.
Canada	The provisions of CLC 1992 (Article VII para. 8) and the Bunkers Convention (Article 7 para. 10) permit this. There are no specific procedures set out to implement the provisions of the Conventions permitting this so resort would likely be taken to the court's own proceural rules with respect to adding parties.
China	Article 69 of Legal Interpretation on Issues of Special Maritime Procedure Law of the People's Republic of China promulgated by the Supreme People's Court provides that, *The maritime court may notify the shipowner to attend the proceeding as an intervenor with no independent right to claims upon the request of the insurer or the persons providing financial security.* Accordingly, if the insurer requires that the party liable is joined as a further defendant, the court will adopt and notify the shipowner to attend the proceedings.
Croatia	The insurer may not require that the party liable be joined as a further defendant if that party is not sued. The insurer may only require that the liable party (as his assured) be joined in the proceedings on the insurer's side as an "intervener".
Finland	No.

Germany	German law does not contain any provisions allowing the insurer to require that the party liable is joined as a further defendant. However, German procedural law provides for a so called "third party notice", which – generally speaking – has the effect that the party liable may join the proceedings, not as a further defendant but to support the defendant by way of own procedural actions such as submissions and motions, and that – no matter if the party liable so joins the law suit or not – anything decided in this law suit against the insurer is binding in a recourse action of the insurer against the insured. However, the claimant will not receive a judgement against the party liable in these proceedings.
Ireland	
Italy	The general rule is that each party may call, in the proceedings, a party with which proceedings are to be shared or by which guarantee is required (Art. 106 Code of Civil Procedure). In the case of motor insurance, which is the main case of direct claim against the insurer in Italy, "In the proceedings against the insurer also the liable party must participate" (Art. 144, 3 Decree 7 September 2005, n. 209).
Japan	Although the Act does not explicitly provide, it does not prohibit it.
Netherlands	Yes, the insurer has the right to require the owner to be joined in the proceedings. Article 118 of the Dutch Code of Civil Procedure (DCCP) requires a third party to be summoned in a similar way as a defendant.
New Zealand/Australia	No
Norway	Yes.
Sweden	No.

Switzerland	Such a request will be dealt with according to Art. 82 of the ZPO: 1) The request has to be made in the second or fourth exchange of pleadings (of a total of 4 – hence in the first or third pleadings by defendants) (Art. 82 (1) ZPO). 2) The joining party and defendant will be invited to comment (Art. 82 (2) ZPO). 3) If the court grants the request to join a further defendant, the court will further decide on when and to what extent an exchange of written pleadings regarding the joining of the proceedings will take place (Art. 82 (3) ZPO).
Turkey	No. Turkish law does not regulate this issue. In cases where the international conventions apply directly, Turkish Judge will have to play the role of the legislator and decide alone how to fill the gap, when the liability insurer uses its right to require that the insured to be joined in the proceedings under the international convention. (Note that the convention does not say that the insured will join upon the insurer's request the proceedings as a "defendant". What the insurer needs is only assistance from the insured and any method that can achieve the purpose would be enough).
USA	In at least one United States jurisdiction, the insurer may successfully require that the insured be joined in any direct action against the insurer. See, e.g., Matter of Brent Towing Co., Inc., 414 F.Supp. 131, 132 (N.D. Fl. 1975) (stating that, under Florida law, "there is no direct right of action against the insurer alone. The insured tortfeasor is an indispensable party in the action.") (citing Freed v. State Farm Automobile Insurance Company, 491 F.2d 972 (5th Cir. 1974)) (emphasis added). Other jurisdictions where direct action is available, however, appear to differ greatly. See, e.g., Travelers Indem. Co. v. Gulf Weighing Corp., 352 F.Supp. 335, 344 (E.D. La. 1972) (stating that "Louisiana permits suit against the insurer without the necessity of joining the insured.") (citing American Indemnity Co. v. Solomon, 231 F.2d 853 (5th Cir. 1956)); see also Estate of Otto v. Physicians Ins. Co. of Wisconsin, Inc., 751 N.W.2d 805, 812 (Wis. 2008) (Stating that, under Wisconsin's direct action statute, "the insured is not a necessary party to the action brought against its insurer.") (citation omitted).

Question 5.1:	**<u>Particulars of direct Action</u> Does your national law contain provisions according to which a direct claimant has to fulfil requirements for commencing a direct action against an insurer?**
MLA	**Answer**
Argentina	No.
Belgium	There are no specific rules on jurisdiction for direct claims against insurers as such.
Canada	The direct claimant would need to follow the general jurisdictional and procedural requirements of the Canadian court (provincial court or federal court) in which it chose to commence such action. Marine insurance in the common law provinces does not otherwise permit rights of direct action against insurers so there are no procedures in place.
China	No, there are not. The victim may action directly. Paragraph 1, Article 97 of Special Maritime Procedure Law provides that, *An party suffered oil pollution damages caused by a ship may claim either against the owner of the ship causing oil pollution damage or directly against the insurer who covers the liabilities of the owner of the ship or the person who provides financial security for the owners.*
Croatia	No.
Finland	More generally in Finland, section 67 of the Insurance Contract Act (1994/543) provides a right of direct action for a limited category of claims only. As regards oil pollution, the right of direct action is laid down in MC 10:12 and 10a:9. No particular requirements must be fulfilled by the claimant before commencing a claim against the insurer.
Germany	Preamble: The German law contains various statutory provisions on direct actions against insurers, but none of those provisions apply to marine insurance. All questions of this part 5 of the Questionnaire, thus, would have to be answered in the negative. The Association, instead, has decided to answer the questions raised in this part 5 on the basis of the application in Germany of the Conventions referred to in the Questionnaire. No.
Ireland	(Without legislative clarity on this issue though we feel that speculative answers to the remaining questions at 4 and 5 in the questionnaire would be of little assistance to the working group)

Italy	A direct claim vs. the liability insurer is generally not allowed under Italian law: such a possibility is contemplated for specific (and limited) cases of compulsory insurance coverage, for instance the liability arising from the circulation of motor vehicles or the liability arising from hunting. A direct claim vs. the insurer is furthermore contemplated with regard to the damages caused by aircrafts to third parties on the surface pursuant to article 1015 of the Italian navigation code; no direct action is generally permitted in cases of non-mandatory insurance coverage (like the insurance coverage of the liability arising from contracts of carriage of goods). The direct action may be subject to a prior request of payment and to a deadline granted to the insurer to reply and take the actions aimed at indemnifying before being exposed to a lawsuit.
Japan	No.
Netherlands	No
New Zealand/Australia	No
Norway	According to MC §§ 188 and 200 (and ICA § 7-6) the injured party has a claim for direct action against the liability insurer of the ship owner. There are no requirements that must be fulfilled to commence such claim.
Sweden	Yes.
Switzerland	No, none. See Art. VII (8) of the "Internationales Übereinkommen über die zivilrechtliche Haftung für Ölverschmutzungsschäden" – Haftungsübereinkommen 1992 (http://www.admin.ch/ch/d/sr/c0_814_291.html).
Turkey	No (except that the insurer has the right to request directly from the victim documents and information about the case).

USA	The responses to Question 5 are based on the law of Louisiana, which has the most far reaching state law for direct actions. The responses also are based on the Oil Pollution Act of 1990 ("OPA-90"), 33 U.S.C.A. §2701 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C.A. §9601 et seq., and the Evidence of Financial Responsibility for Passenger Transportation Act ("Passenger Financial Responsibility"), 46 U.S.C.A. §44101, et seq., which are the U.S. acts that are the most analogous to the international conventions referenced in the I.W.G. questionnaire.Louisiana: Yes. Except in limited circumstances, the claimant must bring suit against the insured together with the direct action against the insurer. L.S.A. R.S 22:1269 B (1) (2010). OPA 90/CERCLA Yes. An insurer providing proof of financial responsibility under OPA-90 may be sued anytime. An insurer providing proof of financial responsibility for an offshore facility may be sued only in the following circumstances: The responsible party has denied or failed to pay the claim on the basis that it is insolvent, The responsible party filed a petition for bankruptcy, or
USA (continued 1)	The claim is asserted by the U.S. 33 U.S.C.A. §2716(f)(2) (2010). Passenger Financial Responsibility The Act has no such requirement for an action against an insurer whose policy was provided as evidence of financial responsibility.

