

PORTS AND HARBOURS (PILOTAGE) REGULATIONS 2008

In exercise of the powers conferred by subsection 15(1) of the Ports and Harbours Enactment 2002 [No. 5 of 2002], the Minister makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the Ports and Harbours (Pilotage) Regulations 2008.

(2) These Regulations come into operation on a date to be appointed by the Minister by notification in the *Gazette*. [1st June 2009]

Interpretation

2. In these Regulations, unless the context otherwise requires –

“COLREG” means the International Regulation for Preventing Collisions at Sea 1972;

“compulsory pilotage areas” means the areas established as compulsory pilotage area under regulation 3;

“Department” means the State Department of Ports and Harbours;

“Enactment” means the Ports and Harbours Enactment 2002 [No. 5 of 2002];

“IMO” means International Maritime Organization;

“INTERCO” means International Code of Signals;

“licence” means a pilot licence issued by the Director under regulation 4;

“Marine Pollution” or “MARPOL” means the International Maritime Organization (IMO) publication of MARPOL 73/78;

“mile” means Nautical Mile;

“pilot” means any person licensed as a pilot under regulation 4 for any specific compulsory pilotage areas;

“Pilotage Committee” means a committee appointed by the Minister under regulation 5;

“pilot station” means a section of a port control tower which regulates and controls pilotage activities within the compulsory pilotage areas;

“port officer” means any officer appointed under subsection 4(2) of the Enactment to be in charge of any port as maybe determined by the Director;

“safe speed” means a speed at which a vessel can take proper and effective action to avoid a collision and can be stopped within a distance appropriate to the prevailing circumstances and conditions;

“ship” has the meaning as assigned to it in section 2 of the Enactment;

“vessel” has the meaning as assigned to it in section 2 of the Enactment;

Establishment of compulsory pilotage areas

3. The areas specified in the Second Schedule are hereby established as compulsory pilotage areas.

Licensing for pilots

4. (1) No person shall operate as a pilot within the compulsory pilotage areas without a valid licence issued by the Director as prescribed in the First Schedule.

(2) The licence fee shall be payable as prescribed under Part I of the Schedule of the Ports and Harbours (Fees) Regulations 2008.

(3) No pilot shall take the conduct of a ship or vessel without the knowledge and consent of the pilot station.

(4) Any person who contravenes this regulation commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to a term of imprisonment not exceeding two years or to both.

The Pilotage Committee

5. (1) For the purpose of these Regulations, there shall be established a committee called the Pilotage Committee.

(2) The Pilotage Committee shall consist of the following members –

(a) the Director as the Chairman;

(b) a senior marine officer of the Department; and

(c) not less than three and not more than five other members, of whom –

(i) two shall be officers in the public service of the State; and

(ii) three shall be persons who have the appropriate technical and academic expertise and experience in navigation and shipping and related matters.

(3) Members of the Pilotage Committee under subparagraph (2)(c)(ii) shall be appointed by the Minister for a period of three years and shall be eligible for reappointment.

(4) A member appointed under subparagraph (2)(c)(ii) may at any time resign by giving notice thereof in writing to the Chairman.

(5) The appointment of a member under subparagraph (2)(c)(ii) may at any time be revoked by the Minister if he thinks it expedient to do so.

(6) The Chairman shall preside over all meetings of the Pilotage Committee and in his absence, the senior marine officer referred to in paragraph (2)(b) shall chair the meeting.

(7) Three members, one of whom shall be the Chairman of the Pilotage Committee, or, in his absence, the senior marine officer referred to in paragraph (2)(b), shall form a quorum at any meeting of the Pilotage Committee.

(8) Subject to this regulation and any directive of the Minister, the Pilotage Committee shall regulate its own procedure.

Powers of Pilotage Committee

6. (1) The Pilotage Committee shall have the power of control and supervision of all pilots on the register of the Department in all compulsory pilotage areas.

(2) Subject to the provisions of these Regulations, the Pilotage Committee may order the suspension or revocation of any licence issued to a pilot if it appears to the Pilotage Committee that –

- (a) the pilot has been guilty of any gross incompetence, negligence or misconduct affecting his capability as a pilot;
- (b) the pilot has ceased to have the qualifications required or has failed to provide evidence that he continues to have those qualifications;
- (c) the number of pilots for a particular compulsory pilotage areas has exceeded the number required for that area;
- (d) the pilot could not pass the health and medical requirements set by the Director; or
- (e) it is appropriate to do so by virtue of the termination of any contact or other arrangement under which the services of pilots are provided within a particular compulsory pilotage areas.

