

CMI International Sub-Committee
on Limitation of Liability
in Maritime Law

List of Issues following further consideration of the NMLA's March 2012

	China	Argentina	Turkey	Denmark	Norway
<p>1 (a) What are the Consequences of non participation to the Limitation Fund.</p> <p>1 (b) In the case of non-participation, can the claims be exercised against other assets of the owner?</p> <p>1 (c) What is the purpose/value of limitation if liability by the shipowner (or any other person entitled to limits it liability) in circumstances where participation in the fund is optional and/or there is non-participation and claims can be exercised against other assets?</p>	<p>1(a) Creditors who fail to register their claims before expiry of the time limit announced shall be deemed to have abandoned their rights to debts. Claims subject to limitation of liability cannot be exercised against any other assets of the person liable once limitation fund is established. Claims that are not subject to limitation of liability can be exercised against other assets of the owner. Participation in limitation fund is not optional in China.</p> <p>Under Chinese law, if the relevant claimants, whose claims are subject to limitation of liability, did not participate in the limitation fund, it shall be deemed that they have abandoned their rights to debts. The consequence of not participating in the limitation fund is provided by the procedural law. Under Chapter X Procedure for Registration and Repayment of Debts of the Special Maritime Procedure Law of the P.R.C., Article 112 provides as follows:</p> <p>After the maritime court's announcement of acceptance of the application to constitute a limitation fund for maritime claim, the creditors shall, within the time limit announced, apply for registration of their claims relevant to the maritime accident that occurred at a particular scene. The creditors who fail to register their claims before expiry of the time limit announced shall be deemed to have abandoned their rights to debts.</p> <p>1(b) The answer should be "no". Article 214 of Maritime Code of THE P.R.C. expressly stipulates that: "Where a limitation fund</p>	<p>1. Non participation is not dealt with within national law</p>	<p>There is no explicit rule covering this scenario. However, Art. 1370(5) New Turkish Commercial Code passed 13 January 2011, and which will come into force 1 July 2012 ("N-TCC") says that, where a ship is arrested, the owner is entitled to apply for the release by depositing a security corresponding to the amount of the limitation fund under the LLMC and CLC, respectively. On the other hand, the N-TCC has adopted the provisions of the International Convention on Maritime Liens and Mortgages, made at Geneva on 6 May 1993, and its sibling, the International Convention on Arrest of Ships, made at Geneva on 12 March 1999. In accordance with the provisions of the 1999 Convention, Art. 1353 N-TCC provides that the applicable remedy for maritime claims is the arrest of a ship. On the basis of this rule, it might be argued that maritime claims, against which the owner is entitled to limitation, may only be pursued by way of the arrest of the ship. Whenever such an arrest is effected. The owner will be entitled to direct the applicant to any limitation fund that might have been constituted, and thereby obtain the release of the ship. If so, the scenario envisaged in the question may not arise in practice, at all.</p>	<p>1(a) Limitation funds are exclusively handled by the Maritime and Commercial court in Copenhagen (So-Og Handelsretten i Kobenhavn). If a claimant has not filed his claim In the limitation Fund before the Court (In the first instance) has rendered judgment on the distribution of the funds then such Claim will be considered precluded and the claimant will not receive payment for such claim out of the limitation Fund. It is Irrelevant whether the claimant had knowledge of the existence of his claim prior to the fund distribution. Sections ~38 and 245 of the Danish Merchant Shipping Act (the "DMSA").</p> <p>1(b) If a claimant has not filed his claim In the limitation fund before the Court has rendered its decision on the distribution of the Funds then such claim Is precluded and cannot be exercised against other assets of the party who established the limitation fund. Section 178 (2) of the DMSA.</p> <p>1(c) Participation in the fund is not optional.</p>	<p>1(a) According to MC § 177 it is a condition for establishing a limitation fund in Norway that suit, arrest or other enforcement of a claim subject to limitation has been brought before a Norwegian court. The limitation fund is regarded as constituted with effect for all persons who can invoke the same limit of liability, and only for the benefit of limitable claims subject to such limit of liability.</p> <p>After the fund has been established, a limitation action to determine the liability for each claim, the right to limitation, the limitation amount and the distribution of the fund may be brought only by the person having established the fund, its liability insurer or any person having a claim which can brought against the fund (MC § 177 sub-para. 3). No separate suit relating to any of the questions to be determined in the limitation action, may be brought before a Norwegian court after the limitation fund has been established (MC § 177 sub-para. 4).</p> <p>The rules on limitation actions and proceeding are contained in MC chapter 12. The court shall announce that the limitation fund has been established and invite all creditors intending to make a claim against the fund to submit their claim to the court within a specified time limit set by the court MC § 235). Subsequently, the court shall call a fund meeting for the consideration of all issues to be determined in the limitation action, including the liability for the particular claims, the right to limitation of liability,</p>

	<p>has been constituted by a person liable, any person having made a claim against the person liable may not exercise any right against any assets of the person liable...” Therefore, once the limitation fund is constituted, the relevant claimants, whose claims are subject to limitation of liability, can not exercise any right against any assets of the person liable. However, Article 8 of Fa Shi No. 11 (2010), which is the Certain Provisions of the Supreme People's Court on Trying Cases Involving Disputes over the Limitation of Liability for Maritime Claims provides: “After constitution of the limitation fund for maritime claims, the maritime claimant may apply for preserving the property of the liable person based on a maritime claim that a liable person is unable to invoke the defence of the limitation of liability for maritime claims.” In case of non-participation, the relevant claimants, whose claims are not subject to limitation of liability, can still exercise their rights against other assets of the owner.</p> <p>1(c) Given participation not optional question does not apply.</p>				<p>and the distribution of the fund. Any dispute arising shall be determined by the court before it renders its decision on the distribution of the fund. Any claim not submitted to the court before it has decided that the limitation proceedings are concluded and that the question of the distribution of the fund will be adjudicated by the court, shall not be entitled to any recovery except to the extent that the court in its judgement and at its discretion decides to retain a certain amount for payment of claims not having been made prior to its decision to concluded the limitation proceedings (MC §§ 238 and 244).</p> <p>The final judgement in the limitation action, including the distribution of the fund, is legally binding on all persons entitled to make claims against the limitation fund regardless of whether or not they have submitted any claim against the fund or participated during the limitations proceedings (MC § 245).</p> <p>These rules apply to all limitation funds established according to MC chapters 9 and 10.</p> <p>1(b) After the limitation fund has been established at a Norwegian court, any separate suit relating to any of the questions to be determined in the limitation action (MC § 177 sub-para. 3) may not be brought before a Norwegian court (MC § 177 sub-para. 4). This prevents any claimant from enforcing his claim by separate action in Norway.</p> <p>According to MC § 178 sub-para. 2, a Norwegian court shall recognize and give effect to any limitation fund established in a Danish, Finnish or Swedish court. This means that a claimant may not obtain arrest or other enforcement proceeding at a Norwegian court for a claim which may be brought against the limitation</p>
--	---	--	--	--	---

					<p>fund established in any of these states. However, this provision does not prevent a claimant from bringing an action in Norway to have the liability for his claim determined, but a judgement against the person held liable cannot be enforced in Norway.</p> <p>According to MC § 178 sub-para. 3, a Norwegian court may at its discretion reject an application for arrest or other enforcement proceedings or release any security established before a Norwegian court if a limitation fund already has been established before a court in a state being party to the 1976/1996 Convention. However, if the limitation fund is established in the court of such state at any of the places which are enumerated in the Convention article 13 para. 3, the Norwegian court has a duty to reject such application, provided that the claimant is entitled to bring the claim against the fund and obtain recovery.</p> <p>It should be noted that the provisions of MC 178 sub-paras. 2 and 3 only apply if the foreign limitation fund has been established in a state party to the 1976 Convention as amended by the 1996 Protocol. Accordingly, a limitation fund established in a state which is party only to the 1976 or the 1957 convention, or in a state which is not party to any of the limitation conventions, is not covered by MC § 178 so as to prevent arrest or other enforcement proceedings in a Norwegian court. However, if the limitation fund has been established in a state member of the EU or EEA, it will follow from the provision of the Brussels I Regulation (44/2001/EC) and the 2007 Lugano Convention that a limitation fund established by a court of such state shall be recognized by Norwegian courts even if the conditions set out in MC § 178 are not met, see the answer to Question 5 (d) below. According to a decision by the</p>
--	--	--	--	--	--

