**COMITÉ MARITIME INTERNATIONAL**

**Standing Committee on Marine Insurance**

**Questionnaire for National MLA’s on Rights of Direct Action Against Insurers**

Note: References to “national laws” in this Questionnaire includes any statutory law of whatever level in each nation and, for common law jurisdictions, any caselaw precedent establishing a right of direct action.

**1. Direct action against liability insurer by third party claimants**

* 1. Does your national law provide for a right of direct action against liability insurers by third party claimants?

The Third Party (Rights Against Insurers) Act 1930 provides for a right of direct action against liability insurers by third party claimants in the event where the insured becomes bankrupt or makes a composition or arrangement with his creditors or if the insured is a company where insured is wound up or resolution for voluntary winding up is passed or a receiver or manager has been appointed or if possession is taken on behalf of holders of debentures secured by a floating charge or of any property comprised in or subject to the charge; where either before or after that event any such liability is incurred by the insured, his rights against the insurer under the contract in respect of that liability shall be transferred to and vest in the third party to whom the liability was so incurred.

The Contracts (Rights of Third Parties) Act 2001 allows third parties to directly enforce a term of contract against the insurer where the contract expressly provides that the third party may, or where the term purports to confer a benefit on the third party. Contracts for carriage of goods by sea, rail, road or air are expressly excluded from the operation of the said Act but this exclusion does not operate in relation to contracts of insurance relating to a contract for carriage of goods by sea, rail or road or air.

If so,

* 1. Does such right of direct action apply to any claim, either in tort or in contract?

In the Third Party (Rights Against Insurers) Act 1930, the rights against the insurer under the contract in respect of the liability is transferred to and vested in the third party. In the Contracts (Rights of Third Parties) Act 2001, the right of direct action arises in contract.

If not,

1.3 Is there a right of direct action granted to specific categories of claimants?

In the Contracts (Rights of Third Parties) Act 2001 third parties who are expressly provided as benefitting or purported to benefit have a direct action against the insurer in a contract between the insurer and the insured.

**2. Jurisdiction**

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

Claims above S$250,000 are heard in the General Division of the High Courts while claims of S$250,000 and below are heard in the State Courts.

2.2 Does your national law allow that the direct claims against an insurer are subject to an arbitration clause stipulated into the contract of insurance?

Section 9 of the Contracts (Rights of Third Parties) Act 2001 expressly state that where the right to enforce a contractual term is subject to the submission of disputes to arbitration, the third party is treated as a party to the arbitration agreement as regards disputes between the third party and the promisor relating to the enforcement of the term by the third party.

**3. Applicable law**

3.1 Does your national law contain special conflict of laws provisions on the applicable law governing the right of direct action against Insurers?

There are no special conflict of laws provisions.

If not,

3.2 Is the proper law governing such direct action established on the basis of the general conflict of laws rules applicable to the insurance contract stipulated with the liability insurers, or to the claim in tort or in contract brought by the third party claimant, or on the basis of other general rules?

The proper law governing such direct action is based on general rules of conflicts of law.

**4. Procedure**

4.1 Under your national law, can the claimant sue the person liable and the insurer in the same proceedings?

The suit can be brought against the person liable and the insurer may be joined as a third party (Order 10, Rules of Court 2021).

4.2 Can the third party sue directly the insurer only?

This is possible under s 1 of the Third Party (Rights Against Insurers) Act 1930 and s 2 of the Contracts (Rights of Third Parties) Act 2001.

4.3 Can the liable party, as a respondent, ask that the insurer is joined as a further defendant and ask that the decision be issued directly against the insurer?

It is the claimant’s discretion whom to sue, but the liable party can join the insurer as a third party to the proceedings.

4.4 Can the insurer, as a respondent, ask that the party liable is joined as a further defendant?

It is the claimant’s discretion whom to sue, but the insurer can join the party liable as a third party to the proceedings.

4.5 In case the liable party and the insurer are joined as respondents in the same proceedings, can the insurer file in the same proceedings an action seeking recovery from the insured under the terms of the contract of insurance for the indemnity to be paid by the insurers to the third party?

If the insurance contract allows recovery from the insured, the insurer can file a counterclaim against the insured.

4.6 What are the rules for jurisdiction for joining the third party and/or filing action between the respondents in the above cases?

For the matter to be within the jurisdiction of the Singapore courts, respondents have to be in Singapore, otherwise permission to serve the joinder out of jurisdiction must be obtained from the courts.

**5. Defences**

5.1 Under your national law, in case the insurer is directly sued by the third party

5.1.1 Can the insurer raise any defence which would be available to the liable party as regards the merits and quantum, whether or not the latter is joined in the proceedings as a defendant?

The insurer can raise any defence available to the liable party on merits and quantum, whether or not the liable party is joined as a party (s 4 Contracts (Rights of Third Parties) Act 2001; s 1(4) Third Parties (Rights Against Insurers) Act 1930.

5.2 Can the insurer benefit of the global limitation of liability – if any – available to the liable party, whether or not the latter is joined in the proceedings as a defendant?

The insurer can take benefit of the global limitation of liability available to the liable party whether or not the latter is joined in the proceedings as a defendant (s 4 Contracts (Rights of Third Parties) Act 2001; s 1(4) Third Parties (Rights Against Insurers) Act 1930.

5.3 Can the insurer raise defences based on the terms of the insurance contract stipulated with the liable party against the action filed by the third party?

The insurer can raise defences based on terms of the insurance contract stipulated with the liable party against the action filed by the third party (s 4 Contracts (Rights of Third Parties) Act 2001; s 1(4) Third Parties (Rights Against Insurers) Act 1930

5.4 Does a separate judgement against the liable party bind the courts of your country in a direct action against an insurer as regards the merits and quantum?

Separate judgments against the liable party may be used to ‘bind’ the Singapore courts in a direct action against an insurer as regards merits and quantum under the doctrine of *res judicata*.

If so,

5.4.1 does this also apply to judgements in default?

Yes, it applies to judgments in default that are final and conclusive.

5.4.2 does this also apply to foreign judgements?

Yes as Singapore recognises foreign judgments that satisfy the requirements under the Reciprocal Enforcement of Foreign Judgments Act 1959, Reciprocal Enforcement of Commonwealth Judgments Act 1921 and the Choice of Court Agreements Act 2016.

For judgments not within the scope of the above statutes, common law principles of recognition of foreign judgments apply. These foreign judgments have to be final and conclusive, given by a court of competent jurisdiction and must be for a fixed sum of money.

**6. Time limits**

6.1. Under your national law, are there any time limits for a direct action against an insurer?

Under the Limitation Act, contract and tort actions have to be commenced within 6 years of the date the cause of action accrued.

If so,

6.1.1 how can they be protected?

The third party can file a protective writ or write to the insurer to seek their consent to an extension of the limitation period.

6.2 Is it possible for the third party to sue directly the insurer even if the time limit of the action against the liable party has not been protected?

Aside from latent injuries and damage or fraud and misrepresentation, it is not possible for the third party to sue the insurer directly if the time limit has not been protected and has become time barred.