

CMI Questionnaire
Unification of procedural rules in limitation conventions

Replies received from Argentina, Chile, China, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Mexico, Netherlands, Norway, Slovenia, Sweden, Venezuela

Introduction

Argentina	<p>1. Argentina is a Party to the CLC PROT 1992, but not a party to either the LLMC 1976 and the HNS 1992. Thus, the comments and information provided in this paper of the Argentine Maritime Law Association should be exclusively related to the CLC PROT 1992.</p> <p>2. Claims out of oil pollution are not specifically contemplated among those credits for which a ship-owner can limit its liability, but they fall into the so called "claims for loss of property or rights or damages arising therefrom" set out in Section 177 (b) of the Argentine Navigation Act. Therefore, the procedural rules on the shipowner's limitation of liability put forth in said Navigation Act are applicable to the cases governed by the CLC PROT 1992.</p>
Chile	<p>According to Chilean Law, the constitution of the limitation fund in respect of maritime claims is ruled by the Code of Commerce (C. Com).</p> <p>As far as claims relating to oil pollution are concerned, although the person entitled to limit liability must constitute a separate fund, the procedural rules are the same of the Commercial Code. Moreover, Chile has not ratified the LLMC, but some of its rules have been incorporated by the Code.</p> <p>Bearing in mind the above, we reply the questionnaire as follows</p>
Finland	<p>Finland has denounced the LLMC 1976 with effect from 13 May 2004, and has ratified both the Protocol of 1996 to amend the LLMC 1976 and the CLC 1992. General rules on limitation of liability for maritime claims are included in Chapter 9 of the Finnish Maritime Code (674/1994), while Chapter 10 contains provisions on liability for oil pollution damage. Furthermore, rules on limitation funds covering both limitation actions and claims for compensation for oil pollution damage are included in Chapter 12. Finland has not yet ratified the HNS Convention of 1996.</p>
Greece	<p><i>The Pollution Convention</i></p> <p>Greece acceded to the International Convention on Civil Liability for Oil Pollution Damage 1969 (The CLC 1969) on 29 June 1976. The CLC 1969 was enacted in Greece by L.314/1976 (Ratification of the Brussels International Convention on Civil Liability for Oil Pollution Damage 1969 and Associated Matters) and entered into force on 27 September 1976.</p> <p>Greece also acceded to the 1976 Protocol to the International Convention on Civil Liability for Oil Pollution Damage (The CLC PROT 1976) on 10 May 1989. The CLC PROT 1976 was enacted in Greece by the P.D.81/1989 (<i>Acceptance of the 1976 Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969</i>) and entered into force on 8 August 1989. The CLC 1969 was denounced on 2 May 1997 with effect as of 15 May 1998.</p> <p>Greece ratified the 1992 Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage (The CLC PROT</p>

	<p>1992) on 9 October 1995. The CLC PROT 1992 was enacted in Greece by the P.D.197/1995 (<i>Ratification of the 1992 Protocol to amend the 1969 International Convention on Civil Liability for Oil Pollution Damage and Associated Matters</i>) and entered into force on 9 October 1996. Today Greece applies the CLC 1969 as amended by the CLC PROT 1992 (hereinafter “<i>the 1992 Liability Convention</i>”).</p> <p>Further Greece has adopted a number of procedural rules in order to give effect to the provisions of the convention. These rules are found in the Greek Presidential Decree No. 666/1982 (Foundation, Management and Distribution of the Shipowner’s Limitation Fund for Oil Pollution Damage), as amended (the Greek Pollution Decree).</p> <p><i>The LLMC Convention</i></p> <p>Greece acceded to the International Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976) on 3 July 1991. The LLMC 1976 was enacted in Greece by L. 1923/1991 (<i>Ratification of the International Convention on Limitation of Liability for Maritime Claims signed in London on 19 November 1976</i>) and entered into force in the internal legal order on 1 November 1991. In practice, the Convention’s provisions set aside, in the great majority of cases, the relevant substantial provisions of the Hellenic Code of Private Maritime Law [hereinafter <i>CPML</i>] regulating the same matters (arts. 85 et sqq). According to the unanimous opinion of the legal doctrine and the jurisprudence, the 1976 LLMC applies even in cases in which interests of only Greek nationals are involved.</p> <p>Greece did not adopt a set of new procedure rules - in the way it did for the Pollution Convention - in order to give effect to the provisions of the 1976 LLMC Convention. According to the prevailing view, adopted by the Greek Courts, the procedural provisions of the CPML (arts 90-104) would apply by analogy in order to cover the matters not regulated by the Convention, and to the extent they are compatible with the provisions of the latter. Another point of view proposes the application by analogy of the Pollution Decree (P.D. 666/1982).</p> <p><i>The HNS Convention</i></p> <p>Greece has not yet acceded to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996 (HNS 1996).</p>
Italy	<p>Italy is not yet party to the LLMC Convention and to the HNS Convention.</p> <p>It is party to the CLC Convention as amended by the 1992 Protocol (which entered into force in Italy on 16th November 2000).</p> <p>The comments and responses that follow relate, therefore, only to the CLC 1969 and the CLC 1992.</p> <p>Article 3 of Law 6 April 1977, No. 185 authorizing the President of the Republic to ratify the CLC 1969, authorized the Government to issue a decree, having the value of a law for the purpose of setting out the rules necessary for the fulfilment of the obligations arising out of the said Convention. The Decree of the President of the Republic authorized by the aforesaid Law was issued on 27 May 1978 with No. 504 (dPR 504/1978). It set out certain specific provisions in respect of the constitution of the fund (article 7) and then identified the competent court and provided that existing rules of procedure applicable in respect of the procedure for the limitation of liability of the owner of the tanker was governed by the rules on the domestic limitation of liability of ship operators, “in so far as applicable”. This has given rise to problems, since the Italian system differs significantly from that adopted by the CLC, in as much as it is based on the value of the ship at the end of the voyage during which the event triggering the request of limitation occurred, provided it is not below one fifth and not above two fifths of the sound value; if it is lower, the limit is equal to one fifth of the sound value, while if it is higher the limit is equal to two fifths of the sound and damaged conditions and generally are tailored to the domestic limitation system. The problem of their application to limitation proceedings under the CLC 1969 has been considered in the case of the</p>

	<p><i>“Patmos”</i> by the Tribunal of Messina (judgment of 24 June 1985, [1986] Dir. Mar. 439) and then by the Tribunal of Genoa in the case of the <i>“Haven”</i> (judgment 29 May 1991, [1991] Dir. Mar. 793). For an analysis of the applicability of the domestic procedural rules in respect of limitation proceeding under the CLC 1969 see F. Berlingieri, <i>Problemi connessi con l'entrata in vigore per l'Italia della Convenzione di Bruxelles 29 novembre 1969</i>, [1979] Dir. Mar. 307.</p>
Mexico	<p>Mexico has ratified LLMC 1976 and CLC PROT 1992 and has not ratified the HNS nor LLMC PROT 1996. Claims for Oil Pollution are handled according to CLC PROT 1992 and the Fund Convention 1971 and Fund PROT 1992. For both, Mexican Navigation Act refers to above conventions.</p>
Norway	<p><u>Norwegian Legislation</u></p> <p>1) Norway has ratified the LLMC Convention 1976 as amended by the 1996 Protocols thereto, and the 1996 version of the Convention (“the 1996 Convention”) has been the basis for the existing provisions in the Norwegian Maritime Code (MC) 1994 chapter 9. Accordingly, Norway is no longer a party to the 1976 Convention in its original version. The MC chapter 9 (§§ 171-182) is applicable in all cases where questions of limitation of liability are brought before a Norwegian court (MC § 182). Norway has, according to art. 18 para. 1 of the 1996 Convention, made a reservation excluding the application of the 1996 Convention to all claims referred to in art. 2, para.1 (d) and (e). Such claims for wreck removal and removal of cargo, including – when relevant thereto – claims to avert or minimize loss as referred to in art. 2, para. 1 (f), are subject to a separate limit of liability according to the MC §§ 172a and 175a. Under these provisions the minimum limit for each accident is 2 mill. SDR and increases according to tonnage by 2 000 SDR per ton up to 10 000 tons and 500 SDR per ton for tonnage in excess thereof. In all other respects the limitation of liability of claims is implemented in particular cases in accordance with a principle of global limitation, the limitation limits and the procedural rules applicable to limitation of liability according to the 1996 Convention.</p> <p>2) Norway has ratified the CLC Convention 1992 and the Fund Convention 1992, and the provisions thereof have been incorporated in the MC chapter 10 (§§ 191-206).</p> <p>3) Norway has not yet implemented the HNS Convention 1996, but in 2004 the Maritime Law Revision Committee submitted a report recommending this to be done, and the report contains the necessary draft legislation – a new chapter 11 in the MC (NOU 2004:21 “Erstatningsansvar ved sjøtransport av farlig gods”/ “A liability regime for the carriage by sea of dangerous goods”). It is expected that a bill be brought before the parliament with the spring term of 2006.</p> <p>4) The main principles as to procedure relating to the three limitation of liability systems now in force have been reflected in certain provisions contained in the MC chapter 9 or 10. Most of the provisions contained in the relevant Convention are included therein. In addition, however, a separate chapter 12 of MC (§§ 231-245) sets out detailed procedural rules relating to the handling of particular limitation cases in the courts, cf. e.g the 1996 Convention art. 14. These rules are generally applicable regardless of whether limitation is sought according to chapter 9, §§ 172a and 175a, or chapter 10 of MC. It is proposed in the new draft HNS legislation that these rules shall also apply in respect of limitation of liability for HNS claims. A major part of the questions contained in the Questionnaire will have to be answered on the basis of these procedural rules applicable to all types of limitation funds.</p>
Slovenia	<p>1. Slovenia is a Party to the CLC PROT 1992 and the HNS 1996, but not a party to the LLMC 1976.</p> <p>2. The Slovenian Maritime code is based on the LLMC Convention.</p>
Venezuela	<p>Venezuela has not ratified the Conventions relating to Limitation of the Liability of Owners of Sea-going Ships of 1957 and Limitation of Liability for Maritime Claims of 1976.</p>

	<p>However, Venezuela has incorporated the International Conventions on its new Venezuelan Maritime Commerce Law (VMCL), in force since November 2001.</p> <p>Consequently, the Venezuelan system of limitation of liability follows the principles of the 1976 International Convention on Limitation of Liability for Maritime Claims.</p> <p>According with article 14 of LLMC Convention, rules of procedure shall be governed by the law of the State Party in which the fund is constituted.</p> <p>For that reason, VMCL in its Section IV (articles 52 to 74) deals with the rule governing the constitution of a fund. This proceeding is applicable in all cases of limitation of liability allowed by national law, including international conventions ratified by Venezuela. (i.e. CLC and Fund Convention).</p> <p>Such proceeding follows the principles of LLMC Convention, and French Decree No. 67-967 of 27 October 1967. Such Proceeding as per Venezuelan principles of classification of the laws into substantive and procedural laws is an insolvency proceeding as the bankruptcy proceedings so it is a procedural law.</p>
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Question (a): *Whether the constitution of the limitation fund is a condition for the availability of the benefit of limitation.*

Argentina	As mentioned above Argentina is not a Party to the LLMC.
Chile	The constitution of the limitation fund is not a condition for the availability of the benefit of limitation, but whilst the constitution has not occurred, the person entitled to limit liability cannot rely on the effects of the constitution, such as the bar to other actions and the release of the arrest of ships.
China	No.
Denmark	The answer is no. The position is set out in the Danish Merchant Shipping Act ("MSA"), Section 180(1), see further below under item (b).
Finland	(Only in respect of the LLMC Convention) According to the FMC, limitation of liability may be invoked notwithstanding that a limitation fund has not been constituted (cf. Chapter 9, § 7 and § 9). See concerning oil pollution damage, the next reply.
France	The constitution of the limitation fund is not a condition for the availability of the benefit of limitation. The right to limit liability can be raised, as a mean of defence, in the proceedings on the merits even if the fund has not been constituted. However, pursuant to article 62 of the law of 3 January 1967, the constitution of the limitation fund is necessary to prevent the claimants from arresting the vessel in respect of which the fund has been constituted or any other assets of his owner or to release them from an arrest.
Germany	According to section 487 e II, HGB a person liable may not only invoke the right to limit liability if a limitation fund has been constituted.
Greece	<i>The Pollution Convention</i> The constitution of the limitation fund is a condition for the availability of the benefit of limitation of liability (Article 4 para 1 point (c) of the Pollution Decree). <i>The LLMC Convention</i> Greece has not included in its national law a provision such as the one envisaged by Article 10 para. 1 of the LLMC Convention.

	Therefore, according to Article 10 para. 1 of the LLMC Convention, limitation of liability is available whether or not the person who evokes the limitation constitutes a limitation fund.
Ireland	(LLMC only) - LLMC - No, a limitation fund does not need to be constituted in order to avail of the benefit of limitation. ¹ - CLC – N/A - HNS – N/A
Italy	Yes it is, pursuant to article V(3) of the CLC. Article 7 of dPR 504/1978 provides that the owner of the ship in case of pollution damage may apply for the limitation of his liability as provided by art. V of the CLC by means of the production of a suitable bank or insurance guarantee, issued in conformity with the laws and regulations that authorise and govern the banking and insurance services in Italy.
Mexico	The fund can be constituted or guaranteed, but in order to benefit from the limitation, either the fund must be constituted or guaranteed. Forms of guarantee normally accepted by Mexican Courts are bonds issued by Mexican bonding companies, deposit, letter of credit, etc.
Netherlands	Pursuant to Dutch law (Article 642a (1) of the Dutch Code of Civil Procedure (CCP)), the constitution of a limitation fund is a prerequisite that must be fulfilled before a party can benefit from the limitation of liability provisions in Articles 8:750 and 8:751 of the Dutch Civil Code (DCC).
Norway	According to MC § 180 the liability for a maritime claim may be limited even if a limitation fund has not been established. However, in such cases the court shall, when applying the limit of liability, only take into account the claims which are included in the action before the court. If the person liable considers that there may also be other claims arising out of the same event, he may ask that a reservation as to the limitation of liability is included in the decision of the court. Notwithstanding such reservation, the judgement can subsequently be enforced in respect of the claims decided upon, unless there is established a limitation fund which will constitute a bar to other actions. A person liable who has paid claims according to such a decision, may himself submit the claim in any subsequent limitation fund, cf. MC § 176 (Question (i) below).
Slovenia	The constitution of the limitation fund is a condition for the availability of the benefit of limitation.
Sweden	<u>LLMC</u> : Pursuant to MC, Chapter 9 Section 9 of the Swedish Maritime Code (below MC) Limitation of liability may be invoked notwithstanding that a limitation fund has not been constituted. <u>CLC</u> : MC, Chapter 10 Section 6 - The right to limitation of liability for damage caused by oil pollution exists only if a limitation fund has been established.
Venezuela	The constitution of the limitation fund is a condition for the availability of the benefit of limitation. Article 52 of VMCL provide that the proprietor, shipowner, charter, insurer, salvors, or any other liable person who may consider themselves to have a right to limit liability, may appear before the competent court (Special Aquatic Jurisdiction) and request that proceedings be commenced to constitute the fund, verify and liquidate the claims and to make the distribution according to law.