					<p>Norwegian Supreme Court in 2007, this means that a Norwegian court has to reject an application for arrest based on a claim which can be brought against a limitation fund in an EU or EEA state also in cases where the fund has been established according to the 1976 or the 1957 convention, cf. Selvig in SIMPLY 2010 (Scandinavian Institute of Maritime Law Yearbook) pp. 359 et seq., at 371-79.</p> <p>In accordance with the 1992 Convention on Civil Liability for Oil Pollution Damage article 3(4), MC § 193 sub-para. 1 provides that compensation for oil pollution damage may only be claimed according to the provisions of MC chapter 10. This means that a limitation fund can be established by a Norwegian court only if, according to the rules on jurisdiction in MC § 203, an action for damages has been or may be brought before a Norwegian court, and that the establishment of a limitation fund at a Norwegian court is a condition for invoking limitation of such liability in Norway (MC § 195). A limitation fund established in accordance with the CLC in a foreign Convention State has the same legal effects as a fund established in Norway (MC § 195 sub-para. 5). If a limitation fund has been established by a Norwegian court or a court of a foreign CLC State, recovery of claims which can be brought against the fund, cannot be obtained by arrest of ship or other property of the owner in Norway (MC § 196).</p> <p>1(c) The 1976/1966 Convention entitles the person liable to invoke limitation of liability by establishing a limitation fund. However, according to article 10 limitation of liability may also be invoked even if no fund has been established, unless otherwise is provided in the national law of the Convention State</p>
--	--	--	--	--	---

					<p>concerned. Article 10 is the basis for MC § 180 which contains provisions relating to limitation of liability in legal actions in respect of claims subject to limitation in cases where no limitation fund is established. Thus, the person liable may also invoke limitation of liability merely as a defence in an ordinary legal action for damages.</p> <p>The general rule is that in such a case the court, when the distributing the limitation amount, shall only take into account the claims actually covered by the particular action brought before it. If a person liable has maintained that the court should also take in account other claims subject to the same limit of liability, the court shall render a judgement on the claims, but insert in the judgement a reservation as regards further limitation of liability. The judgement is nevertheless fully enforceable if the person liable does not subsequently establish a limitation fund where all of the claim arising out of the same incident may be taken into account when the limitation amount is distributed. Relying on the rules in MC §180 the person liable consequently runs a risk that claimants not party to the particular action may later enforce their claims against him with the consequence that the total liability may exceed the limitation amount.</p>	
2.	<p>What time limits should apply for Filing Claims with the Limitation Fund? Is it appropriate to co-ordinate the time limit for filing claims with the applicable time bar of the claims subject to limitation or may/should the time limit for participation in the limitation proceedings be shorter?</p>	<p>There is no integrated limitation procedure under Chinese law. And Special Maritime Procedure Law of THE P.R.C. only provides for Procedure for Constitution of Limitation Fund for Maritime Claims. So, the following statement is about Procedure for Constitution of Limitation Fund. The time limit for participation in limitation fund is thoroughly different from the time bar of the claims subject to limitation. The former belongs to the concept of procedural law, and the latter belongs to that of substantial law. According to the Chinese judicial interpretation, there are</p>	<p>According to section 565(C) of the Navigation Act claims shall be submitted within a time period stated by the Court, which cannot be less than 20 days not more than 60 days. Appropriate to fix time limit for filing claims with Limitation Fund.</p>	<p>There is no specific provision in the N-TCC regarding any time limit for filing claim in the limitation proceedings. However, it is suggested that this would have to be the same time limit that applies to the claim itself. If and whenever the claim has become lime-barred, it could no longer be admitted to the limitation fund.</p>	<p>When the limitation fund has been established the Court must announce this by publishing a notice in the Danish Official Gazette (Statstidende) and invite claimants to file their claims In the limitation fund before the expiry of a certain fixed deadline which must not be shorter than two months. If required the notice must also be published in other ways, for example In other states where loss or damage may have occurred. This could in particular be relevant In pollution cases where many foreign parties are often involved. The notice must also be sent</p>	<p>Norwegian law clearly distinguishes between the question of a time limit for filing claims in the limitation fund proceedings and questions relating to time limitation of the particular limitable claims.</p> <p>The time limit for submitting claims against the limitations fund in the limitation proceedings has already been dealt with above in the answer to Question 1(a). The time limit for submitting claims set by the court according to MC § 235, does not have the legal character of a time bar. The main rule is that, in order to be taken into account in the</p>

<p><u>Comments</u></p> <p>The reply to this question may extensively depend on the reply to Question no. 1. In order to reply to this question, the interest of limitation and expeditious termination of the limitation proceedings should be balanced with the claimants' interests. If the reply is that claims which did not participate in limitation proceedings, can not be exercised otherwise, what other protection could be envisaged for claimants (e.g. a broader publication of proceedings commenced)?</p> <p>- CLC and HNSC provide for a two-tier time bar of three and six years under (Art. VIII of CLC) and ten years under Art. 37 (1) and (3) of HNSC.</p> <p>- LLMC does not have a time bar for the claims subject to limitation (the time bar of each claim is subject to the governing law of the respective claim).</p> <p>- In this connection Guideline 12 provides that: "(a) States should set in their national law a time limit, or give their courts the power to set such time limit, for the following actions by Claimants: ... (iii) submitting Claims in the Limitation Proceedings. (b) In setting</p>	<p>two kinds of time limit for participation: (1) Registration of the claims should be applied for during 60 days from the last announcement of applications for limitation fund constitution (Fa Shi No. 11 (2010)); (2) Where creditors have provided the maritime claim evidence other than the judgements, written orders, conciliation statements, arbitral awards or the notarized documents, they shall bring actions to confirm their rights within 7 days after their claims are registered in the maritime court (Fa Shi No. 3 (2003)).</p>			<p>by registered post to all known claimants. Section 235 01 the DMSA.</p> <p>Claims that have not been filed in the limitation fund before the Court renders its Judgment on distribution are considered precluded. It should be noted that preclusion does not occur until the Court is ready to render its judgment. The deadline notified by the Court before which claimants must file their claim (and which must not be shorter than two months) is not decisive in this respect. Even if claims are not filed until after the expiry of the deadline such claims will be allowed until such time! when the court is ready to render its judgment. It is not unusual that this period can take several years, Before distribution can take place the question of liability must be decided which in itself can take a long time, for example depending on the merits of the case and the jurisdiction In which the case is decided.</p> <p>Moreover, If a claimant can prove that more time is needed (for valid/ relevant reasons) before he can calculate his final claim, the court will generally accept this and - all other things equal - postpone its judgment on distribution until the claim has been finally calculated.</p> <p>To our knowledge the above measures work well to ensure that all claimants are notified of the establishment of the limitation fund and get the chance to file and calculate their claims In time before judgment is rendered.</p> <p>The system does entail the risk that a claimant who does not become aware of the limitation fund loses his claims even though the claim is not time barred simply because the claim was not filed timely In the limitation fund. This Situation could for example occur If the claimant is a foreign company who has no realistic way of becoming aware of the limitation fund without being notified thereof either through direct notification or publication in the relevant country.</p>	<p>distribution of the limitation fund, claims must have been submitted to the court prior to the point in time during the fund proceedings when the court has decided to conclude the limitation proceedings and to render its judgement on the distribution of the limitation fund (MC § 238). However, in its judgement the court may at its discretion retain a certain part of the limitation amount for claims not having been so submitted (MC §§ 244). It follows from MC § 245 that a claim not submitted in the limitation proceeding may only be extinguished by a final judgement on the distribution of the limitation fund. Such a judgement is legally binding on all claimants having a limitable claim arising out of the same incident.</p> <p>In Norwegian law the general provisions on time limitation of particular claims are contained in the Statute on Time Limitation of Claims of May 18 1979 no. 18. The general rule is that a claim is time barred unless the claim is asserted in any legal proceedings against the person liable within three years of its maturity. However, the MC § 501 contains a number of special and shorter time limits for the various types of maritime claims, and MC § 504 set out the special time limits for claims for oil pollution damage contained in the CLC and the Bunker conventions.</p> <p>It should be noted that the claimant's submission of a claim against the limitation fund within the applicable time limit is sufficient to interrupt the running of the time limitation and thereby to prevent that the claim becomes time barred. The submission of the claim means that it has been asserted in legal proceedings against the person liable (Statute on Time Limitation § 15). If the claim has not been so submitted during the limitation proceedings within the applicable time limitation or otherwise been the subject of legal proceedings before the expiry of the time limit, it will be time barred and constitute a claim for which the person having established the limitation fund no longer may be held liable. Such a claim is consequently to be excluded</p>
--	---	--	--	--	---

