

Circular 02-17-19-02

RE: MEMORANDUM ON THE RECENT REGULATION CHANGES REGARDING THE TURKISH STRAITS AND MARMARA SEA PASSAGES

Following to our previously issued Circulars re amendments in regulations concerning marine pollution in Turkey, Ingosstrakh warns the Owners of insured vessels about new amendments regarding passages of Turkish straits and Marmara Sea. This new Circular is also prepared under assistance of Turkish P&I Correspondent and maritime lawyers Gur Law Firm.

In order to increase the security of navigation and safety of the life, goods and environment in/around the Turkish Straits, The Instructions for the Implementation of the Rules Regulating the Turkish Straits Maritime Traffic Scheme ("New Instructions") has entered into force on 01.09.2018 by the General Directorate of the Regulation of Seas and Inland Waters and as per the Article 22 of the New Instructions, the Instructions for the Implementation of the Rules Regulating the Turkish Straits Maritime Traffic Scheme dated 16.10.2012 was abolished. Moreover, in the beginning of this year substantial changes were made on the tariff regarding the pollution fines that are issued due to the illegal discharge of petrol and petroleum products (bilge, fuel oil and oily wastewater), dirty ballast water, solid waste, garbage and hazardous substances, and the fine amounts have been increased by approx. fifteen (15) times.

The changes brought by these new regulations will be main focus of this memorandum and accordingly at first, the current regulations regarding the tug assistance and salvage services in/around the Turkish Straits will be explained. Later on, handling of the maritime accidents in the Turkish Straits and Marmara Sea will be explained, and then, approach of the Turkish courts and the relevant judicial process in case of collisions and similar accidents will be detailed.

I- THE CURRENT REGULATIONS REGARDING THE TUG ASSISTANCE AND SALVAGE SERVICES IN/AROUND THE TURKISH STRAITS

As per the new regulations regarding the general principals of salvage operations, it is stipulated that the relevant Harbor Master's Office shall ex officio (without the need for any request or permission from vessel interests) ensure that salvage services are given to the vessels which get involved to Sea Perils in/around the Istanbul (Bosphorus) and Canakkale (Dardanelles) Straits and at anchorage areas. Furthermore, in such cases, all inspections including underwater surveys and ascertainment shall also be carried out by the Coastal Safety in relation to the eventual salvage.

Moreover, it is also stipulated that in such cases of Sea Perils, the vessels shall not carry out salvage operations, ballast operations, cargo discharge/transfer, machinery operation and similar operations (i.e. rescue operations on their own), provided that

these are precautions to be taken for the prevention of pollution of the environment (without the use of any chemical substances) and ensuring the safety of life.

II- HANDLING OF THE ACCIDENTS IN THE TURKISH STRAITS AND MARMARA SEA

As per the New Instructions, it is stipulated that in case that a vessel involves into a collision, grounding, contact with coastline, friction or fire during her Turkish Strait or Marmara Sea passage, she shall not be allowed to resume navigation before completion of judicial and administrative precautions, completion of administrative investigation regarding the incident and payment of environmental damages, salvage expenses or without providing securities for these matters.

a) In Case of Breakdown, Malfunction, Collision, Grounding, Contact with Coastline and Other Accidents

With the New Instructions, a vessel encountering a Sea Peril or losing her technical specifications/seaworthiness in the Turkish Straits and in the areas that are covered under by VTS, shall inform the VTS Centre immediately and request necessary instructions. Subsequently, upon the completion of taking necessary measures by the VTS, she shall follow VTS's instructions and measures. Furthermore, within the VTS Area (except the boundaries of Istanbul and Canakkale Straits), in case of a Sea Peril, navigation of the vessel shall be subject to the additional passage conditions which will be determined by the Commission (which includes one expert from the Harbor Master's Office, one head pilot from Pilot Organization and one operator from the VTS Centre) pursuant to result of survey carried by class organizations authorized by the Ministry of Transportation and Infrastructure.

On the other hand, in case of a breakdown in the traffic separation scheme of Marmara Sea, it is stipulated that maximum 4 hours will be granted to the vessel for the repair of her breakdown and in case that the vessel is unable to solve her breakdown on her own, she will be anchored to safe zones accompanied with tugboat(s). Accordingly, the vessel experienced the breakdown and anchored to the safe zone will be allowed to transit Turkish Straits pursuant to the permission of the relevant Harbor Master's Office. Such permission shall be granted subject to a survey which will be performed by surveyors recognized by the relevant Harbor Master's Office and confirming that the vessel may safely complete her transit passage through the Turkish Straits under the assistance of a pilot.

b) Technical Capability Failure and Seaworthiness:

Prior to the New Instructions, a vessel which lost her technical capability and/or seaworthiness prior to the entrance to the Turkish Straits (from Aegean or Black Sea side) could have her Turkish Straits passage under the assistance of a pilot subject to the permission of the relevant Harbor Master's Office and such permission would be granted subject to a survey performed by surveyors recognized by the relevant authorities or by the class society recognized by the Ministry of Transportation and Infrastructure. Article 5 of the New Regulation has extended the scope of the abovementioned provision by including the entries to Turkish Straits from Marmara Sea side also. In addition to the requirement of a pilot assistance, with the New Instructions, it is also stipulated that the relevant Harbor Master's Office may require additional passage conditions.