Question 5.2:	Does your national law contain provisions on burden and measure of proof which distinguish between a claim against the party liable under the respective convention and a direct claim against the insurer of such party?
MLA	**Answer**
Argentina	No.
Belgium	A claim against the party liable and or claim against the liability insurer are dealt with in exactly the same way.
Canada	Canadian courts would apply general principles of evidence, except to the extent these are modified by the provisions of the Conventions. The same burden and measure of proof would be applied against both the liable party and the insurer.
China	No special regulations are prescribed in the domestic laws of China on this issue.
Croatia	No.
Finland	No.
Germany	No.
Ireland	
Italy	There is no provision establishing a different burden and measure of proof, which therefore coincide with those set out for the action against the party liable.
Japan	No. Act. Art.(15)(2)
Netherlands	No
New Zealand/Australia	No
Norway	No
Sweden	No.
Switzerland	No, none. See Art. VII (8) Haftungsübereinkommen 1992.
Turkey	No.

USA	Louisiana No. When bringing suit against the insurer, the direct action claimant generally has the same burden and measure of proof to show the liability of the responsible party as when the claimant is proceeding against the responsible party itself. La. R.S. 22:1269 (A) (2010). As to the burden and measure of proof for the direct action claimant to show that the insurer covers the particular liability of the responsible party, see question 5.3 below. OPA 90/CERCLA No. An insurer is considered to have consented to direct action only for liability under the acts, which is the same liability as the responsible party. 33 C.F.R. §138.80 (d)(2) (2010). Passenger Financial Responsibility No. The amount insured shall be available to pay a judgment against the responsible party for damages. 46 U.S.C.A. §44103 (c) (2010). Accordingly, the burden and measure of proof against the insurer is the same as against the responsible party.

Question 5.3:	What defences does your national law allow an insurer against a direct claim?
MLA	**Answer**
Argentina	In the direct not autonomous action against the insurer in case of civil liability insurance the insurer can not oppose defences born after the casualty occurred if they are related to the contract of insurance.
Belgium	All the defences which could have been advanced by the liable party in the first place.
Canada	The Conventions provisions restricting which defences are available to the insurer have the force of law in Canada.
China	No regulations are specified in laws.
Croatia	In respect of claims for oil pollution damage and bunker oil pollution damage the insurer's defences are those provided under CLC 1992 Art. VII, para. 8 and Bunker convention, Art. 7, para. 10. respectively, as the cited conventional provisions apply directly under Croatian law, as has already been explained. Therefore the possible insurer's defences in those cases would be: limitation of liability, all owner's defences against the injured party, and wilful misconduct. In respect of a direct claim of a crew member and a direct claim for the costs of locating, marking and removal of wreck, the above cited Article 743 of the Maritime Code applies (see answer to question no. 3.2.2 above), in which case the defences available to the insurer are as explained in the answer to the question no. 3.2.1 above. Currently, direct action for HNS damage claims and passenger claims is not allowed in Croatia, as those liabilities are not subject to compulsory insurance.
Finland	Sections MC 10:12 and 10a:9 (ie claims under the CLC and bunkers convention) provide that the insurer is entitled to invoke the same defences as the assured, i.e. the insurer will be relieved from liability if the shipowner is not liable or if the damage was caused with intent by the vessel owner. However, the insurer may not invoke any other defences.
Germany	The law does not contain any particular provisions, but the insurer may invoke all defences which the insured is entitled to invoke. This includes the defence of contributory negligence of the insured party, i.e. the argument that the injured party has either partially or totally caused the damage himself. German law deals with this in § 254 Civil Code.

Ireland	
Italy	The insurer is allowed to raise the same defences available to the insured, but cannot challenge the action on the ground of exceptions and defences arising from the contract of insurance, like for instance the insured's failure to pay the premium or to comply with the measures set out in the contract of insurance for the mitigation of damages or the prevention or avoidance of the risks or losses. The insurer can however reject the claim on the grounds that the contract does not exist, or is totally null and void.
Japan	The defence to be available for insurer is limitedly to defend that the damage was caused knowingly by the Shipowner. (Art.(15)(1))
Netherlands	The same defences as the owner under the relevant Convention. The insurer may, even if the owner is not entitled to limit his liability according to the relevant Convention, avail himself of the limits of liability prescribed therein. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.
New Zealand/Australia	Those provided for in the Conventions.
Norway	According to MC § 188 and § 200 (and I CA§ 7-6), the insurer can adduce the objections to the claim raised by the insured party in relation to the injured party. However, the insurer may not adduce its objections in relation to the insured party except if the shipowner deliberately caused the damage himself.

Sweden	Chapter 9 Section 7 of the Swedish Insurance Contract Act (FAL) provides that an "injured party may direct a claim for indemnification to the insurance company pursuant to the insurance contract". Hence, the liability insurer can rely on all terms of the insurance contract and put forward the same defences against an injured party as against an assured. Chapter 10 Section 14 of the Maritime Code (ie CLC claims) provides that the insurer is entitled to invoke the same defences as the assured, i.e. the insurer will be relieved from liability if the vessel owner is not liable or if the damage was caused with intent by the vessel owner. However, the insurer may not invoke any other defences.
Switzerland	The insurer may rely on Art. V (1) (4 510 000 SDR for a ship of up to 5 000 GRT and 631 SDR/GRT in excess of it even if the owner caused damage with intent or recklessly with knowledge that such damage would probably result as per Art. V (2) (Art. VII (8) Haftungsübereinkommen 1992). It further allows for the same defences that could have been raised by the owner of the vessel (save bankruptcy or liquidation of the owner). Moreover, it allows for a defence based on the fact that the damage was intentionally caused by the owner. The defence of the insurer however may not be based on any argument which the insurer could raise based solely on the relationship of the insurer with the owner (Art. VII (8) Haftungsübereinkommen 1992).
Turkey	We have to differentiate between mandatory (liability) insurances and voluntary (liability) insurances. In voluntary insurances, where the law grants also the direct action, the insurer can invoke defences arising out of the insurance contract. However in mandatory liability insurances, the fact that the insurer is relieved from liability vis-à-vis the insured cannot constitute a defence against the victim. Furthermore, the insurer is allowed to invoke the termination of the insurance contract only after one month from the notification made to the competent authority. But the mandatory liability insurer that is relieved from liability vis-à-vis the insured can invoke that it is exempted from liability vis-à-vis the victim to the

USA	Louisiana The insurer may assert coverage defences. The direct action statute says an action may be maintained only within the terms and limits of the policy. La. R.S. 22:1269 (A) (2010). The principal difference is that the liability insurer may not rely on the bankruptcy or inability to pay of the insured. Id. Depending on policy wording, the insurer may not have the advantage of the responsible party's right to limit liability as a shipowner. See, question 5.10 below. OPA 90/CERCLA Under OPA-90, the insurer providing financial responsibility may assert only the following defences: The incident was caused by the wilful misconduct the responsible party; Those available to the responsible party; The amount of the claims paid by the insurer under the Act exceeds the guaranty;

USA (continued 1)	The amount of the claims paid by the insurer under the Act exceeds the guaranty; The amount of the claims exceeds the amount of the guaranty based on the International Tonnage Certificate, and The claim is not made under OPA-90 or CERCLA. The insurer may not invoke any other defence that might be available in proceedings between the responsible party and the insurer. 33.U.S.C.A. §2716(f)(1) (2010); 42 U.S.C.A. §9608 (c)(1) (2010); 33 C.F.R. §138.40 form CG-5586 (rev. 10-08), 138.80 (d) (1) (2010); Passenger Financial Responsibility The statute only says that the amount insured shall be available to pay a judgment against the insured for damages. It does not state expressly whether an insurer whose policy has been presented as evidence of financial responsibility retains coverage defences. 46 U.S.C.A. §44103 (c),(d) (2010). The regulations provide, however, that insurance accepted as evidence of financial responsibility under the statute shall not restrict the liability of the insurer where privity of the owner or charterer has been shown to exist. 46 C.F.R. §540.24(a)(3),(d) (2010).
USA (continued 2)	The insolvency of the responsible party shall not be a defence for the insurer. 46 C.F.R. §540.24(a)(2) (2010).

