

SHIPOWNERS LIMITATION OF LIABILITY FOR MARITIME CLAIMS UNDER EGYPTIAN MARITIME LAW.

In view of recent increase of claims in Middle-East region, our longstanding partners, Egypt based lawyers and P&I Correspondent Eldib Advocates refreshes the info on limitation of liability under Egyptian law.

According to EML 1990 the shipowner shall be civilly liable for the acts of the master, seamen, pilot and any other person serving on the ship when such act is committed in the course, or because, of their duties. Article No. 81 of the said law allows the shipowner to limit their liability, even if the debt is in favour of the state or public sector, and if the damage arise from any of the following causes:

- The damages caused by the ship to the Harbour's installation, dockyards, water courses, or navigational aids.
- Physical or material damages occurring on board the ship, or those connected directly with maritime navigation or the operation of the ship.

However, Article No. 82 of the said Maritime Law specifies six occasions, where limitation of liability shall not be applied, namely:

- Floating a sunken, stranded, or deserted ship, lifting wrecks, cargo, and objects found on it.
- Salvaging the ship.
- Participating in General Average.
- Nuclear damage.
- The rights of the ship's master, crew and all other subordinates to the shipowner working on the ship or whose job is related to serving the ship. Such right is also determined for the successors and heirs of the said persons.
- Damage resulting from oil pollution and contamination by other materials.

Meanwhile, in the event that damages have occurred as a result of one of the aforementioned causes, the shipowner will be liable to compensate the injured party for the said damages which will be determined by the competent court without taking into consideration the shipowner's limitation.

The calculation of the ship-owner limitation of liability has been clarified in Article No. 83 from the aforesaid law as following:

- EGP 600,000 for the damage resulting from physical damages, in case the total tonnage of the vessel does not exceed 500 tons. However, if the total tonnage exceeds the said figure, the liability shall be increased by EGP 350 per ton in addition to the stipulated EGP. 600,000.
- EGP 300,000 for any other damages occurring for reasons other than physical damages, in case the total tonnage of the vessel does not exceed 500 tons.

However, if the total tonnage of the vessel exceeds the said figure, the liability shall be increased by EGP 150 per ton in addition to the stipulated EGP. 300,000.

The shipowners are not the only party who has the right to limit their liability. Pursuant to the provisions of EML 1990, the limitation of liability can also be applied in respect of the ship's operator, who is not the owner, charterer, manager, master or seaman in addition to other subordinates of the owner, operator, charterer or manager, as regards to the performance of their duties and according to the same conditions as those applicable to the owner, provided the liability of the owner, as well as that of the foregoing persons shall not exceed the limits set down in Article 83 with regard to the same accident.

The law also grants the right to apply limitation to the master or the seaman in case the proceedings are brought against them. As the master or the seamen may insist on applying the limitation, even when the accident resulting in damages was due to their personal fault.

The liability action against the shipowners and all interests shall lapse with the expiry of two years as of the date the act establishing the liability occurred (the date of incident).

Most of the legal systems in the Middle East have adopted the concept that the carrier's liability remains in force during the transportation period of the cargos and hence any damage that may occur in that period shall be the responsibility of the carrier without the need to prove the occurrence of damage on its part unless the carrier proves that the sustained damages has occurred as a result of a foreign reason such as the nature of the cargo, force majeure, a sudden accident or the shipper's / the consignee's fault or that the damage occurred prior to the loading operations or following the discharge bearing in the mind the carrier's granted limitation of liability according to the Marine Contract of Carriage. Moreover, the local laws grant the carriers the right to limit their liability for the damages caused by the ship unless the accident has occurred due to the carrier's personal fault, which should be proven by the claimant.

Finally, it is worth mentioning that Egypt has ratified the London Convention on Limitation of Liability for Maritime Claims (LLMC 1976), where the said convention has come into force in Egypt as of the first day of July, 1988.

Therefore, in case a claim is brought before the Egyptian Courts and involves the persons defined in the LLMC 1976 as parties to the convention, then the said person shall be entitled to seek the application of the provisions of the limitation of liability stipulated in the convention.

CHINA AMENDS THE ECA REGULATION.

Our Chinese P&I Correspondent Huatai Insurance Agency & Consultant Service Ltd., reports on new changes regarding captioned issue.

On 27.08.2018, Shanghai MSA issued a formal notice on implementing requirement of using low sulphur content fuel (not exceeding 0.5%mm) for ships navigating in Shanghai port area from 01.10.2018, which can be interpreted as an early adoption of requirement that had been planned to become effective from 01.01.2019.

On 30.08.2018, Zhejiang MSA issued a similar notice to the effect that vessels with destinations of Ningbo or Zhoushan will be required to use low sulphur fuel once they enter Yangtze River Delta ECA as from 01.10.2018.

According to the notice, the requirement applies to all ships which are navigating, berthing or operating in Shanghai port, excluding ships or crafts to be used for military or sporting purpose and fishing boats.

