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Turkey

SHIPPING

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Turkey.

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TURKEY
SHIPPING

1. What system of port state control applies in your jurisdiction? What are their powers?

Turkey is a party to the Black Sea Memorandum of Understanding (the **"Black Sea MoU"**) and the Mediterranean Memorandum of Understanding (the **"Mediterranean MoU"**).

The Black Sea MoU has been signed on 7 April 2000 at Istanbul, to eliminate substandard vessels arriving in ports between Member States, to increase safety at sea and to prevent and control marine pollution. Turkey also has the right to appoint the Secretary of the Black Sea MoU and therefore, the secretariat of the Black Sea MoU is located in Istanbul. With the signing of the Black Sea MoU, Turkey has committed to inspect at least 15% of foreign flagged vessels arriving in its ports annually. The inspections are to be carried out within the scope of, inter alia, the following international agreements; LOADLINES 66, SOLAS 74, MARPOL 73/78, STCW 78, COLREG 1972, TONNAGE 69, ILO no.147,1976, MLC 2006, AFS 2001, BUNKERS 2001.

The Mediterranean MoU has been signed on 11 July 1997 for the same purposes, and Turkey has committed to inspect at least 15% of foreign flagged vessels arriving in its ports annually. The inspections are to be carried out within the scope of the following international agreements: MLC 2006, LOADLINES 66, SOLAS 74, SOLAS 74/78, MARPOL 73/78, STCW 78, COLREG 1972, ILO no.147, 1976, IMO Resolution A.481(XII) and it Annexes, IMDG Code, and ILO Publications.

On 26 March 2006, Turkish Port State Control Regulation (the **"Regulation"**) has been enacted in line with the abovementioned memorandums of understanding. As per Articles 4/1(a) and 5/1 of the Regulation, the maritime authority for port state control is determined as Ministry of Transportation, Maritime Affairs and Communication. Accordingly, port state control is carried out by properly qualified port state control officers acting under the responsibility of the maritime authority. The Regulation provides that inspections are carried out within the scope of the international agreements, such as the Black Sea MoU and the Mediterranean MoU. Upon the completion of the inspections, the maritime authority has the power to refuse access of dissatisfactory vessels to Turkish Ports, detain such vessels, cease their operations or may allow the vessel to eliminate of the determined deficiencies.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

In terms of wreck removal, Turkey is not a party to the 2007 Nairobi International Convention on the Removal of Wrecks. Therefore, the primary applicable law for wreck removal is the Law on Ports numbered 618 (the **"Law on Ports"**). The wreck removal process is regulated in Article 7 of the Law on Ports, which provides that the harbour master of the administrative port area in which the wreck is located shall order the removal of the wreck from the owner or the master of the vessel. After the exhaustion of the 45-day period granted to the owner or the master for the removal of the wreck, the harbour master is entitled to arrange the removal and the subsequent sale of the wreck.

In terms of wreck pollution, Turkey is a party to the below-listed conventions:

- MARPOL 73/78 (Only to the Annexes I, II, and V),
- SOLAS 1974,
- International Convention on Oil Pollution, Preparedness, Response and Cooperation,
- Convention on the Protection of the Mediterranean's Marine Environment and Coastal Zone,
- Protocol on the Prevention and Elimination of Pollution Caused by Unloading from Ships and Airplanes in the Mediterranean Sea or Burning at Sea (1976) 1995 Barcelona,
- Protocol on Prevention of Pollution Caused by Transboundary Movements and Disposal of

Hazardous Wastes in the Mediterranean,
- Protocol on the Protection of the Mediterranean Against Pollution from Land Based Resources and Activities,
- Protocol on Struggle and Cooperation in the Pollution of the Mediterranean with Petroleum and Other Harmful Substances in Extraordinary Situations,
- Protocol on Specially Protected Areas and Biodiversity in the Mediterranean
- Convention on the Protection of the Black Sea Against Pollution,
- Protocol on the Protection of the Black Sea Marine Environment Against Pollution from Land Based Resources,
- Protocol on Cooperation in Emergency Situations Against Pollution of Black Sea Marine Environment with Petroleum and Other Harmful Substances,
- Protocol on the Prevention of Pollution of the Black Sea Marine Environment Due to Discharges,
- Protocol on the Protection of the Black Sea Against Pollution Convention on the Protection of Biodiversity and Landscape in the Black Sea,
- Basel Convention on the Control of Transboundary Transport and Disposal of Hazardous Wastes,
- 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments.

