



Insight Article

Pilotage Law

This article will focus on pilotage legislation in a few selected areas around the world. In co-operation with our correspondents and regional offices we have sought to identify local pilotage requirements and also to learn more about liability issues.

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In Norway, the oldest rules about pilotage date back as far as the year 1276, which shows that pilots have for centuries played an important role in providing local knowledge and assistance to ensure the safety of vessels and seafarers. Statistics will invariably show that many marine accidents involve vessels which had a pilot on board. This is in most cases an obvious consequence of the fact that pilotage areas are close to the coastline or in restricted waters. Traffic and safety margins are therefore at a completely different level than on the high seas. Accidents are therefore more likely to occur. Nevertheless, pilotage remains a concern in many parts of the world and a number of recent disasters, such as the "SEA EMPRESS" and "DIAMOND GRACE" groundings, have put pilots and pilotage services under increased scrutiny from authorities, industrial bodies, classification societies and insurers. The varying standards of pilotage world wide and the lack of international requirements with regard to pilot qualifications, master-pilot relationships and passage planning are of concern to the shipping community. Another concern is that pilots and/or the authorities which employ them, are often immune from liability when their negligence or misconduct causes a casualty. Pilotage safety issues will therefore remain a current topic and new initiatives can be expected. However, for the time being we shall concentrate on the present position.

BELGIUM

Our survey starts in Belgium where the three main categories of pilots are North Sea pilots, river pilots and dock pilots. North Sea pilots handle the non-mandatory pilotage out of the Belgian territorial sea, and as they are rarely used the following information will focus on the river and dock pilots which every vessel entering a Belgian port will meet. In addition to pilot services, a radar-based Vessel Traffic System (VTS) tracks and records all vessels and Very High Frequency (VHF) traffic outside the Belgian coast and on the river Scheldt. The VTS is very accurate and can for example assist vessels in difficulties (with or without a pilot on board). The use and importance of the VTS will probably increase in the future, but it is important to remember that the VTS has no general obligation to control vessel traffic and that the initiative to use the VTS has to come from the vessel, even when the vessel has a pilot on board. Experience in the last few years shows that most collisions could have been avoided if VTS assistance had been sought. Before arrival in Belgian waters it is mandatory to provide the vessel's ETA and ETD to the pilot station. Failing this, the Master can be fined. Pilotage assistance (be it on the vessel or from land) is mandatory in most cases. Only very small vessels (less than 60/70 metres) or vessels commanded by an officer with necessary dispensation are exempt from the mandatory pilotage (for example regular ferry services). If the rules about mandatory pilotage are not complied with the vessel must stop further navigation and the commanding officer will be fined. Pilotage dues are payable even when no pilot has been used. Liability: The pilot or VTS has only an advisory role. The Master remains in full control over his vessel and its manoeuvres, and the vessel remains liable for all damages, even if the vessel in fact is under the effective command of a pilot. The pilot, his employer and the VTS system are all exempt from liability. However, the pilot can in cases of wilful misconduct or gross negligence be held liable for an amount up to BEF 500,000 (USD 15,000).