¹ Merchant Shipping (Liability of Shipowners and Others) 1996.

Question (b): *In which manner the limitation of liability may be invoked and whether this action must precede the constitution of the fund.*

Argentina	The following replies are exclusively referred to the CLC PROT 1992. In order to invoke the limitation of liability, the limitation fund must be previously constituted (Section 562 of the Navigation Act).
Chile	The limitation of liability may be invoked as an action to obtain the limitation by the constitution of the fund, before an action against the shipowner is brought, or by way of defence after an action has been brought against him.
China	The shipowner may invoke the limitation of liability in two manners under Maritime Code of the People's Republic of China 1993: (1) apply to a maritime court for constitution of the limitation fund for maritime claims; (2) to invoke the limitation of liability directly as a counterplea against the claims of claimants during the proceedings. This action may not precede the constitution of the fund under Chapter IX <i>Procedure for Constitution of Limitation Fund for Maritime Claims</i> of the Special Maritime Procedure Law of P.R.C. (hereafter referred to the SMPL of the PRC). But this Chapter is deemed imperfect in judicial practice.
Denmark	The position is perhaps best described by quoting (a translation of) MSA, Section 180(1), which provides: <i>"The liable party is entitled to limit liability even if no limitation fund has been constituted. The court shall take into account only those claims, which have been raised during the legal proceedings. If the liable party so demands, the judgment shall contain a reservation to the effect that also other claims which are subject to limitation may have to be included in the court's decision as to the limitation amount"</i> . So, the right to limit liability can be and in the circumstances has to be invoked by way of a reservation prior to the constitution of the fund, if any.
Finland	Limitation of liability may be invoked by 1) a claim for limitation of liability, 2) invoking the right to limit when an action is brought against the shipowner (or other person who has the right to limit), or 3) constitution of a limitation fund when legal proceedings are instituted in respect of claims subject to limitation. However, the right to limitation of liability for oil pollution damage claims requires the constitution of a limitation fund (Chapter 10, § 6).
France	The limitation of liability may be invoked in two different manners: (i) by the constitution of the limitation fund in accordance with the provisions of the decree of 27 October 1967, (ii) by raising the limitation, as a mean of defence in the proceedings on the merits, whether the fund has been constituted or not. There is no limitation proceedings as such.
Germany	<u>LLMC & CLC:</u> The limitation of liability may be invoked as a limiting plea before or within the lawsuit. It must not precede the constitution of the fund.
Greece	<i>The Pollution Convention</i> A person who is faced with claims for pollution damage and wishes to limit his liability in accordance with the provisions of the convention (the Debtor) has to file a Statement to that effect before the Secretary of the competent Court of First Instance (Art. 2 para. 1 of the Pollution Decree). Evidence of the constitution of the fund must be attached to the Statement of the Debtor for the limitation of liability (art. 4 para 1 point (c) of the Pollution Decree); therefore the constitution of the limitation fund is a condition in order to invoke the limitation of liability. Following the Statement for the limitation of liability, the Court assigns the limitation process to a Reporting Judge and appoints a Fund Administrator (art. 6 of the Pollution Decree).

	<p><i>The LLMC Convention</i></p> <p>The limitation of liability can be invoked at any stage of the legal proceedings, until the completion of the compulsory enforcement procedure. The person entitled to limit his liability (the Debtor) shall file a Statement with the Secretary of the Court of First Instance before which the legal action was instituted (Art. 90 CPML).</p> <p>In limitation of liability with the constitution of a fund, evidence of the constitution of the fund must be attached to the Statement of the Debtor for the limitation of liability (Arts 90 and 91 CPML). Thus, the constitution of the limitation fund precedes the Statement. Following the Statement for the limitation of liability, the Court assigns by Court Order the limitation process to a Reporting Judge and appoints a Fund Administrator (Article 92 CPML).</p>
Ireland	<ul style="list-style-type: none"> - LLMC - Limitation can be invoked either by pleading limitation as a defence and/or by the issue of limitation proceedings seeking a declaration of entitlement to limit liability. There is no rule as to the timing of the constitution of the fund. - CLC - The ship owner must first apply to the court for an order limiting his liability and then the court will order a payment into court.² - HNS - The ship owner will have to first apply to the court for an order limiting his liability and then the court will order a payment into court.³
Italy	The limitation may be invoked by means of an application to the Tribunal in the circuit of which the pollution has occurred. As stated in the response to Question 1, the guarantee must be produced when filing the application.
Mexico	<p>According to Mexican legislation it can be invoked either:</p> <ul style="list-style-type: none"> a) Voluntarily, by presenting a guarantee to the Mexican Courts and invoking the limitation of liability in a Voluntary Jurisdiction Procedure. b) It can be invoked as a defence in Court when there is a claim or sue against the Owners.
Netherlands	Any person who wishes to invoke limitation of liability must apply to the Court where the vessel is registered (if registered in The Netherlands) and otherwise to the Court of Rotterdam (Article 642a (1) CCP). The application must be made in writing and should request the Court to establish the limitation amount or limitation amounts and to order the commencement of proceedings to divide the fund to be constituted (Art. 642a (1) CCP).
Norway	<p>Limitation of liability may be invoked only after legal proceedings in respect of a claim subject to limitation, including arrest, have been brought before a Norwegian court (MC §§ 177 and 195). However, a limitation fund according to MC § 195 (oil pollution) may also be established before legal proceedings is brought, but only with a court which will be a proper venue for claims arising out of the event in question.</p> <p>A limitation fund can only be established by the court and if requested by the defendant. The fund is established according to a decision by the court (MC § 234).</p>
Slovenia	<p>The shipowner may invoke the limitation of liability with the claim addressed to the court, if the conditions under the Maritime code are fulfilled. The conditions are:</p> <p>(a) description of the event under which the claim arises;</p>

² Section 12 Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

³ Section 14 Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (**NB Not yet in force – awaiting a statutory instrument**).

	(b) undergrounds and the limitation amount ; (c) the manner in which the shipowner is prepared to constitute the limitation fund (deposit of cash or any other form of guarantee); (d) the list of known creditors with their registered place of business or domicile; (e) the nature and the amount of the claims. His claim does not have to be preceded by the constitution of the fund.
Sweden	<u>LLMC</u> : See above. There is no specific action needed or any specific manner in which the limitation may be invoked. <u>CLC</u> : Other than constituting the fund, there is no specific action needed or any specific manner in which the limitation has to be invoked.
Venezuela	The limitation of liability may be invoked: (i) as an autonomous action of the shipowner to obtain the limitation by the constitution of the fund; or (ii) by way of defence after an action has been brought against the shipowner.

Question (c): *In which manner the limitation fund may be constituted, in addition to depositing a sum.*

Argentina	Article V (3) of the CLC admits a bank guarantee or other guarantee acceptable under the legislation of the State Party in which the fund is constituted. Under the Argentine legislation bank guarantees or guarantees issued by other third parties are acceptable provided that the guarantor is solvent and domiciled within the jurisdiction of the Court (Section 1998 of the Civil Code).
Chile	The fund may be constituted either by depositing the sum or by producing a guarantee considered adequate by the Court, such as a bank guarantee or an insurance guarantee, executable in Chile.
China	Article 108 of the SMPL of the PRC provides that: <i>“A limitation fund for maritime claims may be constituted either by depositing cash or by providing security acceptable to the maritime court.”</i>
Denmark	The relevant rules are set out in chapter 12 of the MSA, which concerns limitation funds. Briefly summarised, the fund must be established before the Maritime and Commercial Court of Copenhagen and shall cover the full global limitation amount, plus interest running from the accident/event date to the date of the constitution of the fund on 2% p.a. above the official interest rate. To this amount shall be added a cost amount covering, inter alia, the administration of the fund. The limitation fund is formally established by way of an order/decision rendered by the Maritime and Commercial Court to that effect, which Court will also decide, whether a cash deposit or other sufficient adequate security is to be procured. The Court will hereafter insert a notice in the official gazette (“Statstidende”) confirming the constitution of the fund, calling upon the claimants to present their claims before a fixed date. This notice shall also emphasise that the claimants are no longer entitled to pursue their claims by other individual legal means such as arrest.
Finland	In addition to depositing a sum, also a guarantee may be accepted by the Court where the limitation fund is constituted (Chapter 12 § 4). The courts have in practice accepted guarantees provided by banks and P&I Clubs.
France	The manner in which the limitation fund may be constituted is provided for by articles 59 to 64 of the above decree of 1967. Pursuant to articles 62 and 63, the fund may be constituted by the deposit of the amount of the limitation into the hands of a bank or other financial institution, appointed to that effect by the Judge of the control of the proceedings (<i>“juge commissaire”</i>), or alternatively by a bank guarantee or a Club letter of guarantee drafted to the order of the liquidator of the fund.

	The Judge who authorizes the constitution of the fund, decides its form by reference to the customs in such matters and to the jurisprudence.
Germany	LLMC & CLC: By producing a guarantee acceptable by absolute discretion of the court, e.g. bank or insurance guaranty fond.
Greece	<i>The Pollution Convention</i> The limitation fund may be constituted either by deposit of a sum in a special bank <i>account held with a Bank operating in Greece</i> . or by providing a letter of guarantee by a Bank <i>operating in Greece</i> (Art. 5 of the Greek Pollution Decree). The Letter of Guarantee has to follow a standard wording provided by the Greek Pollution Decree. <i>The LLMC Convention</i> The limitation fund may be constituted either by depositing the sum or by producing a guarantee acceptable under the Greek Law. No Court involvement is requested for the determination of the limitation amount in case the fund is constituted by deposit of a sum. If a guarantee is produced, the court intervention is necessary in order to evaluate if the said guarantee (a) is acceptable under Greek Law and (b) is sufficient to cover all claims arising from the same incident. The competent court is the Court of First Instance of the place in which the fund is constituted.
Ireland	- LLMC - By producing an acceptable guarantee. ⁴ - CLC - Irish law only envisages the ship owner making a payment into court. ⁵ - HNS - Irish law will only envisage the ship owner making a payment into court. ⁶
Italy	See response to Question 1.
Mexico	The limitation fund may also be constituted by granting a guarantee to Court satisfaction. This normally can be a bond issued by a Mexican Bonding Company, Letter of Credit issued by a Mexican Bank, etc.
Netherlands	Pursuant to Article 642c (2) b) CCP, the applicant has the option of depositing security in an alternative way (e.g. a letter of undertaking from a first class P&I Club or bank) than cash deposit of the limitation amount. However, any alternative way of depositing security must first be approved by the Court in its discretion. Further the alternative security must be good for not only the main sum of the limitation amount, but also subsequent Dutch legal interests from the day of constitution of the fund until the day that the administrator of the limitation fund invites payment of the fund pursuant to Article 642v CCP. Finally, the applicant must also provide security for the costs of the limitation proceedings (Article 642c (2) a) CCP).
Norway	It is for the court, when deciding upon a request, to decide whether the fund shall be established by depositing the amount or by the submission of adequate security acceptable to the court (MC § 233). In practice, security offered by a reputable liability insurer will be accepted in most cases. According to MC § 234 the court will also determine the additional amount required to cover interests on claims and cost due because of the limitation procedure, whether or not the fund is established according to MC §§ 177 or 195. Such interests and cost are not subject to limitation (MC § 173 no. 6, and § 194).

⁴ Article 11.2 Convention on Limitation of Liability for Maritime Claims 1976.

⁵ Section 12 Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

⁶ Section 14 Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (**NB Not yet in force – awaiting a statutory instrument**) (?NB Article 9(3) H&N Convention also allows the shipowner to constitute a fund by producing a bank guarantee or other guarantee acceptable under the law of the State and considered adequate by the Court?).

Slovenia	If the above mentioned conditions are fulfilled, the court issues the decision under which the limitation fund can be constituted. In this decision the court requests the shipowner to produce evidence of depositing an appropriate sum. The limitation fund is deemed to be constituted on the day the shipowner produces this evidence.
Sweden	<u>LLMC</u> : MC, Chapter 12 Section 3 – By application. The person applying for constitution of the limitation fund shall pay the amount into court or produce satisfactory security for it. <u>CLC</u> : MC, Chapter 10 Section 6 paragraph 4 referring to Chapter 12 Section 3 - By application. A party applying for the establishment of a fund shall pay the amount into court or produce satisfactory security for it.
Venezuela	According with article 56 of VMCL, the limitation fund may be constituted only by depositing the fund before the Maritime Court. The fund may only be constituted in cash, negotiable instruments or obligations issued or guaranteed by the Bolivarian Republic of Venezuela.