Therefore, in cases of pollution within the jurisdiction of Turkey, the above-listed international conventions shall apply in addition to the Turkish Environmental Code numbered 2872. However, it is important to note that, Liability cannot be limited against the receivables listed in paragraphs (d) and (e) of the first paragraph of Article 2 and Article 3 of the 1976 Convention on Limitation of Liability for Maritime Claims (the **"1976 Convention"**) as per Article 1331/1 of the Turkish Commercial Code numbered 6102 (the "**TCC**"). The reasoning behind the rule is that in the 1976 Convention, it is possible to exclude some receivables from the scope of application by way of giving a reservation, and consequently with a regulation to be made in national law. Therefore, Article 1331 of the TCC has been prepared to regulate these excluded receivables. In consequence, it is stipulated that in Article 1331 of the TCC that the limitations of the 1976 Convention will not apply to wreck removal claims.

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

In accordance with Annex VI of the International Convention for the Prevention of Pollution of the Seas by Ships (MARPOL), the sulphur limit in fuels used in ships has been limited to 0.5% as of 01.01.2020 in order to reduce air pollution from ships and these limitations have started to be implemented all over the world and in Turkey. In Sulphur Oxide (SOX) Emission Control Areas (ECA), the limit for sulphur content in fuel is 0.1%. Furthermore, at the 22nd Meeting of the Parties (COP22), held by the states party to the Barcelona Convention for the Protection of the Mediterranean in Antalya between 07-10 December 2021, which was hosted by Turkey, it was proposed that Mediterranean and Aegean Sea be declared as SOX ECA area. Consequently, this proposal was placed on the agenda of the International Maritime Organization's Marine Environment Protection Committee's 78th Session in December 2022 and approved. With the Mediterranean designated as a SOx ECA, the sulphur content in ship fuels as of 1 July 2025, will be reduced from 0.5% to 0.1%.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

For collision, Turkey is a party to the 1910 Brussels Collision Convention (the "1910 Convention"), the provisions of which have been directly adopted and incorporated to turksi, and the Convention on the International Regulations for Preventing Collisions at Sea, 1972 ("COLREG"). Furthermore, in the event that a maritime dispute arising out of an event related to collision occurs, the provisions of the 1910 Convention will take precedence over the related provisions of the TCC except for collisions involving one or more vessels of the state which are dedicated to a public service or involving warships, which are excluded from the scope of the 1910 Convention as per Article 11. In such case, related provisions of the TCC shall apply.

For salvage, Turkey is a party to the 1989 International Convention on Salvage (the **"1989 Convention"**) the provisions of which have been directly adopted and incorporated to TCC. Therefore, 1989 Convention shall apply in cases of salvage. An important issue to point out is that unlike the 1989 Convention, the TCC does not leave warships and state-owned non-commercial vessels out of the scope of its salvage provisions. On the contrary, as per Article 935, the TCC indirectly allows the salvage provisions to be applied to vessels dedicated exclusively for recreational, sports, education, training and scientific purposes, such as yachts, seaman training

ships, as well as state-owned vessels dedicated exclusively to a public service, warships and auxiliary ships of the navy. Hence, in cases where the ship or craft subject to salvage is both outside the scope of the 1989 Convention and one of the vessels listed above, salvage provisions of the TCC will apply. In addition to the above, since Turkey reserved her right to apply the provisions of the 1989 Convention for the situations listed in Article 30/1, provisions of the TCC shall apply for those situations.

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Turkey is a party to the 1976 Convention, having also accepted the 1996 Protocol made thereto. The 1976 Convention came into force in Turkey on 1 July 1998, whereas the 1996 Protocol came into force on 17 October 2010. Furthermore, Article 1328 of the TCC provides that the 1976 Convention shall be directly applicable as national law and the foreign element shall not be required for its application within the meaning of Article 1 of the Law on Private International Law and Procedural Law numbered 5718. Therefore, within the scope of Turkish law, persons entitled to limit their liability is as per Article 1 of the 1976 Convention.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Turkey is not a party to the 1952 Arrest Convention but a party to 1999 International Convention on Arrest of Ships (hereinafter shall be referred to as **"1999 Convention"**). The provisions of TCC regarding the arrest of the ships have been prepared based on the provisions of this 1999 International Convention. Under Turkish law, duly ratified international conventions become a part of domestic law, therefore, the 1999 Convention can be said to be applicable to the issues of arrest of ships.