Moreover, one new provision has been also added with the New Regulations and as per the said provision, in case that a vessel encounters a breakdown/malfunction in the

Marmara Sea and she calls one of the Marmara ports after the repair of such breakdown/malfunction, an inspection will be made by the relevant Harbor Master's Office's survey committee or by the class society recognized by the Ministry of Transportation and Infrastructure.

c) The Overview of the Administrative Investigations Process

In case of a collision (including one-side collisions), grounding, contact with coastline, friction, fire and similar maritime accidents in the administrative zone of the relevant Harbor Master's Office, especially in Istanbul (Bosphorus) and Canakkale (Dardanelles) Straits and Marmara Sea, the administrative investigation will be commenced by the relevant Harbor Master's Office in line with the Article 40 of the Port Regulations dated 31.10.2012.

Following the occurrence of the aforementioned incidents/accidents, the relevant Harbor Master's Office initiates the administrative investigation file and issues an official writ to the relevant state authorities (i.e. the Coastal Safety) and to the local agents of the vessel(s) informing that the investigation has been initiated. By way of this official writ, the Harbor Master's Office requests that an incident file to be prepared by the interests of the involving vessels (in practice, the said file is prepared by the local agents and/or the lawyers of the vessel) and the same is submitted to the investigation file. Whereas the requested documents vary depending on Harbor Master's Office's approach, usually the below listed documents (and their Turkish translations) are sought;

- Master's Statement regarding the Incident
- Drawing of the Incident
- Sea Map of the Scene of Incident
- Crew List
- Log Book and Engine Log Book
- Maritime Accident Report which should be issued by the Competent Court
- Class Certificate issued after the incident
- Vessel Certificates
- VDR/S-VDR Records
- P&I and H&M Insurance Policies

Following the completion and submission of the incident file, it is also requested that the statements of the master, chief engineer, duty officer and/or helmsman of the vessel to be heard at the Harbor Master's Office by the officers. During the hearing of the statements, a certified translator is required to accompany the seafarers.

With respect to the class certificate that is sought for the sail permission after the incident, it should be issued by one of the accepted and recognized class organizations by the Ministry of Transportation and Infrastructure. Otherwise, in case that the class organization of the vessel is not one of the accepted and recognized class organizations, an inspection would be made on the vessel by the Harbor Master's Office's survey committee and the decision regarding the sail of the vessel will be rendered by the said committee accordingly.

It is highly important to note that unless the abovementioned administrative investigation process is completed, the vessel shall not be allowed to sail.

Nevertheless, the Harbor Master's Offices have administrative discretion on how the administrative investigation will be handled and therefore, procedures (i.e. requested documents etc.) vary depending on the scope of the incident.

d) Sea Pollutions arising from Breakdowns, Collisions, Groundings, Contacts with Coastline, Fires and Other Accidents

Considering that sea pollution may also occur as a consequence of a Sea Peril, attention should be paid to the new tariff of the pollution fines which has multiplied the fine amounts.

As mentioned in the beginning of this memorandum, due to the increase in the number of the marine pollution incidents in Turkish waters, the Ministry of Environment and Urbanization introduced a new bill in order to make several amendments on the Turkish Environmental Code and subsequently, the said amendments have entered into force 10.12.2018. Only 20 days later, the Ministry of Environment and Urbanization introduced the tariff numbered 2019/1 ("Tariff 2019") which regulates the administrative fine amounts that were stipulated under the Environmental Code. By way of the Tariff 2019, the amounts of the administrative fine amounts have been increased by roughly approx. fifteen (15) times more compared with the former amounts, which were applicable prior to 10.12.2018.

Considering above detailed significant increase on the pollution fines, the vessels should be very careful during their navigation in Turkish waters.

III- THE APPROACH OF THE TURKISH COURTS AND THE RELEVANT JUDICIAL PROCESS IN CASE OF COLLISION AND SIMILAR ACCIDENTS

a) The Issuance of the Maritime Accident Report

Turkish Courts' direct involvement to the Sea Peril incidents usually begin with Maritime Accident Report issued by the Competent Court which is generally sought for the completion of the administrative investigation handled by the relevant Harbor Master's Office. In that respect, in practice each party of the collision usually applies to the Competent Court for the obtainment of the said Maritime Accident Report.

