THE BOSPHORUS ONLINE

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INTRODUCTION

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 providing legal advice regarding local and international law,

Collection of outstanding premiums on behalf of P&I Associations, Ship Finance - Sale & Purchase, as well as assisting foreign banks and other financial institutions, covering also mortgages and disputes arising out of mortgages, 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 correspondent 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, Serving as legal advisers to Turkish Chamber of Shipping, also representing the Chamber at the Bimco Documentary Comittee.

1. STATUS OF PHYSICAL SUPPLIERS' CLAIMS UNDER TURKISH LAW

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According Turkish Commercial Code ("TTK") article 1352/l, (which is directly imported from the Arrest Convention 1999) "goods, materials, provisions, bunkers, equipment (including containers) **supplied or services rendered** to the ship for its operation, management, preservation or maintenance" creates maritime claim on the vessels. The phrases "**supplied or rendered**" used in the mentioned article enables to arrest the vessel for the physical suppliers' claims under Turkish Law.

According TTK article 1363, in order to arrest a vessel, the claimant should deposit SDR 10,000.00 as a security (this amount is paid to the courts while the arrest application is being made); this could be provided in cash or as a bank LOU; on the other hand Turkish Courts do not recognize Club LOUs as security. Article 1376 of TTK regulates that the substantive lawsuit should be launched within one month commencing from the date of the arrest order.

The above basic information gains importance during these days due to the status of OW.

Turkish physical suppliers are willing to ask for direct payment for fuel they provided to vessels through OW and seek to arrest the vessels to enforce their claims in Turkish waters. As advised above, due to the presence of article 1352/1, physical suppliers have right to claim maritime lien over the vessels and may ask the courts to arrest them.

At that point we should emphasize that, according Turkish Law, there is no way to take a measure for preventing the arrest besides establishing contact with the claimants for either reaching an amicable settlement or for reaching a common understanding with the claimants to provide a security (out of court). In other words Turkish Courts do not allow the owners to deposit the funds into either the court or a law firm's trust accounts to preclude the risk of their vessels being arrested.

Due to the abovementioned system in Turkey and due to the fact that the physical suppliers reject the suggestion as to the funds' being deposited at an escrow account, the most proper way is to evaluate the conditions of "assignment". In that scenario, the owners pay the invoices of the physical suppliers and simultaneously with that an agreement is signed between the owners and the physical suppliers as to the physical suppliers' assignment of the rights concerning the services rendered to the vessels. However it must to be born in mind that there should be no assignment restriction between the owners and the physical suppliers and the law of country at which the bankruptcy proceeding is held should allow this solution.

On various occasions, Ulgener LC/LO represented both the owners and the physical suppliers at this period.

2. Amendments Regarding Establishment Of Foreign Companies In Turkey Under Turkish Commercial Code

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According as the number of companies in an international arena increases, the freedom and right to settlement of companies abroad becomes a more significant matter that requires detailed legal norms. Developments in the globalized commercial and economic arenas should be taken into consideration for the regulation of any legislation regarding foreign companies' freedom of settlement.
Capital companies are the most common form of entities in Turkey utilized by local and foreign investors. The shareholders' liability of the companies is limited to the subscribed capital. In both joint stock and limited liability company types, corporate matters are managed by their company

articles of association pursuant to the Turkish Commercial Code No.6102 (the "TCC"), which entered into force on July 1,2012.
Aforementioned the New TCC has come with various amendments. Accordingly, major amendments in the New TCC can be summarized as:

- The establishment of joint stock companies (A.Ş.) or limited liability companies (Ltd. Şti.) is possible with only a single shareholder and this shareholder can be a foreign real person. According to the former code, joint stock companies could be established with a minimum of five shareholders, while limited liability companies could be formed with a minimum of two partners. Therefore, the New TCC removes the requirement for foreign companies to secure mandatory minority shareholders in order to comply with the minimum shareholder number requirements by the former TCC. Previously established companies' shares can now be held by a single party.

- Under the New TCC art. 365/1, joint stock companies are managed and represented by board members. However board members may assign representative authority as manager to third parties or managing members. On the other hand, under the New TCC art. 623/1, at least one of the shareholders is required to be chosen as manager who has right to manage unlimitedly and representative authority in limited liability companies. Pursuant to the amendment dated on 26.06.2012 and numbered 6335, it is not a requirement for at least one authorized representative to have place of residence in Turkey and to be a Turkish citizen. By this regulation on the stated law, a foreign real or legal person will be able to establish a joint stock company or limited company and all members of the board of directors can be comprised of non-resident foreign persons in Turkey. Nevertheless, if the appointed manager is foreign person, tax number or identity number for foreign people and notarized copy of decision by authorized body that includes place of residence shall be submitted. Furthermore, in case manager or representative of company is foreign person and resides in Turkey, residence permit is required.