<p>these time limits special attention should be paid to the relevant provisions of international conventions, including in particular the CLC, the HNS Convention and the Bunker Convention or any other applicable convention. In making interim and final distributions, due consideration shall be given to the possibility of damage arising after such distribution."</p>				<p>It could be argued that this situation makes it relevant to change the system so that the deadline to file claims in the limitation fund can never be shorter than the applicable time bar of the underlying claim.</p> <p>The problem with such a system is that It will put a high degree of uncertainty Into the limitation proceedings. Different claims will be subject to different time bars under different systems of law and It will be difficult to set any uniform rules in this respect.</p> <p>Other claimants also have valid interest in expediting proceedings in order to get their claims paid Without having to wait for the expiry of long time bars for unknown, potential claims which may or may not be filed. In some instances relevant time bars can stretch beyond 10 years.</p> <p>If a claimant can prove that the party on whose behalf the fund was established was aware of the claim but failed to inform the Court and that consequently the claimant had no way of knowing that the limitation fund had been established, there could potentially be grounds for independent legal action on a tort basis</p> <p>In our opinion the Danish system works well to ensure that all known and potential claimants are made aware of the limitation fund and invited to file their claim. It is up to the Court to decide where to publish notification of the limitation fund besides the Official Danish Gazette.</p> <p>It can always be argued that broader publication in many different types of news media and in several different countries is the safest way to ensure that all claimants are informed. However, there are issues of cost and proportionality to consider in this respect.</p> <p>Another possibility could be to include specific rules to protect the "innocent" claimant who without any fault or neglect of his own did not become aware of the limitation fund and therefore did not file his claim in time. In situations where the claimant can prove</p>	<p>when the limitation fund is to be distributed.</p> <p>The Norwegian view is that there is no need for a special time limit or particular time bar for the submission of claims in the limitation proceedings and, furthermore, that the rules on time limitation of particular claims should be determined in light of the particular nature of the various types of maritime liabilities and claims. If believed necessary, one could of course make clear that the time limitation of a claim is interrupted when the claim has been submitted against a limitation fund.</p>
---	--	--	--	--	--

				<p>that this was due to fault Or neglect either by the party On whose behalf the fund was established Or by the Court, it could be considered to allow the claimant to receive payment as If the claim had been correctly and timely filed.</p> <p>However, in our opinion such Situations are best solved through subsequent claims in tort through the ordinary courts.</p>	
<p>3 (a) What are the effects of a declaration of bankruptcy on limitation of liability, if bankruptcy is declared [a] after the limitation or [b] before the limitation?</p> <p>- "After or before limitation" means after of before the establishment of the fund (see Guideline 6(c) which provides that the Limitation of Liability becomes provisionally effective at the time of establishment of the Fund).</p> <p>- The preliminary view was that (a)if bankruptcy becomes effective prior to limitation, there is no entitlement to limit liability and (b)if the bankruptcy becomes effective after the limitation, the limitation fund is not affected (but relevant provisions should be explored).</p>	<p>3 (a) We have not found any reported case in regards to the influence of bankruptcy on limitation of liability for maritime claim. In accordance with the relevant provisions of Enterprise Bankruptcy Law of THE P.R.C. and Special Maritime Procedure Law of THE P.R.C., our viewpoints regarding this issue are as follows:</p> <p>(1) If the limitation fund is constituted prior to the debtor entering into the bankruptcy proceedings and the fund is constituted by the debtor's own capital, the fund should be treated as part of debtor's property. Therefore, in light of Enterprise Bankruptcy Law of THE P.R.C., such fund should be distributed among all creditors. However, Article 109 of Enterprise Bankruptcy Law of THE P.R.C. provides that "A creditor secured by the specific property of the bankrupt shall enjoy the priority in being repaid with the specific property.". The constituted fund, in our opinion, should be deemed to be a kind of special security in nature for the creditors whose maritime claims are subject to liability limitation. Consequently, we think that the limitation fund and its proceedings should not be affected by bankruptcy proceedings.</p> <p>(2) If the debtors have been declared bankruptcy, they should not be permitted to apply to maritime courts for constitution of limitation funds for</p>	<p>3 (a) Section 5577 of the Navigation Act provides that where a bankruptcy becomes effective after the commencement of limitation proceedings, the limitation fund continues even if the ship owner is declared bankrupt provided that the owners right to limit has not been successfully challenged or declared to have lapsed. There is no provision dealing with the situation where the bankruptcy becomes effective prior to commencement of limitation proceedings, albeit assumed the same solution applies. In those circumstances, preferential creditors will be entitled to pursue their claims against the vessel and the ship owner will still be able to limit its liability.</p> <p>3 (b) The bankruptcy of one of the persons entitled to limitation does not affect the position of the others.</p> <p>3 (c) The liability insurer will be entitled to limit liability.</p> <p>3 (d) A claimant is entitled to participate in both the limitation fund and bankruptcy proceedings if necessary</p>	<p>A List of Priorities has been set. out in Art. 1390 - 1397 N· TCC. which applies specifically to ships. The List recognises eight categories of priorities, which the admitted under the 1993 and 1999 Conventions. This List is applicable even in the event of the bankruptcy of the owner; if, in such a case, several vessels were to be brought to judicial sale, the List applies separately to each vessel (Art. 1389(2) N-TCC). It follows that the owner would still have the benefit of limitation even in the case of bankruptcy, as the owner would be entitled to limitation upon arrest of the vessel (Art. 1370(5) N.TCC). According to the List of Priorities, all creditors that remain unsatisfied after distribution of the proceeds of the ship's judicial sale may participate in the bankruptcy proceedings. However, a maritime claimant, who has received its pro rata share from the limitation fund, will not be entitled to apply to the bankruptcy proceedings for any shortfall, as this would entirely defeat the idea of limitation in Maritime law. P.004</p>	<p>3 (a) There are no rules In Danish law which specifically governs these situation. It is not clear exactly what the consequences of bankruptcy are when declared after a limitation fund has been established. There may be Issues of avoidance (omstodelse) for amounts Paid into the limitation fund as security for claims filed.</p> <p>There is legal literature which suggests that the fund may not be amalgamated Into the bankruptcy estate for distribution to all creditors on equal terms. The argument Is that limitation funds are set up to cover claims for damage and should only be available for payment of claims subject to the limitation of the shipowner's liability.</p> <p>The opposite Situation in which bankruptcy Is declared before the establishment of the limitation fund seems to be somewhat theoretical. This situation would likely only occur if the claims against the shipowner are not covered by his P&I Club. Ordinarily, bankruptcy means that the claimants will Instead raise their claim directly against the P&I Club who may then in turn invoke limitation and establish a limitation fund With the same rights at the shipowner. Such limitation fund established by the P&I Club (albeit In the name of the shipowner) after bankruptcy would in our view be dealt with independently and separately from the bankruptcy.</p>	<p>3 (a) According to MC §177 sub-para. 3, the limitation fund established is regarded as constituted only for the benefit of and payment of all claims subject to such limit of liability. The fund according to the 1976/1996 Convention has to be established in an amount equivalent to the limitation amount applicable in the particular case, with an additional amount to cover interest from the time of the incident and to the establishment of the limitation fund (MC § 232). The person applying for the establishment of a limitation fund, shall deposit these amounts with the court or provide security for the amounts satisfactory to the court MC § 233). Consequently, the limitation fund has the character of a special security for the payment of the limitable claims, and the court shall distribute the fund and effect payments of the amount allocated to the particular established claims even if the person having established the limitation fund is subsequently declared bankrupt. If the person liable has been declared bankrupt before a limitation fund has been established, any claim has to be submitted in the bankruptcy proceeding. However, the amount of each of the limitable claims to be taken into account as a debt in the bankruptcy proceeding will be equivalent to the actual liability of the debtor, viz. the claims proportionate part of the limitation amount, cf. MC § 180 relating to cases where a limitation</p>

