



MARITIME LIEN RIGHT UNDER TURKISH LAW

We would like to remind you that we are providing on-going advice on charter contracts (such as voyage charters, time charters, bareboat charters, and bills of lading, special transports etc.), maritime insurance hull and machinery), P&I, and all types of maritime proceedings and litigation (ship arrest at any Turkish port, defending cargo claims on behalf of not only Owners, but also cargo receivers, preventive lien on vessels, salvage, groundings and wreck removal, general average, cargo claims,

GUR LAW FIRM is an established collision handler having acted in many of the major casualties in the Turkish Straits in recent years. The firm advises ship owners, ship managers, charterers, carriers, freight forwarders and their insurers. We provide our clients with casualty investigation reports, salvage and arbitration consultancy services and general average services. We are carrying out all negotiations with port authorities and/or all relevant authorities during the grounding casualties, salvage and towage operations.

We are advising our clients on Turkish Open Form (TOF) and local regulations in disputes arising from the grounding incidents occurring especially in Straits or Inland Waters of Turkey salvage and/or from the towage services provided to the vessels, conducting the necessary negotiations with Coastal Salvage and Safety Administration (CSSA), the institute which provides this service as a monopoly in some regions and which is well known by our firm, and finalization of such disputes fall under the activity areas of GUR LAW FIRM

Death and personal injury actions both in Turkey and abroad through our correspondents also constitute a successful branch of the firm's practice.

GUR LAW FIRM offers its in-depth experience on interim measures, necessary and convenient within the maritime and insurance sectors, to ensure the enforcement of Turkish and foreign judgment or arbitration awards, such as the arrest of vessels and goods, securing of goods under dispute, enforcement of maritime mortgages

Turkey, having surrounded by sea on three sides, is an integral part of the transportation system and a geographical bridge between Europe and Asia, has the privilege of having strategic waters and straits in such a developing region. In this respect, Turkish jurisdiction plays an important role for the vessels interests passing through the Turkish waters.

Turkish Straits, which constitute strategic waterways, connect the Black Sea to the Aegean and to the Mediterranean Sea, comprise Istanbul and the Dardanelles and Marmara region, which include several high volume ports. On the other hand, apart from the Turkish Straits, the ports established on the Aegean and Mediterranean part of the Turkey are also service providers for both domestic and foreign flag vessels. Turkish Waters have great significance for the carriers and traders; not only for the vessels which calls to Turkish ports but also for the transit vessels.

We are encountering with the claims which should follow the vessel passing through the Turkish waters. For instance, in some cases, seeking the assets of a ship owner on the land may be very difficult or, even sometimes, impossible. Therefore, considering the receivables of seamen and public benefit, the necessity to grant privilege to certain receivables has arisen in Turkish Maritime Law.

Turkish Commercial Code (TCC) provides that this privilege granted to the marine receivables is a lien right.

Maritime lien right is a statutory lien right on the vessel and freight and upon occurrence of one of the receivables listed in the relevant articles of law, maritime lien right becomes existent out of the registry record.

The common feature of the receivables that grant maritime lien right is that they relate to the management of the vessel.

Maritime lien right enables the creditor to collect its receivable from the marine assets and since the lien right can be directed against any and all third parties who possess the vessel, it makes the receivable collectable from the vessel from which the same incurred.

Subject of the lien rights of marine receivables are:

- Vessel and appurtenances: It is the consideration of the maritime lien right at the time when the enforcement proceedings are initiated against the vessel. It is not necessary that the debtor owns the vessel since the maritime lien right follows the vessel.
- Freight: Gross freight of the voyage in which the receivable in question has occurred is also included under the maritime lien right, provided that is not yet paid or being held by the master or the agent of the vessel.
- Surrogates: Values replacing the vessel and her freight are also included under the maritime lien right.

The following claims constitute preferential maritime lien rights:

1. in case of auction through the Bailiff's Office, watchman's duty and disbursements of maintenance that can be defined as execution expenses, such as berthing at last port;
2. sailing, port dues, lighthouse dues, quarantine expenses, port fees;
3. seamen's claims arising from labour contracts;
4. pilotage, salvage, ransom and objection fees and expenses;
5. general average claims;
6. credits for which the vessel is pledged and credits arising from the master's transactions that are made out of the home port and in case of necessity. If the transactions are made out of the home port, in case of necessity and limited to the

maintenance of the vessel or success of the completion of the voyage, services and goods given to the master provide maritime lien rights, even if no credit is opened;

For instance, under normal conditions, bunker supplies do not give rise to a maritime lien under Turkish law unless such were procured in the following circumstances:

- where the master of the vessel (and not the owner company) orders such supplies in order to prosecute completion of a voyage;
 - where they are procured under an absolute necessity and the quantum of services obtained is limited to the extent of such necessity;
 - whilst the vessel is out of its port of registry, and
 - where the master's signature and stamp appear on the delivery receipt for such supplies.
7. even if the carrier is not the ship owner, claims arising from the non-delivery of the cargo or baggage, or damage to the same, and non-performance or breach of contract of transportation of passengers or goods;
8. claims arising from contracts made by the master based on his legal powers defined by law, but not a special power of attorney, and claims arising from non-performance or breach of contracts that are made by ship owners to be fulfilled by the master;
9. claims arising from the fault of the seamen;
10. claims of the Social Insurance Institute that can be addressed to the ship owners, excluding the personal liability of the ship owners for some claims.

Irrespective of the dates when the relevant debts were accrued, in case the vessel is sold via an auction, watchman and custody expenses of the vessel and appurtenances made as of the date the vessel has arrived at the last port and not included under the expenses of enforcement proceedings have priority over all other receivables of the vessel.

All receivables that can be claimed from the ship owners pursuant to Social Security Institute insurance laws on the business life foreseen in paragraph 10 above rank after all of the other receivables of the vessel.

In determination of the sequence of priority for the rest of the receivables, TCC considers, first of all, whether or not these receivables pertain to the same voyage and if the receivables granting the maritime lien in paragraphs 2 to 9 above belong to the same voyage of the vessel, the sequence of priority is determined as below;

- 1). paragraph 2
- 2). paragraph 3
- 3). paragraphs 4-5-6
- 4). paragraph 7
- 5). paragraphs 8-9

Receivables in the same group, other than those in line 3 above, are in the same order among one another, irrespective of their type and date of accrual. As for the receivables listed in line 3 above, those accrued after take precedence over those accrued before; whereas those that have accrued at the same time share the same order.

Marine creditors are obliged to apply to enforcement proceedings when they wish to exercise their right to impose lien over the marine assets. Time bar for the vessel receivables is 1 year. Nevertheless, time bar for some receivables is exceptionally 2 years, for instance,

- Receivables of seamen, whose services have been terminated beyond the Cape of Hope and Cape of Horn, resulting from their service contract,
- Compensation receivables originating from a collision,
- Receivables originating from salvage fees and expenses.

Maritime lien right over the vessel is removed;

- other than the sale of the vessel by means of an enforcement auction in Turkey,
- by sale of the vessel by the master based on his legal authority in case of dire necessity,
- upon termination of the receivable in any form whatsoever,
- by waiver of the creditor,
- in cases where no surrogate is present, if the vessel sinks in a way that salvation is by no means possible,
- by means of arrest and confiscation of the vessel,
- by combining the ownership of the vessel and maritime lien right in the same person,
- by time bar of the receivable or maritime lien right.