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1.The new Turkish Commercial Code

a.Introduction

For the purpose of meeting the demands of commercial life, as well as to achieve compliance to the standards and regulations of the EU, a commission has been formed in recent years in Ankara with the task of re-drafting the new Turkish Commercial Code (“NTCC”).

Recently, the first draft has been published. With the same partition of the Turkish Commercial Code presently in force (since 1957), the fourth chapter deals with maritime law and fifth chapter is related to insurance law.

Among other bodies, the commission has also asked the Chamber of Shipping to evaluate the draft and send its opinions. As the legal adviser to the chamber, Dr.Fehmi Ulgener was elected as the chairman of the sub-committee responsible for the extensive work to study the fourth chapter which contains 469 articles. The report of the subcommittee was presented to Mr.Metin Kalkavan (president of Turkish Chamber of Shipping) as well as the board of directors, and which has been accepted and sent to the commission as the official Chamber of Shipping response.

Upon evaluation of the report, the commission invited the Chamber of Shipping to a meeting in Ankara on 11.6.2005. The Chamber was represented by Halim Mete (Vice president), Recep Düzgüt (Board member) and Dr.Fehmi Ülgener. At the meeting some progress was made to meet the demands of both parties in order

to reach an acceptable draft.

A second meeting took place in Istanbul on 17.6.2005. The Chamber was represented by Metin Kalkavan, Recep Düzgit, Dr.Fehmi Ülgener and Atiye Istanbulu (Ulgener LC/LO). During this meeting the parties mainly concentrated on the issues relating to the deletion of Turkish ships from the registry when auctioned abroad, consequences of such auction and the arrest of foreign ships within Turkish waters.

On 22.6.2005 the second draft was published by the commission, with mostly satisfactory results in respect of meeting the previous demands of the Chamber of Shipping.

The next step for the draft is evaluation by a higher commission at the Ministry of Justice. This will be followed by a final vote by the Turkish Parliament. The final step (after approval by Turkish Parliament) will be for the NTCC to be published in the Official Gazette. We have been told that, if everything goes as expected, NTCC will be in force by 1st of January 2006.

We would like to extend our sincere appreciations for the support given by the Chamber of Shipping during our work, especially by Mr.Metin Kalkavan, Mr.Halim Mete and Mr.Recep Düzgit.

In future issues we intend to provide detailed information regarding NTTC, but at this stage we would like to outline some of the major changes and the highlights.

b.Highlights

b.1. Auction abroad - deletion from Turkish registry

Generally speaking, the last 50 articles of NTCC governs the forced sale of vessels (Turkish and also non-Turkish flag vessels) and are broadly in compliance with the International Convention on Maritime Liens & Mortgages dated 6.5.1993.

According to the second draft of the NTCC, (art.1350), a Turkish vessel will only be deleted from the registry, if authorities or parties associated with the procedure for auction abroad notify the registry, the registered owners and other registered benefit holders (such as mortgagees) in writing and also place an advertisement in a local Turkish newspaper by at least 30 days prior to the auction.

Further articles 965 and 966 clearly state that the vessel will be deleted if the she is lost (actual or constructive) or the right of use of Turkish flag will be compromised by any reason, which (as implied) includes the auction abroad.

The state of the regime as summarized above (which has been amended by the initiative of the Chamber of Shipping, as explained above) is in line with the former amendment of TTK in April 2004 (for detailed information, we refer to article “3. *Amendment of Turkish Commercial Code: Public sale of the ship outside Turkey / Faith of encumbrances registered in Turkey and deletion of registry*” The Bosphorus Online Vol.1) and also avoids difficulties encountered in recent years in respect of deletion of ships from the Turkish registry when sold by auction abroad.

b.2. Carriers' liability - the new regime

While present regime (TTK) is in line with Hague Rules, NTTC is creating a mixed system of Hague-Visby and Hamburg Rules.