Question 5.4:	Can the insurer take over the defence of the party liable, and has the insurer a statutory power of attorney to act for the party liable?
MLA	**Answer**
Argentina	No.
Belgium	Yes, it is admitted that the insurer can take over the defence of the liable party because it is the insurer who is ultimately going to pay the bill but the insurer does not enjoy a formal power of attorney on behalf of the party liable.
Canada	This would depend upon the policy terms and applicable law of the policy. If the policy is governed by Canadian Maritime Law, Canadian courts would take Canadian marine insurance practice into account. Canadian marine liability policies generally give the insurer the right to conduct the insured's defence, subject to the general good faith obligation not to prejudice any uninsured interest. There is no statutory provision as such under Canadian Maritime Law which constitutes an insurer an attorney-in-fact for its insured in respect of the defence of a claim.
China	No regulations are specified in laws.
Croatia	There is no such statutory law.
Finland	No.
Germany	It depends on the contract whether the insurer can take over the defence of the party liable, but there exists no statutory power of attorney.
Ireland	
Italy	The insurer can take over the defence of the party liable, but it has no statutory power of attorney, although the representation of the insured is normally set out in the contract of insurance.
Japan	No.
Netherlands	There are no specific provisions on these issues in the relevant Convention or the implementing legislation. It is a question of interpretation of the relevant Convention whether general provisions of Dutch national law may supplement the provisions of the relevant Convention on this issue. If Dutch national law would be allowed to apply we note that there is no statutory power of attorney under Dutch law for insures to act for the party liable. The possibility to take over the defence of the party liable would normally be subject to the relevant contract of insurance.
New Zealand/Australia	Yes as per the Conventions
Norway	Not without agreement in the insurance contract

Sweden	No.
Switzerland	In the circumstances outlined under 4.3 above, the insurer may • defend the claim on behalf of the liable party without any further conditions to be met (Art. 79 (1a) ZPO). • conduct the trial on behalf of the liable party under the condition that the liable party consents to the insurer doing so (Art. 79 (1b) ZPO). There is hence no statutory power of attorney to act for the liable party. If the insurer was not asked to join proceedings, the judgement will not be binding upon the insurer.
Turkey	Article 1476(1) Turkish Code of Commerce states that the insurer shall declare to the insured ..... whether, it will take the necessary legal steps and decisions on behalf of the insured but for its own account and under its own responsibility and assist in the defence of the insured with regards to the claims of the victim. It is not clear whether this rule establishes a statutory power of representation of the insurer to act in the proceedings on behalf of the insured.
USA	This question assumes a suit against the liable party, in which the insurer is not sued. Louisiana Often, the policy will provide that the insurer may control the insured's defence. There are no statutory provisions for the insurer to take over the defence of the insured. OPA 90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law.

Question 5.5:	**Are there any time limits in your national law for a direct action against an insurer?**
MLA	**Answer**
Argentina	No.
Belgium	The time bar for marine insurance cases is still governed by the general Insurance statute of 1874: art. 32 of this statute sets the time bar at 3 years.The Insurance Contract Act of 25 July 1992 for Land based insurance and all ist potentially relevant provisions (art. 36, art. 79, art. 88 etc.) does not apply to Marine Insurance!
Canada	Under Canadian Maritime Law, an insurer may stipulate for a contractual time limits for commencing proceedings shorter than the general three year limitation period under section 140 of the Marine Liability Act. In the absence of any contractual stipulation, section 140 of the Marine Liability Act would apply. If the applicable foreign law of the policy includes prescription periods having the legal effect of extinguishing the right of action, as distinct from barring the procedural right of commencing an action, such foreign legal prescriptions would be regarded as substantive law under general Canadian conflict of laws principles, and therefore would be applied.
China	No regulations are specified in laws. In practice, the time limits for a direct action against an insurer are consistent with those for an action against the party liable by the victim.
Croatia	Yes, they are the same as for the underlying claim (e.g. in case of oil pollution and bunker oil pollution damage, the applicable time limits are those of Art. 8. of the Bunkers convention and of Art. VIII. of CLC 1992 respectively.)
Finland	Yes.
Germany	There are no particular time limits applicable for direct actions against a marine insurer. Consequently the general time of 3 years according to § 195 Civil Code applies. According to § 199 Civil code time commences to run at the end of the year in which the claimant obtains knowledge of the circumstances giving rise to the claim and of the identity of the debtor, or would have obtained such knowledge if he had not shown gross negligence.
Ireland	

Italy	Yes, there are time limits which do not necessarily coincide with those applying to the action against the insured (which is normally subject to a 5 years time limitation for actions in tort, or the longer time limitation in case the conduct gives rise to a crime or an offence).
Japan	Yes. (*Art.* (15)(3))
Netherlands	The Netherlands:The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). See 5.3.
New Zealand/Australia	Contractual claims are generally subject to a six year time limit
Norway	According to the ICA § 8-6, the liability of the insurer becomes statute-barred according to the same rules as apply to the liability for damages of the insured party.
Sweden	Yes.
Switzerland	Yes, see Art. VIII Haftungsübereinkommen 1992.
Turkey	Yes. Ten years maximum from the event (that gave
USA	Yes. If so, ... Louisiana A tort suit against the liable party must be brought within the prescriptive period of one year, but because the liable party and the insurer are jointly liable, suit against the liable party interrupts prescription against the insurer. Martin v. Mud Supply Company, Inc., La.App.Orleans, 1959, 111 So.2d 375, affirmed, 1960, 239 La. 616, 119 So.2d 484; Ensminger v. Great Atlantic & Pacific Tea Co., 134 So. 2d 686, 693 (La.App. 2 Cir. 1961). OPA 90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. The prescriptive period of OPA-90 claims against the responsible party depends on the type of claim, but generally is three years after the discovery of the loss, the assessment of natural damages, or completion of removal. 33 U.S.C.A. §2717 (2010). The three year period also applies after the date of judgment or settlement for contribution or payment for subrogation. Id.

USA (continued 1)	The prescriptive period of CERCLA claims against the responsible party also depends on the type of claim but generally is three or six years. 42 U.S.C.A. §9613 (g) (2010). Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law.

Question 5.5.1:	If so, what protects such a time limit (e.g court proceedings; demand letters)?
MLA	**Answer**
Argentina	Lodging of court proceedings interrupt time bar. A registered demand letter requiring payment of a fixed amount within certain time willsuspend time bar for one year or shorter time bar applicable pursuant Section 3986 of the Civil Code. The filing of a mediation proceeding also suspends time bar until its closure.
Belgium	A former writ of summons served before the expiration of the original time limit and by which Court proceedings are instituted, will interrupt the time limit from running. A demand letter will not but the letter emanating from the party against whom the time limit is running, agreeing to an extension, is valid.
Canada	Under Canadian Maritime law, only an agreement to extend a time limit or the issuance and timely service of court proceedings would protect domestic time limits.
China	
Croatia	Only a law suit.
Finland	Court proceedings (MC, section 19:1).

Germany	Protection of a time limit is dealt with in §§ 203 et seq. Civil Code. The following leads, inter alia, to a suspension of the time limit: a) negotiations in progress between claimant and debtor, b) the bringing of an action for performance or for a declaration of the existence of a claim, for the grant of an execution clause or for the issue of an order for execution, c) the service of a demand for payment in summary proceedings for recovery of debt or of the European order for payment in the European order for payment procedure in accordance with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ EU L 399 p. 1), d) arranging for notice to be given of an application for conciliation filed with a conciliation body established or recognised by the Land justice administration authority or, if the parties seek conciliation in mutual agreement, with any other conciliation body which settles disputes; if notice is arranged to be given shortly after the filing of the application, the limitation period is suspended immediately once the application is filed, e) the service of a third-party notice,
Germany (continued 1)	f) the service of an application for evidence to be taken in independent proceedings, g) the beginning of agreed expert opinion proceedings, i) the service of an application for an attachment order, an interim injunction or an interim order, or, if the application is not served, the filing of the application if the order for attachment, the interim injunction or the interim order is served on the claimant within one month of its being pronounced or of its service on the debtor, j) the filing of a claim in insolvency proceedings or in proceedings for the distribution of assets under maritime law, k) the beginning of arbitration proceedings, l) the filing of an application with the higher court, if the higher court must decide upon the court with jurisdiction over the claim and the action is brought within three months after the application has been disposed of, or the application for which a decision on jurisdiction is necessary is filed, m) arranging for notice to be given of the first application for the grant of legal aid or procedural costs assistance; if notice is arranged shortly after the filing of the application, the suspension of the limitation period takes effect immediately when the application is filed.