In addition, the exclusive interim injunction provided with respect to ships under the TCC is the arrest of ships which is only possible for "maritime claims" that are listed on numerous clasus basis under Article 1352 of the TCC, which is identical to the 1999 Arrest Convention. In other words, a ship may only be arrested for the maritime claims which are stipulated in the TCC. Therefore, it is not possible to arrest a ship for a claim to be pursued in another jurisdiction or in arbitration.

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

The applications are currently made via National Judiciary Informatics Portal (**"UYAP"**). In that regard, it is not required to submit the original power of attorney. With that being said, any power of attorney issued in or outside of Turkey must be notarized and if the same is issued outside of Turkey, the notarization must be legalized before a consulate or by way of Apostille. In the event that the power of attorney is issued in a foreign language, the same also should be translated and notarized.

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

The provisions of TCC relating to the arrest of ships and maritime liens are based on International Convention on Maritime Liens and Mortgages ("**1993 Geneva Convention**"). Turkey is in the process of becoming a party to the 1993 Geneva Convention and Articles 1320-1327 of TCC are based on the same. Article 1320 of TCC regulating maritime liens is identical to Article 4 of the 1993 Geneva Convention, which is as follows:

“Each of the following claims against the owner, demise charterer, manager or operator of the vessel grants a right of maritime lien to its claimant on the vessel:

(a) Claims for wages and other sums due to the crew members in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf; (b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel; (c) Claims for reward for the salvage of the vessel; (d) Claims for port, canal, and other waterway dues and pilotage dues; (e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers’ effects carried on the vessel. (f) The general average contribution credit claims’’

Claims rendering maritime liens are also listed in Article 1352 of the TCC as maritime claims. Therefore, if a claim enables a maritime lien, the claimant may arrest the ship whether the debtor is the owner or operator.

9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

As per Article 1369 of TCC, similar to the Article 3 of the 1999 Geneva Convention, it is provided that the arrest of the ship is possible only when the owner at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest order is affected, or the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is affected, or the claim is based upon a mortgage or a ‘hypotèque’ or a charge of the same nature in the ship, or the claim relates to the ownership or possession of the ship, or the claim gives rise to a maritime lien pursuant to Article 1320 of TCC.

It is possible to say that it is a requirement that the liability in personam and the ownership must be united in the same person. With that being said, if the claim involves a maritime lien or originates from ownership, or a right in rem, the arrest of chartered ships is also possible.

10. Are sister ship or associated ship arrests possible?

The debtor must be the shipowner of the ship that is being arrested. The sister ships can-not be arrested for claims secured by in rem rights (e.g., mortgages and statutory or contractual liens) or claims involving ship ownership or possession. Arrest is permissible of any sister ships and associated ships owned by the person that was:

- liable for the maritime claim at the time the arrest is made; and
- the shipowner, demise charterer, time charterer or voyage charterer of the ship at the time the claim originated.

In disputes regarding ownership or possession of the ship, an arrest may be enforced only on the ship that is the subject of the dispute.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

Pursuant to Article 1363 of TCC, the creditor applying for the awarding of an arrest order to secure a maritime claim must post security in the amount of 10,000 Special Drawing Rights. It is now settled in case law that this requirement is a pre-requisite for the court to review the application of the claimant in the first place. Such rule is not applied to claims arising from crew wages.

The opponent party can request from the same court that the counter security amount be increased at any stage. In evaluating such request, the daily operation expenses in relation to the vessel and of the loss of earnings due to the arrest order shall be taken into account. If it is decided that the security amount will be increased, the court shall also determine the period within which the additional counter security will be submitted.

Having said that, in practice, the courts are generally hesitant to increase or decrease the amount of the counter security. If the court rules for additional counter security and if it is not submitted by the applicant in time, the arrest order shall be automatically lifted. The claimant may also request from the same court for the counter security amount to be decreased. Claimants making claims for wages and other sums due to seafarer in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf, are exempt from the obligation of submitting counter security.

