

PILOTAGE ADVISORY COMMITTEE

Arrangements to deal with Delays/Interruptions during a Pilotage Voyage

Purpose

The purpose of this paper is to inform members of the agreement that has been reached between the Hong Kong Liner Shipping Association and the Hong Kong Pilots Association recently on the arrangements to deal with delays/interruptions during a pilotage voyage.

Background

2. The subject of delays/interruptions during a vessel's pilotage voyage has been discussed by the PAC before. At the PAC meeting held on 9 January 1986, it was considered that during a vessel's inbound voyage to berthing within the port, should there be a delay due to the berth being unavailable, the pilot should exercise his judgment to decide if the vessel was to be anchored to wait for the berth. Under such situation the pilot may leave the vessel after anchoring and the subsequent movement of the vessel to the berth would be regarded as a separate voyage. The above principle has been adopted by the HKPA over the years for delays to berthing at the Kwai Chung Terminals. On many occasions, in order to avoid the need for the agent to place a new booking order and the extra time for pilot disembarkation and re-boarding, the pilot has remained on board after the anchoring. Nevertheless the subsequent movement to the berth would still be charged as a separate voyage.

The Problem

3. In a recent dispute between a ships agent and the HKPA on the charging of 2 separate voyages for a vessel on a transit passage, which was forced to anchor at the Western Anchorage for 3 hours due to poor visibility, the question was raised as to the reasonableness, and also the legitimacy, of such a charging practice. The agent was of the view that such charging was inconsistent with the existing legislation, as the decision/consensus of the PAC in 1986 had not been incorporated in the Pilotage Ordinance so as to give it the legal effect.

The Legal Advice

4. The government counsel was of the view that while the existing Ordinance has laid down the requirement for compulsory pilotage and paying of pilotage dues for the pilotage service, the engagement of a pilot for provision of the service is essentially a private matter between the pilot and the vessel. The parties can make terms in their contract for the provision of such service, so long as these terms are not in conflict with the Ordinance. Clearly the existing Ordinance has not provided for a definition of the term 'pilotage service' and the charging of pilotage dues in detouring situations like this, but this does not prevent the pilot and the representatives of the vessel specifying in their contract their respective rights and obligations under such circumstances.

The Agreement between HKLSA and HKPA

5. To avoid further disputes, the HKPA has discussed with the HKLSA and the Hong Kong General Chamber of Commerce the future arrangements to deal with such situations. The agreement that has been reached is as follows:

- (a) Where the delay was beyond the control of any party (e.g. due to weather)
 - (i) if anchoring was less than 1.5 hours and the voyage was 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 voyage would be terminated and the pilot would be entitled to leave the vessel. The master/agent would have to make a new booking order when the voyage could be resumed and this would be regarded as a separate voyage. The pilot would endeavour to report on board within 1.5 hours but the surcharge for booking with less than 3 hours' notice would not be applied. On the other hand, if the master would like to keep the pilot on board after the original voyage has been terminated (i.e. 1.5 hours after the anchoring), detention charge would continue to be levied and the subsequent movement to the berth/final destination would still be considered as a separate voyage and be charged accordingly.
- (b) Where the delay was avoidable/controllable (e.g. unfinished cargo work, engine trouble, berth or tugs not available etc.) - the voyage would be terminated upon anchoring of the vessel and the

pilot would be entitled to leave. Under such circumstances a new pilot booking order would have to be made when the voyage could be resumed. The vessel would thus be charged 2 standard pilotage dues (+surcharge if any), plus detention if the master would like to keep the pilot on board after the original voyage has been terminated.

The Pilotage Contract

6. The above agreement has been incorporated as the Standard Terms and Conditions in the revised Pilot Booking Form prepared by the HKPA. A copy is attached at Annex 1.

Presentation

7. Mr. C N Chung of Marine Department will present this paper.

Marine Department
January 2003

Hong Kong Pilots Association, Ltd.**Standard terms and conditions for pilotage services**

The provision of pilotage services is subject to the following terms and conditions:-

Definitions

1. For the purposes of these terms and conditions :-
 - (a) "HKPA" means Hong Kong Pilots Association Ltd.
 - (b) "The Applicant" means the person who requests and/or engages pilotage services for a vessel to be provided by a pilot who is licensed under the Hong Kong Pilotage Ordinance.
 - (c) "The Owners" means the vessel and/or Master and/or the Owners and/or the Demise Charterers of the vessel for which the pilotage services are requested.
 - (d) "The Ordinance" means the Hong Kong Pilotage Ordinance and its Schedules and Orders.

Parties

2. In arranging pilotage services for the vessel, the Applicant and the Owners acknowledge that HKPA acts as an agent only for the pilot and assumes no liability hereunder or in relation to the pilotage services provided.
3. The Applicant requests and/or engages the pilotage services on behalf of itself and warrants that it is irrevocably authorized to request and/or engage the pilotage services on behalf of the Owners.
4. Each of the Applicant and the Owners is jointly and severally liable for the pilotage dues under these terms and conditions.

Booking of services

5. The Applicant shall :-
 - (a) submit his request for pilotage services on the Pilot Booking Form (the "Form") by fax to HKPA as early as possible preferably during daytime;
 - (b) use one Form for each pilotage service requested; and
 - (c) confirm each booking by telephone 30 minutes after the Form is submitted by fax.
6. HKPA shall endeavour to arrange the supply of pilots but accepts no responsibility if a pilot cannot be arranged for the requested time for reasons beyond control of HKPA.