Ireland	
Italy	Court proceedings are requested just in case the time limit is established as "decadenza" (forfeiture), whilst demand letters claiming damages are sufficient to avoid the time bar when the time limit is a "prescrizione" (prescription). The time limit for the action against the insurer is normally a prescrizione, which requires just the transmission of a request for payment expressing the intention to exercise the right to seek the recovery of the damages: a new time limitation of equal extension starts to run from the receipt of the request, and the claimant must therefore send a new request for payment before the expiry of the time bar.
Japan	A commencement of court proceedings protects the claimant from the time limit. (Act Art.10, 15(3))

Netherlands	The Netherlands: The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts ("extinguished"/"s'éteignent" and "action brought"/"action en justice intentée" of the relevant Convention). It is a question of interpretation of the relevant Convention whether (all kinds of) court proceedings or demand letters are included in the notion "action brought". In view of case law regarding similar wording (e.g. 'suit is brought'/'action ... intentée' of the Hague (Visby) Rules) we believe court proceedings will of course protect the time limit, but demand letters will not.
New Zealand/Australia	Commencement of court proceedings or arbitration
Norway	Court proceedings or acceptance by the debtor, cf. Time Limit Act § 14 and §15
Sweden	Court proceedings.
Switzerland	The Haftungsübereinkommen 1992 explicitly mentions filing of the suit according to Art. VIII. Moreover, enforcing of the claim according to the provisions set forth in the national law of debt enforcement will have the same effect (Art. 135 (2) of the Law of Obligations "OR"). http://www.admin.ch/ch/d/sr/2/220.de.pdf
Turkey	Court proceedings, application for enforcement (not based on a court judgment), written recognition of the debt, partial payment.
USA	Louisiana Generally, only suit against the insurer interrupts prescription against it. As stated above, however, suit against the insured interrupts prescription against the insurer. OPA-90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law.

Question 5.5.2:	**If so, can the time limit be extended by agreement? If so, is the agreement with the insurer sufficient or does the party liable have to agree to the extension as well?**
MLA	**Answer**
Argentina	Only in cases related to common carriage pursuant Section 293 of the Argentine Navigation Law. The agreement with the insurer will not suffice.
Belgium	Yes the time limit can be extended by an agreement but the extension agreement has to be made after the cause of action arose.The agreement is only binding on the parties who are parties to the agreement.
Canada	Yes. Only the Convention direct action claimant and the insurer would have to agree insofar as action against the insurer only is concerned.
China	
Croatia	No.
Finland	The time limit can be extended, under conditions provided in section 19:1 of the MC. In a direct action case, there is no need for the insurer to have the agreement of the liable party (as far as the case against the insurer is concerned), but if it is not a direct action case, this is clearly necessary as it will be the liable party, not the insurer, who he is the defendant in the case.
Germany	Yes. The agreement with the insurer is sufficient. No agreement by the party liable to such extension is required.
Ireland	
Italy	Under Italian law (art. 2936 Civil Code) provisions of law establishing time limitations as prescrizione cannot be modified or extended by the parties, therefore an extension would be ineffective.
Japan	It is understood that the time limit be extended by agreement and that the party liable have to agree to the extension as well.
Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). We are not aware of the relevant Convention (or implementing legislation) providing/allowing for an extension of the time limit by agreement.
New Zealand/Australia	Insurer suffices

Norway	According to Time Limit Act § 28 extension can be agreed for 3 years at a time. It is not clear whether agreement with the insurer is sufficient to uphold the direct claim.
Sweden	Regarding a direct action according to FAL, yes. However, not regarding a direct action under the Maritime Code (ie CLC claims)
Switzerland	There is no absolute clarity with regards to this question in Switzerland. There currently are two schools of thoughts, given that after the time limit, the right to claim against the insurer will become extinct. One school of thought is of the view that no extension is possible. The alternative school of thought on the other hand believes that a contractual extension of the time limit is possible even in these circumstances as per Art. 135 (1) of the law of Obligations "OR". If so, is the agreement with the insurer sufficient or does the party liable have to agree to the extension as well? No, the liable party does not have to agree, given that the insurer and the liable party are jointly liable.
Turkey	The prescription periods cannot be modified in Turkish law by agreement except where the law explicitly allows it. Any extension agreed by the insurer (or the liable insured) would extend also the claim against the liable insured (or the insurer) if extension were possible, assuming that the insurer and the insured are jointly liable towards the victim –which is debated.

USA	Louisiana The time limit to bring suit against the insurer may be extended by the claimant and the insurer. La. C.C. Art. 3436 (2010). The agreement of the insurer to extend the time to sue is not effective against the responsible party unless the responsible party also agrees to the extension. OPA-90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law.

Question 5.6:	**Under your national law, are the party liable and the insurer jointly liable?**
MLA	**Answer**
Argentina	No, but if the direct not autonomous action was exercised against the insurer the latter could also be condemned.
Belgium	Joint liability of the third party liability insurer is a consequence of the direct action right against the insurer.
Canada	No. The obligation of the party liable is governed by the applicable Convention. The obligation of the insurer is governed by the terms of the applicable policy as modified by the restrictions provided by the Convention in respect of policy defences available to the insureras against Convention direct action claimants.
China	No regulations are specified under our national law.
Croatia	Yes.
Finland	Yes (within the meaning of 5.6.1 below)
Germany	Yes.
Ireland	
Italy	The damaging party is liable for liability in tort, the insurer as consequence of the provision of law, and are jointly and severally liable.
Japan	Although the claimant can choose to sue against the party liable and the insurer, the nature of the claim against the insurer is not a claim for damage. It is a claim for insurance payment to the claimant rather than the insured (the carrier).
Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). It is a question of interpretation of the relevant Convention and the implementing legislation whether the party liable and the insurer may be considered jointly liable or whether general provisions of Dutch national law on joint liability may even supplement the provisions of the relevant Convention on this issue.
New Zealand/Australia	No
Norway	Yes
Sweden	Yes.
Switzerland	Yes
Turkey	It is debated. But in our opinion they are jointly liable.

USA	Yes. If so, Louisiana Yes. See answer to question 5.5 above. OPA-90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. Nevertheless, because the acts create a direct action by the claimant against the insurer, it would seem that the liability would be joint. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. It likely will be decided under applicable state law. Nevertheless, if the Act is found to create a direct action by the claimant against the insurer, it would seem that the liability would be joint.

Question 5.6.1:	If so, what legal consequences does your national law provide for such joint liability?
MLA	**Answer**
Argentina	
Belgium	The consequences of joint liability are such the claimant can implement a favourable decision against any of the jointly held parties according to his wish. He may try to enforce a favourable decision against the deep pocket defendant .
Canada	Not applicable.
China	
Croatia	The party liable and his liability insurer are effectively jointly and severally liable under Croatian law. This means that a claimant may pursue an obligation against any one party as if they were jointly liable and it becomes the responsibility of the defendants to sort out their respective proportions of liability and payment. This means that if the claimant pursues one defendant and receives payment, that defendant must then pursue the other obligor for a contribution to their share of the liability. However, this is subject to the insurer's particular defences against a direct claim and especially to the amount of insurance as a definite limit of insurer's liability.
Finland	Either of them can be pursued for the full claim.
Germany	Each Debtor is obliged to effect the entire performance, but the claimant is only entitled to demand the performance once (joint and several debtors), the claimant may at his discretion demand full or part performance from each of the obligors. Until the entire performance has been effected all obligors remain obliged. Performance by a joint and several debtor is also effective for the other debtors. As to the internal relationship between the joint debtors, they are obliged in equal proportions in relation to one another unless otherwise determined. If the contribution attributable to a joint and several debtor cannot be obtained from him, the shortfall is to be borne by the other obligors obliged to adjust advancements. To the extent that a joint and several debtor satisfies the claimant and may demand adjustment of advancements from the other debtors, the claim of the claimant against the other debtors passes to him. The passing of ownership may not be asserted to the disadvantage of the claimant.