As per Article 1361, should the arresting party fail to fulfil procedural requirements in time or lose the action in merits, he may be held liable for loss and damages suffered by the vessel. The claimant shall have one (1) month to initiate the legal proceeding to claim compensation following the date that the court order rendering the wrongful arrest becomes final and unappealable.

The court which has given the arrest order has jurisdiction to hear the lawsuit for damages for wrongful arrest. In the event that the main proceeding in merits is filed before a different court or arbitration tribunal, the proceedings for the damages for wrongful arrest shall be stayed until the final judgment is given under the action in merit. The applicant may be held liable for damage by third parties (charterers, cargo interests, mortgagees, port authorities and others that could show that they have sustained damages attributable to the arrest. In these cases, strict liability rules apply).

One of the most current discussions in relation to the proceeding to claim wrongful arrest is the concept of mandatory mediation, introduced by the Law numbered 7155, which came into force on 19 December 2018. Article 20 of the Law regulated and amended Article 5/A of the Turkish Commercial Code as mediation to become a pre-requisite to initiate a legal proceeding in commercial disputes. Although it is clear that the interim injunction requests such as an arrest order is not subject to mandatory mediation, it is still not clear whether or not the legal proceeding to be initiated to claim compensation due to wrongful arrest is subject to mandatory mediation as a pre-requisite.

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

The arrested vessel may be released to the debtor at any time desired provided that a deposit equal to the value of the vessel is made for this purpose with the enforcement office or a pledge over real property, maritime pledge or surety of a bank of standing that is acceptable to the enforcement officer is furnished or, if the vessel was arrested while in the possession of a third party, it may be relinquished to that person on receipt of a bond.

Even if, at the conclusion of proceedings brought for the continuation of the arrest, the decision is made for the security to be paid to the creditor, other maritime creditors may participate in the arrest. The provisions of international treaties are reserved.

The vessel's owner or the debtor may, by depositing security that is sufficient to cover the maritime claim in its entirety along with associated interest and expenses, provided that this does not exceed the value of the vessel, apply to the court for the lifting of arrest. Following the commencement of recovery proceedings, jurisdiction in this regard shall pass to the enforcement court.

If, at the conclusion of proceedings brought for the continuation of the arrest, the decision is made for the security to be paid to the creditor, other maritime creditors may not bring any claim about the attachment of this security.

The creditor may freely reach agreement with the vessel's owner or demise charterer as to the type and amount of security to be furnished. Under the previous rules, the courts only accepted cash or bank letter of guarantee issued by Turkish courts which must be unlimited in time. Under the current TCC in force, the type of the security can be agreed by the parties, which introduces the possibility to provide Club LoU letters as security.

The furnishing of security to secure the release of the vessel shall not be construed as an acknowledgement of liability nor as a waiver of any objection, defence or any right to limit liability.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

According to various possibilities, there are different ways to follow after the arrest of the ship:

- In case the subject matter of the maritime claim is the payment of a sum of money or the granting of security, the creditor may initiate enforcement proceedings without judgment;
- In case the subject matter of the maritime claim is secured by a ship mortgage, the creditor may initiate enforcement proceedings by way of the foreclosure of the ship mortgage,
- In case the subject matter of the maritime claim is based on a document in the form of a judgment, the creditor may initiate enforcement proceedings based on a judgment for the payment of money and collateral, or
- the creditor may initiate litigation process in a domestic court or in a foreign court if the

jurisdiction clause is accepted or, if agreed, arbitration in or outside the country.

The creditor must initiate the one of the above-mentioned actions within a period of one month, otherwise the arrest order shall automatically become null and void.

In cases where the creditor is able to initiate enforcement proceedings with judgment, the right to request seizure arises if the debt is not paid within the payment period.

As a rule, the seizure must be final in order to request the sale of the ship after the arrestment as an interim injunction. However, in some exceptional cases, it is possible to request the sale of the arrested ship before the time. In case the owner is also the personal debtor of the maritime claim, the sale can be made at the owner's request; in case the value of the ship is rapidly decreasing or the costs of preservation are increasing, the enforcement office or the creditor can request the early sale; and if the ship or the goods are is dangerous for human, property and environmental safety, then the enforcement office, harbour master and the creditor are entitled to request the sale of the arrested ship before the time.