CANADA

Pilotage in Canada is governed by the Federal Pilotage Act. The Act creates four regional pilotage authorities; Atlantic, Laurentian, Great Lakes, and Pacific. The Chairman of each authority is appointed by the Federal Cabinet, and additional members of each authority are appointed by the Minister of Transport. Pilots must qualify and meet prescribed criteria before a pilotage licence may be issued to them. Only Canadian citizens or permanent residents of Canada, subject to certain restrictions, may become licensed pilots. A number of compulsory pilotage areas are prescribed by regulations made under the Act, and in such areas, no person shall have conduct of a ship which is subject to compulsory pilotage unless that person is a licensed pilot. Such a pilot with the conduct of a ship is responsible to the ship's Master for its safe navigation. Where the Master believes on reasonable grounds that the actions of a licensed pilot on board are in any way endangering the safety of the ship, the Master may in the interests of safety of the ship take conduct away from the pilot, but within three days must file a written report giving the reasons. Ships which are subject to compulsory pilotage vary from region to region, and within some regions, but will generally reflect size, use, manoeuvring and other criteria considered appropriate to safe local navigation. Liability: The Pilotage Act provides that neither the government nor a pilotage authority is liable for any damage or loss occasioned by the fault, neglect, want of skill or wilful and wrongful act of a licensed pilot, and that the licensed pilot personally is not liable in damages in excess of CAD 1,000 (USD 704) for any damage or loss occasioned by his fault, neglect or want of skill. Employment of the pilot does not exempt the owner or Master of the ship from liability for damage or loss occasioned by the ship on the ground that the ship was under the conduct of a licensed pilot or that the damage or loss was occasioned by the fault, neglect, want of skill or wilful and wrongful act of a licensed pilot. The Canadian courts have held that the Pilotage Act effectively imposes liability for the acts of the pilot on the owner and Master, even where the pilotage services are accepted and performed under statutory compulsion and in a compulsory pilotage area. Payment of pilotage charges are the joint and several liability of the owner, Master and agent of any ship. Where a ship is led in a compulsory pilotage area, pilotage charges still apply, and if a ship proceeds through a compulsory pilotage area not under the conduct of a licensed pilot, unless the authority specifically waives compulsory pilotage, pilotage charges are still payable, and the Master liable to prosecution and a fine of up to CAD 5,000. Where pilotage charges are outstanding for a ship and the local customs officer so advised, no clearance will be issued to the ship until all outstanding charges are paid.

EGYPT/SUEZ CANAL

Pilotage is compulsory for all vessels entering or leaving Egyptian ports and for vessels transiting the Suez Canal, regardless of whether the vessels call at Port Said or Suez or not. Pilotage services are administered under the local regulations of the subject port and the Suez Canal Formal Regulations. Suez Canal pilots are under the employment and authority of the Suez Canal Organisation, whereas the other pilots are not state pilots but subject to supervision of the port authorities concerned. Liability: Pursuant to the Egyptian Maritime Code No. 8 of 1990 (Art. 279) as well as rulings of the Supreme Court in Egypt, the responsibility for pilotage operation in port and in the Suez Canal lies entirely with the Master of the guided vessel even in case of the pilot's error.

HONG KONG

The Director of Marine is the Pilotage Authority in Hong Kong. Pilotage is currently compulsory for any vessel of 3,000 gross registered tons¹ or more but also for vessels of 1,000 gross registered tons or more in certain specified circumstances, such as vessels carrying dangerous goods or vessels proceeding to certain container terminals, other wharves and government mooring buoys. Pilotage is compulsory for any gas carrier and for any vessel of 300 gross registered tons or more if, for example, the vessel has limited ability to manoeuvre. Pilotage services are provided exclusively, on a 24 hour basis, by licensed pilots who are employed by the Hong Kong Pilots Association Ltd. This is an independent company, owned by the pilots themselves and supervised by the Director of Marine. The Marine Department maintains a register of pilots. There are various classes of pilot depending on experience/qualification. A person wishing to become a pilot first has to be registered as an apprentice pilot and to gain appropriate experience in this capacity before being licensed as a pilot. Liability: The law concerning pilotage in Hong Kong is to be found in the Pilot Ordinance (Cap 84). Section 23 provides that "Neither the Authority nor the Government shall be liable for any death, injury, loss or damage caused by or arising out of any act or omission of a licensed pilot". Section 24 provides that the owner or Master of a vessel shall be answerable when the vessel is under compulsory pilotage in the same manner as he would if pilotage was not compulsory. In addition to this, section 24A of the Pilot Ordinance limits the pilot's personal liability to HK\$ 1,000. Thus, in a situation where an accident is caused by pilot error the owner or Master remains responsible for any loss or damage, neither the Director of Marine nor the Government have any liability and the liability of the licensed pilot concerned is limited to HK\$ 1,000 (USD 129). This means, effectively, that the pilot is immune from liability. **JAPAN** The Japanese Pilotage Act, 1949, with amendments, provides that a pilot is licensed by the Japanese Minister of Transport to conduct pilotage business belonging to one of the local pilot associations. The number of pilots in each port or area is determined by the Ministerial Ordinance. For example, there are 45 pilots in the Yosuka Area (entrance of Tokyo Bay) and 29 in the port of Kobe. Pilotage is compulsory for all non-Japanese vessels over 300 gross tons and also for Japanese vessels over 300 gross tons if engaged in international trade. Pilotage is also compulsory for Japanese vessels over 1,000 gross tons engaged in domestic traffic only. It is possible to apply for an exemption from the rules about compulsory pilotage, but only for Japanese flag vessels or a vessel on bareboat charter to Japanese interests, and only if the Master has the necessary experience. The criteria vary from port to port. Liability: According to the Act, the pilot must prepare a "Pilotage Agreement" in advance of his actual performance of pilotage. The standard format of the "Pilot Agreement" provides that the Master or owner of the vessel undertakes not to assert any claim of personal liability against the pilot for damage or loss sustained by the vessel, its Master and crew, and any third person, even though resulting from the (ordinary) negligence of the pilot in the performance of his services. The Agreement also prescribes that if the loss or damage exceeds the amount of the pilotage fee paid or payable to the pilot (concerning the voyage he was engaged in at the time), the said vessel or owner further agrees to indemnify the pilot in respect of any liability arising out of any action taken by a third party directly against the pilot by reason of his negligence in the guidance of the vessel. This is, however, provided that the amount of such indemnification shall not exceed the amount to which the owner is entitled to limit its liability to such third party under applicable law pertaining to limitation of shipowners' liability. Accordingly, unless the pilot causes an accident by reason of his own intent or gross negligence, a pilot shall not be liable for whatever results may be due to his error under the Pilotage Agreement (exceeding his pilotage fee). There seems no apparent difference between