(3) The Pilotage Committee may, on the recommendation of the Director, order the re-issuance or re-validation of a licence issued to a pilot that has been suspended or revoked.

Appeal to Minister

7. (1) Any person who is dissatisfied with any decision or order of the Pilotage Committee may appeal to the Minister who may review, revise or alter any such decision or order, as he may think fit.

- (2) The decision of the Minister shall be final.

Non-liability of Director

8. The issue of a licence to a pilot by the Director shall not impose any liability on the Director for any loss or damage occasioned by any act, omission or default of such pilot.

Compulsory application for pilots

9. (1) A master of a ship or vessel intending to enter any compulsory pilotage areas shall first apply to the Director for a pilot. The Director shall be obliged to provide a pilot for any ship or vessel provided that reasonable notice has been given and subject to the availability of berth.

- (2) A master of a ship or vessel entering any compulsory pilotage areas without a pilot on board or who knowingly employs as a pilot any person not being a pilot licensed under these Regulations commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to a term of imprisonment not exceeding two years or to both.

Pilotage services by other pilot

10. The Director may authorize for his functions in relation to the provision of the pilotage services within the compulsory pilotage areas to be exercised by other pilots as he thinks fit.

Registration of corporation, etc. engaged in pilotage services

11. Any corporation or agent engaged in pilotage services shall register with the Department upon paying the fees as prescribed under the Ports and Harbours (Fees Regulations 2008).

Misconduct by pilot endangering ship or persons on board

12. If the pilot of a ship –

- (a) does any act which causes or is likely to cause the loss or destruction of or serious damage to the ship or its machinery, navigational or safety equipment, or the death of or serious injury to a person on board the ship; or
- (b) omits to do anything required to preserve the ship or its machinery, navigational or safety equipment from loss, destruction or serious damage, and the act or omission is deliberate or amounts to a breach or neglect of duty or he is under the influence of alcohol or a drug at the time of the act or omission,

he commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to a term of imprisonment not exceeding two years or to both.

Limitation of liability of pilot

13. (1) A pilot shall use his utmost care and diligence to avoid any accident or damage either to the ship he is conducting or to any other ship or property of whatsoever kind; and if any accident or grounding happens while a ship is under his conduct, he shall report the same in writing to the port officer without delay.

(2) No action shall lie against a pilot unless he is found guilty of gross negligence or of wilful misconduct in the course of his duties as such.

(3) The liability of a pilot for any loss or damage caused under subregulation (2) shall not exceed five hundred thousand ringgit and the pilot shall not be entitled to a payment for the amount of pilotage charges in respect of one voyage during which the liability arose.

Penalty for unlicensed pilots

14. (1) Any person who, not being a pilot licensed under these Regulations, assumes or offers or assume charge of a vessel entering or within any compulsory pilotage areas, or pilots or has piloted a vessel in any compulsory pilotage areas, commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to a term of imprisonment not exceeding two years or to both.

(2) For the purpose of this regulation, a pilot acting beyond the limits of the compulsory pilotage areas for which he is qualified by his licence shall be deemed not to be a pilot.

(3) Notwithstanding subregulations (1) and (2), any person, not being a pilot, without subjecting himself or his employer to any penalty, may take charge of a vessel entering or leaving any compulsory pilotage areas when –

- (a) such vessel is in distress; or
- (b) in circumstances that it is necessary to give the best assistance which can be found at the time to pilot the vessel.

(4) For the purpose of subregulation (3), it shall be the responsibility of the owner or master of the vessel to provide evidence to the satisfaction of the Director, if so required.

Liability of owners and masters of ships carrying pilots

15. The owner or master of a ship navigating in a compulsory pilotage area and carrying a pilot shall be answerable for any loss or damage caused by the ship or by any fault of the navigation thereof in the same manner as he would if the pilotage were not compulsory.

Pilot flags

16. (1) Every pilot boat when on pilotage duty shall display a flag “H” called a “pilot flag” after mast at a height where it can best be seen, so as to mean the same as in the INTERCO.

(2) When a ship is navigating in a compulsory pilotage area and has on board a pilot for that area, the master of the ship shall cause the flag “H” of INTERCO to be exhibited.

(3) A pilot flag or a flag so nearly resembling a pilot flag as to be likely to deceive shall not be displayed on any ship or boat not having a pilot.