Ireland	
Italy	It is a peculiar form of joint liability, since the insured's liability arises ex delicto and may be unlimited, whilst the liability of the insurer is capped by the maximum coverage agreed in the insurance contract. The direct action against the insurer is an option, inasmuch as the damaged party can decide to act just against the party liable.
Japan	

Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). It is a question of interpretation of the relevant Convention and the implementing legislation whether general provisions of Dutch national law on joint liability may even supplement the provisions of the relevant Convention on this issue. If national law would be allowed to apply, one would presumably have to determine - under conflict of law rules - the law applicable to the issue of the consequences of joint liability. If Dutch law were to apply, the joint debtors are obliged to each other to contribute to toward the performance of the obligation of which they are joint debtors (Article 6:10 Dutch Civil Code (DCC)). In order to determine their contribution amongst themselves the loss shall be apportioned between them in proportion to the degree in which the circumstances which can be attributed to each of them have contributed to the damage, provided that a different apportionment shall be made or the obligation to repair the damage shall be extinguished in its entirety or maintained if it is fair to do so on account of varying degrees of seriousness of the faults committed or any other circumstances of the case, and provided statute or contract does not provide for a different apportionment (Article 102 and 6:101 DCC).
New Zealand/Australia	
Norway	Both are fully liable for the claim.
Sweden	Either of them can be pursued for the full claim.
Switzerland	The full amount can either be claimed from the insurer or any other liable party (-ies) at the choice of the third party who suffered from damage.
Turkey	

USA	Louisiana Subject to policy deductibles and limits, the claimant may collect the entire judgment from the responsible party or the insurer. La. C.C. Arts. 1788, 1790 (2010). OPA-90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. Nevertheless, if the liability is joint, the claimant should be able to collect the full amount of its judgment against the insurer, up to policy limits. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. It likely will be decided by the applicable state law. Nevertheless, if the liability is joint, the claimant should be able to collect the full amount of its judgment against the insurer, up to policy limits.

Question 5.6.2:	If so, can the insurer file a cross action against his insured in the same proceedings?
MLA	**Answer**
Argentina	
Belgium	Yes he can. He must not necessarily take out a writ of summons but he can cross claim by filing submissions in the pending proceedings.
Canada	See comments on 4.5.2
China	
Croatia	No.
Finland	Yes.
Germany	The German procedural rules do not allow a cross action. The Association believes that the Conventions, when in force in Germany, will not be construed as amending the German procedural rules. All the insurer can do is is file a third party notice (Streitverkündung) on the insured. But the insured has no obligation to participate in the proceedings.
Ireland	
Italy	Yes
Japan	
Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). We are not aware of the relevant Convention (or implementing legislation) providing for this issue. As a procedural issue it is presumably left to the lex fori. Under general rules of Dutch procedural law the insurer would be allowed to file a cross action against his insured in the same proceedings. It is believed, however, that recourse or cross actions may not be possible in the proceedings relating to the limitation of liability.
New Zealand/Australia	
Norway	Not for breaching the insurance contract
Sweden	Yes.
Switzerland	No (The institute of cross action - Widerklage as per Article 224 ZPO is limited to cross actions against the plaintiff, however not available against the co-defendant).
Turkey	No. The insurer has to file a separate recourse action against the insured.
USA	In some states, yes.

Question 5.6.3:	**If so, do your courts in such a situation give effect to a jurisdiction or arbitration clause in the insurance policy?**
MLA	**Answer**
Argentina	
Belgium	In Marine insurance cases yes, the Court will give effect to an arbitration clauses that were agreed upon by the parties. With reference to land-based insurance cases, the statute on contract for land-based insurance of 1992 does not accept the validity of arbitration clauses unless they have been agreed upon after the cause of action arose. However this statute on the land-based insurance contracts of 1992 is not applicable to Marine insurance cases.
Canada	Yes, under Commercial Arbitration Act (Canada), incorporating provisions of the UNCITRAL Model Law 1985. While there is no Canadian authority on point, the use of the word "claim" in the direct action provision wording of the Conventions, instead of the word 'legal proceeding', probably would be interpreted as permitting the insurer to require compliance by the insured with any policy term not in conflict with the direct action rights conferred by the Conventions.
China	
Croatia	There is no such court practice in Croatia.
Finland	Yes
Germany	As there is no possibility of a cross action, the problem does not arise.
Ireland	
Italy	Yes
Japan	
Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). We are not aware of the relevant Convention (or implementing legislation) providing for this issue. As a procedural issue it is presumably left to the lex fori. Under general rules of Dutch procedural law the insurer one would expect the courts would give effect to a jurisdiction or arbitration clause in the insurance policy in such a situation. It is believed, however, that recourse or cross actions may not be possible in the proceedings relating to the limitation of liability.
New Zealand/Australia	
Norway	N/A
Sweden	Yes.
Switzerland	Not possible (see above).

Turkey	
USA	Jurisdiction Louisiana Yes- The Fifth Circuit Court of Appeals held that the New York Convention preempts state law on the issue. Safety Nat'l Cas. Corp. v. Certain Underwriters at Lloyds, 523 F.3d 714 (5th Cir. 2009). OPA-90/CERCLA Regulations say the insurer who signed an insurance guaranty must acknowledge that an action in court may be brought directly against it. 33 C.F.R. §138.80 (d) (1) (2010) (emphasis added). This is a basis to argue that a clause requiring suits against the insurer to be brought in another country is invalid. Further, the insurer signs insurance guaranty form provided by the Coast Guard. 33 C.F.R. §138.40 form CG-5586 (rev. 10-08), which does not limit jurisdiction, and, accordingly, it is questionable whether the insurer may rely on jurisdiction provisions in its policy.

USA (continued 1)	Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law. Arbitration Louisiana A direct action by a claimant against the insurer may be stayed pending arbitration. See response to Question 4.2. OPA-90/CERCLA The insurer signs insurance guaranty form provided by the Coast Guard. 33 C.F.R. §138.40 form CG-5586 (rev. 10-08). The form does not provide for arbitration and, therefore, it is questionable whether the insurer may assert the arbitration provisions in its policy. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts. Accordingly, it likely will be decided by the applicable state law.

Question 5.7:	**Does your national law allow that the claimant assigns his direct claims to a third party?**
MLA	**Answer**
Argentina	
Belgium	There is nothing in the law which would forbid a claimant to assign his rights or ist claim to a third party.
Canada	There is a legal issue whether the assignment of direct rights under the Conventions is the equivalent of the assignement of a marine insurance policy as permitted by s. 52 of the Marine Insurance Act (Canada). This issue has not been decided in Canada. In situations covered by subsection 52(2) of the Marine Insurance Act (Canada) not applying such right to an assignment after a loss, or in the absence of any explicit statutory recognition of possible rights by assignees of direct action under the Conventions, Canadian courts would apply general commercial law concepts, such as the obligation of the assignee to demonstrate a commercial interest in the assignment and the procedural necessity, in certain cases of having to join the assignor as well as the assignee in the legal proceeding.
China	No regulations are specified.
Croatia	There is no explicit provision forbidding such assignation, therefore, theoretically such assignation would be possible. The insurer in such case would not have to give consent, but would have to be informed of the assignation.
Finland	We cannot think of any legal obstacle to that. Normal contractual requirements apply.
Germany	Yes.
Ireland	
Italy	The issue is disputed and somewhat controversial. The assignment is generally admitted for monetary claims and credits. However it is disputed whether a claim for physical damages can be assigned and enforced against the insurer, since article 1260 civil code excludes the possibility to assign claims and credits of "personal nature".
Japan	Although the Act is silent, it does not prohibit the assignment of claim under Act.

Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). The Convention only refers to subrogation (Article V (5) and (6) CLC 1992) and states (Article III (4) CLC 1992) that no claim for compensation for pollution damage shall be made against the owner other than in accordance with this Convention. It is therefore a question of interpretation of the relevant Convention whether assignment is covered by the notion of subrogation used in the Convention or, if not, whether it is intended that assignment is prohibited by the Convention, or that national law may supplement the provisions of the relevant Convention on that issue.
New Zealand/Australia	Australia – No; NZ - yes
Norway	Yes
Sweden	No.
Switzerland	Yes, according to Art. 164 and following articles of the Law of Obligations.
Turkey	Yes.

USA	Yes. If so, Louisiana The assignment by the direct action claimant of its claim against the insurer would be an assignment of a litigious right and is permissible. La. C.C. Art. 2652 (2010). It also has been held that a subrogee of the claimant may assert a direct action claim against the insurer. Motors Ins. Corp. v. Employers Liberty Assurance Corp. 52 So. 2d 311 (App. 1st Cir. 1951). An assignment by the direct action claimant should be distinguished from an assignment by the responsible party of its rights under the policy. Most policies have a provision prohibiting assignment by the insured. Generally, Louisiana enforces such provisions. La. C.C. Art. 2643 (2010). However, the question whether post-accident assignments are an exception and may be assigned has been certified to the La. Supreme Court. Louisiana v. ANPAC La. Ins. Co. (In re Katrina Canal Breaches Litigation), 613 F.3d 504 (5th Cir. 2010). OPA-90/CERCLA
USA (continued 1)	The statutes and regulations do not address this specific question, and it has not come before the courts. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts.