Question (d): *Whether the limitation fund is a condition in order to invoke the limitation or not, is there in your law a time limit within which the fund must be constituted.*

Argentina	The constitution of the limitation fund is a condition to invoke the limitation [Section 562 (b) of the Navigation Act]. The time limit for the constitution of the fund is the expiration of the period for filing defences in the proceedings for the enforcement of a final judgement (Section 561 of the Navigation Act).
Chile	As explained in our reply to question (a) above, the limitation fund is not a condition to invoke the limitation. As a general rule, the limitation may be invoked up to the time limit to oppose defences in the execution of the final sentence or award (art. 1212 C. Com). Exceptionally, when the fund has not been constituted yet, and the limitation of liability has been alleged by way of defence or exception, then the limitation proceeding must be initiated before the competent Court. In these cases, the limitation of liability by the constitution of the fund can only be exerted in the writ of defences (art. 1211 N°3 C. Com.)
China	The limitation fund is not a condition to invoke the limitation. In Chinese law, there is a time limit before which the fund must be constituted. Article 101 of the SMPL of the PRC provides that <i>“Constitution of limitation fund may be applied for either before an action is brought or during the process of legal proceedings, or, at the latest, before the judgement of first instance is given.”</i>
Denmark	The answer to this question is no, but the MSA, Section 510, contains a series of provisions as to the relevant time-bars applying for the different types of maritime claims, which are subject to limitation. The fund may be established, however, even if the relevant claim(s) is/are time-barred. The final legal decision whether to approve the separate claims will only be taken later by the Maritime and Commercial Court, see below.
Finland	There are no time limits within which the fund must be constituted, but there are, of course, time limits for bringing claims against the shipowner. These are usually short (one to two years; Chapter 19), and it may be added that by submitting their claims to the Court (<i>infra</i> under (f)), the creditors avoid the claims being time barred.
France	Our law does not provide for any time limit for the constitution of the fund.
Germany	<u>LLMC & CLC</u> : no.
Greece	<i>The Pollution Convention</i>

	No time limit is provided for the constitution of the fund. <i>The LLMC Convention</i> No time limit is provided for by the procedural rules of the CPML. As stated above, the limitation of liability (and therefore the constitution of the fund) may take place at any stage of the legal proceedings, until the completion of the compulsory enforcement procedure.
Ireland	<ul style="list-style-type: none"> - LLMC – No, the limitation fund is not a condition. There is no specified time limit within which a fund must be constituted. - CLC - Yes, the court will order a payment into court of a specified amount if it is determined that the applicant is entitled to limit his liability.⁸ This is no specified time limit. - HNS - Yes, the court will order a payment into court of a specified amount before it will order the applicant's liability is limited.⁹ there is no specified time limit.
Italy	Yes, it is. See response to Question 2.
Mexico	According to Mexican Law there is no time limit to constitute fund, but all the cases that have no specific time bar mentioned in our legislation, become time bar in 10 years. The limitation fund is a condition to invoke the limitation.
Netherlands	<p>Under Dutch procedural law there are two separate time limits within which the fund must be constituted. The first relates to the creation of the fund, the second to the suspension of all pending court proceedings with regard to claims subject to limitation.</p> <p>Firstly, if the Court grants the request to commence limitation proceedings, the Court will order the applicant to deposit the limitation fund at a date chosen by the court, but not later than one month after the Court's order. (Article 642c (2) CCP). After the applicant has deposited the fund, he must apply without delay to the Court and ask the Court for a declaration that the fund has been constituted. (Article 642c (6) CCP). If the Court refuses to make the declaration that the fund has been constituted as ordered, the Court can give a new order to the applicant to deposit the limitation fund at a date chosen by the court, not later than one month after the new Court's order. (Article 642c (6) CCP). Failure by the applicant to meet this renewed order of the Court in time or completely, will result in the loss of the right to limitation of liability for the applicant (Article 642c (7) CCP).</p> <p>Secondly and more generally, a debtor who has established one or more limitation funds with a Dutch Court, may ask any Court in The Netherlands to suspend any proceedings pending with regard to claims subject to limitation under the fund or funds established (Article 642f (1) CCP). Failure by the debtor to ask for such suspension of proceedings pending, results in the loss of the right to limitation of liability towards the creditor(s) in these proceedings (Article 642f (4) CCP).</p>
Norway	The MC does not contain any provision setting out such a time limit. It follows from MC § 180 (above Question (a) that a fund may be established even when enforcement of a judgement for a maritime claim is requested. Any request for the establishment of a limitation fund when be dealt with by the court as expedient as possible.
Slovenia	The time limit within which the fund must be constituted is 15 days from the day the decision that permits the constitution of the limitation fund is issued
Sweden	LLMC & CLC: No time limit

⁷ Article 10 Convention on Limitation of Liability for Maritime Claims 1976.

⁸ Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

⁹ Section 14(2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (**NB Not yet in force – awaiting a statutory instrument**).

Venezuela	In Venezuela the limitation fund is a condition in order to invoke the limitation and there is not a time limit within which the fund must be constituted, just as per article 53 of VMCL, the petition to constitute the fund has to be made before the Court's decree of execution of the shipowners' assets.
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Question (e): Which information the shipowner must provide to the Court (e.g. the list of the claimants).

Argentina	The shipowner will inform the Court on the grounds which the limitation fund has been calculated on [Section 562 (b) of the Navigation Act] and provide a list of the creditors including their domiciles and the amounts of the credits [Section 562 (c) of the Navigation Act].
Chile	The information that the shipowner must provide to the Court is (arts. 1213 and 1214 C. Com.): (i) The event from which the damages or losses arise out, which will be subject to limitation. (ii) The maximum amount of the fund that must be constituted. (iii) The way in which the fund will be constituted either by depositing the sum, or by producing another acceptable guarantee to be qualified by the Court. (iv) The list of the claimants known by the shipowners, with indication of their domiciles, nature of their claims and its amounts either final or provisional. (v) The antecedents to calculate the limitation amount (GRT and the Certificate on the rate of exchange of the SDR).
China	In accordance with Article 104 of the SMPL of the PRC, the shipowner must provide these information to the Court, which should be stated in the written application: (1) the amount of the limitation fund to be constituted; (2) the reasons for constitution of the limitation fund; (3) the names, addresses and means of correspondence of the interested persons already known.
Denmark	The answer is set out in MSA, Section 237, which in translation provides: <i>"The party which is presenting the claim (on basis of which the fund is to be established) is to provide the Court with the necessary information about the claim, inter alia, its basis and size and whether it is or has been subject to special proceedings"</i>
Finland	In the written application for the constitution of the limitation fund, the shipowner shall account for the circumstances and state the names and addresses of likely claimants against the fund (Chapter 12 § 3).
France	Pursuant to article 60 of the above decree of 1967, the shipowner must attach to his application to the Judge (the President of the Commercial Court) for the opening of the proceedings of constitution of the fund: (i) a certified statement signed by the applicant listing the names of claimants that he is aware of, together with their address, the nature and the provisional amount of their claims, (ii) the documents justifying the calculation of the limitation.
Germany	<u>LLMC & CLC</u> : The shipowner has to name the incident, provide the court with the list of claimants, name the convention laid down, name and give proof all the relevant details about his entities, name and give proof all the relevant details about the vessel.
Greece	<i>The Pollution Convention</i> The Statement of the Debtor to the Court for the limitation of liability (above, under b) must include the following information (Art. 3 of the Pollution Decree): (a) The name, flag, port and number of registry, international call sign, net tonnage of the ship as well as the tonnage referred to in Article V para. 10 of the Convention.

	<p>(b) A description of the pollution incident and the known or potential damage caused thereby.</p> <p>(c) Information on the possible claimants</p> <p>(d) The limitation amount as calculated in accordance with Article V paras. 1, 9, and 10 of the Convention.</p> <p>(e) The appointment of a process agent. The process agent will receive any document and process document relevant to this procedure.</p> <p>(f) The manner of constitution of the limitation fund (cash deposit or letter of guarantee).</p> <p>Further, the following documents must be attached to the Statement of the Debtor for the limitation of liability (Art. 4 of the Pollution Decree):</p> <p>(a) A copy of the ship's tonnage certificate</p> <p>(b) Official evidence of the SDR/Euro rate</p> <p>(c) Evidence of constitution of the limitation fund after deduction of the expenses of the proceedings and fees of the Fund Administrator</p> <p>(d) Evidence of deposit the expenses of the proceedings and the fees of the Fund Administrator</p> <p><i>The LLMC Convention</i></p> <p>The Statement of the Debtor to the Court for the limitation of liability should, among other, include the following information (arts. 90, 91 CPML and 6, 7 and 9 LLMC Convention):</p> <p>(a) Whether the limitation is invoked with or without the constitution of a fund. Where a limitation fund is constituted, evidence of such constitution must be attached to the Statement.</p> <p>(b) The names of claimants who are known to the Debtor at the time of the Statement, their residence and their claims</p> <p>(c) The occurrence out of which the claims have arisen</p> <p>(d) The tonnage of the ship (as well as any other element which may be useful to the calculation of the limitation amount)</p> <p>(e) The appointment of a process agent for the Debtor</p>
Ireland	<ul style="list-style-type: none"> - LLMC - Ship owner must demonstrate that he is entitled to limit his liability in accordance with the LLMC. - CLC – Ship owner must demonstrate that he is entitled to limit his liability in accordance with CLC.¹⁰ - HNS – Ship owner must demonstrate that he is entitled to limit his liability under HNS.¹¹
Italy	<p>Article 621 of the Code of Navigation (CN) sets out a list of the documents that must be filed with the application. They are the following:</p> <p>a) a declaration of the value of the ship;</p> <p>b) the list of the proceeds of the voyage;</p> <p>c) a copy of the inventory;</p> <p>d) a list of the creditors with their address and the amount of the claim of each one;</p> <p>e) a certificate setting out the hypothecs registered on the ship.</p> <p>Since the documents listed under (a), (b), (c) and (e) are meaningless in connection with a limitation system based on the tonnage of the ship, they do not need to be produced. This has been held by the Tribunal of Messina in its judgement of 24 June 1985 on the</p>

¹⁰ Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

¹¹ Section 14 (2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 **(NB Not yet in force – awaiting a statutory instrument)**.

	<i>Patmos</i> case. The Tribunal held that it was required to produce the tonnage certificate and the calculation of the limitation amount. It did not mention the list of the claimants, but it is obvious that it must be produced.
Mexico	The Owners must provide to the Court: <ul style="list-style-type: none"> - A valid Gross Registered Tonnage certificate; - Official Exchange Rate between the Mexican Pesos or U. S. Dollars and the SDR; - The details of the accident for which the fund is being constituted (and related documents); The possible list of claimants and their addresses.
Netherlands	Pursuant to Article 642a (2) CCP, the application in writing to the Court must include the following particulars: <ul style="list-style-type: none"> a) the name of the vessel; b) if it is a sea-going vessel only its nationality, and if it is sea-trawler also the place of registration; c) the name and place of residence of the applicant, d) the amount of the fund or funds as calculated by the applicant and the information necessary for calculation thereof, e) the day and place of the incident that gave rise to the claims for which the applicant thinks he can limit his liability, as well as a description thereof, f) the name and place of residence of persons known to the applicant against whom he thinks he can limit his liability and an estimate of the maximum amounts of each person's claim, and finally a proposal about how the applicant intends to constitute the limitation fund (cash deposit or a letter of undertaking).
Norway	A request for the establishment of a limitation fund shall explain reasons supporting the request and give the information relating to the ship which is necessary for the calculation of the amount of the fund (MC § 233). The request shall also set out available information as to any claimants likely to make a claim against the fund.
Slovenia	See answer (b)
Sweden	<u>LLMC & CLC</u> : MC, Chapter 12 Section 3 - In the application, which shall be in writing, the applicant shall account for the circumstances and state the names and addresses of likely claimants against the fund.
Venezuela	The information that the shipowner must provide to the Court is as per art. 55 VMCL: <ul style="list-style-type: none"> (i) The event from which the damages or losses arise out, which will be subject to limitation. (ii) The maximum amount of the fund that must be constituted calculated according with the VMCL (iii) The list of the claimants known by the shipowners, with indication of their domiciles, nature of their claims and its amounts either final or provisional. (iv) The antecedents to calculate the limitation amount

Question (f): *Whether notice must be given to the claimants of the commencement of the limitation proceedings and which directions are set out as to the manner in which they must file their claims in such proceedings.*

Argentina	The court appointed receiver will put claimants on notice of the commencement of limitation proceedings by way of registered letters (Section 566 of the Navigation Act). The commencement of the limitation proceedings must also be published in the Official Gazette and in the most widely read local newspaper (Section 567 of the Navigation Act). Claimants will file with the receiver the documentation
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	supporting their credits [Sections 565 (c) and 566 of the Navigation Act].
Chile	<p>Yes, notice must be given to the claimants of the commencement of the limitation proceeding. First of all, once the Court has declared that the fund has been duly constituted, the Trustee appointed by the Court will notify the claimants included in the list, by registered letter, informing them about the fund constitution, the name of the person limiting liability, name of the ship; a brief of facts; the amount of claim and the time limit to verify or present the claim.</p> <p>In addition, the Trustee must publish an abstract of the resolution issued by the Court in the Gazette and in a newspaper of circulation in the city of the Court, informing that there is a time limit of 30 running days from the publication to verify the credits or claims attaching the supporting documents. These publications permit other claimants, not included in the list, to be aware about the Fund Constitution and exert the same rights of those included in the list.</p>
China	<p>Yes, Article 105 of the SMPL of the PRC provides that the maritime court which has accepted an application for constitution of a limitation fund shall, within 7 days of this acceptance, give a notice to all the interested persons already known and issue an announcement of the same in the newspapers or other news media. Such notice and announcement shall contain: (1) name of the applicant; (2) facts and reasons for application; (3) particulars for constitution of the limitation fund for maritime claims; (4) particulars necessary in registration of claims; and (5) other matters which need to be announced.</p>
Denmark	<p>The MSA does not require that the Maritime and Commercial Court of Copenhagen addresses a special notice to the (other) known creditors, apart from the general notice set out in the official gazette, see above under item (c). In practice, the Court will, however, do so, especially if the individual creditors are known to be represented by Danish lawyers.</p>
Finland	<p>When a limitation fund has been constituted, the Court shall announce this immediately. In the announcement, which should include relevant information about the fund (e.g., the name of the person constituting the fund and that of the vessel), all creditors shall be advised to submit their claims to the Court within a certain period (submission period), which shall not be less than two months. The time for submissions is dependent upon the circumstances of the case: longer time is needed when an incident has occurred abroad with many creditors, than in an accident in Finland with few creditors.</p> <p>Notice of the following <i>provisions</i> shall also be included in the announcement:</p> <ul style="list-style-type: none"> - Chapter 9 § 7, third paragraph, which reads: “After a limitation fund has been constituted in Finland, suit regarding a claim of a kind that is subject to limitation may be brought only in a limitation action. The same applies to any suit concerning the right of the person constituting the fund to limit his liability and concerning distribution of the fund.” - Chapter 12 § 8, which reads: “For a claim which has not been notified to the Court before the handling of the fund distribution has been terminated in the court of first instance, payment can be made only according to § 14” (second paragraph of this provision reads: “The Court may reserve a certain amount for covering claims which have not been submitted before end of the distribution of the fund in the court of first instance. Such amount shall be distributed when all claims submitted have been considered and it can be assumed that no further claims will be submitted”). - Chapter 12 § 15, which reads: “A final decision in the limitation proceeding concerning liability, the right to limitation of liability, the amount of liability, claims submitted and the distribution of the fund shall be binding upon every one who can maintain claims against the fund, regardless whether they have submitted their claims or not.” <p>The announcement shall be published in the Finnish Official Journal (“Virallinen Lehti”) and, if the Court considers it necessary, in a</p>

