

TURKISH INTERNATIONAL SHIP REGISTER

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I-SUMMARY

World shipping has suffered a depressed freight market since the beginning of the Asian crisis. The crises exacerbated existing Turkish fleet problems. Beside aging^[2] of the Turkish fleet, oversupply of new ship buildings into the world market pushed the Turkish fleet to considerable decline. This resulted with bankruptcy and decline in tonnage of the fleet. In order to support the Turkish shipping industry, increase revenue and competition, the Turkish Government took two important steps. First step was to increase privatization of national Merchant Fleet and second, which will topic for our discussion, new a legislation regulating registration of ships under Turkish flag, namely the Turkish International Ship Register Code ("TISRC").

Background:

The Turkish Commercial Code ("TCC") states numbers of requirements which entitles the owner to fly Turkish flag. Some of these requirements are with regard to ownership structure, nationality of the crew and captain. There are also special requirements enabling foreigners to own a Turkish flag vessel. These requirements were the deterring factors to attract foreign and national owners to choose the Turkish flag. The existing regulations were not helpful to prevent decline in shipping tonnage and revenue. Turkish Government took radical steps and to prevent decline and attract shipowners to choose Turkish flag. In order to reach that effect Turkish Government passed two pieces of legislation which intends to create new law in that respect. This law implements some principles of the 'open registry' of the ships. They are:

1- 1- The Turkish International Ship Registry Code ("TISRC", No: 4490) was passed on 16.12 1999 which have force of law since 17.06.2000.

2- 2- The Turkish International Ship Registry Legislative Decree ("Decree", No 24088) was passed on 23. 06. 2000 and has force of law from that date.

This law is a radical step forward to ease and remove bureaucratic requirements in registration of the ships under Turkish flag.

II-CURRENT POSITION REGULATING REGISTRATION OF SHIPS UNDER TURKISH FLAG:

The TISRC extends the application of TCC in respect to registration of the ship under Turkish flag. This is not appropriate to think that one overrides another. The full set of the rules with regard to TISRC has been fully established and legal framework is finalized.

A- A- TCC Regulations:

In accordance with the article 823 of TCC a permission for non-Turkish vessel to fly Turkish flag may be granted by the Ministry of Communication and Transportation ("The Ministry"). TCC regulation allows to register foreign vessel under Turkish flag for a specific period of time subject to official dispensation. This is under a sole discretion of the Ministry. A real person and a corporate owner of a Turkish ship must be a Turkish citizen or company established in accordance of Turkish Law retrospectively.

Under Turkish law there are different requirements as to respect to a company owning ships and other companies. A company owning ships deemed to be a Turkish company if it is established in accordance with the Turkish law and registered with the relevant Turkish trade registry. TCC imposes restrictions in relation to companies to own a vessel under Turkish flag. Restrictions apply in relation to the share capital and ownership requirement (art. 823). Companies established in accordance to Turkish Law, a corporate owned as to %51 of the share capital and %51 of the voting rights in the board of directors are allowed to register and own a Turkish vessel. These twofold requirements need to be met at the same time. This an continuing requirement. If one of these requirements to be lost at any point then entitlement to fly the Turkish flag will be lost. The reason behind this is the intention of the Government to retain control of the company by nationals. The requirement with regard to percentage of the share capital may have created a difficulty in monitoring what is an exact percentage of the parties in any particular time. In order to escape of that difficulty, TCC additionally requires that a corporate

^[1] Barrister with Istanbul Bar since 1991.

^[2] SOYSAL Mumtaz, Only 1/3 of the Turkish merchant fleet ships is under age of 10. Number of large tankers is 41 and average age of them is 25,5 (11 of them is under age of 20 and average age of them is more than 17). None of these tankers comply with safety measurement introduced after M/T Exxon disaster, Hurriyet 29.08.2000

owners of a company shares to be issued as a payable on order type/in the name of the shareholders and transfer of this shares are subject to approval of the board of directors.

Article 823 of TCC is one of the major preventive provision to list shipping company to the stock exchange. Shares of the listed companies in stock exchange are 'bearer' type of shares. Therefore, raising a capital via stock exchange is almost impossible. This article also fails to provide confidentiality of beneficial ownership in the company. Shares being issued on order provides clear identification of the shareholder who may wish to hide his identity.

The main advantage of being registered in accordance with the TCC appears to be that the ship can benefit from trading preferences under the Turkish Law of Cabotage.