Considering the urgency of the matter, depending on their workload the Competent Court usually determines the soonest available date as the hearing date for the issuance of the Maritime Accident Report. In order to issue a Maritime Accident Report, usually the master, chief engineer and/or duty officer of the vessel are invited to the hearing for the obtainment of their statements about the incident. As similar to statement procedure before the Harbor Masters' Office, a certified translator should accompany the seafarers during the statement process before the Court.

Following the completion of the said hearing, a maritime accident report in the form of an ordinary court decision is issued by the Court. At this point, it is important to note that the Court do not render any decision about the negligence rates of the vessel(s) and/or parties of the incident/accident at this stage, the said report only includes the brief summary of the incident and the statements of the seafarers.

In that respect, following the issuance of Maritime Accident Report, the same is submitted to the Harbor Masters' Office by vessel's interests for the completion of the administrative investigation.

b) Application for the Precautionary Attachment/Arrest of the Vessel

In case of a collision (including one-side collision cases), grounding, contact with coastline, friction, fire and similar maritime accidents, if someone suffers a loss and/or damage as a consequence of the said accident, they may apply to the Competent Court (the court that bears the title Maritime Specialized Court for that location), in order to obtain precautionary attachment decision on the vessel. In other words, the aggrieved party may request the arrest of the allegedly faulty vessel.

- The Characteristics of Claims

Turkey ratified the Arrest Convention 1999 ("Convention 1999") and the Maritime Liens and Mortgages Convention 1993 ("Convention 1993") and the relevant provisions of Turkish Commercial Code numbered 6102 ("TCC") that regulates maritime liens and maritime claims are in conformity with the said Conventions. Under the Article 1320 of the TCC, maritime liens are listed in line with the Article 4 of the Convention 1993 and under the 1352 of the TCC, maritime claims are listed in line with the Article 1 of the Convention 1999. Therefore, the Turkish Courts may accept the aggrieved party's precautionary attachment application for the claims listed under the aforementioned articles.

- The Procedure of Precautionary Attachment Proceedings

Art. 1355 of Turkish Commercial Code provides that "the precautionary attachment decisions for foreign flagged vessels can only be rendered by the Turkish Courts located at the place where the vessel is anchored, berthed, moored or dry-docked" and as per the Art. 1363 of the TCC, in order to arrest a vessel, the applicant/claimant party should deposit SDR 10,000.00 as a security to the court and this could be provided in cash or as a bank letter of guarantee.

In case of an application for the precautionary attachment decision against a vessel, considering the urgency of the matter (the risk for the vessel to sail away), depending on the workload of the Court, usually priority is given to examination of the application to render a decision (i.e. accept, partially accept or reject) as soon as possible.

c) Application for the Establishment of a Fund

Turkey became a party to the Convention on Limitation of Liability for Maritime Claims 1976 ("LLMC 1976") in 1980 and adopted its Protocol 1996 to the domestic law. Under the Article 1328 of the TCC (the article relating to the limitation of liability), the Owners of the vessels can limit their liability in line with the provisions of LLMC 1976 regarding the incidents/accidents which cause a limitation that attributable to the Owners of the subject vessel.

Under the Article 1348 of the TCC, the Owners of the subject vessel may apply to the Competent Court, the Maritime Specialized Court, for the establishment of a fund and the aggrieved parties may intervene to the said file.

Considering the recent prominent establishment of a fund case where the Competent Turkish Court decided to establishment of a fund, during the calculation for the limitation of liability for the Owners of the Vessel, the calculation method in the LLMC 1976 and the

Protocol 1996 as amended in 2012 has been taken into account. In addition, during the said proceedings, the Article 4 of LLMC, 1976 (same as the Article 1343 of the TCC) is examined in order to determine whether the loss resulted from a personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge.

Conclusion

In conclusion, it is important to note that the Turkish Government regularly makes some amendments on the regulations regarding the Turkish Straits and Marmara Sea and the aim of these amendments is to increase maritime safety in/around Turkish Straits, Marmara Sea and the VTS area, to prevent potential pollution risks, damages to shore structures as much as possible and protect the safety of life, goods and marine environment.

In this respect, it is highly advisable for vessel interests to take necessary measures and follow-up current regulations regarding the Turkish Straits and Marmara Sea and thus, carefully navigate in Turkish waters, especially while passing the Istanbul (Bosphorus) and Canakkale (Dardanelles) Straits in order to avoid high cost losses/payments.

We hope this memorandum and its content would be helpful for our Insureds and assist to decrease high-cost incidents in/around the Turkish Straits.

If you require any further information or assistance, please do not hesitate to contact Ingostrakh.

Best regards,

Ingostrakh Insurance Company

P&I Department