- Under the New TCC, in accordance with provisions pursuant to Joint-stock company, the board of directors may now be comprised of a single person. This offers foreign investors an opportunity to do business more easily. Especially due to companies incorporated many shareholders, board meetings might be problematic. By the virtue of this amendment, board meetings can be conducted easily if board of directors is a single person. Another regulation is that physical presence of board members is not required; it allows board meetings to be held in an electronic environment. Furthermore, resolutions of the board of directors may also be approved via electronic signatures. Additionally, legal entities may be appointed as board members. Thus, foreign shareholders do not have to deal with excessive legal documents or holding shareholder meetings in order to change board members. Different representatives that are entitled by the legal entity may be appointed as a board member.

- By the amendment of the TCC, non-public companies have an opportunity to adopt a registered capital system. Thus, non-public joint stock companies may benefit from the opportunity of flexible capital increases introduced by the registered capital system. In this way, foreign companies may have an advantage to increase capital whilst reducing bureaucracy and/or travel expenses.

In joint stock companies, at least one shareholder (real person or legal entity) and a minimum capital of TRY 50,000 is required. The mandatory company shall include a general assembly and a board of directors. On the other hand limited liability companies may also be established with at least one shareholder (real person or legal entity). The liability of the shareholders is limited to the subscribed capital and paid by the shareholder. However contrary to joint stock companies, a minimum capital of TRY 10,000 is required in limited liability companies.

Consequently, limited liability and joint stock companies became bureaucratically to be closer to each other. Therefore, foreign investors may easily incorporate joint stock companies instead of limited liability companies due to flexibilities of corporate transactions and minimum shareholder liability for corporate related debts.

Company Establishment Procedures

Four copies of articles of association which are notarized must be prepared. After the notarization of articles of association, the application documents stated below are required to be submitted to the relevant trade registry office within 15 days.

Required Documents for the Company Establishment

- A company establishment submission and a notification form, duly filled in and signed by persons authorized to represent the company.
- Letter of Undertaking
- Articles of association including notarized signatures of founders and notary certification that proves all shares have been subscribed by the founders.
- Founders' statement signed by the founders.
- The bank letter proving that the share capital has been deposited and the bank receipt indicating that 0.04% of the company capital has been deposited to the account of the Turkish Competition Authority at a state bank.
- Permit or letter of compliance for companies that is required to the permit or letter of compliance issued by the relevant ministry or other official institutions.
- Notarized copy of signatures of persons with the authority to represent and bind the company. In case an appointed manager is a foreign person, statement of signature under corporate name of the manager is required.
- Application number indicating that the trade name to be used has been checked and confirmed by the Trade Registry Office.
- Company establishment statement form (4 original copies).
- Certificate of residence of founding partners if the founding partners reside in Turkey.
- Notarized translation of passport in case the foreign shareholder is a real person; apostilled and notarized translation of registry document issued by the competent authority in case the foreign shareholder is a legal entity.

3. Bill of Lading According to Turkish, Azerbaijan and Russian Commercial Code

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1.Turkish Commercial Code:

Definition, types and issuing Article 1228-(1) Bill of lading is such a deed by which the execution of a contract of carriage is proven and which shows that either the goods have been taken delivery of by the carrier or that the goods have ben laden on the vessel; the carrier only obliged to deliver the goods upon representation of such deed.

(2) By permission of the shipper, a "received for shipment bill of lading" may be executed in respect of the goods which have been taken delivery of for carriage but which have not been laden on the vessel yet.The carrier is obliged to make ,upon shipment of the goods on the vessel,as many as requested copies of "shipped bill of lading" against the return of the provisional receipt or the received for shipment bill of lading. Should an annotation in respect of the time of shipment of he goods and the vessel to which the shipment was carried out be added to the received for shipment bill of lading.The bill of lading may be issued by the Master or by a representative whom is authorised either by the carrier or the Master for such purpose in the name and on behalf of the carrier.

(3) The bill of lading can be issued in the form ofa straight,order or a holder's bill of lading.Where it is not decided otherwise, upon request of the shipper the bill of lading is issued in the form of a order bill of lading for the order of the consignee or just a orderbill of lading.In the event of this laast option,"order" means theorder of the shippeer.The bill of lading can be issued in the of the

carrier or he Master in the capacty of the consignee.

