**COMITÉ MARITIME INTERNATIONAL**

**Standing Committee on Marine Insurance**

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

**Responses Of The Turkish Maritime Law Association**

**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?

Yes. Article 1478 of the Turkish Commercial Code (TCC) in force since July 2012 explicitly grants the third party claimants suffering a loss falling within the scope of the insurance contract to directly bring a claim against liability insurers. Apart from this general provision with the broadest scope of application, in other provisions such as Article 97 of the Highway Traffic Act no. 2918, Article 21 of the Highway Transport Act no. 4925, the amended Article 12/a of the Travel Agencies Union Act, Article 130 of the Code of Obligation as well as the Article 6 of the Law on Urgent Interventions due to the Pollution of Maritime Environment by Oil or Other Harmful Substances and the Fundamental Principles on the Reimbursement of Damages no. 5312 provide for a right to direct application. Besides these provisions available in national statutes, international treaties such as Protocol of 1992 to Amend The International Convention on Civil Liability for Oil Pollution Damage, 1969 to which Turkey is a party also provide for an entitlement for claimants to bring direct claims against insurers for damages.

If so,

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

The relevant Turkish law provision –including above all the one cited above- doesn’t entail any clear or implicit restriction as to the legal nature of the grounds on which the claims may be brought under TCC Article 1478, as long as that ground of claim is covered by the relevant insurance policy.

If not,

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

Although the claimant’s right to bring a direct claim against the insurer is explicitly granted under Article 34(4) of the Turkish Code of Private International Law and International Civil Procedure (CPIL), no similar provision is available with regards to claim arising from contract law, and the ambiguity on this point would presumably remain open pending a conclusive decision by the Turkish Court of Cassation (Supreme Court of Appeals).

**2. Jurisdiction**

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

According to the general provision of Article 34 of the CPIL, court actions arising from tort claims in disputes of an international character shall be tried in accordance with Turkish law if the tortuous act was committed in Turkey. On the other hand, paragraph (4) of the same Article specifically provides vis-à-vis insurance disputes that are subject to Turkish law –either by virtue of the law applicable to the tort claim or insurance contract-, the third-party claimant may bring an action directly against the insurer before Turkish 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?

The claimants are allowed to bring direct claims against the insurers in an alternative dispute resolution (i.e., arbitration) mechanism as well as in a trial before domestic courts pursuant to the relevant provisions of the Insurance Law no. 5684.

**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?

Pursuant to Article 34(1) of CPIL, tort claims shall be subject to the law of the country in which the tort was committed. It should be reiterated in this regard that Article 34(4) of the same Code allows the claimant to bring direct claims against the insurer if the law applicable either to the tort claim or insurance contract permit this. Therefore, if the Turkish law is applicable on either one of these two grounds of litigation then the claimant shall be able to bring direct claims against the insurer.

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 strict interpretation of the relevant provision –which is Article 34(4) of CPIL- implies that it is applicable solely to tort claims.

**4. Procedure**

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

Yes, actually pursuant to the mandatory provisions of the Turkish law, more precisely Article 1475(2) of TCC, the insured should notify the insurer about the damage claims brought against him/her immediately after the of the receipt of this claims, and ask to join him/her in the defence against the third party.

4.2 Can the third party sue directly the insurer only?

Yes, it can, as explained above.

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?

Yes, after the receiving notice of the claims brought against him/her by the third-party claimant the insured should inform the insurer about such claims and ask whether it will take control of the proceedings and help the insured in his/her defence against the claims, under Article 1475(2) of TCC.

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

No, if direct claims are brought against to the insurer.

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?

It can do so only in exceptional cases, such as for instance those laid down in Article B.4 in the General Provisions on Highway Compulsory Financial Responsibility Insurance, which include cases of reimbursement by the insurer due to the insured’s intoxication by alcohol, drugs or other similar substances.

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

In cases that the insurer joins in the action brought against the insured as a defendant under Article 1475(2), the same court which hears the claimant’s action against the insured will continue to exercise jurisdiction during the new course of proceedings. It should be mentioned in this regard that the insurer doesn’t join the action as a separate individual but helps the insured party’s defence on the latter’s behalf.

**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?

Yes, it can raise all defences available to the liable party regarding the merits and quantum other than right to set-off as far as optional liability insurances are concerned. It should be still borne in mind, however, that the liability of the insurer against the claimant continues up until the insurance sum, any agreement between the insurer and the insured for a partial discharge of the insurer from liability notwithstanding.

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?

Yes, although its liability shall still continue up to the insurance sum.

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?

Yes, it can rely on such defences stemming from the terms of the insurance policy between it and the insured.

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?

Yes, the final decisions taken by courts on such issues would be recognised.

If so,

5.4.1 does this also apply to judgements in default? Yes.

5.4.2 does this also apply to foreign judgements?

Yes, the final decisions taken by foreign courts on such issues would be recognised and, based on the request of one of the parties to the dispute, enforced in Turkey in accordance with Article 52 of CPIL provided that the conditions enumerated in Article 54 of the same law are satisfied.

**6. Time limits**

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

Yes, Article 1482 of TCC foresees a general limitation period of 10 years beginning from the time when the claimant’s damage claim becomes due.

If so,

6.1.1 how can they be protected?

It can be protected in cases in which the running of the limitation period is suspended or interrupted based on one of the reasons laid down in Article 154 of the Turkish Code of Obligations.

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?

Yes. The Court does not hear the issue of the expiry of limitation period on its own initiative. The Defendant should raise the defence of expiration of time limit. In such a case, 10 years time limit apply to the claimant.