<p>the position of the others?</p> <p>3 (c) If the owner becomes bankrupt, is its liability insurer (e.g. P&I Club, especially if it becomes directly liable) entitled to limit liability?</p> <p>3 (d) Is a claimant entitled to participate in both the limitation fund and bankruptcy proceedings or not?</p>	<p>maritime claims, since Article 21 of Enterprise Bankruptcy Law of the P.R.C. provides that "After the people's court accepts an application for bankruptcy, a civil action against the debtor can only be filed with the said people's court".</p> <p>Furthermore, according to the established legal principle, the debtors should not be permitted to constitute the special security which is the limitation fund for only some of their creditors (the maritime creditors, whose claims are subject to limitation of liability) after the debtors are declared bankruptcy .</p> <p>3 (b) (1) If the others are involved in the same accident and they bear respective liabilities with the bankrupt, the bankruptcy does not affect the position of them.</p> <p>(2) If the others bear joint-and-several liabilities due to the same accident, and one or both of them are entitled to the right of limitation, there are no clear provisions in regards to the distribution of the joint-and-several liability between them under current Chinese laws. And Chinese judges and scholars are holding different point of views on this issue. Accordingly, we cannot provide a clear answer to the above question.</p> <p>3 (c) Yes, its liability insurer is entitled to limit liability.</p> <p>3 (d) Please refer to our answer to the question of 3(a).</p>			<p>In our opinion a bankruptcy estate is strictly speaking not precluded from establishing a limitation fund itself if it considers this to be to the advantage of the creditors. However, since the liquidator/trustee of the bankruptcy estate could be held liable for such a decision if it turns out to be to the detriment of the other creditors, it is difficult to envisage a situation In which this would occur.</p> <p>3 (b) Not directly. The party not in bankruptcy is still able to invoke limitation and establish an Independent fund. Obviously, If the parties are Jointly liable the bankruptcy of one party could mean that the claims against other the party will increase.</p> <p>3 (c) If the owner goes into bankruptcy and there is basis for claims against the Owner which is covered under the terms of the P&I policy then the claimant may raise his claim directly against the P&I Club. Section 95 (2) of the Danish Act on Insurance Agreements. In this situation the P&I Club is entitled to invoke limitation to the same extent as the owner.</p> <p>3 (d) It is not clear exactly what the consequences of bankruptcy are when declared after a limitation fund has been established. If the claimant has filed his claim in the limitation fund and the claim is subject to limitation and the limitation fund is upheld irrespective of the bankruptcy, then it would seem to follow that the claimant has no grounds to claim anything further against the bankruptcy estate because the claimant is then already fully secured for his (limited) claim.</p>	<p>fund has not been established.</p> <p>Questions relating to the effect of the person liable being declared bankrupt before a limitation fund has been established, are not likely to arise in cases where the person liable has adequate liability insurance. According to the CLC and Bunkers Conventions the rules on compulsory liability insurance (MC §§ 186 and 197) and the rules on the claimants' right to direct action against the liability insurers (MC §§ 188 and 200), mean that in such a case a limitation fund to cover the limitable claims will have to be established by the liability insurer. According to the Norwegian Insurance Contract Act 1989 § 7-8 sub-para. 2 claimants generally are granted a direct action against the liability insurer if the person liable has become insolvent. This provision will be applicable in cases where the person liable has been declared bankrupt before a limitation fund has been established according to the 1976/1996 Convention. However, a liability insurer being held liable for claims subject to limitation according to the 1976/1996 Convention is entitled to limit his liability e.g. by establishing a limitation fund on behalf of the assured (MC § 171 sub-para. 6.</p> <p>3 (b) According to MC § 171, which is based on 1976/1996 Convention article 1, a number of persons are granted the right to invoke limitation of liability. Moreover, the limits of liability shall apply to the aggregate of all claims arising on any distinct occasion against all persons mentioned in article 1 Nos. 2 and 3 (Article 9 No. 1 and MC § 175 No. 4, cf. § 175a). Any of these persons being liable for limitable claims, is entitled to invoke limitation of liability regardless of whether one or more of the other persons mentioned is without liability for such claims or does not invoke limitation. The fact that one or more of such persons</p>
--	---	--	--	--	--

					<p>has been declared bankrupt does not affect the right to limitation of liability of the others. This is consistent with article 11 No. 1 of the Convention, stating that "any person alleged to be liable may constitute a limitation fund". In accordance with article 11 No 3 and article 9 on aggregation of claims MC 177 sub-para. 2 provides that a limitation fund established by any person liable for limitable claims, the fund is to be regarded as established with effect for all persons which is entitled to invoke the same limit of liability.</p> <p>In Norwegian law this question does not arise in cases of oil pollution liability according to liability regime of the CLC Convention because by MC § 193 all liability has been channelled to the owner of the ship. If the owner has been declared bankrupt, the claims may be enforced against the liability insurer which is entitled to invoke limitation of liability.</p> <p>3 (c) The answer to these questions appears above in the answer to Question 3(a).</p> <p>3 (d) A claimant is entitled to submit his claim both in the limitation proceedings and the bankruptcy proceedings. However, if the claim as subject to limitation is paid out of the fund, the liability of the debtor is extinguished, and claimant may not also receive a dividend from the bankruptcy proceedings. If the limitation fund has been established by an insurer, the insurer may be entitled by way of subrogation to enforce the claim made in the bankruptcy proceedings.</p>
4 (a) Do maritime liens survive after limitation? Do actions in rem, i.e. against the vessel, fall under Art. 1 and 2 of LLMC?	(a) Art. 30 of the Maritime Code of The P. R. C. provides that Section III in Chapter II of this Code regarding maritime liens shall not affect the implementation of the limitation of liability for maritime claims provided in Chapter XI of this Code. This embodies the principle of that the	4 (a) Maritime liens do not survive.	According to Art. 1345 N-TCC, maritime liens are extinguished if and whenever the claim secured thereby is admitted to the limitation fund. The priority granted to the maritime lien is not recognised in the distribution of the fund.	4 (a) Any claim which is not filed in the limitation fund before the Court (in the first instance) has rendered judgment on the distribution of the funds will be considered precluded. This means that there will also no longer be any basis for maritime lien.	4 (a) Certain types of maritime claims are secured by a maritime lien in the ship, which means that the claim may be enforced against the shipowner by sale of the ship and payment out of the proceeds thereby obtained. However, if such a claim at the same time is a