(4) Each and every copy of the bill of lading should contain the same text and each must show how many copies have been issued.

(5) The shipper is obliged upon request to hand over a copy of the bill of lading which is signed by himself to the carrier.

2.Azerbaijan Republic Commercial Shipping Code :

Article 109. Issue of the bill of lading (Madde 109.Konosamentin verilmesi)

109.1. The bill of lading is a document, that verifies the existence of the contract of carriage of the sea freight, acceptance and loading of the freight by the carrier and in accordance with this the carrier undertakes its delivery.

109.2. The bill of lading will be issued upon being accepted for carriage.

109.3. The consignor will guarantee the carrier that the presented information to be included in the bill of lading is correct and he will bear liability for losses incurred as a result of incorrectness of such information.

109.4. The right of the carrier to indemnify the losses will not release the carrier from liability before any third party, who is not a consignor in accordance with the contract of carriage.

Article 113 Types of bill of ladings (Madde 113.Konosamentin növleri)

113.1. Bill of lading may be issued in the name of specified consignor (straight bill of lading), in accordance with the instruction of consignor or consignee (order bill of lading) or to the bearer (bearer bill of lading). In case if the order bill of lading does not specify that it is handed over in accordance with the instruction of a consignor or consignee, the cargo will be deemed to be handed over in accordance with the instruction of the consignor.

113.2. Bill of lading shall be transferred with compliance of the following provisions:

113.2.1. straight bill of lading may be transferred by special endorsement or by any other form in accordance with the procedures established for assignment;

113.2.2. order bill of lading may be transferred by special or general endorsements;

113.2.3. bearer bill of lading may be transferred by simple submission.

3.The Merchant Shipping Code of the Russian Federation

Article 142 Issuance of bill of lading (Статья 142. Выдача коносамента)

l. After goods has been received for carriage, the carrier, upon the demand of the shipper, must issue to the shipper the bill of lading. The bill of lading shall be made up on the basis of a document, signed by the shipper, and containing the information listed in subparagraphs 3 to 8 of paragraph 1 of Article 144 if this Code.

2. The shipper shall guarantee to the carrier the accuracy of the particulars presented to be inserted in the bill of lading and shall be liable for losses incurred by the carrier due to the inaccuracy of this information. The right of the carrier to compensation for losses by the shipper shall not remove the liability of the carrier under the contract of carriage of goods by sea to any person other than the shipper.

Types of bill of ladding :Article 146. Types of bill of lading (Статья 146. Виды коносамента)

The bill of lading may be issued in the name of a specific consignee (Straight bill of lading), to the order of the shipper or consignee (Order bill of lading), or to a bearer. The Order bill of lading without an instruction for its issuance to the order of the shipper or consignee shall be deemed to have been issued to the order of the Consignor.

II. Function of the bill of lading

1.Turkish Commercial Code :

a.Proof of legal relationship

Article 1237-(1) The bill of lading is taken as principle in rrespec of the relationship between the carrier and the holder of a bill of lading.

(2) The relationship between the carrier and the charterer are governed by the provisions of the contract of carriage.

(3) Where there is reference in the bill of lading to the voyage charterparty,a copy of that charterparty shall be reprsented in the case of endorsement of the bill of lading to the new holder.In such case the provisions set forth in the charterparty may be pursued against the holder of the bill of lading where the nature of such provisions allows.However,the provision of article 1245 sub-article one,second sentence is reserved.

b. Proof of the carrier

Article 1238-(1) Such person who signs the bill of lading within his capacity as the carrier or in whose name and behalf the bill of lading is signed shall be deemed the carrier.

(2) Where in the bill of lading the carrier's name and surname or his trade name and centre of management is not stated or not clearly understandable,the owner is considered the carrier;unless in the event where the owner has specified the name and surname of the carrier or his trade name and centre of business and documented such upon Express request of the holder of the bill of lading.

(3)Where in the bill of lading which is issued by either the Master or another representative of the carrier's name and surname ,trade name and centre of managment is not specified or is not clearly understandable,the representative is deemed the carrier together with owner who is deemed liable under sub-article two; unless in the event where the representative has specified the name and surname of the carrier or his trade name and centre of business and documented such upon Express request of the holder of the bill of lading.