compulsory pilotage and non-compulsory pilotage as far as the terms of the pilotage agreement are concerned. No judicial precedent or case so far has yet been reported in which a Japanese court declared that such exemption of a pilot's liability was deemed to be unfair and thus invalid. Each individual pilot is permitted to conduct his own pilotage business and, thus, determining who should be responsible to the vessel's interests and any third party. This implies that a local pilot association is a mere ad hoc organisation created to liaise for and on behalf of a member pilot. In other words, a pilot association would not be held legally responsible for member pilot's error in pilotage services under ordinary circumstances.

NORWAY

An integrated pilotage system which applies to the entire coast has been in effect since 1st May 1995. Section 6 of the new regulations sets out in detail which vessels the rules apply to; the main rule being that vessels exceeding 500 gross tons must use a State pilot when underway in waters inside the base line (an imaginary line drawn through the outmost islands or mainland promontories along the entire coast). There are separate rules for certain areas and for certain categories of vessels. As an example, a single hull vessel of more than 100 gross tons shall use a State pilot when carrying hazardous and/or polluting cargo (as specified in a separate annex). The Coast Directorate has issued separate regulations concerning the advance notice and booking of a pilot. Exemptions from the obligation to use a pilot can be given if the Master or other of the ship's navigators holds a pilot exemption certificate (PEC). The PEC can be issued to navigators who meet various requirements, including a documented knowledge about the vessel and the particular fairway. Liability: The vessel's owners are not relieved from liability on the grounds that the ship was under pilot control. Pursuant to the 1989 Pilotage Act and the 1994 Maritime Code the pilot is deemed to be a servant of the vessel's owner who therefore will be liable for the acts of the pilot. The government is not liable in its capacity as pilot employer and cannot be held liable for loss or damage caused by pilot negligence or fault, even when government property is damaged. The reasoning behind this is that pilotage is considered to be an integral part of the risks involved in maritime transport and that the liability should therefore rest with the owner. However, the vessel's owner has in theory a right of recourse against the individual pilot as per the general principles in the 1969 Compensation Act.

PANAMA (THE PANAMA CANAL)

Pilotage through the Panama Canal is compulsory and carried out exclusively by Panama Canal Commission pilots (about 270 pilots). Unlike most ports of the world, Canal pilots do not act in an advisory capacity but take command over the vessel.