Question 5.7.1:	**If so, are there any requirements for the validity of the assignment?**
MLA	**Answer**
Argentina	
Belgium	The law imposes certain formalities to be fulfilled in order to effectively assign rights to a third person. The essential requirements is that the debtor is being clearly informed about the assignment so that he knows in whose hands he has to pay.That is implemented by informing the debtor by registered mail. (Section 1690 of the Belgian civil code)
Canada	A marine insurer may contractually preclude any right of assignment otherwise permitted under the Marine Insurance Act (Canada). If the assignment is not precluded by contract and was made before the loss, the assignee may sue in its own name. If the Marine INsurance Act (Canada) does not apply to Conventions' direct action rights, it is constitutionally uncertain whether Convention direct action claimant (within federal jurisdiction) would be able to take advantage of certain statutory rights under general commercial law (within provincial jurisdiction) to permit an assignee to suein its own name without having to join the assignor as a party. Unless the Marine Insurance Act (Canada) applies, under general principles of Canadian maritime law, both the assignor and the assignee would have to be joined as parties in any legal proceeding against the insurer.
China	
Croatia	No.
Finland	No.
Germany	Under German law an assignment is a contract and requires the agreement of the assignor and the assignee. As long as the assignment has not been notified to the debtor, he is released from his liability by payment to the assignor.
Ireland	
Italy	The assignment must be notified to the debtor, preferably by a Court officer.
Japan	See the above answer in respect of Q5.7
Netherlands	See sub 5.7 above. If the relevant Convention may be supplemented by provisions of national law the conflict of law provisions provided for in the Rome I Regulation (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations) are thought to apply. If Dutch law were to be applicable, assignment requires both a written instrument and notice thereof by the assignor or assignee to the debtor.
New Zealand/Australia	

Norway	No
Sweden	
Switzerland	Yes, it has to be carried out in written form (Art. 165 of the Law of Obligations "OR").
Turkey	Written form.
USA	Louisiana For purposes of conventional assignment, a litigious right must be a contested suit already filed, and the assignment must be in writing. La. C.C. Art. 2652 (2010). OPA-90/CERCLA The statutes and regulations do not address this specific question, and it has not come before the courts. Passenger Financial Responsibility The statutes and regulations do not address this specific question, and it has not come before the courts.

Question 5.8:	**What qualifies under your national law as a *wilful misconduct*?**
MLA	**Answer**
Argentina	An international harmful conduct.
Belgium	Intentional wrongdoing qualifies as wilful misconduct. After an erratic deviation in ist ruling of Cass. 5/12/00, the Belgian Supreme Court returned to conformism by ist ruling of Cass. 24/4/09 that the concept of intentional loss does not merely imply the knowledge that the act will harm, but requires the intent to harm, even if the actual harm does not correspond with the intended harm. Intentional wrongdoing is not to be placed on the same footing as gross negligence or even "serious" negligence.
Canada	The conduct has to be more serious than negligence. In civil matters, the Supreme Court of Canada has adopted the criterion of "if there is not conscious wrongdoing, there is a very marked departure from the standards by which responsible and competetnt people ... habituallly govern themselves". (McCulloch v. Murray [1942] SCRE 141)
China	No regulations are specified.
Croatia	Dolus eventualis (person acting recklessly and with knowledge that damage may result).
Finland	The concept is not used, but is normally taken to be equivalent to "recklessly and with knowledge that such loss would probably result".
Germany	An intentional act, i.e. an act which is done with knowledge and awareness, including knowledge of the consequences of the act.
Ireland	
Italy	Italian jurisprudence mainly considered fraud and gross negligence, and wilful misconduct is somehow unfamiliar to Italian Courts. The notion of "gross negligence" (colpa grave) implies a degree of negligence lesser than the wilful misconduct and recklessness.
Japan	The Act use the term "knowingly" to refer to "wilful misconduct in CLC". It is understood as an act or omission of the person liable to done with the intent or knowledge to cause oil pollution.
Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation in the Waot ("opzettelijk wangedrag", a phrase otherwise unknown under Dutch law) (to be autonomously interpreted on the basis of the authentic texts ("wilful misconduct", "faute intentionelle" etc.) of the relevant Convention). We are not aware of Dutch case law on this issue.

New Zealand/Australia	Wilful Misconduct is interpreted in the same way as it is used in the Marine Insurance Act UK
Norway	The concept is not used, but normally translated to "damage caused by gross negligence and with the understanding that damage probably will occur".
Sweden	According to the relevant preparatory work to the Maritime Code (Prop. 1982/83:159 s. 110), the concept of "wilful misconduct" is seemingly equivalent to "recklessly and with knowledge that such loss would probably result".
Switzerland	See Art. VII (8) Haftungsübereinkommen 1992: intentional reproachable behaviour of the owner.
Turkey	It lies somewhere between the "dolus eventualis" and "conscious fault". It is heavier than "culpa lata" (grobe Fahrlassigkeit). "Wilful misconduct" is conceived as an act done "recklessly and with conscious that a loss will probably result".
USA	Louisiana Wilful misconduct of the responsible party is not a defence for the insurer, and, therefore, has not been interpreted by the Louisiana courts. OPA-90/CERCLA Wilful misconduct as the term is used in OPA-90 is an act intentionally done, with knowledge that the performance will probably result in injury, or done in such a way as to allow an inference of reckless disregard of the probable consequences. Water Quality Syndicate v U.S., 522 F. Supp, 220, 229 (D. D.C. 2007), citing In re Tug Ocean Prince, 585 F.2d 1151, 1163 (2d Cir 1978); see also U.S. v Water Quality Syndicate, 2005 U.S. Dist LEXIS 7128 (D. Ma. 2005) (interpreting wilful misconduct in the context of a policy insuring pollution). Wilful misconduct of the responsible party also is a defence for the insurer under CERCLA, but its meaning has not been interpreted in the courts. 42 U.S.C.A. §9608 (c) (1) (2010). Passenger Financial Responsibility The term is not used in the act.

Question 5.9:	**Does the insurer acquire rights against his own insured (the party liable) if he has to indemnify the direct claimant in circumstances, under which he would have avoided cover if he had been sued by the party liable and not by the direct claimant?**
MLA	**Answer**
Argentina	
Belgium	Yes the insurer may have a right of recourse against his insured if the latter has breached sudden certain policy conditions and contractual obligations.
Canada	There is no explicit statutory right of recourse against the insured under Canadian Maritime Law in these circumstances. In the absence of fraud by the insured, it is difficult to envisage such right of action by insurers against their own insured would be recognized under general principles of Canadian Maritime Law.
China	No regulations are specified. However, in practice in China, insurer shall be entitled to be reimbursed by the insured.
Croatia	There are no specific statutory rules regulating this matter, therefore, it would depend entirely on terms and conditions of the insurance contract.
Finland	Yes, under ordinary rules of subrogation.
Germany	Yes. The insurer and the insured being joint debtors, the insurer acquires rights under the law of joint debtorship (see above answer to question 5.6.1), in particular a right of internal adjustment. This right will be for the full liability incurred by the insurer. Apart from that the insurer will also be entitled to a claim for unjust enrichment, as settlement of the claim by the insurer also releases the insured from liability (see above answer to question 5.6.1).
Ireland	

Italy	Since the direct action against the insurer is contemplated in limited cases in order to safeguard the right of the party damaged to seek and obtain full recovery, the insurer is generally prevented from excluding liability on the basis of the conduct of the insured, but can seek recovery of the indemnity paid against the insured.
Japan	Such recovery action by insurer is possible although the Act does not explicitly regulate it.
Netherlands	The same provisions as under the relevant Convention are enacted in a Dutch translation (to be autonomously interpreted on the basis of the authentic texts of the relevant Convention). We are not aware of the relevant Convention (or implementing legislation) directly providing for this issue, but the provisions in the relevant Convention and implementing legislation allowing the insurer to require the owner to be joined in the proceedings indicate that this may be the case. If national law is allowed to supplement the provisions of the relevant Convention and the implementing legislation on this issue, the insurer will most probably have the right under the rules of joint liability (see 5.6.1. above) and the insurance contract.
New Zealand/Australia	Yes
Norway	Yes, according to ordinary rules of subrogation.
Sweden	Yes, to some extent.
Switzerland	Yes, I conclude this from Art. VII (8) Haftungsübereinkommen 1992. The article sets forth that the defence of the insurer may not be based on any argument which the insurer could raise solely based on the relationship with the owner. Hence, the insurer must be allowed to recover from the owner in such cases.
Turkey	Turkish legislator did not provide explicitly that the insurer would be entitled to have recourse against the insured after indemnifying the victim (save for some compulsory liability insurances: motor vehicle liability insurance, road carrier liability insurance). But we believe that the insurer would be allowed to get back from the insured what it had to pay to the victim where it did not incur liability against the insured)