<p>4 (b) Comment: Liens in several jurisdictions survive bankruptcy; do they also survive limitation of liability?</p>	<p>application of limitation of liability for maritime claims takes a priority.. Therefore, where a maritime claim is secured by maritime lien and simultaneously falls within the claims subject to limitation, its priority of compensation shall be determined by the provisions of limitation of liability for maritime claims. Accordingly, Art. 210 with respect to priority of distribution of limit of liability for maritime claims does not give consideration to the priority of compensation of maritime claim secured by maritime lien. In principle, claims for personal death or injury and claims other than that for personal death or injury (except for damage to harbour works and etc.) shall be paid pro rata in limit of liability for maritime claims separately. As a result, the maritime lien amounts to be eliminated while the person liable invokes limitation of liability for maritime claims. In addition, Art. 9 of Some Provisions Concerning Trial of Case of Limitation of Liability for Maritime Claims of The Supreme People's Court of the P. R. C. makes it clear that, "After the fund for limitation of liability for maritime claims is constituted, the People's Court shall not support the claimant's application for arrest of ship on the grounds of maritime lien which secures the maritime claim arising from the same incident and falling within the claims subject to limitation provided by Art. 207 of the Maritime Code of the P. R. China."</p>		<p>Turning to the new Turkish law of maritime liens, the catalogue and exclusions set out in Art. 4 of the 1993 Convention have been adopted verbatim in Art. 1320 N-TCC. One additional lien has been admitted in accordance with the right granted under Art. 6 of the 1993 Convention. Indeed, claims for general average contribution have also been given the status of maritime liens (Art. 1320(l)(f) N-TCC): however, this maritime lien ranks after all registered mortgages (Art. 1323(2) N-TCC). As such, these claims will only be paid out if and whenever anything is left after the mortgagees have been satisfied. Therefore, such a lien will be admitted only in the sixth rank (Art. 1395(1) N-TCC). Claims for pollution damage do not confer the laws of maritime liens to the extent that these are secured by compulsory insurance (Art. 4(2)(a) of the 1993 Convention Act. 1320(2)(u) N-TCC). As a matter of Turkish law, this rule applies currently to the claims under the 1992 CLC/FUND. whereas the RNS and Bunker Conventions are not yet in force in Turkey, Finally, it is set out explicitly that maritime liens are governed by the lex fori (Art. 3(l)(e) of the 1999 Convention", Art. 1320(3) N-TCC).</p>	<p>4 (b) Under Danish law the right to invoke limited liability exists irrespective of whether the claim is based on fault based liability (culpa) or based on mandatory liability. It is also irrelevant whether the Claim Is based on an agreement (contract claim) or not (tort claim). It is also irrelevant whether the claim is based on a claim secured by maritime lien without personal liability or whether the claim Is raised in recourse.</p>	<p>limitable claim, the actual amount of the claim (the personal liability) and of the maritime lien in the ship will be determined in the course of the limitation proceedings. When the claim as limited has been paid out of the limitation fund, the claim (the personal liability) against the owner of the ship and its maritime lien in the ship is thereby extinguished as fully satisfied, unless the shipowner due to personal fault is not entitled to limitation of liability. This is the consequence of the rule that any limitation fund established is given effect also in relation to the owner of the ship, see the answer to Question 1 (b) above. However, by way of subrogation a person liable, other than the owner of the ship, who has established the limitation fund and thereby paid the claimants, may be entitled to rely on the maritime lien when making his recourse claim against the owner.</p>
<p>4 (c) Is there a possibility of maritime liens in relation to pollution damage claims and, if so, do such liens survive limitation of liability?</p>	<p>(b) With the absence of actions in rem in China, we can not provide answer to this question.</p> <p>(c) China acceded both the CLC and the Bunker Convention. The CLC has its own system of limitation of liability for claims for oil pollution damage which is isolated from that of the LLMC. But the Bunker Convention accepts the national or international legislation with respect to</p>	<p>4 (c) Pollution Claims (with the exception of claims occurring as a result of O11 exploration or O11 extraction) are secured by maritime lien to the extent that the claims are for damage to property or persons. Section 51 (1) of the DMSA. Pollution damage to a beach area is for example secured by maritime lien.</p>	<p>4 (c) Pollution Claims (with the exception of claims occurring as a result of O11 exploration or O11 extraction) are secured by maritime lien to the extent that the claims are for damage to property or persons. Section 51 (1) of the DMSA. Pollution damage to a beach area is for example secured by maritime lien.</p>	<p>A limitation fund can only be established in Denmark if a claimant has sought arrest or begun legal proceedings for a claim which can be limited. Section 177 (1) of the DMSA.</p> <p>The rules on limitation of liability depend on whether the relevant vessel carries oil in bulk or not. If limitation has been invoked and a limitation fund has been established under the correct rules then any claim which is not filed in the fund before the Court (in the first instance) has rendered judgment on the distribution of the funds will be considered precluded. This means that there is no longer any basis for maritime lien.</p>	<p>In this context it should be noted that maritime liens in a ship are subject to a time limitation of one year from maturity and will be time bared if the ship has not been subjected to an arrest leading to a forced sale before the expiry of the one year period.</p> <p>If a ship has been arrested in Norway in respect of a limitable claim secured by a maritime lien, any person alleged to be liable may establish a limitation fund at the court and demand that the ship be released. Even if the owner of the ship has no personal liability for the claim, the claims having a maritime lien may be enforced against him by forced sale of the ship and, consequently, the shipowner may establish a limitation fund at the place of the arrest and ask release of his ship. In any event the owner may invoke the provisions of MC § 178 preventing subsequent arrest or other enforcement proceedings after a</p>

	<p>limitation of liability from maritime claims, such as the LLMC. As aforesaid, in accordance with the principle of preferred application of limitation of liability for maritime claims, both the CLC and the Bunker Convention shall prevail over maritime liens.</p> <p>Art. 4 Para. 2 of the International Convention on Maritime Liens and Mortgages, 1993 provides that damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims are not secured by maritime lien.</p> <p>Art. 22 Para. 2 of the Maritime Code of the P. R. C. provides that compensation claims for oil pollution damage caused by a ship carrying more than 2000 tons of oil in bulk as cargo which has a valid certificate attesting that the ship has oil pollution liability insurance coverage or other appropriate financial security are not secured by maritime liens. Obviously, as far as the scope of maritime claims not secured by maritime liens is concerned, the provisions of the Maritime Code of the P. R. C. are narrower than those of the International Convention on Maritime Liens and Mortgages, 1993. According to Art. 4 Para. 2 of the International Convention on Maritime Liens and Mortgages, 1993, the bunker oil pollution damage under the Bunker Convention is not secured by maritime lien. Therefore, the oil pollution damage under the CLC and the Bunker Convention is not secured by maritime lien. Relevant provisions of the Maritime Code of the P. R. C. might be amended in the near future.</p>				<p>limitation fund has been established because the fund is given effect in relation to the liability of all persons entitled to invoke limitation of liability including the ship owner, see the answer to Question 1 (b) above. In such a case the running of the time limitation period for the maritime lien for the claim is interrupted because the claimant is legally prevented from having the ship arrested MC § 55 sub-para. 2. However, this is of no consequence because the maritime lien is extinguished when the limitable claim has received the payment due from the limitation fund.</p> <p>4 (b) Yes. The owner of the ship is expressly included in the list of persons which are entitled to invoke limitation contained in article 1. Furthermore, the list of limitable claims includes claims which also are granted maritime lien in the ship, in particular the important group of claims for personal injury and property damage arising in direct connection with the ship. Article 2 provides that such claims are limitable "whatever the basis of liability may be". This means that even the liability of the shipowner for a claim having a maritime lien, is subject to limitation even if the owner has no personal liability for the claim. Any other interpretation would mean that the full amount of any damages for personal injury or property damage could be obtained from the shipowner from the proceeds of a forced sale of the ship, while the personal liability for the claims of a charterer, operator or manager of the ship would be subject to limitation of liability. Such a result would be inconsistent with purpose of the limitation regime and open up for circumventions. It should also be noted that a claim in respect of personal injury or property damage is granted a maritime lien in the ship even if the person personally liable for the claim is a charterer, operator or</p>
--	--	--	--	--	---

					<p>manager of the ship to whom the owner of the ship has transferred his functions (MC § 51 sub-para. 2). In such cases, the personal liability of the charterer, operator or manager for personal injury and property damage will be subject to limitation even if the claims also are secured by maritime lien in the ship.</p> <p>4 (c) The list of claims granted maritime lien does not expressly include claims for damage from oil pollution as such. However, the regimes on the liability for oil pollution damage apply generally to any damage or loss occurring off the ship due to pollution caused by oil escaping from the ship as well as to damage or loss caused by reasonable preventive measures carried out after the incident. This means that to the extent that damage to property or to persons has resulted from oil pollution, including the cost of measures to prevent such damage, the liability for such damage and cost is a claim which will be secured by a maritime lien in the ship (MC §§ 183 and 191), cf. Falkanger, Bull & Brautaset, <i>Scandinavian Maritime Law</i>, 3rd ed. Oslo 2011, section 6.31.</p> <p>However, where the owner of the ship or its liability insurer is entitled to limitation of liability and has established a limitation fund under the relevant liability regimes for oil pollution damage, the claimants are no longer entitled to request an arrest or other enforcement proceedings against the ship or other property of the shipowner in respect of a limitable claim (MC § 196). In such a case the running of the time limitation period for the maritime lien for the claim is interrupted because the claimant is legally prevented from having the ship arrested MC § 55 sub-para. 2. Consequently, if the limitation fund has been established by the shipowner or his liability insurer in a case where the the shipowner due to personal</p>
--	--	--	--	--	---

