**Turkish Maritime Law Association**

**I. PRELIMINARY QUESTIONS**

**1. Has your jurisdiction ratified the following conventions (the 'Conventions'):**

**a. International Convention on Civil Liability for Oil Pollution Damage 1969 ('CLC**

**1969')**

Turkey has not ratified CLC 1969.

**b. 1992 Protocol to the CLC 1969 ('CLC 1992'**

Turkey has ratified CLC 1992 through 27.01.2000 dated and 4507 numbered Ratification Code that has been published on 29.01.2000 dated and 23948 numbered Official Gazette by asserting a reservation to the application of art. II/a(ii) of the Convention. However, art.1 of the 26.04.2001 dated and 4658 numbered Code has stated the removal of the "reservation" wording from art.1 of the 4507 numbered Ratification Code. Thus, CLC 1992 has entered into force in Turkey on 17.08.2002 without any reservations.

**c. Convention on Limitation of Liability for Maritime Claims 1976 ('LLMC 1976')**

Turkey has ratified LLMC 1976 through 28.02.1980 dated and 8/495 numbered Decision of Board of Ministers that has been published on 04.06.1980 dated and 17007 numbered Official Gazette.

**d. 1996 Protocol to the LLMC 1976 ('LLMC 1996') (references to 'LLMC' shall be understood as references to either LLMC 1976 or, where applicable, to LLMC 1976 as amended by LLMC 1996)**

Turkey has ratified LLMC 1996 through 05.02.2010 dated and 2010/162 numbered Decision of Board of Ministers that has been published on 13.03.2010 dated and 27520 numbered Official Gazette.

**e. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 ('HNS 1996')**

Turkey has not ratified HNS 1996.

**f. 2010 Protocol to the HNS 1996 ('HNS 2010') (references to 'HNS' shall be understood as references to either FINS 1996 or, where applicable, to HNS 1996 as amended by HNS 2010)**

Turkey has ratified HNS 2010 through 08.03.2017 dated and 6949 numbered Ratification Code that has been published on 03.04.2017 dated and 30027 numbered Official Gazette.

**g. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ('Bunkers Convention')**

Turkey has ratified Bunkers Convention through 26.02.2013 dated and 6439 numbered Ratification Code that has been published on 27.07.2013 dated and 28720 numbered Official Gazette.

**h. Nairobi International Convention on the Removal of Wrecks 2007 (`WRC')**

Turkey has not ratified WRC.

**2. Please indicate whether the a.m. Conventions apply directly in your jurisdiction or whether the stipulations have been translated and incorporated into domestic legislation.**

The 5th Book of 6102 numbered Turkish Commercial Code (TCC) which get in force in Turkey on 1st of July 2012, is the basic domestic source of maritime law in Turkey. TCC directly refers to the application of CLC 1992 for conflicts over indemnification of oil pollution damage (TCC art.1336). Additionally, TCC entails the direct application of the provisions of LLMC 76, its 1996 Protocol and all the amendments to them for the limitation of liability for marine claims (TCC art.1328/1).

As HNS 2010 and Bunkers Convention get in force in Turkey after the entry force of TCC, there are no provisions in the code that refer to the direct application of these conventions. These conventions have been translated and incorporated into domestic legislation through Ratification Codes. Additionally, there are directives adopted by decisions of Board of Ministers that govern the procedures and essentials of issuing and obtaining CLC 1992 and Bunker 2001 Certificates.

**3. Is the wording of domestic provisions incorporating art. V(2) CLC 1969/art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS/art. 6 Bunkers Convention/art. 10(2) WRC into domestic legislation different to the original text of the Conventions?**

CLC 1992 states that the owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result (art. V(2)). On the other hand, LLMC 1996 states that a person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly, and with knowledge that such loss would probably result (art.4).

In order to complete the application of these a.m. articles, TCC has placed an additional explicit article that clarifies the people whose fault shall be considered in such cases. According to the article, the following shall be considered: (a) if the person liable is a real person, fault of that real person, (b) if the person liable is a legal entity, fault of the bodies that debit the legal entity through their acts and transactions, (c) if the person liable is an ordinary company, fault of the partners, (d) if the person liable is a shipping partnership, fault of the partners and ship manager and (e) the fault of the people who represent the above mentioned people through a general or special authority (TCC art. 1343).

