



## **Pilotage Advisory Committee**

Ref. : HQ/COM 928/19 (4)

### **Minutes of Working Group Meeting**

Date: 26 August 2002

Venue: Conference Room A, 24/F, Harbour Building

Time: 3:00 p.m.

#### **Present**

Chairman :	Mr. SIN Tak-cheung	GM/VTIS, Marine Department
Members :	Capt. LEE Tai-kuen	Representing HK Liner Shipping Association
	Capt. WU Ka-shun	Representing Tug Operators
	Mr. MA Yan-kwong	Representing Container Terminal Operators
	Mr. PANG Kim-wing	Representing HK Pilots Association Ltd.
	Mr. SIU Wai-lim	- ditto -
Secretary :	Ms. Shirley HO	ADS/C&G, Marine Department

#### **In attendance**

Mr. CHAN Shui-hoi	HK Pilots Association Ltd.
Mr. LAM Chee-kin	- ditto -
Mr. SHUM Yum-pui	- ditto -
Mr. YEUNG Chung-kwong	SMO/VTC, Marine Department

#### **Absent with Apologies**

Capt. Alan Loynd	Master Mariner
Capt. LI Kwan-wood	Master Mariner
Mr. CHEUNG Shun-hing	Representing Break Bulk Cargo Operators
Mr. LI Pok-yan	Representing Dockyard Industry
Mr. Terence SIT	HK General Chamber of Commerce
Mr. Albert KWONG	Wells Marine Agencies

## **I. Opening Remarks**

1. The Chairman welcomed all to the meeting.

## **II. Discussion Item**

### ***Charging of Pilotage Dues for a Delayed/Interrupted Pilotage Trip***

2. The Chairman informed members that subsequent to the last Working Group meeting held on 19.8.2002, HKPA had further discussed the matter with representatives from the HK General Chamber of Commerce (Port Affair Working Group) and the HK Liner Shipping Association (HKLSA). It was agreed among the parties that in the event of any delay during a pilotage trip the pilot would endeavour to slow down to avoid the need for anchoring. However if anchoring was unavoidable, then the charging of the vessel would depend on the circumstances as follows –

- (a) Where the delay was due to reasons beyond the control of any party, such as weather or other major disruptions to the port (e.g. accidents, power supply failure etc.):

- (i) if anchoring was less than 1.5 hours and the passage resumed thereafter, this would be regarded as a continuous voyage and the vessel would be charged **1 standard pilotage due (+surcharge if any) plus detention (if any)**.

- (ii) if anchoring was more than 1.5 hours, then the passage would be terminated. The pilot would be entitled to leave the vessel and the master/agent would have to make a new booking when the passage was to resume. The pilot would endeavour to report on board within 1.5 hours with no surcharge for urgent booking but this would be regarded as a separate voyage and be charged accordingly. However if the master wanted to keep the pilot on board after anchoring for the first 1.5 hours, detention charge would continue to be levied. In any event the subsequent movement to the berth/final destination would still be considered a separate voyage and be charged accordingly. Under both circumstances, the pilotage charge would be **2 standard pilotage dues (+surcharge if any) plus detention**.

- (b) Where the delay was controllable/avoidable, e.g. delayed schedule due to unfinished cargo work or engine trouble or unavailability of tug etc., the passage would be regarded as terminated upon anchoring of the vessel and the pilot would be entitled to leave. Under such circumstances a new pilot booking would have to be made when the passage was to resume. The vessel would thus be charged **2 standard pilotage dues (+surcharge if any) plus detention** (depending on whether the master wanted to keep the pilot on board after the anchoring).

(Notes of the meeting between HKPA, HK Gen Cham and HKLSA on 23.8.2002 are at Annex A)

3. In response to Capt. LEE Tai-kuen's request for a relaxation of the grace period to start charging the detention, Capt. PANG Kim-wing said that the HKPA would allow a 30-minute grace period for
- (i) inbound vessel queuing at the PBS under the anti-bunching arrangement;
  - (ii) inbound vessel being delayed at the passage from PBS onward due to unavailability of the berth or traffic congestion; or
  - (iii) vessel departing from berth/anchorage/mooring buoy etc. delayed by traffic or weather.

Other than (i), (ii) and (iii) above, only a grace period of 15 minutes would be allowed.

4. Capt. LEE said that it was difficult for the ship agents to control the vessel's sailing schedule and if additional pilotage dues were incurred due to delays of the schedule, they would have no choice but to claim the responsible parties for compensation when required. The Chairman emphasized that it was the responsibility of all parties to avoid any unnecessary delay.
5. Mr. MA Yan-kwong enquired how much advance notice that a pilot would need when there was a delay at the berth to enable him to slow down without anchoring the vessel so that he could inform the container terminal operators that a delay over such a period might cause additional expenditure to the vessel agents and result in claims by the vessel agents.