					fault is not entitled to limitations of liability, the claimants may nevertheless enforce maritime liens in the ship after the limitation fund has been distributed, but only as regards the part of the amount of the property damages not paid as a result of the distribution of the limitation fund.
5 (a) Should interim payments out of the limitation fund be permitted? If so, against a security or without security?	5 (a) Under the existing Chinese law, there are neither substantive nor procedural provisions in relation to interim payment out of the limitation fund. In judicial practice, however, in cases where it is imperative to resolve the claims arising from person death or injury or outstanding crew's wages promptly, the maritime court of China may order an interim payment outside the limitation fund.	5 (a) There is no provision in their navigation act in relation to interim payments.	5 (a) This would be a useful remedy, which has been explicitly recognised under Art. 22 of the 1989 Salvage Convention and the corresponding AIL 1316 N·TCC.	5 (a) This is already possible under Danish law when the deadline for filing claims in the fund has expired. Section 243 of the DMSA. This is in order to avoid situations where disputes about certain claims can hinder payment of claims which are not in dispute. The Court can make" reservation that funds must be paid back if new claims are filed which significantly move the division percentages.	5 (a) According to MC 243 the court administering the limitation fund may decide that interim payments shall be made, provided that the time limit for submission of claims fixed by the court has expired. The interim payment is to be regarded as a part payment of the claims, and such interim payment can only be made in respect of already established claims.
5 (b) How do you resolve the conflicts between Article XII and XII of the CLC, Art. 42 HNSC and Art. 6 Bunker Convention?		5 (g) Article 177 of our Navigation Acts states that the shipowner is entitled to limit its liability against the following claims: a. Life and injury claims. b. Loss of goods or rights or damages suffered by them. c. Liability or obligation emerging from wreck removal or refloating a sunken vessel of damages to parts or waterways so the shipowners' right to limit does not depend on the person who claims but on the nature of the claim.	5 (b) These issues will yet have to be considered in detail under Turkish law. 5 (c) These issues will yet have to be considered in detail under Turkish law.		
5 (c) How do you resolve conflict of law issues between Arts. 14 and 15 of the LLMC and Art. 15 of Rome II?	Under China's law there are no substantive or procedural provisions in relation to interim payments out of the Limitation Fund. As a matter of judicial practice however, it is imperative to resolve claims arising from personal injury or death or outstanding crew wages promptly and in those circumstances, a maritime court of China may order an interim payment outside the Limitation Fund.		5 (d) In accordance with Art. 2 of the 1993 Convention and Art. 2(4) of the 1999 Convention. Art. 1350 N·TCC says that all matters of enforcement are governed by the <i>lex fori</i> . As such, Turkey must recognise a limitation fund that has been established and distributed in accordance with the provisions of the LLMC and CLC.		5 (b) It is not entirely clear which conflict of conventions this Question relates to. The Bunkers Convention article 4 No. 1 expressly states that the convention does not apply to pollution damage as defined in the Civil Liability Convention (1992). Consequently, this exception covers oil pollution resulting from the escape from the ship of any "persistent hydrocarbon mineral oil" whether carried as cargo or in the bunker of the ship (CLC article I Nos. 5 and 6, both of the 1969 and 1992 CLC). It is submitted, therefore that there does not appear to exist any conflict between CLC articles XII and XIIbis and the Bunker Convention article 6 because these articles have different scopes of application. MC § 183 sub-para 10 contains a provision giving effect to the Bunker Convention article 4 No. 1.
5 (d) How do you resolve the jurisdiction, recognition and enforcement issues raised by the ECJ decision Maersk Olje)?			5 (e) According to Art. 1347(1) N·TCC, interest on claims admitted to a limitation fund will only be calculated on the pro rata share payable to each claimant. On the other hand. Art. 1347(2) N·TCC requires that the fund is kept in an interest bearing account until final distribution.		
5 (e) What rate of interest on the limitation amount should accrue before and/or after the fund is established?	5 (b) The limitation of liability regimes stipulated in HNSC, the Bunker Convention and the LLMC Convention are distinctively independent from each other. Accordingly, there should be no conflicts existing in terms of theory. Neither CLC nor HNSC makes provision that the limit amount thereof shall be subject to or share with the limit amount under LLMC Convention. Instead, Article 12 of CLC 1992 provides that this Conventions shall supersede any International Conventions in force, ... but only to the extent that such Conventions would be in conflict with it. Article 42 of HNSC 1996 provides that this				
5 (f) How do you deal with limitation in relation to ships not measured under the 1969 Tonnage Convention?			5 (f) This issue will yet have to be considered in detail under Turkish law.		5 (c) In accordance with the LLMC articles 14 and 15 the Norwegian Maritime Code § 182 provides that the MC chapter 9 on "Limitation of Liability" shall be applicable in all cases where limitation of liability for maritime claims is invoked in proceedings before a Norwegian court. The Norwegian Maritime Code chapter 10
5(g) What is the shipowner's right to limit liability vis-à-vis other persons (in particular charterers)?			5 (g) This issue will yet have to be considered in detail under Turkish law.		

	<p>Convention shall supersede any convention in force ... at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it. It follows from these provisions that:</p> <p>(1) The limitation of liability provisions in CLC, HNSC and LLMC Convention shall be independent and co-existent legal regimes of limitation of liability. The scope of application of each convention does not overlap with each other and the conflict should not arise among them. The conflict stated in the above provisions should refer to the conflicts between the original convention and the amendment thereof which are in the same nature and in force at the same time, such as CLC 1969 and CLC 1992.</p> <p>(2) The limitation of liability regimes in CLC and HNSC have been separated from the LLMC Convention regime and become independent regimes. Prior to CLC 1969, the claims for oil pollution damage subject to limitation of liability under LLMC Convention have become a claim subject to limitation of liability under CLC. LLMC Convention 1976 also expressly provides that the rules of this convention shall not apply to claims for oil pollution damage within the meaning of CLC 1969.</p> <p>(3) Just because the limitation of liability provisions under LLMC Convention, CLC and HNSC are three independent limitation of liability regimes, no conflict among them should exist and no issue of priority among them should arise either. Accordingly, there will be two limit amounts applicable to an oil tanker or a vessel carrying HNS, one being the limit amount under CLC or HNSC and the other being the limit amount under the LLMC Convention.</p>				<p>on "Liability for Damage caused by Oil Pollution" also applies as lex fori in all cause where limitation of liability is invoked in proceedings before a Norwegian court.</p> <p>The Rome II Regulation (864/2007) on the choice of law for obligations not based on contract, contains provisions determining the law to be applied when to decide whether a particular damage caused by a person entails an obligation to pay damages to the injured party. According to Rome II article 15 the applicable law also determine the rules relating to the calculation of and extent of the amount of damages payable by the tortfeasor when held liable for the damage caused in a particular case. Consequently, the Rome II determines the applicable law when to determine whether the shipowner is actually liable for a particular limitable claim.</p> <p>The LLMC, on the other, does not contain provisions relevant when to decide whether the shipowner actually is liable for the particular limitable claims arising out of one and the same maritime incident. The LLMC contains a regime for limitation of the liability for all claims having arisen out of such incident, in principle regardless of whether the basis for the liability for the particular claim is contractual or non-contractual (LLMC article 2 No.1). It is consequently believed that the Rome II and LLMC have different scopes of application, and that there exists no conflict between LLMC articles 14 and 15 and the Rome II Regulation.</p> <p>5 (d) In 2007 the Norwegian Supreme Court held that, according to the 1988 Lugano Convention on jurisdiction and recognition of decisions of courts in the EU/EAA member states, Norwegian courts had a duty the recognize the</p>
--	--	--	--	--	---