Bunkers Convention refers to the application of LLMC 1976 and states that nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976 , as amended (art.6). Thus, the above explanations made for LLMC 1996 in terms of its incorporation into TCC is valid for the related article of the Bunkers Convention.

**3a. If the answer to the previous question is in the affirmative, what are the differences?**

As explained above, TCC has placed an explicit article (art.1343) that clarifies the people whose fault shall be considered in the application of the above referred articles of the conventions.

**4. If your jurisdiction has not ratified the Conventions, does your jurisdiction recognize a right of limitation of liability for claims that would otherwise fall under the Conventions (the 'Equivalent Claims')?**

Turkey has ratified CLC 1992, LLMC 1996, HNS 2010 and Bunkers Convention.

**4a. If the answer to the previous question is in the affirmative, what are the requirements for breaking the right to limitation for Equivalent Claims?**

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**5. Are there any general principles of law in your jurisdiction that may serve to break the right to limitation otherwise than through the specific provisions contained in the Conventions (e.g. abuse of right)?**

LLMC 76 (art.4), CLC 1992 (art. V/2) and HNS 2010 (art. 9/2) focuses on "the intent to cause such loss, or recklessly and with knowledge that such loss would probably result" to break the right to limitation. TCC reserves the right of the "owner" (art.1062/2) and "master" (art.1089/4) to limit their liability in accordance with the provisions of the international conventions that Turkey is contracting state to. Additionally, the "carrier" cannot demand the application of the provisions governing limitation of liability, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay in delivery or recklessly and with knowledge that such loss, damage or delay in delivery would probably result (TCC art.1187/1). Thus, the wordings of the related provisions of the conventions that Turkey is contracting state to are in harmony with the wordings of the related provisions of TCC.

TCC refers to the application of the general provisions of other codes (such as the provisions of Turkish Civil Code) in times when it includes no provisions to be applied to a particular case (art.1/2). Turkish Civil Code refers to the application of general principles such as "principle of honesty" by explicitly stating that the legal order does not protect the abuse of a right (art.2/2) and "principle of good faith" by stating that the person who does not show due care in accordance with the premises have no right to assert good faith (art.3/2).

**II. "PERSONAL ACT OR OMISSION- ATTRIBUTION TO THE PERSON LIABLE**

**6. How is the requirement for a "personal act or omission" in art. V(2) CLC 1992, art. 4**

**LLMC, and arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?**

According Turkish Commercial Code, the fault of the person who wants to limit his responsibility reaches a certain degree; he loses his right to limit it. There are two stages of fault

 The first stage is if the damage resulted from the personal act or omission with intent to cause damage. The second stage is recklessly and with the knowledge that the damage would probably result. The term 'will' which is one of the aspects of gross negligence, characterizes as "negligence of recklessly conduct".

**7. Where the party entitled to limitation is an entity, what are the requirements for**

**attributing an act or omission to the party entitled to limitation?**

According to Article 1343/1 of the TCC, the following persons' fault is taken into account

ARTICLE 1343- (1) In the implementation of article 4 of the 1976 Convention and the second paragraph of the article V CLC 1992,

The fault of the following persons is taken into account:

a) real person: fault of each real person.

b) legal entities: the fault of the organs that put the legal entities under debt with their actions and affairs under the 50 th Article of the Turkish Civil Code and fault of the persons forming the organ.

c) Ordinary companies: fault of partners

d) Shipowning partnership: fault of stakeholder and ship managers

e) The fault of those who represent the above-mentioned legal entities based on a general or specific authority.

The person who have caused the legal person or legal entities to lose their right to restrict cannot limit their responsibilities.

**8. Are there court decisions or legal texts in your jurisdiction where the right to**

**limitation under the Conventions or equivalent domestic legislation has been broken**

**(or where it has been submitted that such right should be broken), respectively**

**confirmed (or where it has been submitted that such right should be confirmed), for**

acts/omissions of:

8a. The Master?

8 b. Crew members?

8c. The Designated Person Ashore/Company Security Officer?

8d. Other individuals within the entity entitled to limitation?

8e. Third

**According to Article 1343/2 of the TCC,** the fault of those who represent the above-mentioned legal entities (article 1343/1) based on a general or specific authority cannot limit their responsibilities. Therefore, if, 8.a, 8.c, 8.d, 8.e have authority to represent the legal entities, their fault will cause to lose the right to imitation.

