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# THE BOSPHORUS ONLINE

Newsletter of Ulgener Legal Consultants – Law Office / Vol.8 – October 2009 / English Edition

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**Earlier volumes of the newsletter can be found on our website.**

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### 1. Turkish Open Form (TOF) at the Old Library, Lloyds

Dr Ülgener was a speaker at the seminar held by Evdemon, Ertem and Associates on September 15, 2009 at Lloyd's Old Library in London and has given a speech about Salvage in Turkey and the Turkish Open Form (the T.O.F.).

Dr Ülgener stated at the beginning of his speech his purpose for giving his addressing and stated that his intention was neither defending nor criticising the T.O.F.

As the T.O.F. makes references to Turkish Commercial Code (the Code), Dr Ülgener mentioned the differences between the provisions for salvage in the current system and the future system , namely the Draft Commercial Code (the Draft) which plans to renew the Code.

Dr Ülgener stated also that he has taken part in the preparation works for the Draft as the head of a sub-commission of the Turkish Chamber of Shipping and he mentioned that the Draft incorporates the principles of the 1989 Salvage Convention (International Convention of Salvage, International Maritime Organisation). Mr Ülgener stated the equivalent sections of the Draft with that of the Convention and clarified the differences which will be brought by the Draft over those of the current system. In short those relate to the criteria set for the fixing of the remuneration as stated in section 1305 of the Draft and to the annulment and modification of the salvage contract stated in section 1301.

Afterwards, Dr Ülgener mentioned that the T.O.F. will have to be modified upon the entering into force of the Draft and gave brief but useful explanations regarding the eight sectioned contract.

In the end of his speech Mr Ülgener shared some of his experiences with regard to the applications relating the T.O.F. and shared diagrams with the audience with regard to the statistics of the incidents between years 1997 and 2009 and he provided statistical information regarding the whereabouts and reasons of such incidents within the Turkish Waters.

He mentioned his hopes for the better results through the application of the system by sharing of his relating experiences.

Participation was high at the seminar and the participants were mainly from underwriter companies and from law firms.

## 2. Rotterdam Rules and Turkish Commercial Code / Turkish Draft Commercial Code

**(ULGENER LC/LO is organising an event at the CHAMBER OF SHIPPING under the chambers' sponsorship regarding Rotterdam Rules.**

**It is an open event at which the attendants will constitute mainly of shipowners, carriers and underwriters.**

**All interested participants are welcomed.**

**Nov 19, 2009 Thursday, at 13.30 Hours – Chamber of Shipping, Fýndýklý, Istanbul)**

As it is already known, as of September 23, 2009, sixteen States officially signed the UN Convention on contracts For the International Carriage of Goods Wholly or Partly by Sea, i.e. the "Rotterdam Rules". It will take twenty States to ratify the Convention before the Convention comes into force. It is of importance to note that the Convention intends to replace The Hague, Hague-Visby and the Hamburg Rules as any State signing the Convention must denounce the aforementioned Conventions.

It is a surprise seeing the much debated seafaring countries signing the Rotterdam Rules. That alone allows us to consider whether the criticisms against the Convention for being partial are indeed groundless as the lengthy 96 Articles of the Convention are drafted to meet the compulsory needs of the carriage by sea. It is our view that the Convention will, sooner or later, be one that which is adopted by other seafaring nations as its extensive and modern content has the capacity to balance the needs and obligations of the carrier and the shipper and the liabilities owed between each other.

In the meanwhile, the Draft Commercial Code is awaiting approval from the National Assembly in order to come into force and to renew the current Turkish Commercial Code. The Draft is not simply a modification to the current system which was prepared with the text of the current in mind but one which is prepared from blank. It aims, therefore, to completely avail the commercial system be as compulsory and conclusive of the modern applications of trade as possible. That being said, however, it should be noted that the Draft was prepared with The Hague, Hague-Visby and Hamburg Rules in mind which brings the Turkish State to such point that if it decides to ratify the Rotterdam Convention, its newly drafted Commercial Code may have contradictory provisions with it. This is a dilemma which getting into is preferred not to be risked. That being the reason, it is our view that the contradicting provisions should be modified according to the Rotterdam Rules; if at all the State has such an intention of ratifying it which we previously stated that it, sooner or later, should as otherwise the Turkish ship owners', carriers' and shippers' share in the international market will be adversely affected and such case will do anything but serve the Draft's purpose of covering unified rules with regard to such carriage.

For reasons explained above, we provide a brief list of comparison of the disparities between the current system, the Draft Commercial Code and the Rotterdam Rules hereunder, hoping that it should give a fair idea of the differences and provide a guideline as to which provisions should be made compatible with those of the Convention. It should be reminded, however, that such comparison only includes the contradictory provisions of those in the Convention and not all differences between the current and the Draft Commercial Code.