USA	Louisiana Not applicable. The insurer generally may assert coverage defences against the direct action claimant. See answer to question 5.3 above. Accordingly, the insurer will not pay claims for which the responsible party is not insured. OPA-90/CERCLA Because of the restrictions on the insurer's defences, it is possible that the insurer will pay direct action claims for which it does not insure the responsible party. While theoretically the insurer might state a claim for indemnity against the responsible party, the situation has not arisen in a reported decision. Passenger Financial Responsibility It is unclear whether the insurer may be required to pay direct action claims for which it does not insure the responsible party. Accordingly, the situation has not arisen in which an insurer has attempted to state a claim for indemnity against the responsible party. Accordingly, the situation has not arisen in which an insurer has attempted to state a claim for indemnity against the responsible party.

Question 5.10:	**How is limitation of liability affected under your national law in cases of direct actions?**
MLA	**Answer**
Argentina	
Belgium	The Insurer enjoys the same rights of limitation of liability as the liable person would have.
Canada	Because the applicable Convention provisions have the force of law in Canada, the insurercan rely upon the Convention provisions to limit ist liability even if the shipowner cannot.
China	Article 52 of Regulations on Administration of Anti-Pollution to the Marine Environment by Vessels provides that, *The limitation of liability for claims for vessel-induced pollution shall calculated in accordance with the regulation of limitation of liability for maritime claims prescribed in China Maritime Code. But where the pollution is caused by the persistent oil carried by ships in bulk, the limitation of liability shall be calculated in accordance with the relevant regulations prescribed in the international conventions concluded or acceded to by China.* No special regulations are specified with respect to the limitation of liability under direct action.
Croatia	Insurer has the right to rely on the limitation of liability even in cases where the person liable has lost such right. Insurer may set up his own limitation fund.
Finland	Under section 10 :12 and 10a:9 of the Maritime Code the insurer's liability shall in no case exceed the liability amount stated in Section 5 first paragraph. That is to say, the liability insurer is entitled to limit its liability to the limit of the owner's limit, even if the owner, might have lost that right. Through his conduct or otherwise.
Germany	As provided for in LLMC 1995. There is a special provision in the German Code of Civil Procedure (§ 305a), according to which the court will issue a judgement subject to the reservation of limitation of liability, if the defendant does not put up a limitation fund but invokes limitation of liability as a defence (cf. Art. 10 LLMC).
Ireland	
Italy	There is no specific provision on the issue, but as a general rule the insurer is allowed to raise the same defences available to the insured.

Japan	The insurer is able to invoke all of the defences including limitation of liability which are available for the shipowner. (Act Art.15(2))
Netherlands	The same provisions apply as under the relevant Convention. See 5.3. above.
New Zealand/Australia	Limitation limits are applied as if the shipowner were the defendant
Norway	The insurer is never liable for a higher amount than the insured is liable for. According to MC § 188/200 the insurer may invoke limitation of liability even if the ship owner does not have a right to do this.
Sweden	It is not affected. Chapter 10 Section 14 of the Maritime Code provides that the insurer's liability shall in no case exceed the liability amount stated in Section 5 first paragraph. That is to say, the liability insurer is entitled to the same limitation of liability as the vessel owner.
Switzerland	See 5.3. above.
Turkey	Turkish maritime law provides explicitly for the effects of the limitation of liability defence during proceedings. The judge will take that defence into account even if a limitation fund is not established (Code of Commerce Article 1335 which refers to Article 10 of the LLMC). In a direct action against the insurer the same rule should apply by analogy.
USA	Louisiana If the policy limits coverage to the amount that the insured is legally obligated to pay, the insurer may have the benefit of the responsible party's right under 46 U.S.C.A. §30501-30512 (2010) to limit liability as a shipowner. Crown Zellerbach Corp. v. Ingram Industries, Inc. 783 F.2d 1296 (5th Cir. 1986). OPA-90/CERCLA The responsible party under OPA-90 may not assert shipowner limitation of liability as a defence. 33 U.S.C.A. §2702(a) (2010). Accordingly, it is not a defence for the insurer. The insurer, however, is entitled to the responsible party's right to limit its liability as provided in OPA-90. 33 U.S.C.A. §2716 (a) (2010). Passenger Financial Responsibility The effect of the act on whether the responsible party or the insurer may have the benefit of the shipowner's right to limit liability has not been addressed.

Question 5.11:	**Does your national law contain consequences, if the insurance contract contains provisions which are not consistent with the Conventions referred to above?**
MLA	**Answer**
Argentina	No.
Belgium	If the insurance contract is not in compliance with the international conventions the duly qualified agents of the transport authority may either refuse access of these vessels to Belgian territorial waters or may detaine vessels till such time that the insurance policies comply with the treaties. Insurance conditions that are contrary to the binding rules of international conventions applicable in Belgium will not be enforceable in Belgium.
Canada	The administrative practice of the Department of Transport is to accept applications for Financial responsibility certificates only if insurers at interest undertake that they will comply with their obligations in respect of direct actions under the Conventions.
China	No.
Croatia	In such case the certificate of insurance would not be issued (when Croatia acts as flag state). In case where the ship has such valid certificate issued by another state party to the respective convention (and Croatia acts as port state), the presumption is that the contract of insurance is consistent with the relevant conventional provisions.
Finland	No.
Germany	No.
Ireland	
Italy	Yes, for instance in case the certificate provided by the shipowner pursuant to art. VII of the CLC Convention 1992 is considered by the harbour master defective or irregular, the ship may be prevented to berth or to begin loading or unloading, and the defect is reported to custom authorities.
Japan	There is no explicit provision as to the consequence of the inconsistency.

Netherlands	The same provisions apply as under the relevant Convention. We are not aware of the relevant Convention (or implementing legislation) directly providing for this issue.
New Zealand/Australia	No
Norway	No
Sweden	Not that we know of.
Switzerland	No, none.
Turkey	No.
USA	Not applicable.

Question 5.11.1: If so, are such provisions invalid?	
MLA	**Answer**
Argentina	
Belgium	Yes they are invalid.
Canada	Not applicable.
China	Not applicable.
Croatia	Yes.
Finland	
Germany	
Ireland	
Italy	
Japan	
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	
Switzerland	
Turkey	
USA	Not applicable.

Question 5.11.2: If so, is the whole contract invalid?	
MLA	**Answer**
Argentina	
Belgium	Not necessarily, Belgium adheres to the theory of "the partial nullity" meaning the theory of severability. If the contract can survive even if some invalid clauses have to be deleted, the Court will save the contract.
Canada	Not applicable.
China	Not applicable.
Croatia	No.
Finland	
Germany	
Ireland	
Italy	
Japan	
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	
Switzerland	
Turkey	
USA	Not applicable.

Question 5.11.3:	If so, does the contract including such conflicting conditions remain valid, so that the insurance does not fulfil the requirements of the Conventions? What effect does that have under your national law?
MLA	**Answer**
Argentina	
Belgium	Such insurance contract containing clauses contrary to what is required in the international treaties will not be accepted by the certifying authority in Belgium. The consequence of that is that a vessel carrying such an improper/invalid contract cannot operate in Belgium, will not be entitled to leave Belgium, and it is a foreign vessel such a vessel will not be given access to our ports. If such a vessel is already in port she might be detained till the situation is remedied or set right. Administrative sanctions and criminal penalties could be impost.
Canada	See above
China	Not applicable.
Croatia	Contract remains valid, the conflicting conditions are considered non-existent. The contract is construed in accordance with the respective conventions.
Finland	
Germany	Not applicable.
Ireland	
Italy	
Japan	
Netherlands	Not applicable.
New Zealand/Australia	
Norway	
Sweden	
Switzerland	
Turkey	
USA	Not applicable.