**III. "WITH THE INTENT"/"RECKLESSLY" — Degree of fault**

**9. How is "intent" in art. V(2) CLC 1992/art. 4 LLMC/arts, 7(5) and 9(2) HNS or relevant**

**implementing domestic legislation interpreted in your jurisdiction?**

According to the Turkish Supreme Court, it is the act of knowing that the damage that will occur will probably result, and this should be evaluated in the characteristics of each event. In this case, the Turkish doctrine acknowledges that the probability of loss should be more than fifty percent

**10. How is' recklessness under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or**

**relevant implementing domestic legislation interpreted in your jurisdiction? Does**

**negligence qualify as recklessness (`Qualifying Negligence') under art, V(2) CLC**

**1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS in your jurisdiction**

It is evaluated as "negligence of recklessly conduct".

***10a. If the answer to the previous question is in the affirmative, what are the***

***elements of Qualifying Negligence under art. V(2) CLC 1992/a rt. 4 LLMC/arts.***

***7(5) and 9(2) HNS?***

The "negligence of recklessly conduct" has three elements: a recklessly act or omission, probable damage and knowledge that such damage would result. In the context of Turkish law, the will equivalent to wilful misconduct is going to mean "negligence of recklessly conduct".

**11. What is the standard for recklessness under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5)**

**a nd 9(2) HNS?**

The recklessness is considered to be an ultimate breach of due diligence (the objective criteria to be determined by the court) with the awareness that the damage will probably occur. It is necessary to establish a link between the actual damage and act that precise moment under those accurate circumstances, of a strong possibility that such damage will occur (the subjective criteria to be determined by the court)

**12. How is "actual fault" in art. V(2) CLC 1969 interpreted in your jurisdiction?**

The act must be intended with knowledge of the probable consequences.

**13. How is "privity" in art. V(2) CLC 1969 interpreted in your jurisdiction?**

It must be showed that the loss resulted from the personal behaviour of the limitation claimant. However, the limitation claimant is still responsible for the acts of his or her servants.

**IV. KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT**

**14, How is the requirement for knowledge in art. V(2) CLC 1992/art. 4 LLMC/arts, 7(5) and 9(2) HNS interpreted in your jurisdiction?**

The act or omission must be either intended or reckless with the knowledge of the probable consequences. It is not speculation. The knowledge covers that the loss would probably result.

**15. Does imputed or background knowledge suffice for the purposes of art. V(2) CI.0**

**1992/art, 4 LLMC/arts. 7(5) and 9(2) FINS?**

No. It should be evaluated in the characteristics of each even

**15.a. If the answer to the previous question is in the affirmative, what are the**

**relevant requirements?**

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**16. Does failure to obtain the necessary information suffice for the purposes of art, V(2)**

**CLC 1992/a rt. 4 LLMC/arts. 7(5) and 9(2) HNS?**

It should be evaluated in the characteristics of each event.

 **6a. If the answer to the previous question is in the affirmative, what are the**

**relevant requirements?**

**V. "SUCH DAMAGE"/"SUCH LOSS"**

**17. How has the term "such loss"/"such damage" (art, 4 LLMC - art. V(2) CLC 1996/arts.**

**7(5) and 9(2) HNS 1996, respectively) been interpreted in your jurisdiction?**

The shipowner's entitlement to limit liability can be removed only it is proved that the loss resulted from his personal act or omission committed wit the intent to cause such loss, recklessly and with the knowledge that such loss would probably result.

**VI. BURDEN OF PROOF**

**18. Who bears the burden of proof to show that the requirements for breaking the right to limit are fulfilled?**

TCC does not explicitly point on the burden of proof to show that the requirements for breaking the right to limit are fulfilled. Once again, referring to the first article of the code which refers to the application of the general provisions of other codes in times when it includes no provisions to be applied to a particular case, in order to reply the question, the related provisions of Code on Civil Procedure shall be considered.

Art.190 of the Code on Civil Procedure states that unless otherwise stated under a code, the part who has benefits in accordance with the asserted claims is under obligation to prove the existence of the facts of these claims. Thus, the person who asserts the breaking of the right to limit liability is under obligation to show the satisfaction of the requirements under Turkish law.

