

DRAFT – 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

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

If so,

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

If not,

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

2. Jurisdiction

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

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?

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?

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?

4. Procedure

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

4.2 Can the third party sue directly the insurer only?

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?

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

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?

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

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?

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?

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?

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?

If so,

5.4.1 does this also apply to judgements in default?

5.4.2 does this also apply to foreign judgements?

6. Time limits

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

If so,

6.1.1 how can they be protected?

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?