### DIFFERENCES

- i) The Rotterdam Rules (the Convention)
- ii) The Turkish Commercial Code (the TCC)
- iii) The Draft Commercial Code (the DCC)

The Convention states and lists as per what conditions the cargo may be carried on deck and which provisions the carrier would be liable accordingly if it did not pursue the conditions stated within them (Art.25). The same approach is adopted within the DCC (s.1151), however, the TCC, albeit not allowing carriage on deck without shipper's consent, does not state which provisions will apply to govern the carrier's liability (s.1029). Both the Convention and the DCC refer to the liability resulting from loss, damage or delay in respect of the liability arising out of carriage on deck, however, the limitations adopted in the Convention and the DCC are distinct and are as follows; the limits of liability in cases where the value of the goods are not declared and included in the contract particulars, the Convention adopts such limit of 875 SDR or 3 SDR per kilogram of the gross weight of the goods that are the subject of the claim or dispute (Art.59/1),

whichever is higher, where the current Turkish legal system, i.e. the Turkish Commercial Code, adopts a limit of 100.000 TRY (s.1114) which, by no means, reflects the standards of our time and of the maritime trade and such provision is no longer adopted or referred to by the Supreme Court of Appeal. The DCC, however, adopts a contemporary approach and raises the limit to 666,67 SDR or 2 SDR per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever is higher.

The Convention includes (Art.17/1) liability for delay in delivery which is not governed in the TCC (s.1061) but recognised in the Draft Commercial Code (s.1178). With regard to the notice in cases of delay in delivery the Convention expresses that the carrier shall be given such notice within twenty-one consecutive days of delivery of the goods (Art.23/4). The TCC does not include a similar term as a result of the provision adopted in section 1061; however, the DCC does incorporate a period of sixty days (s.1185) before which such notice for delay shall be given to the carrier as a consequence of section 1178 of the Draft Commercial Code.

The Convention expresses circumstances in which the carrier is relieved of all or part of its liability (Art.17/3(1) and states that "saving or attempting to save life at sea" is one of those circumstances. The TCC governs the same approach but with such condition that such attempt should be a "reasonable" one (s.1063/1). The DCC deviates from such approach adopted in the TCC and allows for any such attempt to be one which relieves the carrier of liability (s.1181).

The Convention confirms that the carrier and one or more maritime performing parties are jointly and severally liable for the loss of, damage to or delay in delivery of the goods (Art.20/1) and that they are liable for that part of the loss, damage or delay that is attributable to the event or circumstance for which they are liable (Art.17/6). Unfortunately, the TCC lacks an equivalent provision but the DCC states that the carrier, and the carrier alone, is liable for such loss, damage or delay which is attributable to his negligence (s.1183) despite the fact that such liability arose from joint negligence of the carrier and its men.

The Convention (Art.62/2) and the DCC (S.1188) both accept partial delivery of the goods in relation with the commencing of the time for suit whereas the TCC does not support such approach (s.1067), however, the period of time for suit in the DCC remains unchanged with that of the period in the TCC, i.e. both recognise a period of one year where the Convention allows a period of two years during which judicial or arbitral proceedings may be instituted (Art.62/1). With regard to the documentation required by law for the purpose of proof of receipt of the goods by the carrier, the Convention recognises "transport documents and electronic transport records" (Art.35) where the TCC recognises a "bill of lading" (s.1097) and the DCC does not deviate from that approach (s.1228). However, being a more contemporarily drafted law, although not in force at the time being, the DCC allows for other kinds of deeds which serve the same purpose with that of a bill of lading and additionally, the DCC recognises electronic copies of bills of lading (s.1228/6) which is a parallel approach with that of the Convention.

Regarding the content of such documents, the Convention includes a list of information which it deems shall be included in the transport document or the electronic transport record which are referred to as "contract particulars" (Art.36) the content of which are not different from those enlisted in the DCC which are deemed to be included in a bill of lading (s.1229). The DCC does not make radical changes to the contents of a bill of lading enlisted in the TCC (s.1098), but, as a matter of fact, it makes little amendments as to what should also be included in such particulars such as particular dates and the carrier's place of business.

Consequently and finally, the Convention recognises the evidentiary effect of the contract particulars (Art.41), i.e. a transport document or an electronic transport record, where the TCC recognises only the bill of lading as of such capacity. The DCC, on the other hand, takes a modern approach and states that all other documents with such intent constitute a doubtful presumption that such are of evidentiary effect (s.1242).

### **3. Oğuz Dagdeviren (Mr.), Our new blood**

Our new team member Oğuz contributes to our work with his skills and knowledge of the Turkish and the English legal system. He graduated from a private high school in Istanbul prior to moving to the UK for his legal education and he is a graduate of Law School, Coventry University. After completing his law degree (LLB, Honours) in the UK, he returned to Istanbul and studied, also, at the Faculty of Law, Istanbul

University. Working with us since August this year, Ođuz will surely add energy to our firm and support us in our sustainable and confident endeavours. Welcome, Ođuz!

You can reach Ođuz at [oguz@ulgener.com](mailto:oguz@ulgener.com)

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