Under art.1178, the carrier is liable for loss or damage to the cargo as well as losses arising out of delay. This seems to be the main essence of the Hamburg Rules and significant evidence of deviation from Hague-Visby Rules.

On the other hand exceptions of liability because of loss or damage to cargo are same as in TTK, and similar

to the Hague-Visby Rules, i.e. errors in navigation and fire are straightforward exceptions, while perils of the sea, war, warlike operations..., inherent vice, etc. are creating prima facie evidence for discharge of liability.

A new rule has been introduced for losses arising out of several causes. If one of the cause stands as an exception of liability and the other stands as a cause for liability, the amount of claim will be calculated pro rata.

Another important change has been made in respect of unit / package limitation, i.e. SDR (SDR 667.67 per unit / package or SDR 2 per kg, whichever is higher for loss of or damage to cargo) is now introduced. Wilful misconduct and gross negligence on the part of the carrier amounts to the loss of right to limit liability.

b.3. Time charters - a newcomer to the code

Time charters are not included in the present regime. As a positive improvement, time charters are now within the NTCC, but as a separate type of contract, i.e. they have not been placed with other types of contract of affreightment (such as voyage charters) on the grounds that owners do pass the right of use of commercial spaces of the vessel to the charterers for a specified time and not undertake to carry cargo under time charters. (from this aspect the draft was criticized strongly)

As a result of the initiative by the Chamber of Shipping, issues such as securing hire, minimum time of off-hire and redelivery has also been added to the sub chapter for time charters in the second draft.

b.4. Counter security for arresting ships

Among countries, Turkey is not often considered as a place of easy arrest, one of the major reasons for this was high rates for counter security, i.e. The arresting party has to provide a bank letter of guarantee generally up to 15% or even 20% to the court in order to arrest a vessel. The position will be not the same under NTTC.

Under art 1363 a fixed amount of Euro 10.000 has to be provided as counter security for arresting a vessel. The same article also states that upon application of the opponent party, and subject to the consideration of the court, the amount of counter security can be increased in accordance with factors such as TC rate.

On the other hand, this article has been criticised on the grounds that for small outstandings or damages and/or losses, the counter security amount (Euro 10.000) would be a factor to discourage the claimants from arresting the vessel. By bearing in mind the presently valid system and its consequences (for example for an amount of Euro 10.000, the claimants has to provide counter security for the same amount under the NTTC, but Euro 1.500 for the present system) the Chamber of Shipping has proposed a mechanism similar to one granted to the opponents, i.e. after providing the counter security Euro 10.000, claimants will have the right to ask the court to reduce this amount.

b.5. Club Letter of undertakings - at last !

Another improvement within the NTCC is the introduction of CLU's (club letter of undertakings). Under the present regime, clu's are not acceptable at all for the courts, bank letter of guarantee (unconditional and unlimited by time) is a condition precedent to arrest a vessel or to release an arrested vessel.

This was naturally creating difficulties and also discouraging the parties, as loss of time during the provision of a bank letter of guarantee was encountered in most cases (due to inter-bank problems), also high interest rates were another factor to discourage parties.

Under NTTC, clu's will be acceptable by the courts, but this is conditional, i.e. the opponent party has to accept the clu and also to inform the court consequently. We think that P&I Clubs in particular will be happy

with this development.

b.6. Cancellation of charter - compensation of losses

Under TTK (present regime) if the charterers cancel a charter without a just cause (cases for justified cancellation are expressly stated by TTK, such as war or loss of vessel and / or cargo, etc) they are obliged to pay ½ of the freight (and in some cases even 2/3) as a penalty.