The vessels that are not registered in any registry shall be sold within 2 months starting from the date of the sale request, and vessels registered in any registry regardless of Turkish or not shall be sold within three months.

The priority ranking of claims under Turkish Law can be counted as follows:

1. Costs and expenses arising out of the maintenance and preservation of the ship along with the maintenance of the ship's company for the period under arrest as of the arrest, and out of foreclosure on the ship and distribution of the proceeds of the sale, and wages and other sums due to the crew members that relate to the period under arrest, from the date of the ship arrest until the date on which payment is made,
2. Costs of public authority for removal of a stranded or sunken ship, carried out for the sake of safe navigation or the protection of environment;
3. Some of the maritime liens, namely crew claims, loss of life or personal injury claims, salvage claims, claims for port, canal, and other waterway dues and pilotage dues, claims based on tort arising out of physical loss or damage caused by the operation of the ship which are not governed by the preceding rankings;
4. Shipyard claims, provided such claims arise when the ship is in the possession of a shipyard in the course of judicial sale;
5. Customs duty and other taxes relating to the ship;
6. Claims that are secured by a contractual or statutory right of pledge which are not governed by the preceding rankings;
7. Maritime claims which are not governed by the preceding rankings;
8. Ordinary claims against the owner.

14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

As per Article 1238 of TCC, the "Carrier" is defined as the person who signed the Bill of Lading acting in the capacity of Carrier or on whose behalf the Bill of Lading was signed. If the identity of the Carrier cannot be determined from the information on the Bill of Lading (i.e. name of the carrier, title or main place of business or the logo of the carrier is not shown or is not understandable on the Bill of Lading), the shipowner is deemed to be the Carrier as a general principle. However, it is possible to prove otherwise if such information is provided and documented upon the request of the holder of such Bill of Lading. The representative of the master or the carrier shall be jointly liable in the event that the Bill of Lading is issued by such representative. If such information is provided late or wrongfully, the Carrier, the Owner, or the representative of the Carrier shall be held jointly liable for the damages which may arise in relation thereto.

The identity of the Carrier is important in terms of determining the "Actual Carrier" and the "Contractual Carrier" as both are jointly and severally liable against the Cargo Receiver as per Article 1191 in the event of a cargo damage and the party to which the Cargo Receiver addresses its claims shall have the right to claim recourse against the other party.

Further, if the Carrier is the debtor in a claim and the creditor applies to the court to arrest the vessel for its claims against the Carrier, the court will reject the creditor's application if the Carrier and the Owner are separate entities at the time of the application.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

The Bill of Lading governs the legal relation between the

Carrier and the older of the Bill of Lading as per Article 1237 of TCC. Hence, the proper law of the Bill of Lading is relevant in determining the applicable laws to such relation.

Incorporation of the Charterparty terms and the applicable law therein shall not be recognised unless the Charterparty is physically attached to the Bill of Lading.

16. Are jurisdiction clauses recognised and enforced?

As the general principle, the parties may agree on the jurisdiction of a foreign court or an arbitration tribunal in a dispute that contains a foreign element and arises from obligatory relations as per Article 47 of International Private Law and Procedure Law No.5718 (**"IPPL"**), provided that (i) the Turkish courts are not exclusively competent for the resolution of such dispute and (ii) the party relying on the foreign jurisdiction clause raises an objection in that regard.

On the other hand, in practice, there are two main issues which may prevent the recognition and enforcement of foreign jurisdiction clauses. If there is a resident agent of the Carrier in Turkey, who has been involved in the carriage and/or signed the Bill of Sale for and on behalf of the Carrier, then the claimant shall have the right to initiate a proceeding against the agent acting on behalf of the Carrier as per Article 105 of TCC and the jurisdiction clause shall not be applicable. It is also possible for the jurisdiction clause to be deemed inadmissible due to control of general terms and conditions regulated under the Turkish Code of Obligations No.6098, which limits the freedom of contract. To this day, the recognition and enforcement of foreign jurisdiction clauses remain to be controversial due to conflicting court decisions.

17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

As explained above, the relation between the Carrier and the holder of the Bill of Lading is governed by the Bill of Lading. This means that the third-party holder of the Bill of Lading is only bound by the content of the Bill of Lading, and the terms and conditions provided in the carriage of contracts are not applicable to the holder of the Bill of Lading.