	<p>local newspaper. If there are special reasons, the announcement shall also be published abroad. Such reasons could be, e.g., an oil pollution incident with many creditors abroad.</p> <p>The person constituting the fund and all known creditors shall be informed of the announcement by special message (Chapter 12 § 5). According to Chapter 12 § 7, a claimant submitting his claim shall state its amount and basis. If judgment has been given regarding the claim or legal proceedings about it are pending, this shall be stated. Such a judgment, which is recognized and can be enforced in Finland, is taken into account when the fund is distributed. And knowledge of pending proceedings are important for the other creditors in order to give them a possibility to intervene, if needed.</p>
France	<p>As indicated above in our answer to question (b), no limitation proceedings, as such, exist under French law.</p> <p>The party who wishes to obtain the benefit of a limitation of liability may apply ex-parte to the President of the competent court for the opening of the proceedings of the constitution of the fund.</p> <p>Therefore the claimants are not aware of the application filed with the President of that court nor of the order, constituting the fund, when it is rendered.</p> <p>Claimants are in fact informed of the constitution of the fund by the liquidator of the fund appointed by the President of the court at the opening of the proceeding.</p> <p>Pursuant to article 71 of the decree of 1967, the liquidator of the fund informs the claimants whose names are attached to the application for the constitution of the fund (by letter with acknowledgement receipt requested) and invite them to file their claim into his hands. The same invitation to file their claims into his hands is also made for the benefit of unknown claimants, by way of publication in specialized news-papers.</p>
Germany	<p><u>LLMC & CLC</u>: Public notice is given at least once in the official journal, the named claimants will be informed by the court individually. In the official journal and the individual notices the proceedings are explained.</p>
Greece	<p><i>The Pollution Convention</i></p> <p>The Fund Administrator issues, without delay, a Notice to Claimants to appear before him and announce their claims against the limitation fund within the prescribed period. The Notice to Claimants is published in two daily newspapers in the capital city of Athens, Greece, and in one daily newspaper of the place where the oil pollution damage was mainly sustained. The Notice to Claimants is also posted in the municipality of the place where the oil pollution damage was mainly sustained (Article 11 paras. 1 and 3 of the Pollution Decree).</p> <p>The claimants announce their claims against the limitation fund either by filing a written Notice of Claim with the Fund Administrator or even orally before the Secretary of the Court. the evidence of the claim must be submitted at this stage (Article 14 of the Pollution Decree).</p> <p>The Notice of Claim must contain the amount and basis of the claim. If the amount of the claim is not yet fixed at the time that the Notice of Claim is filed, the Notice may contain only the basis of claim, together with an estimate of the amount that the claim is expected to reach. The claim amount may be fixed until the time that the Fund Administrator draws the List of Claims (Article 15 of the Pollution Decree).</p> <p><i>The LLMC Convention</i></p> <p>The Secretary of the Single-Member First Instance Court before which legal proceedings have been instituted, draws a Report to the effect that a Statement for the limitation of liability has been filed by the Debtor. That Report is notified to the claimants who were</p>

	included by the Debtor in his Statement, to the ship's mortgagees and to the ship's Registry (Art. 90 CPML). The Court Order that assigns the limitation proceedings to a Reporting Judge and appoints a Fund Administrator is notified by the Fund Administrator to the claimants who were included by the Debtor in his Statement for the limitation of liability. The Fund Administrator further notifies the Hellenic Shipping Chamber and publishes a summary of the Court Order in two daily newspapers with wide circulation in the capital city of Athens, Greece, together with a Notice to Claimants (Art. 93 CPML).
Ireland	<ul style="list-style-type: none"> - LLMC – There is no requirement to give notice but in practice the Court would require that all known interested parties would be given notice. - CLC – There is no requirement to give notice but in practice the Court would require that all known interested parties would be given notice. - HNS – There is no requirement to give notice but in practice the Court would require that all known interested parties would be given notice.
Italy	If the Tribunal allows the application of the owner it issues an enforceable judgment. The judgment is communicated by registered letter to the claimants. The judgment fixes a time limit by which the claimants must file their claims in the proceedings.
Mexico	The claimants must receive notice by the Court of the commencement of the limitation proceedings. Each claimant is free to proceed as they will against Owners, not only in respect of the fund but also in connection to a lien they may have.
Netherlands	<p>Firstly, the Court Clerk's Office shall give notice to the known creditors listed in the application to commence limitation proceedings and at the discretion of the Court also by way of an announcement in one or more Newspapers chosen by the Court, of the date and time of hearing, at which the Court will consider and deal with the application to commence limitation proceedings (Article 642a (4) CCP).</p> <p>Secondly, the administrator shall give notice by registered mail (and at the discretion of the Court also by way of an announcement in one or more Newspapers chosen by the Court), to both the debtor(s) and his known creditor(s) of:</p> <ul style="list-style-type: none"> - the date when claims against the debtor(s), as well as challenges to the right to limitation of liability of one or more debtor(s), must be filed with the administrator of the limitation fund(s) (Article 642i and Article 642g (1) CCP); and - the date(s), time and place of the Court hearing(s) when and where the Court will proceed with the verification of all claims against the debtor(s) and the assessment of any challenges to the right to limitation of the debtor(s) (Article 642i and Article 642g (2) CCP). <p>Thirdly, the administrator shall give written notice to the debtor(s) and all known creditors for each fund of the list of provisionally acknowledged claims and of the (separate) list of provisionally disputed claims, and will include also a further invitation to the verification hearing (Article 642m and Article 642l (5) CCP).</p> <p>Fourthly, the administrator shall give notice by registered mail (and at the discretion of the Court also by way of an announcement in one or more Newspapers chosen by the Court), to both the debtor(s) and his known creditor(s) of the statement of division of the fund as approved by the Court (Article 642u (2) and Article 642i CCP).</p>
Norway	<p>There is no requirement that possible claimants be informed before the court makes its decision on the establishment of a limitation fund.</p> <p>As soon as the court has made its decision and the amount or the security is submitted to the court, the court shall issue a public announcement that the fund has been established, and invite all persons who will make a claim against the fund to submit their claims to the court within a time period of 2 months (MC § 235). In addition, claimants known to the court shall be notified.</p>

	<p>The announcement shall make known that</p> <ul style="list-style-type: none"> - claims subject to limitation may not be brought before any other Norwegian court (MC § 177) - claims not received by the court before the court has decided that it shall proceed with the judgement by which the limitation fund is distributed among the established claim, may be excluded wholly or partly at the distribution of the fund (MC § 238), - that any final judgement on the right to limitation, the amount of the fund, the claims made against the fund, and the distribution of the fund will have legal effect for all claimants with claims which may be made against the fund, whether or not the court has received notice of the claims (MC § 245).
Slovenia	The notice of the commencement of the limitation proceedings must be served to all claimants. The claimants must notify their claims to the court within 90 days from the day the court decision on constituting the limitation fund is published. The claimants are also warned by the court on the consequences of the omission of their notification.
Sweden	<u>LLMC & CLC</u> : MC, Chapter 12 Section 5 - When a limitation fund has been constituted, the Court shall announce this immediately. In the announcement, all creditors shall be advised to submit their claims to the Court within a certain period which may not be less than two months. The person constituting the fund and all known creditors shall be informed of the announcement by special message.
Venezuela	<p>Yes, notice must be given to the known claimants referred in the petition of the commencement of the limitation proceeding. Once the Court has declared that the fund has been duly constituted, the same Court will notify such known claimants included in the list provided by the petitioner, indicating:</p> <ul style="list-style-type: none"> (i) The name and domicile of the registered shipowner or of the petitioner if he is not the registered shipowner asking for the constitution of the fund, mentioned his qualification to ask for that benefit. (ii) The vessel's name and its place of registration. (iii) The event from which the damages or losses arise out (iv) The amount of the credits for which the fund has been constituted, according with the petitioner. (v) The indication of the term that has to be given to the creditors to verify his credit. <p>In addition, the Court must publish its resolution admitting the constitution of the fund in a newspaper of Venezuelan national circulation, mentioning the name of the creditors, and giving them a term of 30 running days to verify their credits and to file its supporting documents.</p>

Question (g): *Which is the time limit, if any, within which the claims must be filed and which are the consequences of the failure to file the claims within such time limit.*

Argentina	The time limit for filing documentary evidence of the claims will be fixed by the Court [between 20 and 60 days according to Section 565 (c) of the Navigation Act]. There are no specific provisions regarding the consequences of the failure to file the claims within the time limit established by the Court. Although it is a debatable issue, the Court may decide that such failure may imply the losing of the right to participate in the fund distribution.
Chile	As indicated above, the time limit is of 30 days from the date of the last publication (either the Gazette or the newspaper). Failure to file the claims within such time limit has the following consequences:

	<p>(i) The creditor or claimant loses his right to challenge the limitation on the grounds that the requirements to limit do not exist;</p> <p>(ii) May lose the right to object the amount of the Fund.</p> <p>(iii) If the fund has been paid and distributed amongst the claimants, he will lose the right to be included in the list of the verified credits. However, if the funds have not been paid yet, he may ask the Trustee to be included, although he may have verified the credit in the proceeding after the time limit.</p>
China	<p>Under Chinese law, except the time limit for suit regulated in other substantive laws, such as General Principles of the Civil Law of the People's Republic of China and Maritime Code of the People's Republic of China, there are no other provisions on the time limit for the claimants to file their claims in procedure laws. But as for this question, there is another kind of time limit under Chinese law, that is time limit for registration of claims. Article 112 of the SMPL of the PRC provides:</p> <p><i>“After the maritime court’s announcement of acceptance of the application to constitute a limitation fund for maritime claims, 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 debt.”</i></p> <p>There are no express provisions on how long the abovementioned “time limit announced” is, but in practice, this time limit should not less than 1 month.</p>
Denmark	<p>According to MSA, Section 235, the Maritime and Commercial Court will fix a date on which the claims must be presented, which date must not be less than two months ahead. The claim will, however, not be time-barred, if this date is not being met. But when the Court renders its final judgment distributing the fund, this judgment will have such effect vis-à-vis the creditors which have not raised a claim in the fund. Such claim will consequently be deemed null and void, see MSA, Section 245.</p>
Finland	<p>For a claim which has not been submitted before the handling of the fund distribution has been terminated in the court of first instance, payment can be made only according to Chapter 12 § 14, second paragraph (cited <i>supra</i>), cf Chapter 12 § 8 and § 15. Thus, if the Court has not reserved a certain amount for covering a claim which has not been submitted before end of the distribution of the fund, the claimant has no right against the fund.</p>
France	<p>Pursuant to article 72 of the decree of 1967 the time limit within which such claims must be filed is 30 days as of receipt of the liquidator’s letter or the date of the publication for the unknown creditors. The time limit can be extended to 40 and 50 days, depending on the domicile of the claimants.</p> <p>These time limits make no sense, as they are too short and, in practice, they are not complied with.</p> <p>In case the above delay is not respected, pursuant to articles 72 and 73 of the decree, the amounts of claimants’ claims, as estimated by the applicant, are deemed to be accepted by claimants. Like the above delays, this provision is not applied in practice.</p>
Germany	<p><u>LLMC & CLC</u>: The claims must be established in a time-frame between at least two months (all the claimants are nationals) and at least months (claimants are internationals). The time frame depends on how severe the incident is and who the claimants are. Claims may be filed until the fund is distributed. Cost responsibility with the claimant.</p>
Greece	<p><i>The Pollution Convention</i></p> <p>The Notice to Claimants which is issued by the Fund Administrator (above, under f) contains the time limit within which the claimants must file their claims against the limitation fund. The time limit may not be shorter than fifteen days or longer than six months starting from the date of circulation of the newspaper of the capital city of Athens, Greece, where the Notice to Claimants of the Fund</p>

	<p>Administrator was last published (Article 11 paras.2 and 4 of the Pollution Decree). The Reporting Judge may, until the verification of claims is complete, allow a claimant to file his Notice of Claim after the lapse of the time limit specified above, if the Claimant was unaware of the Notice to Claimants or did not observe the time limit for any other reason which was not due to his own fault; the permission is granted through the procedure of provisory measures (Article 12 of the Pollution Decree). <i>The LLMC Convention</i> The time limit is three (3) months from the date of publication by the Fund administrator of the Notice to Claimants (Article 93 CPML). Although the CPML does not contain provisions regulating the consequences of the failure to file the claims within the prescribed time limit, it is accepted that such failure results to the extinction of the claimant's right to participate to the distribution of the fund.</p>
Ireland	<ul style="list-style-type: none"> - LLMC – The applicable time limit will depend on the type of claim (e.g. a claim for loss of life / personal injury is 2 years)¹². Failure to file a claim within the requisite time period would mean that the action is statute barred. - CLC – Application must be made within three years of the date of the damage and not later than six years of the date of the incident which occasioned the damage.¹³ Failure to file a claim within this period will mean that the action is statute barred. - HNS – Same as LLMC above.
Italy	<p>The time limit is thirty days (sixty days if the claimants are resident abroad) running from the date the judgement mentioned under (f) is published. Article 638 CN provides that the claimants whose claims are not filed within the time limit assigned by the Tribunal in its judgment may only share the surplus of the limitation fund after its distribution amongst the claimants who have timely filed their claims.</p>
Mexico	<p>The Court will set the time limit, running from the date of receipt of the order, within which claimants must submit their claims accompanied by the relevant documents.</p>
Netherlands	<p>In principle claims must be filed with the administrator no later than the date set by the court pursuant to Article 642g (1) CCP. All creditors are obliged to file their claims, even if they contest the right to limitation of the applicant and also if it is unclear whether their claim is subject to limitation under the fund created (Article 642k CCP). Creditors who challenge the right limitation or who doubt that their claim is subject to limitation are obliged to present their reasons for doing so in a separate statement also to be submitted to the liquidator (Article 642l (1) and (7) CCP). If a creditor who was properly invited to file his claim, fails to do so altogether, then ultimately – at the end of the limitation proceedings, when the statement of division of the fund as drawn up by the Court enters into legal force – the claim will become null and void (Article 642w CCP). However, a creditor who failed to file his claim in time, may apply to the Court even after the above date has lapsed, to allow their claim to be admitted to the verification process. The Court in its discretion will decide whether or not to allow the admission of the claim (Art. 642o (1) CCP). If the creditor is domiciled abroad and because of that was unable to file its claim any earlier, the Court must admit the claim to the verification process (Article 642o (2) CCP). If there is disagreement between the parties involved in the verification process about whether the creditor domiciled abroad was indeed unable to file the claim earlier, the Court shall decide after hearing the other parties (Article 642o (3) CCP).</p>

¹² Section 7 Civil Liability and Courts Act 2004.

