



QUESTIONNAIRE

1. Licensing

Does an insurer wanting to insure the risks under the Convention referred to above need a license?

Yes, a general license to write property loss/damage and/or liability insurance will suffice (Arts. 3 & 13 Decree Law 400/1970). There are no special supervisory conditions attached to insure risks under the Conventions referred to above.

If so,

1.1 must it be a national license, or do your respective authorities accept licenses issued by foreign bodies?

Insurers authorised to carry on their business in an EU/EEA Country can also do so in Greece through a branch without the need for a separate license (Art. 2 & 2a 42a Decree Law 400/1970). Other insurers must submit to the Greek certification procedure (Art. 3a & 20 Decree Law 400/1970). A Greek 'national' license will be valid for carrying on insurance business throughout the EU/EEA (Art. 3 Decree Law 400/1970). Mutual assurance associations (the so-called P&I Clubs) are also acceptable as insurers in this context (Art. 35 Decree Law 400/1970).

1.2 What are the consequences if an insurer issues a policy without the respective license?

The policy will be invalid as an insurance contract but will remain valid as a general undertaking (Athens Court of Appeal no. 4883/2007). There will also be administrative (Art. 120 Decree Law 400/1970) and, probably, criminal consequences (e.g. Art. 43 & 47 Decree Law 400/1970).

1.3 Is there an obligation of a licensed insurer to conclude insurance contracts?

No

2. Certification

2.1 Will a certificate issued by a convention state

2.1.1 be recognized in your state without any preconditions?

Yes

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2.1.2 be subject to investigation whether insurance satisfying the convention requirements actually exist?

Normally not. Pursuant Art. 7 (9) of the Bunkers Convention, Greece may request consultation with the issuing or certifying state should it believe that the insurer named in the insurance certificate is not financially capable of meeting the obligation imposed by the said Convention.

2.1.3 be rejected if there is evidence that there no valid insurance at all or that the insurance is not satisfying the convention requirements?

In principle, yes.

2.2 Does the authority in your state in charge of issuing the certificate

2.2.1 require a license of your state or is it sufficient that the insurer is licensed in another state?

It is sufficient that the insurer is licensed in another state party to the specific Convention(s).

2.2.2 investigate the insurance conditions before issuing a certificate?

As a rule, no. The State Authorities will normally accept the insurer's certificate that it has covered the vessel in respect of the liability concerned.

2.2.3 investigate the financial standing of the insurer?

As a rule, no.

2.2.4 investigate the license of the insurer?

Yes

3. Statutory Law

3.1 Does your national law contain any provisions specifically designed to transform the above mentioned provisions in international conventions into your national law?

Under Greek law, once an international convention is ratified by Parliament and the convention and the law ratifying the same are published in the Government Gazette, the convention automatically becomes part of Greek law and takes precedence over any conflicting provisions of Greek internal law (Art. 28(1) of the Greek Constitution).

If so, could you

3.1.1 summarize the main characteristics of those provisions?

See under 3.1 above

3.1.2 provide the IWG with an English translation of those provisions?

The said Art. 28(1) of the Constitution reads thus in English translation:

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The generally accepted rules of international law, as well as the international conventions, upon being ratified by statute and becoming operational in accordance with their respective terms, constitute an integral part of internal Greek law and take precedence over any other conflicting legal provision. The application of international law and the international conventions to foreigners is always subject to the principle of reciprocity.

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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?

Article 26 of Law 2496/1997 contains provisions about mandatory insurance. It reads as follows:

“Article 26 – Compulsory General Third Party Liability Insurance

1) Whenever third party insurance is compulsory by law, the third party shall have a direct claim even for sums exceeding the insured sum, up to the limit for which insurance is compulsory.

2) The insurer may not raise objections arising from the insurance contract against the third party which has suffered loss, unless that party is the policyholder or a person other than the policyholder covered under the policy or, provided that they cohabit, the spouse and relatives up to the second degree, whether by direct relationship or marriage, of either the policyholder or of the insured. If the insurer makes a payment to a third party, although not obliged to do so pursuant to the provisions herein, the insurer shall be subrogated to the third party’s claims against the insured, up to the amount paid. Prescription shall not accrue prior to the lapse of six months following the subrogation.

3) Grounds justifying the termination or expiry of the insurance contract may not be invoked against the third party suffering loss or damage until the lapse of one month from the date on which the insurer notifies the termination to the authority or legal entity designated for such a purpose. In such instances, the insurer shall not be held liable to the extent that the

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third party is able to obtain indemnity from another insurer for his losses, or from a social insurer.