Infectious diseases on board

17. (1) Every pilot shall, before boarding a ship, ascertain from the master of the ship whether there has been any infectious disease suspected of being infectious on board during the voyage, and whether the ship is from an infected port; and in case there has been any

such disease or the vessel is from an infected port shall direct the master to hoist the quarantine flag at the foremost and to proceed forthwith to the quarantine anchorage.

(2) A pilot may board any ship flying the quarantine flag for the purpose of piloting her to the quarantine anchorage but shall not allow any member of his crew to board her nor shall the pilot leave such a ship except with the permission of the port health officer, and he shall submit to vaccination or such other quarantine precaution as the nature of the case may require.

Ships carrying dangerous goods

18. Every pilot on boarding a ship shall ascertain from the master of the ship whether there are any dangerous goods on board and the nature thereof; and, if there are such goods on board, he shall direct the master in the manner required by Ports and Harbours (GOvernment Wharves) Regulations 2008 relating to dangerous goods.

Pilots to be conversant with shipping laws

19. Every pilot shall make himself conversant with all written laws relating to merchant shipping in so far as the same apply to his duties.

Pilot information exchange

20. Every pilot on taking charge of any ship shall establish a pilot information exchange forthwith to ascertain whether the engines are in good working order and able to reverse the ship quickly, and he shall also ascertain that the anchors are clear and ready for immediate use and that the steering gear is clear and in good working order.

Pilot to report buoys which are out of position

21. If any pilot finds or has reason to suppose that any buoys or beacons are out of position, or has broken adrift or is damaged or missing, or if he has noticed anything wrong or defective with any light or beacon, he shall report the same in writing to the Director or the nearest port officer without delay.

Pilot to report alteration in channels, etc.

22. Every pilot shall, without delay, report in writing to the port officer any impediment or alteration which he may have observed in any of the channels and likewise any change, or apparent change, in any land mark.

Obligation of pilot when piloting ships

23. Every pilot taking a ship outwards shall remain on board until the service for which he was engaged is completed and every pilot bringing a ship inwards shall remain on board until the ship has been anchored, moored or otherwise secured to the satisfaction of the master of the ship.

Speed

24. Every pilot having the conduct of any ship in the compulsory pilotage areas shall cause the speed of such ship to be kept at safe speed consistent with the most prudent navigation; due regard being had to sufficient steerageway and to the ship's safety.

Restriction on sending up signal rockets

25. No pilot shall send up or cause to be sent up any signal rocket from any ship except in cases of accident or imminent danger.

Pilot to keep records of services

26. Every pilot shall keep a written up to date record of the ship piloted by him stating the names and tonnage of such ships and the date and nature of the services performed; and he shall on demand produce the same for inspection by the Director or the port officer.

Pilotage fees

27. (1) Every owner, agent and master of a ship engaging a pilot shall pay the appropriate fees as prescribed in the Ports and Harbours (Fees) Regulations 2008, failing which the Director may take an appropriate action which he deems fit.

(2) Such fees shall be paid to the Director on arrival, in the case of an incoming ship and prior to departure, in the case of any outgoing ship, failing which the Director may take appropriate action which he deems fit.

Fees when pilot not used

28. When a request has been made for a pilot but his services are not used by the ship, the ship shall pay a charge as prescribed in Ports and Harbours (Fees) Regulations 2008.

Pilotage fees in special circumstances

29. (1) When the master of a ship is unable to obtain the services of a pilot exclusively for his own ship through shortage, or otherwise, then he may request to follow another ship abroad of which a pilot has been engaged, in which case the full fees shall also be paid by the ship following.

(2) If, for reasons of heavy weather or other particular circumstances, a pilot cannot board a ship, the ship may follow the lead of the pilot boat, and in such case the owner, agent and master shall be liable for any fees for the size and distance run as if the pilot had been on board and had actual charge of the ship.

Taking pilot to sea

30. (1) A pilot, except under circumstances of unavoidable necessity, shall not, without his consent, be taken to sea.

(2) If he is so taken under circumstances of unavoidable necessity, or without his consent, there shall be payable double the pilotage fees.

(3) Such fee shall be computed as from the time at which the pilot passed the normal pilotage limits until he has been returned to his station and shall be in addition to all travelling expenses incurred by the pilot in returning to his station.

Exemption

31. (1) Subject to the provisions of these Regulations, compulsory pilotage areas shall not apply to vessels belonging to the Government of the State of Sabah.

