

"SARNIA NEWS" CIRCULAR

(Ref: 316/17/VAR)

TO ALL SHIPOWNER CLIENTS TRADING TO ITALY

Re: Pilots & Pilotage in Italy

Please find attached information received from P&I correspondents at Italy, advising of a new Pilot's liability regime which came into force on 3.1.17, which we would suggest is distributed to the relevant personnel, as well as being sent to the Master(s)/Chief Officers(s) of your vessel(s) if relevant.

Best regards

Loss Prevention Team

“HOW TO DO”

MAURO Consultants Opinions

Bulletin No. 13

PILOTS AND PILOTAGE IN ITALY

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1) PILOTS AND PILOTAGE

1a) The contract of Pilotage

As is well known, Pilotage, together with Towing, Berthing and Boating is included among the technical and marine harbour services.

These are public services, usually not compulsory, carried out upon vessel's arrival or departure from the harbour.

The aim of the above-mentioned services is to guarantee the safety of navigation within any harbour's area, with general advantages not only for each harbour and its facilities, but also for all the companies working there, for the users, for the citizens and, finally, for the environment.

In particular, by Pilotage service, an expert, that is the Pilot, assists the Shipmaster and suggests the course and all the necessary manoeuvres to execute the route without any damage.

The rules and regulations governing Pilots and Pilotage are provided by Italian Code of Navigation (articles from 86 to 100) and by the “Italian Regulation related to Maritime Navigation” provided by Decree of the President of Italian Republic no. 328/1952 (articles 98-137).

Pilotage contract is the contract concluded between the Shipowner, represented by the

Shipmaster, and the Board of Pilots (*Corporazione dei Piloti*) pursuant to which the Pilot, upon payment, is obliged to suggest the course and to assist the Shipmaster in determining necessary manoeuvres to execute the route.

Since it implies the Pilot's technical advice to the Master, Pilotage has to be considered as a contract for the provision of intellectual services (ruled by the art. 2230 and following of the Italian Civil Code) and not as engagement articles, despite of the fact that the Pilot, when he boards the vessel, becomes a crewmember pursuant to art. 316 of Italian Code of Navigation (from now on "C.N.").

In accordance with art. 126 of the Regulation for the Application of C.N., Pilotage contract is concluded when the Pilot receives the call through which the Shipmaster agrees to the services of the Board of Pilots.

The same situation stands even if Pilot's call is made not by the Shipmaster, as provided by art. 126 of the Regulation for the Application of C.N., but by the Shipagents.

The recent regulations analysed in this Bulletin have produced significant changes in the Pilot's Liability Regime during the service rendered.

1b) The role of the Pilot

As already pointed out, according to art. 92 C.N., "*the Pilot suggests the course and assists the Shipmaster in determining necessary manoeuvres to execute the route*".

When a Pilot boards a vessel, he temporarily becomes a crewmember, with the role of Master's advisor.

The Pilot should remain on duty until the vessel leaves the area of compulsory pilotage or until the vessel is moored in her designated berth.

In the area where the Pilotage service is not compulsory, the Pilot should remain on duty until the Master requires his assistance.

However, the final decision on the course (and on any manoeuvre) rests with the Master, who has to personally direct any manoeuvre for/while entering/sailing from any port, channel, river, and anytime the navigation reveals being difficult (art. 298 C.N.).

In view of the above, the Master is liable for any damage caused to the vessel (art. 313 C.N.) - and the Owners for any damage caused to third parties - unless the mistake of the Master is attributable to the wrong advice or information provided by the Pilot.

2) THE NEW LIABILITY REGIME

2a) The liability

The Pilots' liability regime has been recently revised by the Italian Law no. 230, issued on 01/12/2016 (so called "Law 230/2016") and come into force on 03/01/2017.

The art. 1 of the above Law provides the substitution of the previous articles 93 and 94 C.N..

According to the previous/abolished art. 93, any Pilot was liable for the damages suffered by the vessel during the pilotage when it was ascertained that these damages were caused by wrong information and advices provided by the Pilot to determine the course.

Pursuant to the new art. 93 C.N., "*any Pilot is liable for any damage caused by his own conduct or facts caused by him during the pilotage*" when it is proven (*recte*: supported by proper evidence) that the damage occurred to the vessel or to third parties (persons; things) is attributable to wrong information or advices provided by the Pilot himself for determining the course.

The Pilot's liability is limited up to the overall amount of Euro 1,000,000.00 (One Million Euro) for each incident, regardless to the number of damaged/injured persons and to the type of incident; remaining unaltered the Owners' liability when it is provided by the governing rules.

The limitation of Pilot's liability does not apply when it is ascertained that the liability of the Pilot (for any damage) is attributable to his willful misconduct or gross negligence.

2b) The compulsory insurance

In view of this strict liability regime, the Law no. 230/2016 substitutes the previous contents of art. 94 C.N. with a new one, in compliance to which any Pilot is obliged to have in force an insurance cover (stipulated with proper Insurance Company, up to the limitation ex art. 93 C.N.) covering the civil liability due to any damage attributable to the pilotage services so rendered.

A copy of the insurance policy must be deposited by the Pilot c/o the Board of Pilots which he belongs to.