6. Capt. PANG said that a pilot could normally slow down for about 30 minutes at most provided that -
  - (a) the pilot was informed before or when the vessel was passing Ngan Chau; and
  - (b) the ETD of the vessel occupying the berth was accurate.
7. Mr. MA said that he would pass on the message and remind the container terminal operators of the importance of keeping to the schedule. However he was concerned as to how the pilot could be informed promptly when there was a delay. After some discussion it was agreed that in the event of any delay at the berths, the container terminal operators should fax to the vessel agents at once and then telephone the HKPA for information. Capt. PANG supplemented that the pilots would only take instructions from the vessel agents for any change of the pilot booking.
8. Capt. WU Ka-shun opined that the tug operators should also be informed of the delay so that they could adjust their deployment. Mr. LAM Chee-kin said that according to the present practice, it was the vessel agent to inform the tug operators of such happening.
9. As a delay for berthing would have chain-effects to all the parties involved, including HKPA, ship agents, container terminal operators and the tug operators, the Chairman suggested that the parties should discuss together in order to work out the detailed arrangement to ensure that all would be properly notified when such situation occurred.
10. Members agreed that the arrangements for handling delays during a pilotage voyage and the corresponding charging principles as mentioned in para. 2 (a) and (b) above were reasonable. As regards following up, the Chairman told the meeting that legal advice had been obtained on the recent case of dispute over the pilotage charges. This was summarized at Annex B. In order to avoid further disputes in future, he requested members to consider the following 2 options -
  - (a) To legislate the agreed arrangements by amending the Pilotage (Dues) Order; or

- (b) To revise the existing pilot booking form, which is the contract between the pilot and the vessel, to give effect to such arrangement.
11. Capt. PANG suggested that, as making legislative amendments to the Pilotage (Dues) Order might take a long time, the HKPA would prefer revising the terms and conditions in the Pilot Booking Form as an interim measure. Capt. LEE said that he needed to consult members of the HKLSA and would revert later.

### **III. Any Other Business**

#### ***Revision of Pilotage Dues***

12. The Chairman said that the legislative amendment was still being processed by the Economic Development and Labour Bureau. MD would chase EDLB for quicker action.
13. There being no other business, the meeting ended at 5:15 p.m.

23<sup>rd</sup> August 2002

**CORRECTED COPY**

TO: HKGCC - Shipping Committee – Port Affair Working Group  
HKSLA - Attn: Capt. T. K. Lee  
CC: Pilotage Authority – Attn: Mr. T. C. Sin

Attn: Mr. Terence L. K. Sit

Re: Pilotage dues for an Interrupted Pilotage Trip

Subsequent to the PAC Working Group meeting on the 19-08-2002 of the captioned subject, at the request of the representatives of HKGCC Port Affair Working Group and the HKSLA, and attended by the Pilots of HKPA, a meeting was held at the HKGCC on 22-08-2002. A think tank type open forum to seek industry wise opinion and mutual understanding, in order to eliminate the ambiguity and define what is an "interrupted pilotage trip, and appropriate dues to be levied as a result of weather (Act of God), or unscheduled berth delay (Human Factors) which lead to anchoring of the vessel for safety reason.

**ATTENDANCE** (排名不分先後)

Terence L. K. Sit (Jardine)  
(Chairman)

CHEUNG S.W. Peter (Wallem)  
LEE Tak Kuen (Mitsui)

PANG K.W. Simon (HKPA)  
CHAN S.H (HKPA)  
SHUM Y.P. (HKPA)

KEUNG Y.H. Simon (Maersk)  
FUNG S. T. (OOCL HK)  
WONG Y. K. (P&O Nedlloyd)  
LI K. S. (Sun Hing)  
CHAN Chi Yin, Edwin (Swire)  
CHAN Raymond (Hapag-Lloyd)  
CHAN W.S. Oliver (NYK)  
KWONG C. M. Alex (NYK)  
LAI H.W. Gary (Jardine)  
CHAN K. S. Sunny (Inchcape)

**DISCUSSION AND MUTUAL AGREEMENT:**

A) Passage interrupted as a result of weather / restricted visibility conditions (Act of God), and ship forced to anchor for safety reason applies:

- 1) Ships in transit Hong Kong (e.g. NC to URMPS) or,
- 2) ships inbound to Kwai Chung or other berth/wharf/mooring buoy etc, or
- 3) any other similar situations under Act of God.