Liability: It is possible to hold the Panama Canal Commission liable for accidents which occur during Canal transit and which can be attributed to actions of Canal pilots in command of the vessel. Claims procedures are ruled by the Panama Canal Act of 1979 with amendments and Code of Federal Regulations. Amended claim procedures were also introduced with the Panama Canal Transition Act which entered into force on 18th November 1997. In order to protect an owner's right to claim against the Panama Canal Commission after a casualty, the Master of the vessel must request an official investigation of the Board of Local Inspectors (BLI) and the same must convene before the vessel's departure. Subsequent to this, the owner has one year (previously two years) from the date of the accident or from the date of the new Act (18th November 1997), whichever is the later, to file an administrative claim with the Panama Canal Commission. If the owner is not satisfied with the final determination of his claim at the conclusion of the administrative claims process, he may file suit within 180 days from the date of the final determination or 180 days after the date of the new Act, whichever is the later. The suit must be filed with the United States District Court for the Eastern District of Louisiana. If a vessel involved in an accident departs the Canal waters without the convening of the BLI, the right to claim against the Panama Canal Commission will be lost. At noon on 31st December 1999 the Panama Canal Commission will cease to exist as a United States Government agency and the Panama Canal will pass into the control of the Republic of Panama. The 'Panama Canal Authority' will then become the new entity operating the Canal. There has been some speculation as to changes in the way pilotage will be handled in the Canal after the year 2000, but although the system current is under re-examination no decisions about the future have been made yet. We will continue to monitor the developments in Panama and will keep our readers advised of developments.

UNITED KINGDOM Pilotage in the UK is at the moment in a period of change. Prior to the Pilotage Act of 1987, pilots were generally self-employed, but the Act delegated responsibility for pilotage to the "Competent Harbour Authority" (the "CHA"). It is these bodies, normally the local port authorities, who now have responsibility for authorising pilots to act. The CHA will also decide whether pilotage is compulsory and will issue pilotage directions and examine exemption certificates. Recently, however, the Department of Transport has begun a review of the Pilotage Act, partly as a result of the "SEA EMPRESS" casualty at Milford Haven which, according to the NUMAST Telegraph of October 1997, "raised concerns about standards, training and the Master/pilot interface". This report is still in the process of preparation and the current deadline for its completion is understood to be Easter 1998. In the meantime, one CHA is implementing plans to introduce a new pilotage regime. The Port of London Authority (the "PLA") intends to bring in changes which will increase the length of vessel above which pilotage is compulsory. Those opposing the changes fear this will result in many more unpiloted vessels using the River Thames. These changes were due to be considered by the PLA board on 2nd December 1997 and it is understood that the position will remain unchanged until August 1998. Thereafter, vessels exceeding 50 metres length overall will be subject to compulsory pilotage. The current practice of two major UK ports, London and Liverpool, has been examined. The situation regarding pilotage at these two ports can be summarised as follows: In London, there are 78 sea pilots and 13 river pilots who are all employed directly by the PLA. Pilotage is compulsory for vessels over 50 metres long in the upriver section of the river and for vessels over 80 metres long in the downriver section. The Master, in consultation with the pilot, is

responsible for ordering and deciding on the number of tugs. The PLA can issue exemption certificates to a person who is a bona fide Master or first mate of a ship. There will normally be an examination, although certificates will be issued without an examination if the PLA is satisfied that the applicant is properly qualified and experienced in the navigation of the relevant area. In Liverpool, there are 48 pilots who are all self-employed. Pilotage is compulsory and the pilot is responsible for ordering and deciding on the number of tugs. The CHA issue exemption certificates to Masters who have completed a requisite number of berthing manoeuvres and successfully undertaken an examination. Liability: The liability of the CHA and the individual pilot is governed by the Pilotage Act 1987. A claim by a shipowner is possible in certain circumstances, but an owner will have to show negligence on the part of the pilot and/or the CHA. Even if such negligence can be proven, the liability of an authorised pilot "for any loss or damage caused by any act or omission of his whilst acting as such a pilot" is limited to GBP 1,000 (nearly USD 1,700 at the present rate of exchange) and the amount of pilotage charges "in respect of the voyage during which the liability arose". The liability of a CHA for "any loss or damage to any ship, to any property on board any ship, or to any property or rights of any kind" is limited to GBP 1,000 multiplied by the number of authorised pilots employed by it providing pilotage services at the time the loss or damage occurs. It should be noted that the authorised pilot must be employed by the CHA and in cases where a pilot is self-employed, it is doubtful whether recovery from the CHA is possible.