	<p>5 (c) Question relates to application EU laws.</p> <p>5 (d) According to Article 266 of the Civil Procedure Law of China, which states that "In the case of an application or request for recognition and enforcement of a legally effective judgment or written order of a foreign court, the people's court shall, after examining it in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity and arriving at the conclusion that it does not contradict the primary principles of the law of the People's Republic of China nor violates State sovereignty, security and social and public interest of the country, recognize the validity of the judgment or written order, and, if required, issue a writ of execution to enforce it in accordance with the relevant provisions of this Law; if the application or request contradicts the primary principles of the law of the People's Republic of China or violates State sovereignty, security and social and public interest of the country, the people's court shall not recognize and enforce it", a Chinese court generally will not recognize or enforce a legally effective judgment of foreign court in relation to limitation of liability for maritime claim disputes on the ground that China has not concluded or acceded to any international convention in relation to limitation of liability for maritime claims containing clauses of recognition and enforcement, and that it is unlikely that such a foreign court judgment can be recognized and enforced on the principle of reciprocity.</p> <p>5 (e) Article 213 of the Maritime Code of the P. R. China provides that any person liable who claims the limitation of liability under this Code may constitute a limitation fund with a court having jurisdiction. The fund shall be constituted in the sum of such an</p>				<p>decision by a French court to establish a limitation fund and, accordingly, to deny a request for arrest of the ship in Norway in respect of a claim which had been submitted against the French fund. The French limitation fund had been established according to the 1976 Limitation Convention, to which Norway no longer was a party. However, the Supreme Court held that arrest should be denied even if, according to the provisions of the Norwegian Maritime Code §178, the French limitation fund was not to be given effect because the fund was established according to the 1976 convention and not according to the 1976/1996 Convention as required by MC § 178. In its decision the Supreme Court relied on the ECJ decision in Maersk and the final decision of the Danish Supreme Court concluding the Maersk in 2005.</p> <p>The 1988 Lugano Convention is almost identical to the 1968 Brussels Convention, but subsequent to the adoption of the Brussels I Regulation (44/2001/EC) the 1988 Lugano Convention has been amended and replaced by the 2007 Lugano Convention.</p> <p>The relation between the Limitation of Liability Conventions and the Brussel-Lugano regimes based on the ECJ decision in the Maersk and subsequent decisions by Scandinavian courts, has been extensively dealt with two in studies by Selvig in the Scandinavian Institute of Maritime Law Yearbooks SIMPLY 2005 pp. 1-48 and SIMPLY 2010 pp. 359-90.</p> <p>5 (e) Prior to a limitation fund being established at a Norwegian court, the person liable shall deposit with the court the limitation amount and in addition an amount to cover interest on the limitation amount from the time of the incident and to the establishment of the fund,</p>
--	---	--	--	--	--

	<p>amount set out respectively in Articles 210 and 211, together with the interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Article 21 of the Judicial Interpretation of Limitation of Liability for Maritime Claims of the Supreme Court of China provides that the interest stated in Article 213 of the Maritime Code of the P. R. China shall be calculated in accordance with the 1-year loan standard rate of the financial institute as determined by the People's Bank of China.</p> <p>5 (f) China is a member of The Tonnage Convention 1969. Accordingly, in practice, the tonnage of vessels in China shall be measured in accordance with this convention.</p> <p>5 (g) The persons entitled to limit liability under the Maritime Code of the P. R. China are consistent with the provisions of LLMC Convention 1976.</p> <p>Article 204 of the Maritime Code of the P. R. China provides that shipowners and salvors may limit their liability in accordance with the provisions of this Chapter for claims set out in Article 207 of this Code. The shipowners referred to in the preceding paragraph shall include the charterer and the operator of a ship. Article 205 of the Code provides that if the claims set out in Article 207 of this Code are not made against shipowners or salvors themselves but against persons for whose act, neglect or default the shipowners or salvors are responsible, such persons may limit their liability in accordance with the provisions of this Chapter. Article 206 of the Code provides that where the assured may limit his liability in accordance with the provisions of this Chapter, the insurer liable for the maritime claims shall be entitled to the limitation of liability under</p>				<p>calculated at the Norwegian current rate of interest according to the 1976 Act on interests due in cases of late payment of claims. The rate of interest is fixed in advance for each half year, and is based on the then current discount rate of the Central Bank of Norway with the addition of 7 per cent.</p> <p>5 (f) The minimum limitation amounts applicable for ships measuring less than respectively 1000, 2000 or 5000 gross tons are believed to solve this problem.</p> <p>5 (g) The shipowner's right to limitation of liability also includes limitable claims made against the owner by persons such as charterers and other persons entitled to invoke limitation of liability, e.g. a claim for cargo damage made by a charterer, including a recourse claim in cases where the charterer has paid damages to the owner of the cargo, cf. Falkanger, Bull & Brautaset, Scandinavian Maritime Law p. 189.</p>
--	---	--	--	--	---

	<p>this Chapter to the same extent as the assured.</p> <p>According to the judicial practice of China, the charterers includes both the bareboat charterers and the time and voyage charterers.</p>				
<p>6 (a) When and where can limitation proceedings be initiated and the fund established under the LLMC?</p> <p>6 (b) How is the LLMC applied to ships with dual passenger capacity?</p>	<p>6 (a) According to relevant Chinese legislations and judicial interpretations, the application for establishing the fund for limitation of liability for maritime claims may be filed prior to the proceedings of maritime compensation or in the course of the said proceedings but not later than the judgement of the first instance. (1) Where the application for establishing the fund for limitation of liability for maritime claims is filed prior to the proceedings of maritime compensation, the court of jurisdiction is the maritime court of the place of occurrence of the accident or the place where the ship is arrested. Where the location of a marine accident falls outside of the P. R. China, the port where the ship arrives first in China after the accident shall be deemed as the place of occurrence of the accident. If various persons liable file applications for establishment of the fund for limitation of liability for maritime claims before various maritime courts for the same accident, the maritime court accepting the case later shall transfer the case to the maritime court accepting the case in advance in accordance with the law. (2) Where the application for establishment of the fund for limitation of liability for maritime claims is filed in the course of the proceedings of maritime compensation, the court of jurisdiction is the maritime court accepting relevant case of maritime compensation. If relevant cases of maritime compensation are accepted by various maritime courts, the person liable shall file application</p>		<p>6 (a) The jurisdiction of Turkish Courts on limitation proceedings is described in Art. 1348 N-TCC. According to this provision, such proceedings will be heard before the Court that has been assigned jurisdiction over maritime disputes. These Courts are established pursuant to Art. 5(2) N-TCC. As for Turkish flag vessels, the Court at the place of the registry (National Ship Registry, Turkish International Ship Registry, Home Port Log) will assume jurisdiction. Given that most banks have their headquarters in Istanbul, it was found to be more practical that the Court of Istanbul has exclusive jurisdiction over limitation proceedings in respect of non-Turkish vessels. Indeed, the limitation fund will in most. if not all cases, be remitted via bank transfer from abroad, and arrive firstly at the headquarters in Istanbul. As such, the application to the Court in Istanbul will save time and costs.</p> <p>6 (b) This issue will yet have to be considered in detail under Turkish law.</p>		<p>6 (a) The MC § 177 provides that a limitation fund may be established whenever an action or arrest or other enforcement proceedings is initiated at a Norwegian court and, after the limitations fund has been so established, the limitation proceeding shall take place at the court having established the fund (MC § 240). This is in accordance with the LLMC article 14.</p> <p>If a limitation fund has already been established in another state, the Norwegian court may reject an application for an arrest or a new Norwegian limitation fund in accordance with the provisions of MC 178 (based on LLMC article 13), which has been dealt with in the answers to Questions 1 (b) and 5 (d) above.</p> <p>If no limitation fund has already been established, and no request is made for the establishment of a limitation fund in legal proceedings in Norway, the Norwegian court receiving an action for a limitable claim will apply the rules on limitation of liability to the claims covered by the particular action, see MC § 180 which has been dealt with in the answer to Question 1 (c) above.</p> <p>6(b) The limit of liability for personal injury inflicted on passengers of the ship a lump sum equivalent to SDR 175 000 multiplied by the number of passengers which the ship according to its certificate may carry (MC § 175 No. 1).</p>