¹³ Section 12(5) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

Norway	See answer to Question (f). A claimant must, in order to be fully entitled to participate in the distribution of the fund, have submitted his claim to the court before the court has terminated any hearings and decided to proceed with the judgement on the distribution of the fund among the established claims (MC § 238).
Slovenia	See answer (f)
Sweden	<u>LLMC & CLC</u> : The creditors must file their claims within the period of time set out by the Court (MC, Chapter 12 Section 5 paragraph 1). As regards claims that have not been notified to the Court before the handling of the fund distribution has been terminated in the District Court (MC, Chapter 12 Section 8), payment can be made only if the Court has reserved a certain amount for claims that have not been submitted before the end of the distribution of the fund before the District Court (MC, Chapter 12 Section 14 paragraph 2).
Venezuela	The time limit, within which the claims must be filed is 30 days, counting from the date in which the publication was filed at the Court limitation proceeding. The VMCL, does not establish any consequences of the failure to file the claims within such time limit. However, we are of the opinion that in such a case by analogy with article 1051 of the Venezuelan Commerce Code related to general bankruptcy, the limitation proceeding shall not be suspended for the lack of action of any creditor, but if he appears before the final qualification of the other creditors he may be included in the provisional sums that will set the Court.

Question (h): *In which manner the claims of the claimants must be assessed and whether such assessment may be challenged and how.*

Argentina	A proposal for the fund distribution must be submitted to the Court by the receiver (Section 517 of the Navigation Act). If the proposal is challenged the Court must issue a final decision (Sections 572, 556 and 557 of the Navigation Act.).
Chile	Claims are assessed by each claimant in a draft attached to the writ whereby he verifies his claim together with interests thereon, enclosing the supporting antecedents or documents. From the moment each claim has been verified in the proceeding, and up to 15 days after the notification of the resolution declaring that the verification period has concluded, through publication in the Gazette, other claimants, the Trustee or the person who constituted the fund, may challenge each claim either on its merits or on its calculation / assessment, presenting a writ in the proceeding.
China	According to Article 115 and Article 116 of the SMPL of the PRC, the maritime court would assess the claims of the claimants in different manner under different circumstances: (1) If the creditor/claimant presents a judgement, a written order, a conciliation statement, an arbitral award or a notarized document to the court to evidence their claims, the court would examine these documents to ascertain whether these documents are true and lawful. If the court firmly believes that these documents are true and lawful, it shall make an order to confirm the creditor's rights to debt. (2) Where the creditor wishes to provide other maritime claim evidence, he shall, after having registered his claims, bring an action to confirm his rights before the maritime court where the claims are registered. The judgements and written orders made by the maritime court to confirm the rights are finally binding the parties, they are not allowed to bring an appeal against them. (3) If the creditor provides other maritime claim evidence than those documents mentioned in (1), and an arbitration agreement has been concluded between the parties, the maritime court should ask the creditor to apply for arbitration.
Denmark	The party who has initiated the constitution of the fund is to see to it that all the creditors who have submitted a claim to the Court are invited to a mutual court meeting.

	<p>If any of the submitted claims are contested by other claimants, the Court will ask the disputing parties to provide written submissions to the Court and will fix a hearing, where the relevant matter(s) will be argued. the Court will hereafter render its judgment, if so requested, which may be appealed to the Supreme Court of Denmark.</p> <p>This is confirmed by MSA, Section 242, which provides that:</p> <p><i>“Any objection against the right to limit liability, the size of the fund or a submitted claim shall be determined by the Maritime and Commercial Court of Copenhagen pursuant to the provisions of the Administration of Justice Act”</i></p>
Finland	<p>As soon as the submission period mentioned above (under (f)) has elapsed, the Court shall hold a fund meeting. To the meeting, the Court shall summon the administrator, the person having constituted the fund, the person having brought the limitation proceeding into court and the claimants. If the right of any other person is affected, such person shall also be summoned. At the fund meeting there shall be taken up matters concerning liability and its limitation, the amount of the limit of liability and the claims that have been submitted.</p> <p>In more complicated cases and/or when there are many creditors an administrator of the fund is usually appointed by the Court (cf. Chapter 12 § 6). Prior to the fund meeting the administrator shall examine the submitted claims and, as far as possible, draw up a proposal for the distribution of the fund. The proposal shall be sent to those who have been summoned to the meeting. If no administrator has been appointed, the Court shall take these measures.</p> <p>If no objection to the proposal, duly amended after the fund meeting, remains after the end of the meeting, the proposal shall form the basis for the distribution of the fund. However, if necessary, the fund meeting may be continued later.</p> <p>If any objection remains at the end of the fund meeting, the Court shall set a certain period within which the objecting person shall request the Court’s decision of the dispute. If such request has not been made in time, the objection shall be considered to have lapsed. If it is maintained, the Court shall try the dispute as soon as possible (Chapter 12 § 11).</p> <p>There is a possibility to distribute and dissolve the fund without the decision of a court under particular circumstances, Chapter 12 § 9.</p>
France	<p>Pursuant to article 74 of the decree, the liquidator verifies the claimants’ claims in the presence of the applicant. When the existence or the amount of a claim is challenged by the liquidator or by the applicant, the liquidator informs the claimant accordingly and invite him to comment within a delay of 30 days (which is, in practice, not respected).</p> <p>In most cases, however, the assessment of claimants’ claims is made in the framework of the proceedings on the merits, on liability and quantum.</p> <p>In order to avoid a duplication of assessment of claims, the liquidator may stay the verification of the claims until a final judgement of the court is rendered.</p> <p>The liquidator is bound by this judgement.</p> <p>When the stage of verifications of the claims by the liquidator is terminated, the liquidator presents to the Judge of the control of the constitution fund proceeding (Juge commissaire), his proposals for the admission or rejection of all claims filed into his hands.</p> <p>However, it will not be before a very long time since:</p> <ul style="list-style-type: none"> i) the liquidator must wait until the end of the proceedings on the merits, and ii) there may be several proceedings, in different countries, resulting from the event which has given rise to the constitution of the fund. <p>Pursuant to article 75 of the decree the liquidator’s proposal are thereafter fixed by the judge of the control who issues a “statement of</p>

	<p>the claims" ("Etat des créances").</p> <p>The Registrar of the court thereafter sends to the claimants pursuant to article 77 of the decree this "Statement" and the claimants have a delay of 30 days (increased to 40 and 50 days depending on their domicile) within which they are allowed to dispute the claims (other than their own claim) which have been admitted.</p> <p>The applicant is allowed to dispute the admitted claims in the same conditions.</p> <p>Those disputes are thereafter heard, not by the President who has rendered the order constituting the fund, but by the court itself, on the basis of a report from the Judge of the control of the constitution of fund proceeding.</p> <p>The judgements, rendered in those conditions by the Commercial Court, may be subject to an appeal proceeding.</p>
Germany	LLMC & CLC: The claims are reviewed in every regard by the court.
Greece	<p><i>The Pollution Convention</i></p> <p>The assessment of the claims is made by the Fund Administrator under the supervision of the Reporting Judge; the claimants are convoked to be present during the control of their claims (Art. 18 of the Pollution Decree). The Fund Administrator assesses the truth and validity of the claims on the basis of the evidence of the claim submitted by the claimants (Art. 14 of the Pollution Decree) Following the above assessment, the Fund Administrator issues and files with the Secretary of the Court a list of the claims that the Fund Administrator admits as valid and true (<i>the List of Claims</i>). (Article 20 of the Pollution Decree) The Fund Administrator notifies the Claimants and the Debtor accordingly. The Claimants and the Debtor may file before the Court their Objections against the List of Claims within a time limit of thirty (30) days from the filing of the List of Claims with the Secretary of the Court. (Article 20 of the Pollution Decree).</p> <p>The final Distribution Plan is drawn by the Fund Administrator after the Court issues an irrevocable judgment on every Objection that was filed (Art. 22 of the Pollution Decree).</p> <p><i>The LLMC Convention</i></p> <p>Following the lapse of the three (3) month time limit within which the Claimants file their Notices of Claim, the Fund Administrator summons to a Meeting of Creditors the Debtor and the claimants who have made themselves known and serves on them, at least ten days in advance, the List of the Claims which he has drawn up (Art. 96 CPML). The assessment of the claims is made by the Meeting of Creditors; the decisions of this Meeting are valid, irrespective of the extent of the claims represented (Art. 97 CPML). The assessment may be challenged by an objection from the Debtor or the claimants who were present at the Meeting; such objections shall be adjudicated in proceedings brought at the instance of the Fund Administrator, according to the procedure provided for in arts 739 et sqq. of the Code of Civil Procedure (Article 99 CPML).</p>
Ireland	<ul style="list-style-type: none"> - LLMC – Irish law sets out Article 12 of the LLMC which provides that, subject to Articles 6(1), 6(2), 6(3) and 7 of the LLMC, the fund shall be distributed among the claimants in proportion to their established claims against the fund. - CLC – The court determines the amount (if any) due to any person making a claim and the fund is then distributed in proportion to that determination.¹⁴ - HNS – The court will determine who is entitled to receive compensation and the fund is then distributed in proportion to the amounts of the established claims.¹⁵

¹⁴ Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

Italy	The claims of the claimants must be assessed by a judge appointed by the Tribunal in the judgment mentioned under (f) (hereinafter: "the appointed judge"). Within the date set out in such a judgment the appointed judge must prepare a report setting out all the liabilities resulting from the claims that have been filed. Such report may be challenged by the owner or any claimant. This is done by summoning all persons interested to appear before the Court at a hearing already fixed in the above mentioned judgment. At such a hearing the objections to the report are discussed and then the Tribunal issues its decision thereon.
Mexico	The claims must be assessed in the manner set for each type of claim under a normal sue proceeding. Also, they must be challenged following the remedies set in the Procedures Code.
Netherlands	<p>The first stage in the assessment of claims takes place after the filing of claims with the administrator. The administrator provisionally verifies the claims filed by reference to information received from the applicant and from other creditors. The administrator is also entitled to demand disclosure of missing documents and can require the inspection of original documents as well as the administration of the creditor (Article 642l (4) CCP).</p> <p>The provisional verification by the administrator results for each individual fund in two lists. On the hand a list of provisionally acknowledged claims, on the other hand a list of provisionally contested claims (Article 642l (5) CCP). The lists shall include reference to any statements received contesting the request made by the applicant seeking limitation and also the supporting grounds (Article 642l (7) CCP).</p> <p>The administrator shall make these lists available for (free of charge) inspection by the parties involved in the limitation proceedings by depositing the lists at the Clerk's Office at the Court building no later than 21 days before the first verification hearing (Article 642l (6) CCP). The administrator shall notify all known creditors and debtors of the deposition of the lists at the Court Clerk's office (Article 642m CCP).</p> <p>The second stage in the assessment of claims takes place at the verification hearing(s) of the Court (Article 642n CCP). At these hearings, each party (whether creditor or debtor) may dispute any or all of the filed claims by the (other) creditors (Article 642p (1) CCP). If a claim is not contested by any of the parties present at the verification hearing, it will be established by the Court for the full claim-amount (Article 642p (2) CCP), which will be noted down in the official record of that verification hearing and in the lists drawn up by the administrator (Article 642p (3) CCP). If at the verification hearing the applicant's right to limitation or any claim is contested by parties involved in the limitation proceedings, the Court shall try to assist the parties in finding an amicable settlement.</p> <p>Renvooi-proceedings are the third and final stage in the process of assessment of claims in Dutch limitation proceedings. If it proves impossible for the Court to unite the parties, then the Court shall identify the issues that keep (some of) the parties divided and refer the(se) dispute(s) to one or more Court hearings to be resolved in renvooi-proceedings (Article 642q (1) CCP).</p> <p>In the Dutch law of civil procedure, renvooi-proceedings are a regular kind of court proceedings between one or more claimant(s) against one or more defendant(s). The only special aspect is that the proceedings do not start with a writ of summons, but with the referral decision of the dispute by the Court. Usually after two rounds of written statements (and possibly a hearing in the presence of the parties and/or oral pleadings) the court will give its (interim or final) judgment. In case of an interim judgment, the Court will order a party or the parties to give (additional) evidence in support of its allegations. After that, another round of written statements will follow (and possibly oral pleadings) followed by another (interim or already the final) judgment.</p>

¹⁵ Section 14(2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument).