- 1) If anchored time is less than 1.5 hours (counted from bought up of anchor) and resumed passage thereafter, it should be recognized as a continued passage. Detention to be counted from time anchor bought up, until the ship resumed passage if the pilot was retained on board. **Total pilotage levy = 1 standard pilotage due (+ surcharge if any) + detention, if any.**
- 2) Should the ship anticipating to, or has been anchored for more than 1.5 hours, the passage is therefore terminated and the pilot is entitle to leave the vessel. The pilot will return to the ship in 1.5 hours' time upon calling from the vessel or the agent for the next passage. No urgent call charge will be levied. In case the pilot to be retained on board at the request of the master or the agent for their own purposes, it should not alter the position that the passage has been ended, the pilot remain on board is on standby for the next passage. **Total pilotage levy = 1 + 1 standard pilotage dues (+ surcharge if any) + detention.**

B) Passage interrupted as a result of the intended berth being occupied upon vessel's arrival (inside the port), for safety reason, the vessel was forced to anchor to wait for the berth to be vacated applies:

Under circumstance the passage is terminated upon vessel anchored because user has not provided a proper berth upon the vessel's arrival. Unless it was a condition caused by the Act of God, then (A) above should apply, anything other than that, for instance, scheduling or maintenance problem, all of which are controllable and avoidable by the concerned party.

For the sake of clarification and statistics, according to HKPA's record, in the past 12 months only 12 ships out of 8927 ships called KC was forced to anchor when waiting for berth at the inner harbour. This numbers are the proof to the industry that the pilots have been well constrained and co-operative, flexibly handled the unscheduled berthing delay situation to the best interest of all parties.

For the optimize use of the port facilities and allocation of human resource, for the safety and the environment, it is highly recommended that the same old system that adopted by the PAC previously be preserved (HQ/COM 423/1(5) 09-JAN-1986 please refer), reinstated until a better acceptable replacement, that is capable to deal with the similar situation with a built in anti-abuse mechanism is found. There was no objection to the recommendation by the attended representatives. Under this scenario **Total pilotage levy = 1 + 1 standard pilotage dues (+ surcharge if any) + detention.**

**C) Detention charge:**

Industry representatives requested HKPA to relax the detention grace period and it was mutually agreed the follow:

- 1) When ship calling inbound bunching up at PBS – 30 minutes
- 2) Ship departs from berth/anchorage/mooring buoy etc delayed by traffic or weather – 30 minutes
- 3) All other conditions other than 1) & 2) above – 15 minutes.

At sailing, detention starts to count from time POB, and ceased upon commenced unmooring (when first line cast away from berth or unshackle from buoy) or heave up anchor.

Meeting ended at 11:45 hours.

Recorded by HKPA



**Summary of Legal Advice on the Case of m.v. “Astoria Bay”**

- (i) **Basis for charging of pilotage dues** - as required by section 13(1) of the Pilotage Ordinance, the pilotage dues shall be charged on the basis of pilotage service. Although the term ‘pilotage service’ is not defined in the Ordinance such as making it measurable by reference to some *quantifiable* criteria (e.g. movements, time, etc.), the government counsel is of the view that in considering note (a) under Part I of the Schedule to the Pilotage (Dues) Order (which says that “the pilotage dues specified in this Part include all costs incurred by a pilot in travelling to and from a ship”) the standard pilotage dues under Part I (i.e. \$3,500 plus charges based on tonnage) are seemingly intended by the legislature to be charged *each time when the pilot embarks on the ship*. So if a pilot has for whatever reasons *embarked and disembarked* the vessel which he pilots, even if he does not detour to other places, a multiple of the standard pilotage dues under Part I of the Schedule is *chargeable*. However, given the pilot in the present case had travelled to and from the vessel for one time only, staying throughout the pilotage journey NC→WA→URA without leaving the vessel, the standard pilotage dues should therefore be charged on the basis of the pilotage services provided by the pilot from NC to URA as if the vessel had not detoured to the WA. In addition the detention charge in item 6 under Part II of the Schedule is also payable for the period the pilot was detained on board at the WA.
- (ii) Consensus of the PAC in 1986 and rights and obligations of pilots and vessels – the government counsel is of the view that the engagement of a pilot for provision of pilotage services is essentially a private matter between a pilot and a vessel. The Pilotage Ordinance only concerns the compulsory pilotage requirement, qualifications and disciplinary matters relating to licensed pilots and charging for pilotage dues. In this regard, the Pilotage Authority is required, under section 22 of the Pilotage Ordinance, to provide by order published in the Gazette for the amount of the pilotage dues to be paid for any pilotage service after consultation with the PAC. On the other hand the contract between a pilot and a vessel should have defined the rights and duties of the parties provided that the Pilotage Ordinance is not contravened. The statutory duties of the pilot under sections 17(3)(c) and 17(3)(d) do not prevent the pilot and the vessel from stipulating in their contract their respective rights and duties in detouring situation like the present case (or under other circumstances).