(2) The Minister may, by notification in the *Gazette*, exempt any vessels from the requirement of compulsory pilotage areas.

FIRST SCHEDULE

[Regulation 4]

LICENSING FOR PILOTS



State of Sabah

Pilot Licence

PORTS AND HARBOURS (PILOTAGE)
REGULATIONS 2008

S/NO.

PILOT LICENCE

TO

WHEREAS, after due examination of your particulars, you have satisfied the Director of Sabah State Department of Ports and Harbours of your qualifications, fitness and competency. In pursuance to regulation 4 of the Ports and Harbours (Pilotage) Regulations 2008, you are hereby licensed as a Pilot for the following pilotage areas:

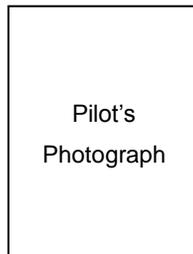
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This Licence shall expire on the

Fee: RM

Date:

*Director
State Department of Ports and
Harbours Sabah*



Place of Birth:

Date of Birth:

Signature of Pilot:

Delivered on the by the Port Officer.

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(Port Officer)

NOTE: Any person other than the owner thereof becoming possessed of this licence should return it forthwith to the Director, Ibu Pejabat, Jabatan Pelabuhan dan Dermaga Sabah, Bangunan Sri Sabah, Jalan Tanjung Batu, P. O. Box No. 80164, 87011 Wilayah Persekutuan Labuan.

SECOND SCHEDULE

[Regulation 3]

COMPULSORY PILOTAGE AREAS

1. Kota Kinabalu

Gaya Bay bounded by a line drawn from Tanjung Aru on the mainland to the most northerly point of Gaya Island and a line thence to Gaya Head with the passages and rivers entering the same.

2. Kudat

Kudat Bay bounded by a line drawn from Tiga Sami Point to Sandilands Rocks and thence to Tanjung Kapor with all passages and rivers entering the same.

3. Lahad Datu

A line drawn from Tanjung Melandong on the south-west point of Darvel Peninsula to the most westerly point of Sakar Island and thence to the mainland with all passages and rivers entering the same.

4. Mempakul

A line drawn from Tanjung Sakat to Tanjung Klias and thence to the north or true right bank at the mouth of the Sungai Kalidoran.

5. Sandakan

Sandakan Bay bounded by a line drawn in a west-south-west direction from the northern point of Berhala Island to the mainland, and by another from the same point on Berhala Island to the most eastern extremity of Tanjung Aru on the south side of the bay together with all passages and rivers entering the same

6. Semporna

Northern limit, from the north point of Tanjung Tabu-tabu to the north point of Tanjung Manimpa. Southern limit, from the south point of Tanjung Hampalan Kajang towards west-south-west direction to the mainland.

7. Sipitang

A line drawn from the point where the boundary of Sabah and Sarawak meets the sea to the north or true right bank at the mouth of the Sungai Lakutan.

8. Tawau

A line drawn from Batu Tinagat on the mainland to the boundary mark on Sebatik Island between Kalimantan Indonesia and Sabah and thence through the Island to Burs Point on the mainland, and thence intersecting all waterways to the west of Burs Point entering the Serudong River

9. Usukan

A straight line drawn from the western extreme of Usukan Island on the north side to Ambong Point on the south side (Extended to include Ambong Bay).

10. Weston

A line drawn from the north or true right bank at the mouth of the Sungai Kalidoran to the north or true right bank at the mouth of the Sungai Lakutan.

11. Bakapit

A straight line drawn from Shoal Point to Bagahak Point.

12. Kimanis

Kimanis Bay bounded by a line drawn from the most westerly point of Tanjung Nosong passing through the most south easterly point of Pulau Tiga; and by another line from the most westerly point of Kuala Papar due west and where intercept.

13. Tungku

The waters contained west of longitude $119^{\circ} 10'$ East and North of latitude $04^{\circ} 57'$.

14. Kunak

The waters contained west of longitude $118^{\circ} 20'$ East between the parallels of latitude $04^{\circ} 40'$ and $4^{\circ} 45'$ North.

15. Laid-up anchorage

The harbour designated for laying-up ships in Brunei Bay and bounded by the coordinates prescribed for laid-up anchorage in the Ports and Harbours (Laid-up Vessels) Regulations 2008.

Made this 24 November 2008.

DATUK RAYMOND TAN SHU KIAH,
Minister of Infrastructure Development.

Sabah LawNet