From 01.10.2018, ships with shore power receiving facilities shall use shore power when berthing at terminal which is equipped with shore power facilities in Shanghai. Ships berthing at Ningbo-zhoushan and Jiaxing port shall prioritize using shore power if condition allows. After recognized by Maritime Administration, ships can take alternative measures, such as using clean energy, exhaust gas cleaning system and etc. to satisfy the emission control requirement. Ships can apply for immunity or exemption under certain circumstances, such as using low sulphur fuel oil is unsafe to ships or failure to obtain fuel oil with sulphur content not exceeding 0.5%mm to Maritime administration in advance. Given the above, owners are recommended to take appropriate measures when calling Shanghai, Ningbo-Zhoushan and Jiaxing port as from 01.10.2018 to ensure satisfaction of relevant requirements and to avoid any delay or penalty to the ship.



TURKEY AMENDS STRAITS MARITIME TRAFFIC REGULATIONS

As per latest reports of Turkish maritime authorities, number of vessel carrying oil and other dangerous cargo has dramatically increased in recent years. In April, there was an incident involving big tanker resulted in destruction of historic mansion.

The Instructions for the Implementation of the Rules Regulating the Turkish Straits Maritime Traffic Scheme ("New Instructions") entered into force on 01.09.2018 intended to increase the security of navigation and safety of the life, goods and environment at/around the Turkish Straits. 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 ("Former Instructions") is abolished.

Our P&I Correspondent Gur Law Firm reports as follows on several key points of respective amendments:

- P&I coverage requirement for vessels entering into straits has been widened to include 300 GT and larger vessels, all of the vessel those carrying dangerous cargo and all of the tugs performing towage services The local agent shall investigate the validation of the P&I insurance policy and indicate it on SP-1 report form that will be given to the Turkish Straits Vessel Traffic Service ("VTS").
- The maximum "in transit"/stopover period during the Turkish Straits passage was increased to 168 hours by the Turkish authorities with the implementation of the New Instructions. Moreover, it is also stipulated that in such cases 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 and ensuring the safety of life in any case without the use of any chemical substances. In case of abovementioned situations, such as collision or grounding etc., under the Former Instructions the port authority was granting 3 hours to the master of the vessel for submission of the plan of salvage operation and subsequently, if the plan was accepted, the port authority was granting 6 hours for salvage operation with vessel's own means. It is also stipulated that vessel 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.

- In case of breakdown, malfunction, grounding, contact with coastline/shore and the others, in addition to existing rules, there also new requirement that further navigation of vessel shall be subject to the additional passage conditions which will be determined by the Commission (which includes one expert from the harbour master office, one head pilot from Pilot Organization and one operator from the VTS Centre) pursuant to result of survey carried by classification societies authorized by the Authority.

- Whereas the provisions of the Former Instructions were covering only Turkish Straits, within the scope of the New Instructions, the Marmara Sea is also covered by the same.

- Following vessels should now perform their transit through the Strait during day-time period (it is *highly recommended* that such vessels should perform their transit under the assistance of pilots and with the escort of tugboat(s) to be determined by VTS Centre):

a) Istanbul (Bosphorus) Strait:

1) all tankers and vessels that are carrying dangerous cargo with a LOA of 200 meters and longer;

2) all tows;

3) all vessels subject to the additional passage conditions;

4) all vessels with a LOA of 250 meters and longer (except tankers and ships carrying dangerous goods) and/or deep draft vessels.

b) Canakkale (Dardanelles) Strait:

1) whether full or empty, all of tankers with a LOA of 200 meters and longer, vessels carrying IMDG Code 1 with a LOA of 200 meters and longer and deep draft vessels;

2) all tankers with a LOA of 250 meters and longer, vessels carrying dangerous cargo (except Ro-Ro and Container Vessels).

- Passage of LNG vessels is regulated specifically now.

a) LPG vessels with LOA of 150 meters and longer shall perform their Turkish Straits passages during day-time period and under the assistance of pilot and with tugboats.

b) LPG vessels with LOA of 150-200(150 included, 200 excluded) meters shall perform their Turkish Straits passages with tugboat(s) with a Bollard Pull not less than 60 tons, while vessels with LOA of over 200 meters shall be escorted by tugboat(s) of at least 90 tons Bollard Pull.

c) Total Bollard Pull of tugboat(s) may be increased depending on weather and sea conditions if necessary.

- Merchant vessels carrying military vessel(s) as cargo on board shall be considered as military vessels during their passages through the Turkish Straits.

- Vessels navigating in Istanbul Strait shall not contact with their local agents in other areas than anchorage areas. However, in the case of obligatory situations, provided that the necessary authorisation is obtained from the VTS Centre, vessels can contact their agents (provided they keep the very starboard side of their traffic separation scheme, paying attention to the navigation/traffic rules):

a) on the South, at the west of the longitude crossing Ataköy Marina and for a period of maximum 1 hour;

b) on the North, at the north of line that unites Hamsi Port and Fil Burnu and for a period of maximum 15 minutes;

- Vessels, including the local traffic, shall not overtake another vessel during their transit between piers (legs) of the bridges and they shall navigate from a distance of at least 100 meters from piers (legs) of the bridges (in other words, there should be a hundred meters distance between piers of the bridges and vessels those passing through under the bridges).