UNITED STATES

Pilotage in the United States is not subject to a comprehensive system of federal regulation. 46 U.S.C. §8501(a) provides that, except as otherwise provided in that statute, pilots in the bays, rivers, harbours and ports of the United States shall be regulated only in conformity with the laws of the States in which the particular body of water is located. The main exception provided by the statute is in 46 U.S.C. §8502, which specifically requires a federally licensed pilot for "coastwise" seagoing vessels or vessels subject to inspection under Chapter 37 of the Title 46 (relating to the carriage of liquid bulk dangerous cargoes). In addition, where a pilot is not required by State law but the vessel is engaged in foreign commerce and is operating on the navigable waters of the United States, U.S.C. §8503 authorises the federal government to require a federally licensed pilot. It is interesting to note that, as a matter of federal law under 46 U.S.C. §8501(b), where a particular body of navigable water makes up the boundary between two states, the vessel is free to take on licensed pilots from either state while transiting the body of water. (However, this liberty ceases once the vessel is beyond the common body of water.) The individual licensing and regulatory schemes of the various States means that non-coastwise pilotage in US waters is not subject to uniform regulation. Many states make pilotage compulsory within their waters, by statute, often with specific exceptions carved out for specific situations. For example, some states which make it generally compulsory for certain classes of vessel to take on a pilot in their waters, may nevertheless make the taking on of a docking pilot voluntary. Liability: Whether a pilot is compulsory or voluntary is of considerable significance for the vessel owner. In the event of pilot error, a vessel under the direction of a compulsory pilot can be held liable in rem for any resulting damage, whereas the vessel's owner generally will not be held liable in personam, in the absence of the independent negligence of the crew. On the other hand, simply because the vessel is under compulsory (rather than voluntary) pilotage does not relieve the vessel's master from reasserting command in the face of obvious pilot negligence. Compulsory pilotage does not, therefore, provide an absolute shield to the owner's in personam liability. The pilot's personal liability to third parties for damages or to the vessel owner for contribution or indemnity is not generally regulated by statute in the US. As a practical matter, pilots are rarely pursued, due to either a lack of assets or a lack of insurance, or both. In those areas where pilots are directly supplied by towing companies, the towing companies generally shield themselves from respondeat superior liability for the pilot's fault by means of the so-called "pilotage clause" in the towage contract with the ship. This clause essentially renders the pilot to be the vessel's "borrowed servant" for liability purposes, and such agreements have been uniformly enforced by US Courts. Very often pilots are independent of any particular employer, being assigned to specific jobs by a pilot's association of which they are members. Under US law, these associations will generally not be held liable for the pilot's independent negligence, and these associations very often have their own "pilotage clauses" to provide further insulation. In sum, under US law practical recourse by a vessel owner against a pilot, a towing company or a pilot's association for indemnity or contribution is rare. We are grateful to Kegels & Co (Antwerp), McInnes Cooper & Robertson (Halifax), Eldib Advocates (Alexandria), Hosoi Law Office (Tokyo), C. Fernie & Co (Panama) and Niles, Barton & Wilmer (Baltimore) for providing information used in this article. We are also grateful to the Norwegian National Coastal Administration for providing the two pictures accompanying this article. Members who require further information are welcome to contact the Association.

Footnote

1 The Hong Kong Pilotage Ordinance still refers to gross registered tons, but in practice the Marine Department are basing the compulsory pilotage requirements on gross tons. The legislation will probably be amended at some stage.

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