The Board of Pilots belonging to each Italian port is subject to the surveillance of the relevant Harbour Master. Therefore, the latter have to check/verify the validity and the

suitability of the a.m. insurance policy.

Failing the said policy and/or its suitability or being the cover not sufficient pursuant to the limitation ex art. 93 C.N., any Pilot is not allowed to provide his service and/or to pursue the same. Even any new licenced port pilot should be provided with the insurance policy, that should be concluded as of one month since the favourable outcome of the exam.

The detailed discipline concerning the possible sanctions and, in general, the consequences for not complying with the mandatory insurance has been demanded by the Law no. 230/2016 to additional regulations that shall be issued by the Italian Government.

3) RECCOMENDATIONS ON “HOW TO DO”

Notwithstanding the relevant regulations have yet to be completed, the new regime concerning the Pilots’ liability should produce a considerable innovation on the topic in the Italian legal system.

However, the Shipowners and Masters’ liability for damages caused to the ship and/or to third parties remained unaltered.

In view of the above, any Master/Owners invoking the Pilot’s liability for damages caused to the ship and/or third parties should support the claim by proper evidence.

In fact, according to the new art. 93 C.N., the Pilot should be considered liable for any damage only in the event the relevant claim is proven, namely well grounded by proper evidence.

- **Collection of evidence about Pilot’s “acts and facts” during pilotage**

In order to collect the necessary evidence during the attendance of the Pilot on board being on duty (in case he should cause or produce any damage to the assisted ship or to third parties – vessels, persons or things –) we suggest to consider the following guidelines:

a) **Log Book**

Pursuant to art. 174 C.N. on the Log Book (Navigation Book) it is compulsory to record the ship’s course, forecast, any manoeuvre, any fact related to the navigation. By this term it is intended the ship’s voyage from one port to another.

According to art. 178 C.N. (“*Probative evidence of recordings on ships’ books*”), any records on the Log Book related to the use of the ship constitute an evidence even in favour of the Shipowner.

In view of the above, the principal source of evidence is the Log Book.

In the event of any damage to the assisted ship or to persons or things/ fixed objects caused by the attending pilot, it is necessary for the Master, after having recorded that the pilot did or suggested to him the relevant detrimental manoeuvre, to present a report to the local Court of the port where the vessel has been moored after the pilotage, in compliance with art. 304 C.N..

The relevant formalities are ruled by art. 584 C.N. and they require the assistance of a lawyer and deposition of three crewmembers (except for the Master) as witnesses.

These formalities are the ones even necessary to lodge the so called “Sea Protest”, which, according to Italian legal system, is not only restricted to invoke the *force majeure* in connection with adverse weather conditions encountered by a vessel during the sea passage.

As a matter of fact, Italian Code of Navigation imposes on the Master the duty to lodge a “Sea Protest” (*rectius*: “*Report concerning Extra-ordinary Events*”) every time that – during the voyage – extraordinary events occur to the ship, to the cargo or to the people on board.

Once the a.m. report has been issued, the Master should issue a Power of Attorney in favour of a lawyer who should apply to the local Court depositing the report and requesting the appointment of a Judge.

The latter schedules a hearing for the purpose of questioning three witnesses (crewmembers), verifying the contents of the report itself.

Upon completion of these formalities, the Master’s Report concerning Extra-ordinary Events acquires the value of full evidence of the facts herein contained.

b) VDR (Voyage Data Recorder)

A VDR is a device permanently installed on a ship to continuously record key information related to the operation of a vessel. It contains a voice recording system for a period of at least 12 hours. This recording apparatus is recovered and used for investigation in the event of incidents.

It goes without saying that VDR device should reveal more than useful to re-construct entirely what the Pilot did and recommended to be done.

c) Voice Recorder

As an alternative source of evidence, should the VDR device not be working, it would be advisable to use a voice recorder.

d) Witnesses

The attendance of other crewmembers on the bridge during manoeuvre (a part from the Master) is essential.

Those who were present when the Pilot was on duty when the incident occurred in fact should be called as witnesses for the purposes of the hearing to verify the Report of Extra-ordinary Events (see item "a").

e) Pilot's Card

In view of the new Pilot's liability regime, it shall be imperative, from now on, that a IMO rule to date frequently disregarded by the Masters, will be always accomplished with. We refer to the PILOT's CARD, i.e. the form (usually consisting of one or two pages of A4 size) which a Master of any ship should present to the Pilot, prior to the commencement of the pilotage service, and which the Pilot should always hand back to the Master, duly dated and signed for acknowledgement.

The P.C. includes all the necessary information about the ship, which any Pilot must know, namely:

- a) full dimensions of the ship, including the " air draft " (for avoiding possible contact against the arm of the harbour cranes, for instance).
- b) Minimum time and distance for arresting the ship (0 speed) starting from usual navigational speeds.
- c) Turning cycles and other manoeuvring performances.
- d) Average speed corresponding the steps of the engine telegraph (dead, slow, half, full).
- e) Anchor's weight and mooring cable length.
- f) Propeller's type (solid, CPP), presence of bow/stern thruster, etc.

As previously indicated, we have personally verified more than once that the Masters forget or consider not important the P.C. , so giving to the pilot a legal chance for minimising his liability in case of casualty occurred during the pilotage service.

Ravenna, 20th March, 2017

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