(4) Where in the event the name and surname,trade name or centre of managment of the carrier is wrongly specified with delay the carrier,the owner or the representative of the carrier are severally liable for damages arising out of such wrongful specification or delay;in such an event the period for loss of right of a claim stated under article 1188 does not commence in respect of the claims against the carrier until such time name and surname,trade name and centre of management of the carrier is correctly specified.

c.Proof in general of the nature,Marks,quantity of package or unit, weigh and amount of the goods

Article 1239-(1) Where in the bill of lading contains generally the nature,Marks,package or unit quantity,weigh and amount of the goods and the carrier,despite the fact that a received for shipment bill of lading or a shipped bill of lading is correctly and in ful lor he suspects that on reasonable grounds or he does not have the opportunity to check those declarations on the bill of lading,then he is obliged to enter a reservation on the bill of lading stating that such declarations are in conflict with the truth;stating his reasonable grounds or the fact that he did not have the opportunity to check the those declarations.

(2) Where the carrier neglects to state in the bill of lading the condition of the goods apparent externally to him ,he is deemed to have stated in the bill of lading that the goods are in good condition as apparent externally to him.

(3)Without prejudice to the statments in respect of which under sub-article one reservations are entered in the bill of lading,the bill of lading constitutes a prima facie evidence to the fact that the carrier has taken delivery of the goods as stated in the bill of lading or where a shipped bill of lading is issued to the fact that he has shipped the goods;so much that,the opposite of such prima facie evidence cannot be proven against a third party who is a bona fide third party endorsee (including the consignee) of the bill of lading who had trust for the definition of the goods stated therein.Sub article four of article 1186 is reserved.

d.Proof of freight

Articles 1240-(1) A bill of lading which does not include a clause stating that the freight shall be paid by the consignee as per article 1229 sub-article 1/1 or a clause in respect of the fact that such has been effected at the port of loading and that of a clause with regard to the demurrage payment is a prima facie evidence to the fact that the consignee has no liability to make any payment in respect of the freight or demurrage;so much that,the opposite of such prima facie evidence cannot be proven against a bona fide third party endorsee (including the consignee) of the bill of lading who had trust for the absence of such clause therein.

(2) Where the freight is determined according to the quantity (size,number and weight) of the goods and such quantity is stated on the bill of lading and where there is not any contradictory term on the bill of lading as per article 1239 sub-article one shall not constitute a contradictory term.

(3) Where there is reference to the contract of carrage in respect of the freight,the scope of such reference shall not contain the provisions in respect of the discharge period,demurrage period and demurrage payment.

2. Azerbaijan Republic Commercial Shipping Code :

Article 112. Clauses of Bill of lading. Evidential force of Bill of Lading (Madde 112.Konosomentde qeyd-şertler.Konsament sübutedici qüvvesi)

112.1. In case if the carrier or other person, submitting a bill of lading on his behalf have substantial reasons on non-compliance of information on the freight name, its main brands, number of places and items, weight or quantity with the actually accepted freight, specified in the bill of lading, the carrier or other person submitting a cargo on his behalf should introduce clauses to the bill of lading on such non-compliance by specific specification of lack of a reasonable opportunity for checking of non-compliance or information.

112.2. In case if the carrier or other person presenting a bill of lading on his behalf do not specify the appearance of the freight in the bill of lading, it will be deemed that good appearance of the freight has been specified in the bill of lading.

112.3. In accordance with the article 112.1 of this Code, except information noted in clause, if there are no proves of other events, the bill of lading will be a proof of acceptance for carriage of the freight as it is described by the carrier in the bill of lading. If the cargo is handed over to a third party, that will fairly act in accordance with the description of cargoes specified in the bill of lading, the carrier will not be permitted to prove the opposite case by the carrier.

3.The Merchant Shipping Code of the Russian Federation :

Article 145. Reservations to bill of lading. Evidentiary effect of bill of lading (Статья 145. Оговорки в коносаменте. Доказательственная сила коносамента)

1.Where a bill of lading contains particulars concerning the name, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the

bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a Shipped bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. Where the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

3. Except for particulars in respect of which a reservation permitted under paragraph 1 of this Article has been entered, the bill of lading is evidence, unless proved otherwise, of the receipt by the carrier of goods for carriage as they are described in the bill of lading. Proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party including a consignee who in good faith acted in reliance on the description of the goods therein.

4. The Validity of Charterparty terms against a Turkish B/L Holder

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It is a well established fact that if the bill of lading is making a reference to a charterparty with the condition that the reference contains expressly the dispute resolution clause, ("All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/ Dispute Resolution Clause, are herewith incorporated") bill of lading holders will also be bound with this stipulation.