Question 6.1:	**State Liability** **Does your national law provide for liability of the state where the appropriate authority issues a certificate under the Convention, if it turns out that there is no insurance contract at all?**
MLA	**Answer**
Argentina	
Belgium	The general rules on tort liability will be applicable. Since more than half a century the Belgian state is no longer held immune for errors committed in managing public affairs. The Belgian state and in the same vein, any governmental authority can be sued for wrongdoings and errors.
Canada	Under Canadian administrative practice, the Department of Transport will not issue a financial responsibility certificates unless the insurer provides a certificate that it will comply with the provisions of the Conventions. There have been not been any known instances in Canada of an application for a financial responsibility certificates based upon a non-insurance form of security such as a letter of credit or guarantee. A claim could not be asserted in Canadian courts against a foreign government for the foreign government's alleged negligent issuance of a financial responsibility certificate because the act of issuing such certificate would be considered a public non-commercial act and therefore be immune from civil suit in Canadian courts under the State Immunity Act.
China	No regulations are specified on this issue.
Croatia	No.
Finland	No express provisions exist, although it is possible that such liability may follow from general principles under national law on State liability.

Germany	German law does contain a general provision for liability of the state when a state employed person (an official, in German "Beamter") breaches the duty imposed on him towards a third party: The relevant law, para.839 of the German Civil Code (Bürgerliches Gesetzbuch" - BGB) reads as follows: *Section 839* *Liability in case of breach of official duty* *(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way.* *[(2) not of relevance]* *(3) Liability for damage does not arise if the injured person has intentionally or negligently failed to avert the damage by having recourse to appeal.* If liability had been established the liability rests with the authority at which the "Beamter" has been employed. However, it should be highlighted that the burden of proof lies with the claimant, of course except for the exception as lined out in Section 839 sub.3 BGB. Therefore in particular the claimant has to proof that the "Beamter" acted negligently when breaching a duty and - most important – that this particular duty was "in relation to the claimant", or - in
Ireland	
Italy	
Japan	The Act is silent in respect of such liability of the state.

Netherlands	The same provisions apply as under the relevant Convention. We are not aware of the relevant Convention (or implementing legislation) directly providing for this issue. If national law is allowed to supplement the provisions of the relevant Convention and the implementing legislation on this issue, which we expect, state liability is to be determined under general notions of Dutch tort law. In that respect to so-called rule of relativity of Article 6:163 DCC will be relevant: there is no obligation to repair the damage if the standard breached does not serve to protect against damage such as that suffered by the person suffering the loss. In the matter of the Linda the Dutch Hoge Raad (Court of Cassation) ruled that the state was not liable for issuing a safety certificate for a inland vessel (lighter) contrary to applicable safety rules. It ruled that the relevant safety rules served to enhance safety in general, and not the direct financial interest of third parties that suffered loss when the lighter capsized due to its poor condition. Where it concerns issuing a certificate under the relevant Convention and implementing legislation attesting that insurance or other financial security is in force it is arguable that the applicable rules do serve to protect the financial interest of third parties that suffered loss, entailing a greater likelihood of state liability.
New Zealand/Australia	No
Norway	
Sweden	
Switzerland	State Liability under Swiss law requires for an unlawful (widerrechtlich) act or omission to trigger liability. The issuing of a certificate notwithstanding the fact that there is no insurance will lead to a solely pecuniary damage with the victims. The sole pecuniary damage does not qualify as unlawful act under Swiss law if there are no statutory provisions to that extent. In the context of the CLC there are none such provisons. Hence there is no state liability (see Häfelin/Müller, Allgemeines Verwaltungsrecht, 4. Auflage, Zürich 2002, N 2248 following).
Turkey	
USA	Inapplicable- The United States has not ratified the Conventions

Question 6.2:	**Does your national law provide for liability of the state where the appropriate authority issues a certificate under the Convention, if it turns out that the insurance contract is not consistent with the provisions of the Conventions?**
MLA	**Answer**
Argentina	
Belgium	Same as above.
Canada	Under Canadian administrative practice, a financial responsibility certificate will not be issued unless the insurer undertakes that it will comply with the provisions of the Convention.
China	No regulations are specified on this issue.
Croatia	No.
Finland	No express provisions exist, although it is possible that such liability may follow from general principles under national law on State liability.
Germany	
Ireland	
Italy	
Japan	
Netherlands	See under 6.1.
New Zealand/Australia	No
Norway	
Sweden	
Switzerland	No – see 6.1.
Turkey	
USA	Inapplicable- The United States has not ratified the Conventions

Question 6.3:	**Does your national law provide for liability of the state where the appropriate authority issues a certificate under the Convention, if it turns out that the insurer is not financially stable and cannot satisfy all direct claims?**
MLA	**Answer**
Argentina	The punctual situations mentioned are not expressly contemplated, but according to our Supreme Court doctrine the Argentine State could be liable if there was violation of the guarantee of private property recognized by the National Constitution (leading case "Laplacette", decided in 1943). The said guarantee includes acquired rights and, therefore, liability of the state could arise. Some authors think that the liability of the state could be grounded in the Civil Code, but the modern doctrine tends to consider negative the application of the Civil Code to the liability of the Argentine State.
Belgium	Same as above.
Canada	The administrative practice of the Department of Transport in applications for financial responsibility certificates is to review the financial background of proposed insurers. The present Canadian law on liability of public authorities for negligent administration of a regulatory regime is very uncertain, because of conflicting decisions of appellate courts. A mere breach of statute does not constitute a tort. A duty of care by a public authority in the operation or administration of a regulatory regime and the proximity of the victim to the negligent acts or omissions hasd to be demonstrated. The shipowner applicant for a financial responsibility certificate negligently issues would more likely be within the ambit of proximity than would pollution victims who were precluded from recovery on their potential rights of direct action.
China	No regulations are specified on this issue.
Croatia	No.
Finland	No express provisions exist, although it is possible that such liability may follow from general principles under national law on State liability.

Germany	German law does contain a general provision for liability of the state when a state employed person (an official, in German "Beamter") breaches the duty imposed on him towards a third party: The relevant law, para.839 of the German Civil Code (Bürgerliches Gesetzbuch" - BGB) reads as follows: *Section 839* *Liability in case of breach of official duty* *(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way.* *[(2) not of relevance]* *(3) Liability for damage does not arise if the injured person has intentionally or negligently failed to avert the damage by having recourse to appeal.* If liability had been established the liability rests with the authority at which the "Beamter" has been employed. However, it should be highlighted that the burden of proof lies with the claimant, of course except for the exception as lined out in Section 839 sub.3 BGB. Therefore in particular the claimant has to proof that the "Beamter" acted negligently when breaching a duty and - most important – that this particular duty was "in relation to the claimant", or - in other words- that the intention of this duty was to shelter or safeguard the particular claimant (contrary to a shelter/safeguarding for the "general public").

Ireland	The HNS enabling legislation provides for example that "Any action for compensation under the Convention (otherwiese knwon as a "Convention Action") shall be deemed for the purposes of any enactment or rule of law to be an action founded in Tort. It is provided that in the absence of a compliant certificate of insurance it is the Owner and Master of the Ship that are guilty of an offence. There is no provision in National Law for any liability on the part of the Marine Survey Office in respect of the issuance of convention certificates. They do require evidence of insurance but in the absence of any evidence to the contrary they would be accepted as prima facie evidence of compliance. They wouldn't for example wuestion the bona fides of the insurance certificate. Again in practice they are underwritten by the reputable P&I Clubs.
Italy	
Japan	
Netherlands	See under 6.1.
New Zealand/ Australia	No
Norway	This issue must be solved according to ordinary tort law, where the state can be liable for negligence or according to rules on vicarious liability. There is no particular regulation.
Sweden	No express provisions exist although it is possible that such liability may follow from general principles under Swedish law on State liability.
Switzerland	No – see 6.1.

Turkey	Yes, the liability of the Turkish State arising out of the competent Turkish Authority which issued a certificate a for non existing or inconsistent insurance contract, would be subject to the rules and principles of Turkish administrative law (any act or action of the State being subject to judicial control). However, the State would most probably not be regarded as having guaranteed the financial capabilities of the foreign insurer if at the moment of issuing the certificate there was no reason to be suspicious about this.
USA	Inapplicable- The United States has not ratified the Conventions