NNTC has a different approach for this matter. The owners have to prove their losses arising out of an unjustified cancellation of the charter; if there are difficulties to determine the loss, the court may calculate the compensation as 30% of the total freight. (this percentage was 10% in the first draft, but as a result of the Chamber of Shipping's initiative, it has been increased.)

b.7. IMAC - the amended formation

Istanbul Maritime and Administrative Court ("IMAC") has been established in 2004 to deal with matters and disputes arising out of the fourth chapter of TTK. During the period left behind since 2004 some difficulties have been encountered, for example according to the by-laws of the Ministry of Justice IMAC is a speciality court, which can only have a single judge. However time has proved that a system with a single judge is not rational. Furthermore definition of the task of the IMAC as "matters and disputes arising out of fourth chapter of TTK" is making cargo indemnity cases impossible to be dealt by IMAC, since during such cases cargo insurers based on subrogation are the claimants, but the issue of subrogation is not within the fourth chapter, but within the fifth chapter. (insurance)

In order to avoid those difficulties, NNTC introduces a full commercial court (with three judges) which will only deal with matters and disputes arising out of the fourth chapter of NTTC as well as stemming from any other source of law.

Further, depending on the requirements, further IMAC's can be established in different regions.

b.8. General Average - direct reference to YAR

The present regime has a set of rules regarding general average. NTCC is changing this and without containing detailed articles, it simply refers to the latest York-Antwerp Rules of which are applicable at the time of the event.

b.9. Pollution - a whole new chapter

One of the major changes introduced by NTCC is a new chapter dedicated to pollution issues. The new chapter has 3 sections. The first refers to LLMC 1976, the second refers to CLC 1992 / IOPC 1992 and the last governs the application of those conventions.

Importation of those conventions into the domestic system are also making them applicable for Turkish flagged vessels directly.

2. News from the community

"Launching of first Kamsarmax of Yasa Shipping"

Launching ceremony of the first Kamsarmax “MV Yasa Neslihan” ordered by Yasa Shipping and Trading Industry SA will be held on 28.7.2005 in Japan / Tsuneishi Shipyard.

Order book for Yasa is very impressive indeed:

3 x 82.800 DWT “Kamsarmax” Panamax Bulk Carriers (Delivery : 2005/2006)
2 x 75.500 DWT Panamax Bulk Carriers (Delivery : 2005/2006) 4 x 56.500 DWT Handymax Bulk Carriers (Delivery : 2005/2006/2007)
1 x 207.000 DWT Capesize Bulk Carrier (Delivery:2008)
2 x 110.000 DWT “Aframax” Crude Oil Tanker (Delivery 2007/2008)

ULGENER LC/LO – SCOPE OF WORK

Ulgener LC/LO, based in Istanbul, with its office right **in the Shipping Center**, where most major Turkish ship holding groups have their headquarters,
is a law firm dedicated mainly to shipping matters, with a wide scope including related issues, such as:

P&I matters,

cargo claims - disputes arising from bills of lading, crew claims, pollution, liens on vessels; accidents, such as collisions, salvage and wreck removal, etc.

FD&D matters,

disputes arising from voyage and time charterparties, i.e. forced freight & demurrage collection, liens on cargoes, etc.

H&M,

salvage, general average adjustment etc; war and strike clauses and cargo insurance matters, also representing underwriters and providing legal advice regarding local and international law.

Ship Finance - Sale & Purchase,

assisting foreign banks and other financial institutions, covering also mortgages and disputes arising out of mortgages.

Contracts of **Shipbuilding & Repair** and disputes arising out of such contracts.

Collection of **outstanding premiums** on behalf of P&I Associations.

Enforcement of **foreign arbitration** and **court awards** (marine / non-marine).

Advising shipowners and P&I Clubs regarding issues arising from Turkish as well as International maritime & commercial law.

Legal correspondents of a P&I Club within the International Pool.

Assisting foreign companies to establish local branches, entering into partnerships with Turkish companies, privatisation of ports & other facilities, etc.

Contracts for and disputes arising out of **carriage by road** (CMR / local law) and **aviation**.

Assisting owners for protection of their interests and avoiding conflicts on drafting charterparties, bills of lading, MOA's and other documentation.

Advising leading Turkish **steel manufacturers** for shipping related issues.

Serving as legal advisers to the **Turkish Chamber of Shipping** and representing the Chamber at the **Bimco Documentary Committee**.

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