Information

7. The Applicant shall provide all the information and data required in the Form accurately and properly.
8. The Applicant shall :-
 - (a) indemnify HKPA and the pilot for all loss and expenses; and
 - (b) pay all reasonable fees and/or charges for all additional work performed and/or time spent by the pilot and/or all additional administrative work performed by the HKPA

caused by inaccurate and/or insufficient and/or unclear information provided by the Applicant in the Form.

Arrangement of berth

9. The Applicant shall procure that the destined berth is clear and available before the vessel's arrival at that berth.

Duration of pilotage services / additional pilotage dues

10. The pilot shall endeavour to render his pilotage services for the intended trip booked by the Applicant, PROVIDED ALWAYS that :-
 - (1) If within 30 minutes after the pilot has boarded the vessel, the terminal is unable to confirm to the pilot that the destined berth is clear and available, the pilot may decide in consultation with the master:-
 - (a) discontinue the intended trip and divert the vessel to an anchorage. Upon safe placement of the vessel at the anchorage, the pilotage service shall be deemed to have been duly completed and all the obligations of the pilot shall be deemed to have been discharged, and the pilot shall be at liberty to leave the vessel; or
 - (b) continue with the intended trip in which case an additional pilotage due for detention under Pilotage

(Dues) Order item 6, Part II of the Schedule to the Ordinance is payable from the expiry of 30 minutes after the pilot has boarded the vessel until the terminal confirms to the pilot that the berth is clear and available. However, the pilot reserves his right under sub-paragraph (a) to discontinue the intended trip at any time before the terminal confirms to the pilot that the berth is clear and available.

- (2) If the pilot in consultation with the master decides that it is unsafe or impracticable to continue with the intended trip, the pilot may discontinue the intended trip and divert the vessel to an anchorage whereupon :
- (a) If the trip is discontinued for reasons relating to the vessel or its cargo, or for reasons for which the Applicant and/or the Owners is/are responsible the pilotage service shall be deemed to have been duly completed and all of the duties of the pilot shall be deemed to have been discharged, and the pilot shall be at liberty to leave the vessel; or
- (b) If the trip is discontinued solely for reasons for which the Applicant and/or the Owners are not responsible (i.e. for reasons unrelated to the vessel or its cargo including but not limited to fog, weather conditions, closure of fairways and city power failure) then :-
- (i) if the trip is resumed within 1 hour 30 minutes of anchoring, the pilotage service shall continue to form part of the original pilotage service; and
- (ii) upon the expiry of 1 hour and 30 minutes after anchoring, the pilotage service shall be deemed to have been duly completed and all the duties of the pilot shall be deemed to have been discharged, and the pilot shall be at liberty to leave the vessel.

11. When the vessel has been diverted to an anchorage and the pilotage service is deemed to have been duly completed under Clause (10) hereof then if the Applicant and/or the Owners request the pilot to stay on board the vessel to stand by for the new pilotage service, the new pilotage service shall be deemed to have commenced upon the receipt of such request and the pilot shall be entitled to an additional pilotage due for detention until the vessel sets off on the new intended trip. However, if a new pilotage service for the vessel is requested within 3 hours after anchoring, the additional pilotage due for services requested on short notice under Pilotage (Dues) Order item 7, Part II of Schedule to the Ordinance shall not be payable. The Pilot shall endeavour to return to the vessel in about 1.5 hours upon request.

12. Where a vessel arrives late at the pilot boarding station, an additional pilotage due for detention is payable. At its sole discretion, HKPA may allow a grace period of 30 minutes.

13. Where a vessel departs late, an additional pilotage due for detention is payable. At its sole discretion, HKPA may allow a grace period of 30 minutes for delay solely caused by traffic congestion or weather, and a grace period of 15 minutes for delay solely caused by cargo and/or ship operations.

Payment of pilotage dues

14. The Applicant shall settle all invoices for pilotage dues together with all other amount(s) payable under these terms and conditions within seven (7) days of presentation.

15. Interest shall accrue on any overdue pilotage dues and/or all amounts payable under these terms and conditions from the date of presentation of the invoice until full payment at the rate of 2 per cent per month or part of a month.

16. HKPA at its sole discretion may require the Applicant to pay the pilotage dues in advance as a condition for arranging pilotage services where: -

- (1) the Applicant and/or the Owners :-
- (a) is/are indebted to HKPA for overdue pilotage dues; or
- (b) habitually delay payment of pilotage dues; or

(2) HKPA considers that the Applicant or the Owners may default on payment of the pilotage dues.

Severability

17. If any of these terms and conditions or part thereof becomes invalid, illegal or unenforceable, such terms and conditions or part thereof shall, to the extent of such invalidity, illegality or unenforceability be deemed severable and the remaining terms and conditions and the remaining part of such terms or conditions shall continue in full force and effect.

18. Nothing in these terms and conditions shall affect the pilot's rights under the Ordinance.

19. This agreement shall be governed by Hong Kong law and any dispute arising hereunder shall be submitted to the non-exclusive jurisdiction of the Hong Kong Courts.