On the other hand, the relation between the Carrier and the Shipper are governed by the provisions of the contract of carriage. As per Article 1237/3 of TCC, where there is reference in the Bill of Lading as to the charterparty, a copy of that charterparty, being a contract of carriage, shall be presented in the event 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. In other words, the charterparty should be attached to the Bill of Lading, and it should be presented to the holder of the Bill of Lading in order for an arbitration clause to be binding on the third-party holder of the Bill of Lading.

18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Turkey is a signatory to the International Convention for the Unification of Certain Rules of Law, Brussels 1924 known as the "Hague-Visby Rules", which was ratified in and came into force in 1956. Although Turkey is not a party to neither of the Hague-Visby Rules, Rotterdam Rules, and Hamburg Rules, Hague-Visby Rules were chosen as the reference code when drafting the relevant provisions of the Turkish Commercial Code with Hamburg Rules being used a supplementary code in cases that are not covered by Hague-Visby Rules.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Turkey is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The main legislation as to enforcement of arbitration awards in Turkey are the IPPL and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is ratified by Turkey on 2 July 1992 and entered into force on 30 September 1992.

As per relevant terms of IPPL and the New York Convention, recognition and enforcement of an arbitral award may be resisted if:

- There is an absence of an arbitration agreement or an arbitration clause in the relevant agreement.
- The subject matter is not referable to arbitration under Turkish law.
- The recognition or enforcement of the award is contrary to the public policy and morality of Turkey.
- The party, against whom the enforcement of the award is sought, was not properly served of the arbitration proceedings and therefore could not use its right of defence.
- The party, against whom the enforcement of the award is sought, was not given proper notice of the appointment of the arbitrator or the arbitration proceedings or was otherwise unable to present his case.
- The composition of the Tribunal or the arbitral procedure was contrary to the agreement of the parties or with the law to which the agreement is subjected and/or the law of the country where the arbitration was concluded.
- The part of the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. The award submitted for recognition and enforcement has not yet become binding on the parties or has been set aside or suspended by a competent body.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

Unless otherwise specified time limit for commencing suit under Turkish Law is ten years. In general terms time limit for commencing suit in contract, although it may vary depending on the specific form of the contract, and/or in tort is ten years.

Time limits for various claims are as follows;

- salvage or wreck removal claims: two years,
- Claims granting creditors maritime lien rights: one year,
- Claims for loss of life or personal injury: ten years
- Passenger Claims and claims for damage or loss of luggage: two years
- Claims arising out of charter parties, contracts of carriage or bills of lading: one year;
- Collision claims: two years.
- Claims arising out of damage, loss or late delivery of cargo: one year,
- General Average claims: one year

Pursuant to article 72 of the Turkish Code of Obligations, if the dispute concerns any criminal liability, the time limit for commencing suit may be longer under the criminal laws.

21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?

There is no precise definition of “force majeure” under Turkish laws. However, Article 136 of Turkish Code of Obligations numbered 6098 defines the term “Impossibility of Performance” and provides that if it is impossible to perform all the obligations under the contract due to the reasons that are beyond the control of and not attributable to the obligor, the obligor shall be released from its obligations.

TCC also regulates the terms of “Partial Impossibility of Performance” and “Hardship”. The partial impossibility of performance occurs when the performance of the obligations under a contract becomes partially impossible due to reasons for which the obligor cannot be held responsible, the obligor shall be released from the obligations which became partially impossible. However, if it is clearly understood from the interpretation of the contract that such contract would not be concluded if the respective impossibility would have been foreseen by the parties in advance, then all of the obligations under such contract shall be terminated.

Pursuant to article 138 of TCO titled “hardship”, an obligor is entitled to either request from the judge to adjust the agreement to new conditions or exercise a right to withdraw from the agreement if the former is not applicable, in cases where:

- An extraordinary circumstance, which was not foreseen and is not expected from the parties to be foreseen at the time the agreement was concluded, arises for a reason not caused by the obligor, and
- The facts existing at the time of the conclusion of the contract change to the detriment of the obligor to the extent that it would be contrary to the rules of good faith to require performance of the obligations, and

- The obligor has not yet performed his obligation or has performed it by way of reserving his rights arising from the undue hardship of performance.

In continuous performance contracts, the obligor, as a general principle, uses the right of termination instead of the right to recission. This shall also apply to foreign currency debts.

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