	<p>before the maritime court accepting the case at first according to agreement of jurisdiction. If no agreement of jurisdiction is concluded, the application shall be filed before the maritime court accepting the case at first.</p> <p>6 (b) The meaning of this question is not clear. If it refers to roll-on/roll-off ship and the marine accident causes both personal death or injury of passenger and damage to property, the person liable shall invoke limitation of liability pursuant to limits of liability for personal death or injury of passenger and for damage to property respectively. Where there is no personal death or injury of passenger but damage to property only, the personal liable shall be entitled to limit liability according to property limitation.</p>				
<p>7 What is a Claimants' right to challenge (in the context of limitation proceedings) claims of other claimants adjudicated in proceedings in which the challenging claimants did not participate under the CLC and/or HNSC?</p> <p><u>Comment:</u> The issue to be resolved is the extent of recognition provided in Art. X of the CLC and Art. 40 of the HNSC i.e. whether it binds claimants who did not participate in the proceedings or only claimants, who participated in the proceedings. Guideline 15 does not solve this problem because the</p>	<p>Claimants' right to challenge (in the context of limitation proceedings) claims of other claimants adjudicated in proceedings in which the challenging claimants did not participate under the CLC and HNSC (Art. X CLC and Art. 40 HNSC).</p> <p>Firstly, it should be made clear that, as China does not accede to the HNSC, the Question 7 may be only related to CLC as far as Chinese maritime laws are concerned.</p> <p>According to the laws on the establishment and distribution of the limitation fund before Courts in China, the question may be divided into two aspects which are contained in the procedure of limitation proceedings in China</p> <p>(i): Whether such Claimants as mentioned in Question 7 could participate and challenge the claims of other claimants if such challenging claimants did not participate in registration of debts in a Chinese Court establishing the fund?</p> <p>(ii): Whether such Claimants are entitled to apply to the Court establishing the fund not</p>		<p>This issue will yet have to be considered in detail under Turkish law.</p>		<p>7 The answer to this question has been dealt with in the answer to Question 1(a). The consequence of the provisions of MC §§ 238, 244 and 245 there discussed, is that the final judgement on the distribution of the limitation fund will be binding on all claimants entitled to make a claim against the CLC limitation fund. According to CLC article X a final judgements from a foreign CLC state will normally be recognized by a Norwegian court so as to be binding on all claimants entitled to make a claim against the CLC limitation fund, whether or not they have participated in the limitation proceedings. The exception relating to claimants who were not given reasonable notice and a fair opportunity to present his case during the limitation proceedings, will most likely be understood and applied in view of the following procedural requirements in the Norwegian Maritime Code:</p> <p>- The shipowner, when requesting the establishment of a CLC fund, shall inform the court of all persons which are believed to make claims against the fund</p>

<p>issue in question is the extent of recognition provided in Arts X CLC and 40 HNSC.</p>	<p>to recognize or enforce a judgment obtained by other claimants under CLC?</p> <p>1) As to Item (i)</p> <p>According to relating provisions of the Special Maritime Procedure Law of the P.R.C and Article 26 of The Supreme People's Court' Regulation on The Trial of Cases on the Compensation of Ship Oil Pollution Damage, the claimants shall be deemed to waive the right of distribution from the limitation fund if they failed to register their claims before the expiry of the time limit announced by the court. Therefore, according to Chinese law, the claimants are not entitled to participate the distribution of limitation fund nor to challenge other claimants' claim before the court establishing the fund in the circumstance where the distribution proceedings have commenced. In other words, their rights to claim for compensation are waived at the time of expiration of the announced time limit, namely the claimants did not have the rights indicated in item (i).</p> <p>2) As to Item (ii)</p> <p>This item could also be divided into two aspects:</p> <p>A. In the event that other claimants' claims have been adjudicated by the judgments made by Chinese court, whether the claimants who did not participate in the aforementioned judicial proceedings have the right to challenge other claimants' claims in the liability limitation proceedings?</p> <p>According to Article 178 of the Civil Procedure Law of The P. R. China and Article 116 of the Special Maritime Procedure Law of The P. R. China, the claimants, as the party not participating in the proceedings for adjudication claims of other claimants, only have the right to apply</p>				<p>(MC 233 sub-para. 2),</p> <ul style="list-style-type: none"> - The court shall publicly announce the establishment of the limitation fund in Norway and, if the pollution incident so suggests, also in the relevant foreign states, inviting claimants to submit their claims within a specified time limit (MC 235 sub-paras. 1 and 2), - The court shall at the same time also notify all known claimants by registered mail, setting out the relevant information and the time limit set for submission of claims (MC § 235 sub-para. 3). - After the expiry of the time set for submission of claims the Court shall invite all persons having made claims to a "fund-meeting" where the questions relating to the right to limit liability, the limitation amount and the submitted claims shall be considered with the view to ascertain whether there are disputes that have to be decided before judgement on the distribution of the limitation fund be rendered (MC § 241). Any claimant may make objections to the draft distribution presented at the meeting, in which case the court shall set a time limit for the claimant to issue an formal objection setting out the issue to be determined by the court.
---	--	--	--	--	---

	<p>for a retrial if they intend to raise objections against judgment adjudicating claims made by other claimants. However, the Article 5 of The Supreme People's Court's Interpretation of Several Issues on the Application of Civil Trial Supervision Procedure of Civil Procedure Law of People's Republic of China, which provides more detailed regulations which stipulates that the court shall apply in the retrial cases, make limitation to condition under which a party could apply for a retrial. According to Article 5 of this Supreme People's Court's Interpretation, a party who did not participate in proceedings will only be permitted to commence a retrial of such proceedings if he has entitlement to the object of judgment enforcement. However, the challenging claimants cannot put forward a case to satisfy such pre-condition. And as a result, they have no right to challenge the judgments/rulings made by Chinese courts by way of applying for a retrial.</p> <p>B. Whether the claimants who did not participate in a foreign judicial proceeding adjudicating claims of other claimants have the right to challenge such claim in the liability limitation proceedings?</p> <p>1. General premise of recognition and enforcement by Chinese court in respect of judgments/rulings made by foreign courts.</p> <p>Though China as a sovereign state has no obligation to bind her courts to recognize or enforce a foreign court's judgment, the Chinese civil procedure laws do provide some regulations related to the reorganization and enforcement of a foreign court's judgment.</p> <p>According to Article 265 of the Civil Procedure Law of the P. R. of China, if a legally effective judgment or ruling made by a foreign court seeking for recognition and enforcement in Chinese courts, the party</p>				
--	--	--	--	--	--

	<p>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 People's Republic of China or based on the principle of reciprocity, request the recognition and enforcement by the people's court.</p> <p>2. Recognition and enforcement of judgments made by other contracting states of CLC.</p> <p>There are two kinds of jurisdictions of courts under CLC (Article IX): (1) jurisdiction of suits relating claims of oil pollution damage; (2) jurisdiction of fund distribution. According to Article 265 of the Civil Procedure Law of the P. R. of China, China as a contracting party to CLC has the obligation to recognize and enforce the final judgments/rulings made by the courts of other Contracting State in accordance with the contents and within the scope of the CLC.</p> <p>Pursuant to Article X of CLC, any final judgment made by a court with jurisdiction shall be recognized in any Contracting State and become enforceable after perform relating proceedings of the contracting state except:</p> <p>(i) where the judgment was obtained by fraud; or</p> <p>(ii) where the defendant was not given reasonable notice and a fair opportunity to reply.</p> <p>Thus, being the court of a Contracting State to CLC, China's court may only reject to recognize a judgment made by the competent court of another contracting state under the above two circumstances.</p>				
--	---	--	--	--	--

	<p>Meanwhile, according to Article 266 of the Civil Procedure Law of the P. R. China, 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.</p> <p>In consequence, Chinese courts shall not recognize and enforce the judgments / rulings made under CLC under the following three circumstances,</p> <p>(i) where the judgment was obtained by fraud; or</p> <p>(ii) where the defendant was not given reasonable notice and a fair opportunity to reply; or</p> <p>(iii) where the judgment/ruling contradicts the basic principles of the law of the People's Republic of China or the national, social, and public interest of China.</p> <p>According to Article 266 of the Civil Procedure Law of the P. R. China, it is the courts who have the power to review a judgment made by foreign courts in the recognition proceedings to determine if any of the above negative circumstance of the recognition exists. The challenging claimants are not the party to the judgment and accordingly they have no right to file a challenge in the recognition proceeding under Chinese laws.</p> <p>CONCLUSION: Under Chinese laws, Claimants do not have right to challenge (in the context of limitation proceedings) claims of other claimants adjudicated in proceedings in which the challenging claimants did not participate under the CLC (Art. X CLC).</p>				
--	--	--	--	--	--