4) If more than one third party has suffered loss or damage, each shall be indemnified proportionately. If the insurance money paid to one of the claimants exceeds his proportion of the insured sum, the insurer shall be released from its obligation towards the others for proportionate claims in excess of the insured sum, unless the insurer made the above payment whilst aware of the existence of the other claims. The remaining claimants shall, however, have a claim against the indemnified third party for the refund of the sums received in excess of the allotted proportion.

5) The authorities or corporations authorised to receive insurers' notices, the procedure to be followed in order to certify compliance with the requirements of compulsory insurance, as well as the necessary details pertaining to the operation of compulsory third party insurance shall be specified by decision of the Minister of Development and the competent Minister in each case and published in the Government Gazette. The provisions of this Article shall not apply in the event that the department or the legal entity has not been specified.

6) The provisions of this Article shall not apply to Motor Insurance."

If so, could you

3.2.1 summarize the main characteristics of those provisions?

See above

3.2.2 provide the IWG with an English translation of those provisions?

See above

3.3 What does your private international law provide for as the applicable law,

3.3.1 if the claimants are national persons or companies, but if the insurer is a foreign company?

3.3.2 if the claimants are foreign persons and companies, but if the insurer is a

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national company?

3.3.3 if the claimants and the insurer are foreign companies?

As a rule, insurance policies concluded in Greece and/or referring to loss/damage occurring in Greece are subject to Greek law (Art. 7 Reg. 593/2008/EC & Art. 4 Decree Law 400/1970). By way of exception, nonetheless, in the case of insurances on vessels and/or covering the civil liability from the operation of vessels, the law governing the insurance contract is freely chosen (lex voluntatis) (Art. 7(2) Reg. 593/2008/EC and Art. 4 & 13.3 Decree Law 400/1970).

4. Jurisdiction/Proceedings

4.1 Does your national law contain provisions on jurisdiction of courts for direct claims against Insurers?

Yes, but only in exceptional cases, such as in motor traffic insurance, and/or whenever an international convention so stipulates.

If so, does your national law

4.1.1 allow foreign claimants to directly sue national insurers in your national courts?

Yes

4.1.2 allow foreign and national claimants to directly sue foreign insurers in your national courts?

Yes

4.2 Does your national law allow that the direct claims against an insurer are subject to an arbitration clause?

Yes, but in practice this is possible only after the case has arisen, by way of an agreement between the insurer and the claimant to arbitrate, as an arbitration clause in the insurance contract would not be binding on a third party.

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?

No, but will have significant persuasive value

If so,

4.3.1 does this also apply to judgements in default?

4.3.2 can the insurer invoke that the court having decided on the claim against the party liable has not had jurisdiction?

4.3.3 can the insurer invoke that the party liable has not been properly served with proceedings and no opportunity to defend itself?

4.3.4 can the party liable invoke that the party liable has not defended itself properly?

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Not applicable

4.5 Can the claimant under your national law sue the person liable and the insurer in the same proceedings?

Yes

If so,

4.5.1 are there any requirements as to the domicile of the party liable or the insurer?

Whenever the Brussels I Regulation applies, jurisdiction is entirely governed by the terms of the Regulation. Whenever it does not, the relevant provisions of the Greek Code of Civil Procedure (Art. 22-44) will apply. Normally, both the liable party and the directly liable insurer will be sued by the third party (a) before the courts of the place where either one of them is domiciled or (b) before the courts of the place where an accident involving tort has occurred. Different provisions can apply in cases governed by the conventions, such as the CLC (Presidential Decree 666/1982).

4.5.2 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?

Yes

5. Particulars of direct action

5.1 Does your national law contain provisions according to which a direct claimant has to fulfil requirements for commencing a direct action against an insurer?

No particular requirements are called for.

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?

No, it does not.

5.3 What defences does your national law allow an insurer against a direct claim?

The insurer cannot normally use the contractual defences set out in the policy against the third party.

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?

No and no.

5.5 Are there any time limits in your national law for a direct action against an insurer?

Depends on the case. The Conventions normally stipulate specific time limits.

If so,

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5.5.1 what protects such a time limit (e.g court proceedings; demand letters)?

Demand letters or notices do not suffice. Court proceedings are necessary.

5.5.2 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?

No, it cannot be so extended (Art. 275 Civil Code).

5.6 Under your national law, are the party liable and the insurer jointly liable?

Yes, but the insurer is only liable up to the monetary limits provided by the statute providing for direct action in each case.