However, according the new Commercial Code of Turkey this may not be the case necessarily.

According the article 1237/3 of the Commercial Code, clauses of the charterparty can only be used against a bill of lading holder / consignee, if a copy of the charterparty has been attached to the bill of lading during its delivery to the holder.

It seems not realistic and practical … but it is a fact, we thought that you need to know it.

There is another interesting article within the same code; according article 1359, if there is no binding agreement between the parties as to the resolution of a dispute for a maritime claim (this term has the same scope with Arrest Conven-tion, 1999, Art.1.1), then the court which has decided for the precautionery measure (i.e. arrest) will have also competency and jurisdiction for the case in respect of the merits.

As you will notice articles 1237/3 and 1359 are somehow coupled, since one determines how a dispute resolution clause for a Turkish bill of lading holder / consignee will be valid and the other clause sets Turkish jurisdiction, if the condition of art.1237/3 is not fulfilled and a Turkish Court arrests a vessel for the cargo claim.

5. Is Letter of Indemnity against Clean Bill of Lading Enforceable under Turkish Law?

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Enforceability of a letter of indemnity (LOI) against a clean bill of lading has been a contentious area in shipping law. While some of the legal systems find them strictly unenforceable, some deem them enforceable under certain conditions. The Turkish Commercial Act (TCA, effective as of July 2012) has its own codification mostly based on the Hamburg Rules (1978). A brief description of the legal configuration laid out under the TCA is going to be given in this article.

The TCA addresses the issue first stating that any agreement or undertaking (which shall mostly be in the form of an LOI in practice) entered into between the carrier or a person acting on his behalf and the shipper whereby the shipper undertakes to indemnify the carrier in lieu of the issuance of a bill of lading without entering a reservation as to the particulars with regards to the general nature of the cargo, its marks, quantity, number and weight for insertion in the bill of lading or as to the cargo's apparent condition is unenforceable as against the bona fide third parties to whom the bill of lading is endorsed, including the consignee.

While such an LOI or an agreement shall not be enforceable as against the bona fide third parties, the TCA recognizes that they are valid and enforceable only between the carrier and the shipper, unless such an LOI or an agreement was entered into in order to deceive the third parties who act in reliance on the bill of lading's description as to the cargo.

As the first hand source of information as to the cargo's particulars, the shipper is liable to the carrier for his misrepresentation as a general rule which was first introduced by the Hague Convention (1924) as an internationally recognized source of law. However, in case the description that is omitted to be written in the bill of lading by the carrier or a person acting on his behalf are related to the particulars furnished by the shipper for insertion in the bill of lading, the carrier cannot bring a claim against the shipper, losing his right of indemnity from the shipper for his loss incurred as a result of the shipper's misrepresentation as to the particulars of the cargo.

Another important ramification of the foregoing intention to defraud the third parties that deserves mentioning is that the carrier shall be liable to the third parties including the consignee without the right to utilize the limitation of liability provisions defined under the TCA which was adopted by the Turkish lawmakers in light of the relevant provisions of The Hague Visby Rules (1968) and The Hamburg Rules (1978).

Being inspired by mostly The Hamburg Rules (1978), the TCA, entered into force in July 2012, recognizes that the LOI or an agreement contracted for the issuance of the clean bill of lading is void and enforceable, unless such an LOI or agreement is contracted with a view to deceive the third parties. In case of the otherwise, LOI shall not be enforceable against the bona fide third parties including the consignee to whom the bill of lading is transferred. What's more, the carrier, liable to the third parties who act in reliance on the description of the cargo in the bill of lading, is going to be deprived of benefiting the provisions adopted under the limitation of liability regime in line with The Hague Visby Rules (1968) and The Hamburg Rules (1978).

6. Dismissal in Limited Companies Formed By Two Partners

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The most frequent way to invest in Turkey preferred by foreign investors is to establish a limited company within the borders of Turkey in which the foreign investor person or legal entity becomes a partner. In practice, said company acts as if it's a Turkey branch office of the foreign investor, having in view some fiscal and practical difficulties in opening a straight branch office which canalize investors to form up an independent new legal entity. However, even though this is not a legal necessity usually a Turkish manager is assigned to follow up all the investment and

its operations. This Turkish manager usually takes part as a partner holding minimum 1 % of the shares for the purpose of legal convenience. Accordingly, legally the most popular way to do business in Turkey with a foreign investor is to establish a limited company formed by one foreign and one Turkish partner.

