

The legal position of pilots

The provision of pilotage services in the European Union will undergo a shake-up as a result of the Directive on port services. What implications will this have for the legal position of the pilot? By Philip Carney, of Spanish maritime law firm, Ignacio de Ros Maritime Advocates.

The importance of maintaining and raising standards of pilotage services is self-evident to ship-owners, their insurers, port authorities and many other interested parties. One merely has to recall the Aegean Sea incident in 1992, in which negligence on the part of both the pilot and the Master resulted in a spill of approximately 79,000 tonnes of crude oil off the coast of La Coruña. It becomes even more evident when one considers the position of the pilot in national laws, in particular the provisions that limit the pilot's liability.

The role of the pilot

A modern definition of the role of the pilot is provided by article 102 of the Spanish Law of State Ports and the Merchant Marine. This article provides that pilotage is understood as the service of advising the Masters of ships and floating objects on nautical manoeuvres in order to facilitate their safe entry into and exit from a port. The classification of the pilot as an advisor is not uncontroversial. There has been a debate in many jurisdictions as to whether the pilot's role is merely to advise the master, or whether he actually takes charge of the vessel. Although in practice the pilot will normally be in effective control on board, the fact remains that the master may take back control if he believes it necessary to do so, and therefore the classification of the pilot as an advisor to the master seems to be more appropriate. In the case of a collision, article 5 of the 1910 Brussels Convention for the unification of certain rules of law relating to collision between vessels provides that the owner of the vessel at fault will be liable when the collision was due to the negligence of a pilot, even if pilotage was compulsory. However, the position regarding liability for incidents other than collisions, for example, liabilities to a port authority for damage to the port installations, is not quite as clear.

The general position is that the pilot is treated as a temporary crewmember. Therefore, the owner will be liable for all loss or damage caused by a ship that is due to the negligence of the pilot, even if pilotage was compulsory and the incident giving rise to the damage cannot strictly be classified as a collision. Thus, section 16 of the English Pilotage Act 1987 provides that: "the fact that a ship is being navigated in an area and in circumstances in which pilotage is compulsory shall not affect any liability of the owner or master of the ship for any loss or damage caused by the ship or by the manner in which it was navigated".

Claims against pilots

While the owner may be liable towards third parties, he may have the right to recover from the pilot. Thus, article 834 of the Spanish Commercial Code provides that while having a pilot on board will not relieve the master (for which one should read 'owner') of a vessel from liability towards the innocent vessel for collision damage, he has the right to be indemnified by the pilot. In France, article 18 of the Law of 3rd January 1969 provides that, while the pilot is not liable to third parties for damage caused in the course of pilotage operations, he must, within the context of his relations with the owner of the piloted vessel, contribute to the reparation of such damage.

However, such a claim will generally be subject to limitation. Section 22(2) of the Pilotage Act 1987 limits the liability of any authorised pilot for any loss or damage caused by any act or omission of his while acting as a pilot to £1,000 plus the amount of the pilotage charges in respect of the voyage during which the liability arose.

While this represented a tenfold increase on the limit provided for by the 1983 Pilotage Act, it would still barely justify the expense of bringing a claim in many cases. Similarly, in France, the liability of the pilot is limited to the amount of the guarantee that must be deposited by anyone who wishes to provide pilotage services pursuant to article 20 of the Law of 3rd January 1969.

Claims against the state

As pilotage may be classified as a public service, claimants have, on occasion, attempted to hold the state or state bodies vicariously liable for the acts of the pilot. In the English case of *The Cavendish* (1993) 2 LLR 292, the Claimant argued that the Port of London Authority should be found liable for the negligence of a pilot in its employment as the Authority has a statutory duty to provide pilotage services pursuant to section 2 of the Pilotage Act. Mr Justice Clarke rejected this argument, on the basis that section 2 only required the Authority to supply competent pilots and not to pilot ships.

Claimants in Spain who took on state bodies had better fortunes under the legislation in force prior to the 1992 Law of State Ports and the Merchant Marine. The Supreme Court considered that the port authorities were vicariously liable for the acts and omissions of the pilot on the basis that the 1958 pilotage regulations referred to pilots as public functionaries, directly subordinated to the maritime authorities. However, the 1992 law reorganised the service of pilotage on the corporate model found in countries such as France, Italy and Holland. Now, although the position is still somewhat unsettled, it is thought that it is unlikely that such claims against the port authorities will succeed, unless the particular port authority involved provides pilotage services directly instead of through a corporation.

Future developments

As has been seen above, there have been three common tendencies in legislation regarding pilotage, which are long-rooted in some countries but have only developed relatively recently in others. They are: the tendency to hold the shipowner responsible for the acts of the pilot, the tendency to limit the pilot's liability vis-à-vis the shipowner and the tendency not to hold public authorities vicariously liable for the pilot's negligence.

While the shipowner's inability to rely on a defence of compulsory pilotage is unlikely to be affected by

any liberalisation of pilotage services, and while such a liberalisation is likely to sound the final death-knell for any future attempts to hold public authorities vicariously responsible for the acts or omissions of pilots, one area that might undergo some change is the limitation of the pilot's liability.

The International Association of Independent Tanker Owners (INTERTANKO) calls for the increased responsibility of pilots and their organisations for the consequences of pilotage failure. Even if legislation fails to produce some uniformity on the limits of liability, it is conceivable that, in a freer market, pilots may agree to contractually higher limits than those provided for by law. Accordingly, ship-owners (and their insurers) may, as a consequence of freer market access, have an opportunity to ensure that, when an incident is caused by a pilot, his liability insurers will assume a greater share of the resulting liabilities.

Based in Barcelona, Ignacio de Ros Maritime Advocates provide maritime law services all over Spain and in the Canary Islands. Specialist practice areas include collisions, salvage, port state control issues, ship arrest and cargo claims, and languages spoken are Spanish, English, French, German, Danish and Catalan. To find out more, visit www.ignaciaderos.com, or contact office@ignaciaderos.com.