	Decisions in renvooi-proceedings are subject to appeal within four weeks from the day of the judgment. Appeal decisions in renvooi are also subject to final appeal in cassation to the Hoge Raad, the Dutch Supreme Court (Article 642y (2) CCP). After all disputes have been resolved either in renvooi (and the renvooi-decision has entered into legal force) or by amicable agreement between the parties, the verification-hearing will be resumed and a statement of division will be drawn up by the administrator of the limitation fund(s) (Article 642s (1) CCP).
Norway	<p>After the fund has been established in Norway, the rest of the limitation procedure is governed by the rules on <i>limitation actions</i>. Such action may be initiated at the same court by the person having established the fund or his liability insurer, or by any claimant having a claim which may be made against the fund and has a right to participate in the distribution of the fund. Other persons may not initiate the limitation action (MC §§ 177 and 195).</p> <p>In a limitation action the court shall decide all questions as to the liability relating to the particular claims made against the fund, the right to limit liability, the amount of the limit(s) of liability, and the distribution of the fund.</p> <p>The limitation action (Question (f) above) is initiated by the person liable, his insurer or a claimant by a writ to the court where the limitation fund has been established. This is an <i>en bloc</i> writ addressed to all claimants who are entitled to make a claim against the fund, and any person liable who may benefit from the establishment of the fund may be requested to join in the action (MC § 240).</p> <p>When a limitation action has been initiated the court shall issue an order requesting all parties to the action to attend a “Fund meeting” to deal with a report setting out proposals to the solution of all relevant questions concerning liability and limitation of liability (MC § 241).</p> <p>Any issue which is contested by any party during the “Fund meeting”, is to be argued separately before the court by the particular parties involved in the dispute, and then decided by the court (MC § 242). Accordingly, if the person liable contests his liability for a particular claim, the disputed claim will separately decide by the court.</p> <p>When all disputed issues are solved, the court shall by final judgement distribute the fund among the established claims (MC § 244), even if the person liable do not have the right to limit liability.</p>
Slovenia	<p>See answer (f);</p> <p>The claimants, who have their claims in foreign currency, must notify them in Slovenian tolar.</p> <p>The claimants can not challenge the claims of the other claimants under the reason that the claim arose under shipowners wilful misconduct.</p> <p>If the shipowner challenge the existence or the amount of the claim, the court requests the claimant to prove the existence/the amount of the claim (in the separate proceeding). The claim can not be challenged if it is final.</p>
Sweden	<p><u>LLMC & CLC</u>: MC, Chapter 12 Section 11 - The Court or an appointed administrator shall examine the claims before the fund meeting. The assessment can be challenged by way of an objection to the distribution proposal. If there remain any objections at the end of the fund meeting, the Court shall set out a certain period of time within which the objecting party shall state whether he maintains his objection and requests that the dispute be referred to and decided by the Court.</p>
Venezuela	<p>Claims of the claimants have to be assessed by the solicitor (the person limiting liability). Such assessment may be challenged within 10 days after conclusion of the 30 days above mentioned by any of the claimant either on its merits or on its calculation / assessment. Also, the claimants may challenge the amount of the fund constituted. (Article 64 VMCL).</p>

Question (i): To which extent is the subrogation of any person who has paid any amount of compensation in respect of claims subject to limitation permitted under your national law?

Argentina	The third party that paid any amount of compensation in respect of credits subject to limitation will assume the position of the original creditor. Under Argentine law subrogation is accepted up to the amount paid without restrictions (Sections 767/ 772 of the Civil Code).
Chile	If before the distribution of the fund the person liable has settled a claim against it, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under the law. Regarding other third parties such as the shipowner's P&I Club who has paid a claim against the owner, will also acquire by subrogation the same right, assuming that the person so compensated would have been entitled to claim under the law.
China	Under Chinese law, there are no express provisions regarding this issue. However, in our view, the Chinese maritime courts will recognize the subrogation up to the amount of compensation that the person has paid.
Denmark	The basic rule is that the party who compensates a claimant also subrogates de lege into the claimant's rights, but shall obviously obtain no better rights than the claimant. So, if the claimant's claim is subject to limitation, this also applies to the subrogating party. MSA, Section 176(3), provides that: <i>"The party who has fully or partly honoured a claim, before the limitation fund is distributed, subrogates into the claimant's right to obtain cover in proportion to the amount honoured"</i>
Finland	According to the FMC Chapter 9 § 6, third paragraph, "If the vessel operator or any other person has wholly or partly paid a claim before the limitation amount has been distributed, he shall succeed to the creditor's rights to the extent of his payment". This provision covers not only the person liable (or his insurer), but also a third party who has paid the relevant claim, e.g., when the State pays compensation to people who have suffered environmental harm.
France	The subrogation of a person (such as an insurer) who has indemnified a claimant is governed by the rules of our domestic law on subrogation. This person acquires the rights of the claimant for the value of the sums paid and can therefore file a claim against the fund accordingly. Article 65 of the law of 1967 specifically provides that the shipowner which has paid all or part of a claimant's claim is entitled to substitute it in the distribution of the fund.
Germany	<u>LLMC & CLC</u> : To the full amount, without limitation.
Greece	<i>The Pollution Convention</i> Art. V para. 5 of the LLC is applicable. In implementing para 6 of the same article, the Greek Pollution Decree extends the subrogation rights to the Hellenic State. In particular, the Hellenic State has the right to compensate a third party that suffered damage as a result of the pollution. The Hellenic State, as from the time of payment of such compensation, acquires automatically by subrogation the rights which the compensated party would have enjoyed under the Convention (Article 16 of the Pollution Decree). <i>The LLMC Convention</i> This matter is not regulated in the Rules of Procedure of the CPML. The right of subrogation is permitted up to the amount of the

	compensation paid, if it is based on contract (arts 455 CC) or in cases provided for explicitly by specific substantive provisions.
Ireland	- LLMC – Up to the amount paid. ¹⁶ - CLC - Up to the amount paid. ¹⁷ - HNS – Irish law is silent on this point.
Italy	The right of subrogation is permitted under Italian law up to the amount of compensation paid.
Mexico	Any subrogation is subject to the same limitations as if the original claimant presented the claim.
Netherlands	Pursuant to Dutch law, a debtor or underwriter who has paid an amount of compensation in respect of claims subject to limitation of liability, will by operation of law become subrogated in the rights of the creditor (Article 642j CCP).
Norway	According to MC § 176, cf. MC § 195, any person having paid a claim subject to limitation is by subrogation entitled to make the claim against the person liable. A person who may be forced to pay a claim later, e.g. a ship owner having to settle a claim, and thereby acquire the claim by subrogation may also participate in the distribution of the limitation amount.
Slovenia	We have no such provisions.
Sweden	<u>LLMC</u> : MC, Chapter 9 Section 6 paragraph 3 and 4 - If the owner/operator or any other person has wholly or partly paid a claim before the limitation amount has been distributed, he shall succeed in the creditor's right to the extent of the payment made. If the owner/operator or any other person shows that he may later become liable to cover, wholly or partly, a claim which, if paid before the distribution of the liability amount, pursuant to paragraph 3 could have been reclaimed from the liability amount according to former sentence, a temporary reservation shall be made in order to enable him to claim his right at a later stage. <u>CLC</u> : MC, Chapter 10 Section 8 - If the owner/operator or any other person has wholly or partly paid a claim before the limitation amount has been distributed, he shall succeed to the creditor's right to the extent of his pay. If the owner/operator or any other person shows that he may later become liable to cover, wholly or partly, a claim which, if paid before the distribution of the liability amount, could have been reclaimed from the liability amount, a temporary reservation shall be made to enable him to assert his right later. If the owner has voluntarily incurred expenses or losses for preventive measures, he has the same right to compensation against the fund as any other party having suffered damage.
Venezuela	If before the distribution of the fund the person liable or his assurer has settled a claim against the fund, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under the law. (Article 47 of VMCL).

Question (j): *Within which set of proceedings and at which time may the counterclaims mentioned in Article 5 of the Convention be brought?*

Argentina	This question is referred to the LLMC. Argentina is not a party of said Convention.
Chile	Art. 1218 of the Chilean Code of Commerce states a similar rule than Article 5 of the LLMC Convention. The counterclaim will be exerted within the same time limit and during the same opportunity mentioned in (h) above.

¹⁶ Article 12(2) Convention on Limitation of Liability for Maritime Claims 1976.

¹⁷ Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

China	No express provisions are provided in Chinese law.
Denmark	The counterclaim may effectively be raised so late as the substantive rules on passivity/inactivity on part of the defendant provide; and in case of a fund – limitation as late as the procedural rules permit (which is basically prior to the date when the preparation of the court hearing is completed).
Finland	The relevant provision (Article 5 LLMC) has been written into Chapter 9 § 2, second paragraph. Typically the question of counterclaims arises in collision cases where the owners of the respective vessels seek to limit their liabilities. The limitation rights and actions are then regulated by the applicable legal (both substantive and procedural) rules. There are no <i>special</i> rules for counterclaims in limitation actions in the FMC. It seems to be uncertain, whether a counterclaim which as an independent claim would be time-barred can be used in set-off based on Chapter 9 § 2 as deriving from Article 5 LLMC.
France	They may be filed in the proceedings on the merits on liability and quantum.
Germany	<u>LLMC</u> : The single liability theory applies. The court reviews as above described.
Greece	This matter is not regulated in the Rules of Procedure of the CPML. Thus, the relevant provisions of the Civil Code relating to the offsetting of claims (arts 440 et sqq) will apply as far as they are compatible with the specificity of the limitation procedure. Counterclaims may be brought by an offsetting objection during the legal action instituted by the claimant against whom the shipowner has the relevant counterclaim.
Ireland	- LLMC – The substantive proceedings involving the parties. Normal time limits would apply to defending this type of claim. - CLC – N/A - HNS – N/A
Italy	This question relates to article 5 of the LLMC Convention to which Italy is not yet a party.
Mexico	The counterclaim mentioned in Article 5 of the Convention must be brought at the time of the reply to the sue, just as in any normal procedure.
Netherlands	Pursuant to Article 5 LLMC and Article 8:753 (2) Dutch Civil Code, counter-claims arising out of the same casualty shall be set off against the main claims and only the balance (if any) shall be subject to limitation of liability. It follows therefore that the counter-claims may be brought as a defence both against the verification of a claim in the limitation proceedings and in regular separate court proceedings.
Norway	Art. 5 of the 1996 Convention has been implemented in MC § 172 2 nd para. In a limitation action the person liable will have to raise the counter claim as a defence in connection with the handling of the claims at “Fund meeting” (Question (h) above). If the right to limitation is, according to MC § 180, invoked independent of a limitation fund (Question (a) above), the counter claim will have to be used as a defence or as a basis for a counter claim according to ordinary rules of civil procedure.
Slovenia	We have no such provisions.
Sweden	<u>LLMC & CLC</u> : If a person entitled to limitation of liability has a counterclaim against the claimant and the claim and counterclaim have arisen out of the same event, the limitation shall apply only to that part of the claim which exceeds the counterclaim. The MC does not lay down how and when a counterclaim shall be brought before the Court, but it can be concluded that a counterclaim may be raised until the end of the fund meeting.
Venezuela	Article 60 of the VMCL states a similar rule than Article 5 of the LLMC Convention. According with such article 60 of the VMCL “the

	shipowner has the right to oppose compensation against a creditor for damages resulting or by reason of the same event". The counterclaim will be exerted within the five (5) court days after conclude the 10 days mentioned in (h) above.
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Question (k): *What is the position of a person who has a claim subject to limitation and has recovered a part of such claim out of other assets of the person liable and subsequently makes a claim against the fund? How does Article 9 apply in such case?*

Argentina	This question is referred to the LLMC. Argentina is not a party of said Convention.
Chile	If the person recovered a part of the claim and signed a full and final release, then she would be barred to subsequently make a claim against the fund. On the contrary, if the recovery was obtained without signing a full and final release, then she would be entitled to recover the unpaid balance against the fund.
China	No express provisions are provided in Chinese law.
Denmark	The claimant will be put in the same financial position as if the total claim (the aggregate of all its claim) had been raised in the fund.
Finland	The limits of liability concern the aggregate of all claims arising out of any distinct occasion against the vessel's operator, non-operating owner, manager, charterer or sender of goods and against anyone for whom these persons are responsible (Chapter 9 § 5, second paragraph). Thus the original claim should be taken into account when deciding about the distribution of the fund, but the person liable has the right to succeed to the creditor's rights to the extent of the payment he has made (cf. § 6, third paragraph). It would seem logical, therefore, that the claimant receives money from the fund only to the extent that his share of the fund exceeds the payment already received from the person liable. However, there is no court practice concerning this particular issue.
France	This question is too precise to be answered in a general way and it raises substantive rather than procedural issues. It seems therefore that it could only be decided by the court which will be seized of the questions of liability and quantum.
Germany	<u>LLMC</u> : His claims will also be settled within the process of reviewing the claims by the court. His claim will, if any, be reduced by the recovered part. The liable party has an own claim against the fund in the amount of the recovered part.
Greece	<i>The Pollution Convention</i> This matter is not regulated by the Pollution Decree. <i>The LLMC Convention</i> This matter is not regulated in the Rules of Procedure of the CPML.
Ireland	- LLMC – Irish law is silent on this point - CLC – Irish law is silent on this point. - HNS – Irish law is silent on this point.
Italy	Reference is made here to Article 9 of the LLMC Convention, to which Italy is not yet a party.
Mexico	The recovered part will be deducted from the amount awarded against the fund.
Netherlands	This question has not been dealt with in Dutch legislation with regard to global limitation of liability or Dutch limitation procedure. Further, to my knowledge, this situation has not yet occurred in Dutch limitation proceedings. Presumably however, in the division of the limitation fund, this person shall in one way or other have to account for the amount already recovered by other means than through the limitation fund. It is even conceivable that the limitation Court would decide that such a person would have forfeited his right of claim

	against the fund.
Norway	Any claimant, who has recovered part of his claim from a person liable, will, under Norwegian law, be only entitled to make a claim for the remaining part in the limitation fund. However, the person having settled part of a claim, may by way of subrogation make a claim against the limitation fund equivalent to the part of the claim already paid (MC § 176, cf. art. 12 of the Convention).
Slovenia	We have no such provisions.
Sweden	<u>LLMC</u> : There is no express answer to this question in the MC. However, if a claimant has received part of a claim subject to limitation from assets not part of the fund, general principles suggest that only the remaining amount can constitute a claim against the fund. MC, Chapter 9 Section 8 paragraph 1 - A claimant against a limitation fund constituted in Sweden or in any other Convention State may not, on the basis of his claim, obtain any other security measures or distraint in the vessel or other property belonging to any person for whom the limitation fund is constituted and who is entitled to the same limitation of liability. There are no rules in the MC which deal with a situation where a party has recovered part of a claim subject to limitation before the constitution of a fund. <u>CLC</u> : There is no express answer to this question in the MC. If a claimant has received part of a claim subject to limitation from assets not part of the fund, general principles suggest that only the remaining amount can constitute a claim against the fund. MC, Chapter 10 Section 9 - If a limitation fund has been established and the owner is entitled to limit his liability, no other asset of the owner may be used for satisfying compensation claims which can be raised against the fund. There is nothing said about the situation where a person has recovered a part of a claim subject to limitation before the constitution of a fund.
Venezuela	This question is too precise to be answered in a general way and it raises substantive rather than procedural issues. It seems therefore that it could only be decided by the court which will be seized of the questions of liability and quantum. As a general principle of Venezuela obligations law, the person who has recovered a part of the claim would be barred to subsequently make a claim against the fund for the balance.

