

**SUBJECT: PRIMAL PRACTICE FOR THE CONSTITUTION OF THE FUND IN TURKEY UNDER THE LLMC**

4 April 2014

**We have taken the liberty to highlight a recent development in Turkish practice of maritime law, which scratches the surface of invoking limitation and constitution of the limitation fund.**

As indicated in our respective circular published on 7<sup>th</sup> August 2012, the new Turkish Commercial Code numbered 6102 (“TCC”) came into force as of 1<sup>st</sup> July 2012, wherein a great variety of amendments have been introduced to the maritime law practice. Earlier, one of the problematic issues was the application of the relevant international conventions as far as the limitation of liability for maritime claims is concerned and how the owners limit their liability in Turkey.

The response of the TCC to this issue demonstrated that the liability for maritime claims can now without hesitation be limited in accordance with the Convention on Limitation of Liability for Maritime Claims dated 1976 (“LLMC”) and the Protocol dated 02.05.1996 which had been ratified by Turkey as well as any other convention replacing the Protocol as long as they are approved by the Turkish Republic (Sec. 1328 of the TCC). It is worth to mention on this occasion once again that the TCC also allows any person who seeks to limit liability before the Turkish Courts, even if at the time the rules of the LLMC are invoked, does not have his habitual residence or principal place of business in a State Party. However, the claimant may claim that the State of the subject person does not grant limitation of liability and therefore the liability of that person cannot be limited in Turkey.

Furthermore, if the claimant can prove that the state of that person applies higher limits in terms of LLMC, those limits will be taken into account while applying the LLMC. Furthermore, as per the Article 1335 of the TCC, liability may be limited without constitution of the fund pursuant to Article 10 of the LLMC.

The primal application of such provisions has been experienced on occasion that the respective P&I Club represented by us. Following the contact of a Turkish flagged oil products tanker to the pier and cargo lines at the Refinery Platform in Aliaga, Izmir on 20<sup>th</sup>

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March 2013, the Owners decided to invoke limitation of liability to prevent the arrest of the ship, in such circumstances where the security requested from the Owners was nearly USD 2.5 million. With commencement of the necessary proceedings on 28<sup>th</sup> March 2013, the Owners have constituted a limitation fund for SDR 1,000,000 by paying funds into the court as per the relevant court's interim decision rendered on 7<sup>th</sup> June 2013.

The jurisdiction of Turkish Courts on limitation proceedings is set out under Sec. 1348 of the TCC. Accordingly, the limitation proceedings are heard before the Court that has been assigned jurisdiction over maritime disputes, which is the Court at the place of the Registry for Turkish flag vessels and the Istanbul Courts in respect of non-Turkish vessels. It is further stipulated under Sec. 1349 that the liability cannot be limited for the court and costs and even in the event of constitution of a fund, the respondent should pay such costs separately.

In lack of further specific provisions in the TCC for the method for filing such an application to invoke limitation of liability, the Istanbul 51<sup>st</sup> Commercial Court has made no distinction between invoking limitation and constitution of the limitation fund as far as the procedure is concerned and with its decision dated 29<sup>th</sup> March 2013 ordered that the constitution of the fund should be pursued by way of an action on the grounds of the Turkish Code of Civil Procedure ("TCCP") and cannot be heard on documents only basis. On the other hand, it has further been decided that such action should be heard on the basis of simple procedure in accordance with the TCCP.

In consideration of the foregoing, when the claimant is tempted to arrest a ship for jurisdiction and security purposes in pursue of a maritime claim, it should be kept in mind that Turkish practice on application of the 1924 Limitation Convention with its low limits is no more concerned and Turkish maritime law practice on invoking the limitation and constitution of the fund is no more a mystery.

We hope the above will be of assistance and please do not hesitate to contact us for any and all further queries arise.

Best regards,

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