However, in practice it is frequently observed that the foreign partners have commercial conflict with Turkish partner by time and they are tendency to have him dismissed from company aiming to get the whole control. Prior to the code amendment in 2012; as limited companies were obliged to have minimum two partners, dismissal of the Turkish partner directly meant to be dissolution of the company. Therefore, the owners of the small shares were demanding unfair amounts to agreeing dismissal or transfer of shares. This hassle is overcome by the new Turkish Commercial Code (TTK) no 6102 which enables to form limited companies with a sole-partner and % 100 foreign capital.

Based on valid justified reasons, a 'partnership dismissal lawsuit' can be filed with reference to above mentioned dismissal situation. Whereas the 'cause of action' of this said suit, in accordance with TTK article no 621/h is a presence of a general meeting decision taken simultaneously by minimum two-thirds of votes represented in general meeting and absolute majority votes representing the whole main capital. Otherwise the lawsuit will be exposed to procedural rejection without being examined whether there are existing justifying reasons or not. The partners who cannot provide majority votes, may demand dissolution of the company provided they prove presence of justifying reasons in line with TTK article no 636/3 and may ask the court to decide in dismissal of the other partner by means of proving there is commercial interest for the company to continue without him. However, in such situation the decision will be at the discretion of the relative court and it may result in an unexpected dissolution. For this reason, it is very important to hold minimum two-thirds of the new limited company shares prior to entering into such venture.

In Turkish Commercial Code it is not explicitly stated which facts may be deemed as justifying reasons in such cases. It is up to the relative courts to decide case by case. To mention some of the justifying reasons; we can line-up mismanagement of the company, cause loss to company, forwarding company's customers to another company and cause losing business, serious conflict between partners spoiling company's operations, betrayal to company and/or similar results. In such or similar circumstances, it will be possible to file a lawsuit for dismissal of unwanted partner. Another novelty brought by the new code is the opportunity to state dismissal conditions in the articles of association at the time of establishment. For companies established considering this issue, general meeting decision to dismiss unwanted partner will suffice and there will be no need to go to the court. In such case, the dismissed partner must file a lawsuit -within latest three months after receipt of the decision via notary- against such general meeting decision otherwise the decision will be finalized without requirement of a court order. Therefore, it is recommendable to state which actions are deemed to be justifying reasons for dismissal in articles of association of the company at the stage of establishment.

7. Claims for Unpaid Bunker Dues under the New Turkish Commercial Code

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As it is well known, the unpaid dues of bunker suppliers were included among the "maritime liens" in the former Turkish Commercial Code. This notion was however changed under the new Turkish Commercial Code (New TCC), which was entered into force on July 1, 2012. In other words, the bunker suppliers' claims are no longer evaluated as a maritime lien, instead they have been qualified as a "maritime claim" ever since the new TCC has come into force. Thus, unpaid dues in respect to the supplied bunkers have gained a characteristic of a maritime claim, but not a

maritime lien.

Furthermore, the concept of maritime claims, which entered in Turkish Legal System with this new commercial code, shows crucial differences than maritime liens in terms of the point of privileges. The most significant outcome of it in our practical life is that the bunker suppliers' claims will be no longer following the vessel.

In contrary to the above statement, maritime liens are following the vessel and these claims can be brought forward against the new owners of that vessel, regardless these owners are aware of these debts. Although the maritime claims also provide creditors to have right to establish a precautionary measure (i.e. arrest) on the vessel, this right comes to an end if a change occurs in the ownership of the vessel.

As is known, the Turkish law allows to arrest a vessel even if the debtor is not the owner of the said vessel, i.e. the bunker suppliers are entitled to arrest a vessel even if the bunker has been purchased by a time or bareboat charterer.

As a result, a vessel which has purchased bunker can be arrested in Turkey if the ownership of the vessel has not been changed, however, bunker suppliers, with the new TCC which came into force, will not be entitled to arrest the vessel if the vessel is purchased by a third party after the bunker has been purchased.

Another significant difference between maritime claims and maritime liens is from the point of priority. The maritime liens have preceded all kind of rights and claims, including those registered in the Ship Registry with a mortgage. In addition to this, the other debts and mortgages have not been considered as privileged even if they became due earlier than the maritime lien. However the superiority of the bunker suppliers' claims have come to an end as of 1 July 2012 as a result of this alteration. Consequently, bunker suppliers will no longer have the privilege to obtain their unpaid claims earlier than the other creditors.

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