Question (I): Whether a plan for the distribution of the fund among the claimants must be prepared and by whom.

Argentina	See (h).
Chile	Yes there will be a plan for the distribution of the fund among the claimants prepared by the Trustee, who will present it for the Court's approval. The distribution must consider the rules on maritime privileged credits, which may have priority of payment than others.
China	This issue is provided in Article 118 of the SMPL of the PRC, which reads: <i>"The creditors meeting may through negotiation put forward a plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims and sign an agreement on satisfaction. The agreement on satisfaction shall be legally binding after the maritime court makes an order to confirm it. Where consultation at the creditors meeting fails, the maritime court shall, according to the ranking of claims provided for in the Maritime Code of the People's Republic of China and other related law, decide on the plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims."</i>
Denmark	It is up to the Court to decide who is to make such plan, if any, for the distribution of the fund.
Finland	As was said earlier (<i>supra</i> under (h)), prior to the fund meeting the administrator (or the Court) shall examine the submitted claims and, as far as possible, draw up a proposal for the distribution of the fund.

France	Yes. Pursuant to article 82 of the decree, when the “Statement of the claims” has become final (which means that all the disputes against the “statement”, fixed by the Judge of the control, have been dealt with by the court in accordance with the provisions of article 77 – as explained above in our answer to question (h) –), the liquidator prepares a “table for the distribution” of the fund and submits it to the Judge of the control. The liquidator thereafter informs each claimant of the sum it will receive out of the amount of the fund.
Germany	<u>LLMC & CLC</u> : The plan will be prepared by the court after reviewing the claims.
Greece	<i>The Pollution Convention</i> The distribution of the Fund is made on the basis of the Distribution Plan prepared by the Fund Administrator. <i>The LLMC Convention</i> A final Distribution Plan is drawn by the Reporting Judge after the Meeting of Creditors has reached an agreement on the assessment of the claims or after the Court issues a final and unappealable Judgment on the objections filed against the assessment of the claims (Art. 12 of the LLMC Convention and art. 100 CPML).
Ireland	- LLMC – The court distributes the fund among the claimants in proportion to their established claims against the fund. ¹⁸ - CLC - The court determines the amount (if any) due to any person making a claim and the fund is then distributed in proportion to that determination. ¹⁹ - HNS - The court will determine who is entitled to receive compensation from the applicant and the fund is then distributed in proportion to the amounts of the established claims. ²⁰
Italy	Pursuant to article 637 CN once the claims against the fund have been definitely allowed by the Tribunal, the claimants may agree on the distribution of the fund. Failing an agreement, the plan for the distribution of the fund is prepared by the appointed judge.
Mexico	No, the Court is the only entity that can distribute the fund and assign percentages.
Netherlands	As stated above below h), it is normally the administrator of the fund who prepares one or more lists of provisionally acknowledged or provisionally contested claims (Article 642/ (5) CCP). After all the contestations of claims and disputes between the parties have been resolved either amicably or in renvooi-proceedings, it is again the administrator who normally will prepare the final statement(s) for the distribution of the funds (Article 642s (1) CCP). However, if the parties involved in the limitation proceedings reach amicable settlement about how or on which principles the fund is to be distributed over the creditors, it may well be that the statement of distribution is drafted by the Dutch attorneys acting for these parties. In the end it is always the Court, which must give its final approval of the statement of distribution (Article 642s (1) CCP). The Court may also issue a provisional statement of distribution (Article 642x (1) CCP).
Norway	Such a plan, setting out also the relevant issues to be dealt with before distribution of the fund, shall be prepared by the court or by an independent consultant and submitted to the “Fund meeting” (Question (h) above). Any disputed issue shall be decided separately by the court (MC § 241).
Slovenia	A plan for the distribution must be prepared by the court.
Sweden	<u>LLMC & CLC</u> : MC, Chapter 12 Section 11 - The Court or an appointed administrator shall draw up a proposal for the distribution of the fund. If there remains no objection to the proposal, as duly amended at the fund meeting, after the end of the meeting, the proposal

¹⁸ Article 12(1) Convention on Limitation of Liability for Maritime Claims 1976.

¹⁹ Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

²⁰ Section 14(2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (**NB Not yet in force – awaiting a statutory instrument**).

	shall form the basis for the distribution.
Venezuela	A plan for the distribution of the fund among the claimants must be prepared by a Trustee (Liquidator) appointed by Court, who will present it for the Court's approval. The distribution must consider the rules regarding preference established for maritime privileged credits. (Article 66 of VMCL).

Question (m): Whether the plan may be challenged and how.

Argentina	See (h).
Chile	The plan may be challenged presenting a recourse of reconsideration against the resolution whereby the Court approved the fund distribution, not later than 5 days from the publication in the Gazette of that resolution.
China	Also see the answer to question (l).
Denmark	If such plan has been made, it may in the circumstances be challenged at a fixed court meeting; or during the preparation of the fund-case pending before the Court; and/or during the final hearing.
Finland	Also here reference is made to what was said under (h), <i>supra</i> . The administrator and the fund meeting seek to settle all objections to the proposal. If any objection remains at the end of the fund meeting, the objecting person shall request the Court's decision of the dispute.
France	No. The above "table for the distribution of the fund" which represents the very last stage of the proceeding, cannot be challenged.
Germany	LLMC & CLC: The claimants will be furnished with the plan automatically after its publishing.
Greece	<i>The Pollution Convention</i> The Distribution Plan is drawn by the Fund Administrator after the Court issues a final Judgment on every Objection filed as above and that Judgment becomes irrevocable; then the Fund Administrator notifies the Reporting Judge that the Distribution Plan is drawn and files same with the Secretary of the Court. The Distribution Plan may be challenged further for accounting errors only. The application to correct an accounting error is filed before the Reporting Judge within fifteen days from filing the final Distribution Plan with the Secretary of the Court (Article 22 of the Pollution Decree). <i>The LLMC Convention</i> The Distribution Plan that is drawn by the Reporting Judge (above, under l) is final and may not be challenged (Art. 12 of the LLMC Convention and Art. 100 CPML).
Ireland	- LLMC – N/A - CLC – N/A - HNS – N/A
Italy	The plan may be challenged within ten days from its filing with the chancery of the Tribunal, but only for issues regarding the ranking of the claims.
Mexico	The Court award may be appealed as in any other judicial proceeding.
Netherlands	As stated above below h) and l), the final statement(s) or plan(s) for the distribution of the fund(s) are the result either of amicable settlement between the parties involved or of resolution of disputes in renvooi-proceedings (possibly even in appeal and appeal in cassation). After the final plan has been prepared in draft, the Court will deposit this plan at the Court Clerk's Office during 14 days for

	inspection free of charge by the interested parties (Article 642u (1) CCP), who will be given proper notification (Article 642u (2) CCP). After having heard or given proper notice to the parties the Court will take its decision with regard to the approval of the plan(s) for the distribution of the fund(s) (Article 642u (3) CCP). This decision of the limitation Court pursuant to Article 642u (3) CCP is neither subject to appeal, nor to appeal in cassation (Article 642y (1) CCP).
Norway	Any party attending the “Fund meeting” may take issue with one or more features of the plan, in which case the court shall identify the issue and determine who shall as plaintiff and defendant argue the issue as a separate dispute. The parts of the plan not contested at the “Fund meeting”, shall serve as a basis in connection with the distribution of the fund (MC §§ 241-42).
Slovenia	The plan may be challenged in the trial.
Sweden	LLMC & CLC: MC, Chapter 12 Section 11 - The claimants can object to the proposal.
Venezuela	The plan may be challenged by any of the creditors presenting a recourse of reconsideration against the plan, which will be decided by the Court. The decision of the Court may be appealed.

Question (n): *Whether in such case the distribution must be stayed until a final decision issued.*

Argentina	No specific provision on this issue has been included in the Navigation Act. Although debatable, a reasonable solution may be to distribute the fund among the claimants whose credits have not been challenged and to keep in the fund enough money to afford the credits that have been challenged.
Chile	The distribution is not suspended when a challenge has been filed. In such case, the Trustee must make a proportional provision or reserve of funds that he may consider prudent.
China	Under Chinese law, the court must firstly examine and confirm the relevant maritime claims before the distribution of the limitation fund. In other words, the distribution must be stayed until a final decision issued. However, it should be noted that the judgment on confirming the maritime claims, which is delivered by the Chinese maritime court in charge of the relevant procedure for constitution of limitation fund, is deemed final, and no appeal is permitted. This is provided for in Article 116 of the SMPL of the PRC, which reads: <i>“Where a creditor wishes to provide other maritime claim evidence, he shall, after having registered his claims, bring an action to confirm his rights before the maritime court where the claims are registered. Where an arbitration agreement has been concluded between the parties, they shall apply for arbitration promptly. The judgments and written orders made by the maritime court to confirm the right are legally binding, no parties may appeal against them.”</i>
Denmark	When all disputed items have been settled, the Court shall distribute the fund. This can be done by way of either a (simple) court order/decision or by way of a judgment, which judgment will finally settle all claims, which have or could have been addressed to the fund. Only a judgment (not a court order/decision) has this prejudicing effect.
Finland	When a request has been made by the objecting person, the Court shall summon the administrator of the fund into court. The person who has constituted the fund shall also be summoned, if the objection concerns the right to limitation or the limitation amount. And a creditor shall be called, if his claim is being objected. But already after the expiry of the submission period (<i>supra</i> under (f)), the Court may order that a certain part of the proven claims shall be paid (Chapter 12 § 13). When all disputes are settled, the Court shall decide on the distribution of the fund. As was said earlier, the Court may reserve a certain

	<p>amount for covering claims which have not been submitted before end of the distribution of the fund. Such amount shall be distributed when all claims submitted have been considered and it can be assumed that no further claims will be submitted (Chapter 12 § 14, second paragraph; cited <i>supra</i> under (f)).</p> <p>Distribution of the fund shall take place even if the person constituting the fund has no right to limitation of liability. In such case the Court, upon motion, may give judgment concerning the part of a claim that is not paid out of the fund (Chapter 12 § 14, third paragraph).</p>
France	This question is not relevant in view of our answer to the previous question.
Germany	<u>LLMC & CLC</u> : Only after the final decision the distribution starts.
Greece	<p><i>The Pollution Convention</i></p> <p>The final distribution of the fund is made to the Claimants in proportion to their established claims according to the Distribution Plan, after the lapse of the fifteen day time limit for an application to correct an accounting error in the Distribution Plan (Article 23 of the Pollution Decree). However, the Fund Administrator may propose that provisional payments are made to the claimants and to himself on account of his fees and expenses, even before the Distribution Plan is drawn. Provisional payments are approved by the Reporting Judge (Article 24 of the Pollution Decree).</p> <p><i>The LLMC Convention</i></p> <p>As mentioned above (under m), the final Distribution Plan may not be challenged. Besides, the Fund Administrator, with the approval of the Reporting Judge, may make provisional distributions to the persons entitled under the uncontested claims, retaining in full the amounts corresponding to the contested claims (Art. 101 CPML).</p>
Ireland	<ul style="list-style-type: none"> - LLMC – N/A - CLC – N/A - HNS – N/A
Italy	Yes. In such case the distribution must be stayed until a final decision is issued.
Mexico	Yes, the distribution will be done once there are no more possible remedies to the parties.
Netherlands	The Court may determine a provisional plan for the distribution of the fund pursuant to Article 642x (1) CCP. If the Court orders that on the basis of the provisional plan of distribution a payment is to be made to creditors, the Court may in its discretion also order that a kind of counter-security is given (Article 642x (2) CCP). In practice it is very rare in Dutch limitation proceedings that the limitation Court draws up a provisional plan of distribution. In general distribution of the fund must wait until amicable settlement is reached or a final decision has been issued with regard to all the disputes that keep the parties divided .
Norway	The court shall not decide questions relating to the distribution as such of the fund until all particular questions, included disputed claims, in the limitation action have been settled or decided by the court or, if applicable, the appellate courts.
Slovenia	Yes.
Sweden	<u>LLMC & CLC</u> : MC, Chapter 12 Section 14 paragraph 2 - Should any objections remain at the end of the fund meeting, the Court shall set out a certain period of time within which the objecting party shall state whether he maintains his objection and requests the matter to be referred to and decided by the Court. Once all disputes have been settled, the Court shall decide on the distribution of the fund.
Venezuela	The distribution is not suspended when a challenge has been filed. In such case, the liquidator must make a proportional provision or reserve of funds that he may consider prudent until the Court decision is final. (article 68 VMCL).

Question (o): Which are the effects of the bankruptcy of the owner on the limitation proceedings.