**19. Is it possible under the procedural rules of your jurisdiction that the burden of proof may shift to the person liable under certain conditions?**

There are no provisions concerning this possibility.

**VII. INDICATIVE REFERENCE TO OTHER CONVENTIONS**

**20. What is the wording used to implement art, 10(2) WRC and art. 10(2) Bunkers Convention in your jurisdiction?**

The wording in Turkey that is used to implement art.10/2 of WRC and art.10/2 of Bunkers Convention is "recognition and enforcement". Hence, a foreign judgment can be effect as a "judgment" in another country, only after a process of recognition and enforcement and conditions of the recognition and enforcement of a foreign judgment can only be determined by the law of this country.

**21. How have art, 10(2) WRC and art. 10(2) Bunkers Convention been interpreted in your jurisdiction in the context of breaking the right to limitation?**

There is no special interpretation for the application of art.10/2 of Bunkers Convention in the context of breaking the right to limitation. In times when there will be a decision concerning the breaking the right to limitation and given by the foreign court, as this decision is on the merits of the case, Turkish courts will be bounded with the decision of that foreign court.

**VIII. EQUIVALENT PROVISIONS**

**22. The same language for the test for breaking the liability limits is used in art IV (5)(e) of the Hague Rules as amended by the Visby Protocol.**

Art. IV/5(e) of the Hague Rules as amended by the Visby Protocol states that neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result. As pointed above, TCC states that the "carrier" cannot demand the application of the provisions governing limitation of liability, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay in delivery or recklessly and with knowledge that such loss, damage or delay in delivery would probably result (TCC art.1187/1). Thus, the wordings of the related provisions of the conventions that Turkey is contracting state to are in harmony with the wordings of the related provisions of TCC.

**22a. Has your country ratified the Hague-Visby Rules or enacted these rules into their domestic legislation?**

Turkey has not ratified Hague-Visby Rules however has enacted some of the provisions of the Hague-Visby Rules in the related articles of TCC as follows:

- The carrier shall be discharged from all liability in respect of loss or damage, unless suit is brought within one year after delivery of the cargo or the date when it should have been delivered (TCC art.1188/1 and art.1188/2)

- An action for indemnity against a third person may be brought even after the expiration of the one-year period. However, this action shall be served in 90 days commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself (TCC art.1188, para.3).

- Carrier shall not be liable for loss or damage arising without the will or neglect of himself or his servants(TCC art. 1179/1).

- Unless there is an actual fault of the carrier, he shall not liable for the damage arising from the technical management of the ship or fire (TCC art. 1180/1).

- When the damage arises from one of the following reasons, the carrier and his servants are deemed to be faultless (TCC art.1182/1): (a) dangers and accidents of the sea or other waters which are suitable for the operation of the ship, (b) acts of war, riots and civil commotions, acts of public enemies, orders of the authorized institutions or quarantine restrictions, (c) seizure decisions of the courts, (d) strike, lock-out or other obstacles to working, (e) act or omission of the shipper or consignor or owner of the cargo, his agent or representative, (f) spontaneous decrease of the cargo in terms of its volume or weight or hidden defects or sui generis nature and quality of the cargo, (g) insufficient packaging and (h) insufficient marking.

- Unless the nature and value of the cargo has been declared by the consignor before shipment and inserted in the bill of lading, carrier shall not be liable for any loss or damage to or in connection with the cargo in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2 SDR per kilo of gross weight of the cargo lost or damaged, whichever is the higher (TCC art. 1186).

**22b. If the answer to the previous question is in the affirmative, how are the relevant criteria as listed above (II-V) interpreted in the context of the respective provision incorporating art. IV (5)(e) of the Hague-Visby Rules?**

Turkey is not contracting state to Hague-Visby Rules. Nevertheless, as pointed above, TCC has placed several provisions concerning the issue. The carrier cannot get benefit from the limitation of liability if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay in delivery or recklessly and with knowledge that such loss, damage or delay in delivery would probably result (TCC art.1187/1), for instance. Likewise, the carrier's servants cannot also enjoy the limits of liability if their act or omission is proven to have been done with the intent to cause such loss, damage or delay in delivery or recklessly and with knowledge that such loss, damage or delay in delivery would probably result (TCC art.1187, para.2). This is also a mandatory provision, thus the parties of a contract of affreightment cannot decide against this provision (TCC art.1243/1 (a)).