If so,

5.6.1 what legal consequences does your national law provide for such joint liability?

See under 5.6 above

5.6.2 can the insurer file a cross action against his insured in the same proceedings?

Yes

5.6.3 do your courts in such a situation give effect to a jurisdiction or arbitration clause in the insurance policy?

Jurisdiction and arbitration clauses in insurance contracts are not always valid, especially whenever the Brussels I Regulation applies. Whenever they are deemed valid, the courts will give effect to the same.

5.7 Does your national law allow that the claimant assigns his direct claims to a third party?

Yes, and there are also cases where the said claims are assigned to a social security agency ex lege.

If so,

5.7.1 are there any requirements for the validity of the assignment?

In voluntary assignments, there are only the general requirements for any valid contract. Ex lege assignments occur automatically.

5.8 What qualifies under your national law as a wilful misconduct?

Seeing that our Civil Code does not contain a relevant definition, the Courts normally adopted the wilful misconduct definition set out in Art. 27 of the Penal Code, reading thus in translation:

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1. There acts ex dolo (deliberately) he who wishes to produce the circumstances, which make up the concept of a punishable act under law; also, he who knows that the said circumstances may flow out of his act and accepts this.

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2. *Whenever the law prescribes that the act must have been committed in the knowledge of a particular circumstance, contingent wilful misconduct will not suffice. And, whenever the law prescribes that the act must have been committed with the intent of bringing about a particular result, it is required that the culprit must have intended to bring about this result.*

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In summary, therefore, Greek law knows of two types of wilful misconduct (dolus): the immediate or direct wilful misconduct, which is in evidence whenever the acting person deliberately and intentionally produces (or attempts to produce) a particular result or outcome, and the indirect or contingent wilful misconduct, which is in evidence whenever the acting person is interested in producing a different outcome, but, in the process of so doing, realises that some other negative outcome may occur and accepts (tolerates) this eventuality. For instance, a person who places a bomb with the intention of causing property damage, but who also realises and accepts the possibility that people can be killed or injured thereby, acts with contingent wilful misconduct in causing the deaths/personal injuries.

The term “wilful misconduct” as applied in the above International Conventions regarding civil liability has been interpreted by Greek Courts to cover not only the above cases of direct and indirect dolus but also a particular case of negligence whereby the standard of diligence in which the party ought to have had acted is not measured objectively by the standard of the average party in the same circumstances but by a subjective standard whereby it is proven that the party in question acted although he knew that its actions would increase the possibility of the loss or damage and they were reckless about it without necessarily accepting such an outcome (Areios Pagos Decision in plenary session 18/1998 which was a case which turned on the interpretation of the term “wilful misconduct” as applied in the context of CMR).

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?

Yes, it does. The contractual stipulations in the insurance policy remain valid as between the insurer and the assured, even though the insurer cannot normally plead the same via-à-vis the third party.

5.10 How is limitation of liability affected under your national law in cases of direct actions?

Any contractual right to limit liability does not apply as against the direct action claimant. The insurer will be liable up to any statutory limits provided in favour of the assured irrespective of any agreed limitation.

5.11 Does your national law contain consequences, if the insurance contract contains

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provisions which are not consistent with the Conventions referred to above?

An insurer issuing a certificate, free of any reservations, to the effect that it has insured the shipowner in respect of the Conventions, or any of them, will be liable under the terms and the limits of the respective Conventions, irrespective of any provisions in the insurance contracts.

If so,

5.11.1 are such provisions invalid?

5.11.2 is the whole contract invalid?

The contract and its terms remain valid as between the insurer and the assured; they are not binding on third parties, however. If the insurer's certificate does include reservations, cf. under 5.11.3 below.

5.11.3 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?

As aforesaid, once the insurer certifies cover under the Conventions without any reservation, it is bound by the Conventions no matter what the contract stipulates. If, on the other hand, the certificate includes reservations, the insurer will not be liable for claims encompassed by the reservations, but, then, the State Authorities must not issue the official certificate. Art. 7(6) of the Bunkers Convention is a case in point.

6. State Liability

Does your national law provide for liability of the state where to appropriate authority issues a certificate under the Convention, if it turns out

6.1 that there is no insurance contract at all?

6.2 that the insurance contract is not consistent with the provisions of the Conventions?

6.3 that the insurer is not financially stable and cannot satisfy all direct claims?

The foregoing have never been tested in Greece. In principle, however, the State would be liable in tort (Articles 105-106 of the Introductory Law to the Civil Code) if its functionaries acted culpably when issuing a Convention certificate.

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