

**RECENT AMENDMENTS AND ALTERATIONS
MADE IN
THE REGULATION ON PORTS**

12.04.2017

Dear Sir / Madam,

Being a commercial correspondent in Turkey, we, Omur Marine Ltd, would like to share some information with your selves regarding recent developments introduced by By-Law Related to Making Amendments to the Regulation on Ports (*hereinafter referred to as "By-Law"*).

The Regulation on Ports prepared by the Ministry of Transport, Maritime Affairs and Communication which entered into force after being published in the official gazette on 31st of October 2012 (*hereinafter referred to as "the Regulation"*) consolidates all the bylaws, regulations and instructions in a single Regulation. As defined in article 2 (1), the Regulation frames the duties, powers and responsibility of the port authorities as well as the responsibility of the persons concerned with ships, vessels and shore facilities in relation to their maritime operations towards the port authority, excluding the port authorities situated in inland waters.

Recently, the legislator has regulated some changes in the Regulation via the By-Law Related to Making Amendments on the Same promulgated in Turkish Official Gazette on 08.04.2017. As being considerable changes, two of them attract great deal of the attention at the first glance.

1. Pursuant to the recent amendments, the article 13 of the Regulation, now, reads as follows:

*500 GT and larger tankers and vessels carrying all types of dangerous goods; vessels of 1000 GT and larger flying under Turkish Flag; foreign flagged vessels of 500 GT and larger; foreign flagged commercial and private yachts of 1000 GT and above shall be obliged to engage a pilot whilst berthing alongside and departing from coastal facilities **and fish farms**. All foreign flagged military vessels shall be required to engage a pilot while entering to and departing from the non-military coastal facilities. The bunker barches,*

vessels of 1000 GT or less, shuttling to shore facility to take cargo for bunkering or shuttling to the vessels on anchorage or berthed at facilities for going alongside shall not be obligated to engage a pilot at the harbor reach where the pilotage areas are located including the same.

Please kindly be advised that the underlined phrase of “and fish farms” have been added up to the wording. In the view of that, in addition to the coastal facilities, the vessels prescribed under the article, have to engage a pilot whilst berthing and leaving the fish farms, as well

2. From both practical and legal aspect of the matter; the most controversial amendment would be that have been made to the article 39 of the Regulation by incorporating the following:

“In case of any incident or pollution defined under article 3 of Code no. 5312, arising from any kind of vessels that move or operate in Turkish territorial waters and inland waters; an administrative fine up to TRL 5,000,000.- (approximately USD 1,350,000.- as per the exchange rate of 12.04.2017) shall be imposed to concerned vessel by the harbor master”

Despite the fact that the referred Code no. 5312 provides a definition on both “pollution” and “incident”, the article still have remained unclear with regards to the means of its application. Just for your brief information please kindly be advised that, as per the legal definitions pursuant to the Code no. 5312; *pollution is a mixing of petroleum or other noxious substances with marine environment, as a result of an incident, in a way that might cause harm to living resources and marine life, constitute a hazard to human health, hinder maritime activities including fishing and other legal utilization of the seas, change the quality of sea water, and disturb ecological balance; likewise incident is a situation that brings about pollution or damage, or creates risk of the same, originating from vessels or coastal facilities due to collision, wreckage, fire, explosion or other causes, hence requiring implementation of emergency response plans or carrying out an emergency response.*

As the harbor masters are entitled to impose a fine to the vessels up to aforementioned monetary limit, those have caused pollution and been subjected to an incident at the areas where has fallen under their authority; the article raises many question marks in minds; for instance;

- i.* dependent on which criteria the administrative sanction will be imposed;
- ii.* based on which/what measure, the amount of the fine will be designated;
- iii.* on which ground the method of ascertaining the incident/pollution arisen from the vessel will be determined;

- iv.* by considering that the Environment Code in force also stipulates a fine to be imposed to the vessels caused pollution, whether or not the aforementioned article allows dual penalty regime for same sanction;
- v.* would stipulating a clause regarding a fine via by-law without grounding the same to a code, be complied with the law-in-force and the Constitution.

Would like to draw your kind attention to that the legislator designed the aforementioned change as a reaction to the hazardous and sensitive incidents occurred in the last six months at Turkish waters; as such drastic and disproportionate measures have been taken. In consideration of the same; and legally speaking, the subject amendment leaves an impression on us of that it could be challenged.

We hope that the above may be of your assistance in the future cases.

Yours faithfully,

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