B- B- New Regulations:TIRSC and Legislative Decree

This regulations, defines eligible ships and shipowners^{3[3]} to be registered and sets procedural rules for registration to the Turkish International Ship Registry (Registry). Further provisions are setting principles of nationality in respect of crew, master and owners, tax and duty exposure. As a general we can say that there is a substantial relaxation on these matters with comparison to the TCC regulation.

i- i- Eligible Vessels:

This law applies to all kinds of cargo, passenger, open-sea fishing vessels used for commercial purposes and yachts navigated for commercial benefits with maximum load of 36 passenger, ships and yachts which are already registered with the National Ship Registry, the ships built in Turkey and ships over 12.000 dwt which to be imported (499 gross tonnes for passenger ships and special purpose and special design). These ships on application can be registered with the International Register.

Appears to be that the new legislation limits registrability to the ships under certain size. This restriction applies for ships over 12.000 dwt and used for commercial or fishing purposes imported after introduction of the Law No 4490. If the ship is under 12.000 dwt then this ship shall fulfill requirements set under Law No 2581 dated 29 June, 1989 (ships must be designated for special purposes and fulfill conditions required for class B type ships). Same restriction applies to the passenger ships and ships designed for special purposes or specially designed ships over 499 gross-tonnage. The new law does not define meaning of the '*ships designed for special purposes*' and/or '*specially designed*' ships. In our interpretation this refers to certain types of off-shore drilling rigs, pontoons and barges which are towed

Ships subject to the bare boat charter (charterparties where the charterer provides its own crew and is responsible for maintenance) and yachts are not permitted to be registered to open registry (s. 12) (1). Bareboat registration may give raise to possible confusion as to whether bareboat registration or the suspended owner registration covers the matters referred to the flag, e.g. mortgage, validity, lien.

There is no restriction on the upper age of the ship eligible to be registered to the Registry. The lack of regulation on this respect may create a problem. Many sub-standard ships may apply for registration. It may create a deterioration of the Turkish Merchant fleet casualty record. This may create more harm than good. It is possible that that Turkish owned vessel may not be made subject to any requirements whilst a foreign owned vessel may be only registered if not older than ten years.

iii- iii- Eligible Shipowners

Regulations does not deal with nationality issue in satisfactory manner and poses some ambiguity. Eligible shipowners in art. 5 of the TIRSC and s. 7 of the Decree are defined as a '*Ships owned by a foreign and Turkish real person resident in Turkey and Turkish company incorporated in accordance with Turkish law can be registered* (are eligible to be registered) (2) *to the Turkish International Ship Register*'. Question arises whether a real Turkish shipowner resident abroad is allowed to register his ship to the Registry? If not, then, it is not clear the purpose of this provision? There is no reason why should be a difference between foreign shipowner and a Turkish real person resident abroad. We are of the opinion that there is an ambiguity in the wording of the provision and interpretation of the contrary would be outside of the intend of the Turkish Government. We would suggest that this provision should be understood as '*Ships owned by a foreign owner resident in Turkey and -any- real Turkish person including Turkish company incorporated in accordance with Turkish law can be registered to the Turkish International Ship Registry*'.

The ships and yachts imported to Turkey under financial leasing will be registered under special column in the Registry.

ii-Crewing:

^{3[3]} ITC cl. 5.2 "any change, voluntary or otherwise, in the ownership or flag transfer to new management, or charter on a bareboat basis..."

The new law introduces a flexible approach to crewing arrangements and trying to maintain high standards of competence. Irrespective of whether the owner is Turkish and/or a non-Turkish real person the master must be of Turkish nationality (s. 21a and art. 9 , art. 823/2 of TCC) In the case that the owner is of Turkish nationality or the company is established in accordance with TCC then %51 of the crew must be of Turkish nationality provided that ship operates outside of the Cabotage routes. In other words, if any ship operating within Cabotage route and ship's owner is in Turkish nationality or a company is established in accordance with TCC the crew must be manned %100 of Turkish crew (s. 21) and art 823-824 of the TCC. But the new law is silent as to the number and nationality of any officers and/or crew who make-up the balance of %49. The Decree does not clarify this position either, therefore it would be correct to assume that related legislation is mandatory only with regard to the masters position. The balance of the crew can be recruited in accordance with charterers/owners commercial wish and convenience. Considering that ISM Code implication in respect of manning varies greatly from country to country this provision would give flexibility to the owners and charterers.

iii-Duties and Exposure:

Operational profits and profit derived from transfer/sale of a vessel registered in the Turkish International Ship registry are exempt from any income and corporate tax and funds. The crew wages are not subject to income tax and funds either. Buying, selling mortgage registration, credit and contract of affreightment as regards the ships and yachts to be registered in the Registry are not made subject to stamp duty and custom duties, bank and insurance procedures tax and funds (s. 26/a). Wording of the Decree may create an ambiguity with regard to the word "contract of affreightment" in the text. Decree seems to describe only charetparty freight. It is not clear why the bills of lading freight is not included as an operational income of the ship. This seems to be a contradiction of the Government intention to exclude all operational profits from the income exposure. In order to circumvent this ambiguity in the wording we would suggest that the word "contract of affreightment" to be understood to cover a "charterparty and bills of lading freight".

Expenses to be made in relation to registration has been simplified and made easy to calculate prior to the registration. Appears to be that, the intention of the Government is to provide clear picture in respect of expenses to be made. Only taxes and fees to be collected from the ship applied for registration to the Registry are registration and annual tonnage fee. There might be an issue for reduction of that fee under certain circumstances (s. 26/2c).

Figures set in USD are collectable in Turkish Lira in accordance to current exchange rate announced by Turkish Central Bank (s. 26/2d). Proper prior accountability of the expenses would help to investors to account their net cash flow.

This regulation sets one-off low initial registration fee. The registration fee is USD 10.000 plus USD 1.00 (equivalent Turkish lira) per net ton. The Council of Ministry is empowered to increase this fee ten times. It is not possible to proceed with registration if registration fee is not been paid (s.26/1b).

Annual tonnage tax of Turkish lira equivalent of USD 1.00 per net ton will be collected from this ships in each calendar year as long they remained registered with the Registry. This tax is payable in two equal installments January and July (s. 26/2b). Failure to pay one of the installments due, prevents proceeding with regard to cancellation of the previous owners name from the registry and prevents registration of the new owner. The tax installment not yet due during the transfer, will be paid within the installment periods by its new owner to whom it has been registered. Installments which due date are after registration are payable by new owner. (s. 26/2b). The current position has brought Turkey into profitable environment for tax-based leasing transactions. The foreign investors looking what is available can benefit from current position. This position is unlikely to change soon since the Government is in immediate need for a revenue.

Corporate tax issue is not dealt in this regulations. Therefore this issue remains to be subject to the current law.

iv-Cancellation and Forfeiture from the Registration:

It appears from the wording of the Annex 2 to the Decree that cancellation from the National Registry, shipowner shall provide that he has paid his registration fee and annual tonnage tax (or any new owners paid the tax installment not yet due during the transfer).

Cancellation from the Registry without future plan to register the ship to the National registry is not defined. In this situation, whether cancellation will be executed upon request or only after some preliminary investigation is not clear. We think that there will be consideration whether the cancellation will render the ship without flag or not. This position clear will need to be clarified by judicial authorities. The new regulation does not allow registration to the Register and the National Registry at the same time (art. 7). If that is going to be an issue, the cancellation from the National Registry will be executed by the National Registrars own motion.

New law does not regulate how to forfeit a vessel from the registry. For example it is not clear what would be result in the event where a qualified Turkish corporate owner loses its character with regard to nationality requirements. We are of the opinion that that issues need to be clarified further.

III-CONCLUSION

Introduction of the new law shows Turkish Governments support the development of the shipping register. This support does not go far as to intent to render Turkish flag as to Flag of Convenience. The new regulations are not ignorant to beneficial ownership, requirement of domicile. Requirement in respect of issuance of shares in the name of the shareholders supports this view. Flexibility in registered ownership requirement should not be seen as abolishing requirements for a genuine link to exist between Turkey and ship which looks for registration under its flag (genuine link policy).

We are of the opinion that new legislation provides a wider view in relation to list corporate ship owners shares to the Istanbul Stock Exchange ("ISE"). The new legislation overcomes a previous difficulty existing under TCC art 823 with regard of issuance of all shares to the name of the company. Now, it should be possible to make an interpretation that TCC art. 823 allows issuance of a %49 bearer shares and %51 of shares issued in the name of the company.

Despite to some level of ambiguity, it appears to be that the new legislation will make substantial contribution to the Turkish shipping industry.

NOTES

- (1) (1) "section" is used to refer to the provisions in the Decree and "article" is used to describe provisions in the TIRSC.
- (2) (2) Our interpretation.