

ULGENER LEGAL CONSULTANTS / LAW OFFICE

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1. Activities

We have been very busy during the past months giving seminars (in Arendal and Bergen, Norway and in London - all Gard A/S offices) for briefing and promoting the maritime aspects of the new Turkish Commercial Code, attending to IMCC 2011 at Dublin, attending to Bimco Documentary Committee in Copenhagen.

We were also in close contact with leading German Banks regarding flag aspects and international credibility of Turkish Flag as per the new Commercial Code.

Our lawyers made five trips to Korea and Japan for closing and signing ceremonies for new buildings.

We will be organizing with Holman Fenwick and Willan a joint seminar next week on 23rd of November and also a dinner on 24th of November to the Turkish Shipping Community.

2. **New Turkish Commercial Code: Carriers Liability in general (within 3rd Sub-Section under the "Carrier's Liabilities and Rights")**

Further to our explanations regarding this topic in previous newsletter, here are some detailed information:

Article 1178 stipulates the general provisions, whereas:

The sub-article (1) sets out the principle of the liability, which could be considered in line with Hague-Visby Rules, since the article is dividing the stages similar to Hague-Visby Rules and also stating the degree of the carriers obligation:

(1) The carrier is obliged, particularly during the loading, stowing, trimming, carriage, keeping and the discharge of the goods, to exercise due diligence in the performance of the contract of affreightment which shall not be lesser than a level of diligence that can be expected from a prudent carrier.

Sub-article (2) stipulates for which issues the carrier is liable for, such as totalloss or damage to the goods as well as delay (significant deviation from Hague-Visby rules and approach to Hamburg Rules in this regard) in delivery within the condition that goods have to be under the control of the carrier:

(2) The carrier is liable for the total loss of or damage to the goods and for the delay in delivery provided only that such loss, damage or delay occurs while the goods are under the control of the

carrier.

In sub-article (3) the article explains the duration for the carrier liable for, ie the meaning of the control of goods by the carrier:

(3) The goods shall be deemed under the liability of the carrier from the time the goods are taken delivery of by the carrier from the shipper or any other person acting on behalf or in the name of the shipper or from the authorities which it is by laws or regulations at the port of loading mandatory to hand over the goods for shipment or from thirdparties until such time that;

a) It is delivered to the consignee by the Carrier or

b) Where the consignee refrains from accepting the delivery thereof, until such time that it is placed at the disposal of the consignee in accordance with the contract or with the provisions of the law or with the usage of the particular usage of trade applicable at the port of discharge or

c) It is delivered to the authorities or to the third parties whom, pursuant to laws or regulations applicable at the port of discharge, the goods must be handed over to.

Sub-article (4) explains the issue of delay.

(4) It shall be deemed that there is delay in delivery should the goods not be delivered in a period which could be reasonably expected of a diligent carrier, with consideration to the merits of each case, in the absence of another time which is either expressly stated at the port of discharge which is determined in the contract of affreightment or any other time which is expressly determined.

As the last sub-article, (5) explains the term of "total loss" and stipulates that 60 days have to be passed in order to consider a total loss.

3. New Regulation of Third Party Compulsory Insurance

On the 1st of July 2011 the '*Regulation on the Requirement to obtain insurance coverage for vessels against Maritime claims and supervision thereof*' shall come into effect.

According to Article 2

(1) This regulation shall apply to vessels of 300 GT and over flying Turkish flag, and for vessels regardless of the flag state bound for or leaving ports, terminals, anchorages and other ports facilities in Turkish territorial waters,

(2) This regulation shall not apply to warships such as naval ships, auxiliary naval ships and vessels owned or operated by a state and used for the time being by or on behalf of a State/Government for non-commercial purposes or for public service purposes.

According to these regulations the vessel must be insured, however the insurer does not need to be approved by the state.

This is provided within Article 5

(1) ship-owners of vessels flying a flag other than Turkish flag are required to have a valid protection and indemnity insurance policy against maritime claims.

(2) Ship-owners of vessels flying a flag other than Turkish flag are required to have a valid protection and indemnity insurance policy against maritime claims in place when such vessels enter a port facility included within the scope of this Regulation.

(3) The insurance referred to in paragraphs 1 and 2 shall cover maritime claims subject to limitation under the framework of 1976 Convention and Protocol of 1996. The amount of the insurance for each and every ship per incident shall be equal to the relevant maximum amount for the limitation of liability as laid down in the 1996 Convention.

It should be noted that within Article 6

(1) upon request of relevant competent authorities, the operator, agent or captain of a ship bound for a port or off-shore terminal under the jurisdiction of Turkey or which intends to anchor in territorial waters of Turkey for the purposes of loading, unloading or anchoring shall deliver a copy of the insurance policy to the nearest port authority on their route or the port authority of the port at which the vessel calls through a shipping agent based in Turkey prior to entering Turkish Territorial waters.

(2) Ship-owners are required to obtain a new protection and indemnity insurance policy for their vessels in accordance with the provisions of this Regulation and submit a copy of the insurance policy to the nearest port authority on their route or the port authority of the port at which the vessel calls through a shipping agent based in Turkey before the relevant vessel leaves Turkish territorial waters in cases where the existing

protection and indemnity policies providing insurance coverage for vessels against maritime claims have been cancelled, suspended or have become null and void for any reason whatsoever.

(3) Relevant Port Authorities shall not issue permits for docking/ mooring/ anchoring and certificates of seaworthiness for vessels which fail to comply with the obligation of notification under this article. There shall be various benefits such including the lessening of environmental pollution, sunken commodities shall be cleared away etc. Vessels of less than 300GT are not included in these regulations.

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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.