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# THE BOSPHORUS ONLINE

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

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We have dedicated this issue to the New Turkish Commercial Code (NTCC), which was enacted last week by the Turkish National Assembly. However the new code will be effective as of 1.7.2012. Herebelow are some highlights of the NTCC, however we will be focusing in the future into more detail of each topic. Furthermore our lawyers will be pleased to answer your queries as quick as possible, therefore please do not hesitate to contact us !

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### 1. Auction abroad - deletion from Turkish registry

The last 50 articles of NTCC are governing the auction / 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 NTCC, (art.1350), a Turkish vessel can 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 are stipulating that the vessel will be deleted if she is lost (actual or constructively) 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) is in line with the former amendment of the commercial code 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.

## **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.

As per 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 the present commercial code), 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.

Regarding Rotterdam Rules, Turkey did not declared it's intention yet about whether to accept those rules or not. If the decision comes out as positive, then it is obvious that the NTCC is to be amended accordingly.

## **3. Time charters**

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.

## **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.

## **5. Club Letter of undertakings**

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 by 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.

## **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.)

## **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 NTCC as well as stemming from any other source of law, which would be according same issues.

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

## **8. General Average**

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.

## **9. Pollution**

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.

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## ULGENER LEGAL CONSULTANTS / LAW OFFICE

Ulgener LC/LO, based in Istanbul, with its office right in the Shipping Center, where the most major Turkish ship holding groups have their headquarters,

is a law firm dedicated mainly to shipping matters, with a wide scope including all kind of related issues, such as:

P&I matters, such as cargo claims - disputes arising from bills of lading, crew claims, pollution, liens on vessels; as well as accidents, such as collisions, salvage, wreck removal and general average matters, etc.

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

H&M, war and strike clauses and cargo insurance matters, such as salvage, general average adjustment, etc, also representing underwriters and provision of legal advice regarding local and international law,

Collection of outstanding premiums on behalf of P&I Associations,

Litigation and also corporate issues regarding yachts / superyachts.

Ship Finance - Sale & Purchase, as well as advising and assisting foreign banks and other financial institutions, covering also Turkish mortgages and disputes arising out of mortgages,

Assisting owners in respect of new building contracts and relevant steps to be taken after initial stage.

Enforcement of foreign arbitration and court awards,

Advising shipowners and P&I Clubs regarding issues arising from Turkish as well as International maritime law, (legal correspondents of a P&I Club within International Pool)

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

Also advising leading Turkish steel manufacturers for shipping related issues,

Legal advisers to Turkish Chamber of Shipping.