Argentina	Once the limitation fund has been constituted, we consider that the bankruptcy of the ship-owner not have any effect on the limitation proceedings. There should be two separate funds and two separate set of proceedings.
Chile	<p>This is a very complex question. If we apply the general principles set in the Chilean Bankruptcy Law, it could be concluded that the limitation proceedings, as a proceeding against the bankrupt person, should be accumulated to the bankruptcy proceeding.</p> <p>But if we take into account that the limitation fund is a special proceeding to pay and distribute funds between only maritime claims, as a consequence of the right to limit liability (which is not the general rule in Civil and Commercial law) then it could be concluded that the other creditors cannot be paid with that special fund.</p> <p>This is inferred from art. 1217 of the C. Com. which states that once the fund has been constituted, no right whatsoever may be brought against the fund, which remains exclusively destined for the payment of claims in respect of which limitation of liability can be invoked.</p> <p>In brief, the effects of the bankruptcy of the owner on the limitation proceeding are:</p> <ul style="list-style-type: none"> (i) The bankruptcy produces the effect that any proceeding by or against the bankrupt person must be accumulated or attached to the bankruptcy proceeding; (ii) If the limitation fund was constituted before the bankruptcy, the limitation proceeding will be attached, but will continue as a special proceeding in the bankruptcy and only the maritime claims in respect of which limitation of liability can be invoked, may be paid by the fund; (iii) If maritime claims are paid in full, and there is still an outstanding balance remaining, art. 1227 states the balance will be restituted to the party who constituted the fund. So, if the fund was constituted by the bankrupt owner, the balance should pass to the general fund in the bankruptcy proceeding and would favour non marine claimants. But, for instance, if the fund was constituted by a third party such as the P&I, the remaining balance should be restituted to the Club. (iv) If the bankruptcy was declared before the initiation of any limitation proceeding, then, if the latter is applicable, it should be requested and constituted as a special proceeding, within the bankruptcy proceeding.
China	There are no express provisions regarding this issue under Chinese law. And it seems that no disputes in this respect have arisen before Chinese maritime courts up to now.
Denmark	The fund proceedings will continue but with the bankruptcy estate acting as the competent party.
Finland	<p>If the limitation fund has been constituted by depositing a guarantee provided by a bank or a P&I Club, the fund does not become part of the owner's bankruptcy estate. However, the position becomes unclear if the owner makes a cash deposit. Arguments in favour of a similar view also in this case are:</p> <ul style="list-style-type: none"> - by constituting the fund, the owner loses his possibility to dispose of the cash, - as the constitution of the fund has the effect of prohibiting (and annulling) all security measures or distraints against the vessel or other property belonging to any person for whom the fund has effect (Chapter 9 § 8), the creditors could lose their security if the fund becomes part of the bankruptcy estate. The legal position of the creditors should not depend on the manner in which the limitation fund is constituted, and - even if the LLMC 1976/96 is silent on this issue, a solution whereby the cash deposit forms part of the owner's bankruptcy estate

	would, arguably, be against the “spirit” of the Convention. But there is no court practice on the issue, and another view is also possible, that is, to consider the cash deposit to the fund comparable with a security for debts, and thus forming part of the owner’s property.
France	Pursuant to article 62 of the law of 3 January 1967, the amount of the fund, once the fund has been constituted, is exclusively assigned to the payment of the claims which are included in the above “table for the distributions”.
Germany	LLMC & CLC: After the constitution of the fund bankruptcy of the owner has no effects at all. The fund is separated from the bankruptcy.
Greece	<i>The Pollution Convention</i> The limitation fund is separated from the property of the Debtor and is only available for the payment of the claims in respect of which limitation of liability has been evoked (Article 9 para. e of the Pollution Decree). The bankruptcy of the Debtor (or any third party that constituted the limitation fund) has no effect on the limitation proceedings. The fund is not part of the bankruptcy property (Article 9 para. f). <i>The LLMC Convention</i> This matter is not regulated in the Rules of Procedure of the CPML. The bankruptcy of the Debtor, if it takes place before the limitation proceedings, hinders such limitation because the bankrupted shipowner will be no more able to dispose of his own property. In contrary, the Greek legal theory seems to accept that the bankruptcy of the Debtor, which is consequent to the limitation of liability, has no effect on limitation proceedings.
Ireland	- LLMC – Generally speaking, if the fund was constituted by the relevant insurer, any creditors of the bankrupt ship owner would have no rights against the fund. If there was a bona fide constitution of a fund by the ship owner when solvent and prior to the bankruptcy, creditors of that bankrupt ship owner should have no rights of redress against the fund. - CLC - Ditto. - HNS –Ditto.
Italy	Pursuant to article 639 CN the bankruptcy of the owner if subsequent to the date when the claims have been definitely allowed, does not affect the limitation proceedings; the fund is not included in the property of the bankruptcy divisible amongst the creditors, and the claimants whose claims are subject to limitation are not entitled to participate in the distribution of the property of the bankrupt.
Mexico	If the fund has been already constituted, it remains separately from the Owner bankrupt. If the Owners have not constituted the fund, then the claims will not be subject to limitation, but will enter the bankruptcy procedures.
Netherlands	Bankruptcy of the owner or any other party entitled to limitation of liability who constitutes a limitation fund generally has no effect on the limitation proceedings. Pursuant to Article 21 (5) Faillissementswet (Insolvency Act), the fund is not part of the insolvent’s estate. The only procedural effect is that the insolvency liquidator will be entitled to replace the insolvent party in the limitation proceedings and to intervene in renvooi-proceedings (Article 642r (4) CCP).
Norway	The 1996 Convention art. 11 para.1 has been implemented in MC § 177 2 nd para. Accordingly, MC § 239 provides that the fund may not be released except by the consent of the person liable and all claimants having given notice of claim to the court. MC § 195 (oil pollution) does not contain any provision equivalent to § 177 2 nd para., but MC § 239 on the release of the fund also applies to limitation funds for oil pollution. The fund is protected in bankruptcy, also because the sum or the security ordinarily has been provided by the liability insurer.
Slovenia	We have no such provisions.

Sweden	<u>LLMC & CLC</u> : The matter of the owner entering into bankruptcy (liquidation) during the limitation proceedings is not regulated in Swedish maritime law. General rules suggest, though, that a bankruptcy will not affect the distribution of the limitation fund. If limitation of liability has been invoked without constitution of a fund, a bankruptcy will probably affect the creditors' prospects of getting their claims covered. The Swedish Insurance Contracts Act (1927:77) section 95 paragraph 3 - If a policy-holder, who is declared bankrupt, is entitled to claim compensation under a liability insurance, but which he has no right to draw without the consent of the party who suffered the damage, the suffering party has the right to take over the insured's claim against the insurer.
Venezuela	The VMCL is clear in this respect. There is an article (Art. 71) by which it is established that the Limitation as a maritime insolvency proceeding has priority over a general bankruptcy proceeding of the shipowner. Such article says that the fund of the limitation proceeding will not be attached to the bankruptcy proceeding provided the right of the shipowner to limit his liability has not been denied. Just and only in the latter case the Court will the transfer of the funds deposited in the limitation proceeding to the bankruptcy proceeding.

Question (p): *Whether there are any other issues relating to the limitation procedure in force in your country that are worth mentioning.*

Argentina	See point 2.- of the Introduction to this paper.
Chile	We consider worth to mention the effects once the limitation fund has been constituted, and so declared by the competent Court. In fact, art. 1217 of the C. Com. states that any individual execution of any precautionary measure such as the arrest of ship shall be suspended. As a consequence of that, any interested party may request the release of the arrest. Likewise, as already mentioned in letter (o) above, the fund shall be available only for the payment of claims in respect of which limitation of liability is invoked.
China	No.
Denmark	We shall revert later with a very interesting issue, which concerns the relationship between the Judgments Convention; and the right to enforce EC-judgments without limiting the amount in question or challenging its exequatur on the one side; and the Convention on Limitation of Liability for maritime claims; and the right to limit liability, on the other side. Two Danish judgments rendered by Courts on the same judgment-level have reached different conclusions on the question, i.e. where a final non-appealable German EC-judgment in a collision case, rendered on basis of the German global limitation rules, was acknowledged and considered enforceable by Vestre Landsret ("The Western High Court of Denmark"); whereas the Maritime and Commercial Court of Copenhagen, where a limitation fund had been constituted, found that the German judgment should be submitted to the Court, but should then form part of the limitation proceedings to the effect that a second limitation of the underlying claim should be accepted, this time according to Danish law, lex fori. The dispute, inter alia, concerned the question whether the Limitation Convention is a "special convention" within the meaning of Article 57 of the Judgments Convention. Vestre Landsret found that it was <u>not</u> – especially in view of the original Travaux Préparatoires (inter alia the Schlosser Report) and in view of the main rule set out in Article 29 of the Convention; whereas the Maritime and Commercial Court of Copenhagen found that the Limitation Convention in the opinion of the Court is an Article 57 Convention. This Court found that most factors supported such conclusion and also indicated that a different conclusion would have unpredictable consequences, as exequatur could be attempted in any of the 25 EC member states, although a limitation fund has been constituted in another EC state.

	We shall revert with further information and documentation about this issue, where the undersigned represented the Owner invoking the limitation rules.
Finland	---
France	<p>If, as we understand it, the aim of this questionnaire is to contemplate the feasibility of unified procedural rules in limitation conventions, it would be useful that each country highlights the weaknesses of its own procedural rules so that they are set aside from any attempts to draft rules that could be proposed by the CMI.</p> <p>The French system has two main defects:</p> <p>(i) The right of the owner to limit liability can be challenged, as we have explained it in our answer to question (b), before two different judges:</p> <ul style="list-style-type: none"> - the President of the Commercial court who has rendered the order constituting the fund and, - the court seized of the merits of the case. <p>The possibility offered to claimants to seize the President of the Commercial court, in summary proceedings, of the question whether the owner is entitled to limit his liability, or not, is the result of the interpretation given by the jurisprudence of some of our courts of the decree of 1967 and more precisely of its article 61.</p> <p>It is not satisfactory as this interpretation allows Presidents of Commercial courts in summary proceedings to decide on the fundamental issue of the right of the shipowner to limit liability.</p> <p>This issue, which is a substantive one, should therefore be of the sole competence of a court in the framework of substantive proceeding.</p> <p>Although it is a matter of French procedural law, it raises the question of the proper court to hear the question of the right of the owner to limit his liability which needs to be contemplated and resolved in the proposed unified rules.</p> <p>Assuming the proper court is that which is seized on the merits of the liability and the quantum issues, claimants should be prevented, through coercive procedural means, to challenge the right of the owner to limit his liability before the court before which the limitation fund has been constituted, which, in a number of cases, is not the same.</p> <p>But the opposite can be contemplated in the same way, in which case, claimants should be prevented by coercive procedural means from challenging the right of the owner to limit his liability in the framework of the proceedings on liability and obliged to raise this issue before the court before which the limitation fund has been constituted.</p> <p>This solution would be sensible in cases where several courts are simultaneously seized of the liability issues in different countries and may render, for the same event – unless connexity can be pleaded successfully –, conflicting decisions on the owner's right to limit.</p> <p>Therefore, the question of the consolidation of the limitation proceedings before one court only, i.e. the court seized of the liability issue (if there is only one dispute) or alternatively the court before which the fund has been constituted (if several courts have been seized of several liability issues), would need to be discussed within the CMI in matters where there are several claimants and concurrent forums.</p> <p>(ii) The system of assessment of claimants' claims provided for by the decree of 1967 is extremely complicated and, it does not work because in most cases the claims are assessed by the court seized on the merits of the liability and quantum issues and the work of the liquidator is limited.</p> <p>In practice, the liquidators wait for the outcome of those proceedings (which may take place simultaneously but at different speeds before the courts of different countries) to present to the Judge of the control his proposals for the admission or rejection of the claims</p>

	<p>filed into his hands, as explained above in our answer to question (h). But in cases where there are a lot of claimants against the fund, each of those claimants have, at that stage, the theoretical possibility to dispute the claims of the other claimants which have been admitted by the liquidator and the Judge of the control of the constitution fund proceeding. Although, to our knowledge no proceedings have ever reached that stage, this duplication of proceedings and recourses is not satisfactory. Therefore, the question of the proper court to assess the claimants' claims should also be discussed within the CMI so that the system of assessment of claims proposed by the unified rules of the CMI avoids the duplication of proceedings. We would finally like to draw the attention on the consequences for the claimants of the bankruptcy, in the course of the proceedings, of the person who has constituted a fund and who is found liable and entitled to limit its liability. Such a bankruptcy should have no effect on the distribution of the fund which should therefore be exclusively remitted to the claimants who are entitled to it. A clear provision to that effect should be included in the unified procedural Rules of the CMI.</p>
Germany	<p><u>LLMC & CLC</u>: With the "Schiffahrtsrechtliche Verteilungsordnung" the German law is very well prepared to settle both CLC & LLMC claims in one law.</p>
Greece	<p><i>The Pollution Convention</i> (a) Jurisdiction of the Greek Courts Jurisdiction for the constitution of the limitation fund is awarded to the First Instance Court of the court district where the incident that caused the pollution occurred or, if the incident consists of a series of events, the court district where the first serious event occurred. In case that the incident or the first of a series of events occurred outside the Greek territory, then jurisdiction is awarded to the First Instance Court of the court district where the first serious event occurred or where the first event of preventive measures to prevent or minimise damage to the territory occurred (Article 1 para. 1 (a) of the Pollution Decree). The wording of this provision is not fully compatible with Article IX (1) of the Convention; for example, the jurisdiction of a Greek court could be questioned in a theoretical case where an incident of pollution occurs entirely within the Greek territory but no damage is sustained in Greece. (b) Objection against the Statement of the Debtor for the limitation of liability A Claimant who questions that the Debtor has the right to limit his liability in accordance with the Convention may file an objection before the Court against the Statement of the Debtor for the limitation of liability. This objection is filed within the time limit for filing a Notice of Claim. If the objection is admitted by the Court with a final and unappealable Judgment, then the limitation of liability has no effect towards the Claimant who filed the objection and that Claimant is removed from the Distribution Plan (Article 28 of the Pollution Decree). This provision seems rather unfortunate as it could be interpreted to mean that, even though a final and unappealable Judgment has declared that the Debtor did not have the right to limit his liability under the Convention, the limitation proceedings would carry on for the claimants who were not party to the objection proceedings.</p>
Ireland	<ul style="list-style-type: none"> - LLMC - CLC - HNS
Italy	Reference is made to the Introduction.
Mexico	Once the fund is established, no precautionary measures can be requested against Owners assets.

Netherlands	<p>1. Under Dutch limitation procedure, after the limitation fund has been constituted and it has been established that the applicant is entitled to limitation of liability, he (and all other persons entitled to limitation) must ask for the suspension of all proceedings pending against him (or them) before Dutch Courts regarding claims subject to limitation (Article 642f (1) CCP). Failure to do so, will result in the loss of the right to limitation of liability of that person(s) towards that or those creditor(s) (Article 642f (4) CCP).</p> <p>2. In the <i>Mighty Servant II</i>-decision dated 30 October 2002 (<i>Schip & Schade</i> 2003, 26) the Rotterdam Court has held in a case where the bare-boat charterer/ disponent owner had constituted a limitation fund with the Rotterdam Court and a charterer wished to rely on that fund as well, that according to Dutch limitation (procedural) law, the charterer had to exercise its right to limitation of liability by issuing its own application for the commencement of limitation proceedings to the Rotterdam Court, but by reference to the already existing fund. The original decision (in Dutch) and an English translation of same will be attached to this questionnaire.</p>
Norway	---
Slovenia	No.
Sweden	<u>LLMC & CLC</u> : No additional information.
Venezuela	We consider worth mentioning the effects once the limitation fund has been constituted, and so declared by the competent Court. First, as per Art. 59, any individual execution of any precautionary measure such as the arrest of ship shall be suspended. As a consequence of that, any interested party may request the release of the arrest. Second, as per article 61 by which once constituted the fund all existing claims, actions and proceedings or which may be aroused against the petitioner, to which he may opposes his liability, shall be accumulated to the limitation proceeding.