

Port Authorities Act 1963 (Revised 1992)

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REPRINT

Act 488

PORT AUTHORITIES ACT 1963

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LAWS OF MALAYSIA

Act 488

PORT AUTHORITIES ACT 1963

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## LAWS OF MALAYSIA

PORT AUTHORITIES ACT 1963

An Act to provide for the establishment of port authorities, for the functions of such authorities and for matters connected therewith. [27 June 1963, L.N. 154/1963]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Port Authorities Act 1963. PART I

PORT AUTHORITIES

Establishment of port authorities

2. (1) There shall be established in respect of every port specified in the first column of the First Schedule a port authority (hereinafter referred to as "the authority") which shall be a body corporate to be known by the name specified in the corresponding second column of the Schedule, and such authority shall be established on the date specified in the third column of the said Schedule. (2) The authority shall have perpetual succession, a common seal and the power to enter into contracts and to sue and be sued. (3) The Second Schedule shall have effect with respect to the authority.

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(4) The authority shall consist of a Chairman who shall be appointed by the Yang di-Pertuan Agong and--

(a) the General Manager for the time being of the port; and (b) not less than five nor more than nine members, to be appointed by the Minister:

Provided that it shall be lawful for the Yang di-Pertuan Agong to appoint the General Manager as the Chairman of the authority. (5) Where the Chairman is a person other than the General Manager, then unless the Minister appoints any of the members under paragraph (4) (b) to be Deputy Chairman, the General Manager for the time being shall be Deputy Chairman.

(6) A member (other than the Chairman and the General Manager) shall, unless his office is sooner resigned or revoked, hold office for one year, and shall



be eligible for reappointment. (7) The Yang di-Pertuan Agong may, in the interest of the effective and economical performance of the functions of the authority and without assigning any reason, remove from office all or any of the members of the authority.

(8) A temporary Chairman or member may be appointed during the temporary incapacity of the Chairman or member (whether by reason of illness or absence from Malaysia), such temporary Chairman or member to be appointed in like manner as the Chairman or member is appointed under this section.

### Functions of the authority

3. (1) The function of the authority shall be to operate and otherwise maintain the port in respect of which it is established, and for that purpose shall have the powers and duties provided under this Act. (2) The authority shall have power to do all things reasonably necessary for or incidental to the discharge of its functions, and in particular--

(a) to acquire by purchase, gift or otherwise movable and immovable property and any interest therein, and to dispose or otherwise deal with any moveable or immovable property or any interest thereon so acquired upon such terms and conditions as the authority may think fit;

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(b) to undertake all or any work of every description of or in connection with the loading, unloading and storing of goods or cargo in the port, or authorize by way of licence any company, firm person or persons to undertake such work, subject to such regulations or by-laws as the authority may from time to time make, and such licence may contain conditions which may include a condition that such work shall be undertaken under contract to the authority; (c) to construct, maintain, repair and use wharves, docks, piers and bridges within the limits of the lands vested in it, with all necessary and convenient arches, drains, culverts, fences, roads, railways and approaches;

(d) subject to this Act, to levy such port dues and such general charges upon goods or cargo loaded and discharged in the port as it may deem necessary for the maintenance, improvement or development of the port;

(e) to control the berthing and movement of all vessels, whether in the road or longside any quay, wharf, pier or landing place, which are vested in or are under the control of the authority;

(f) to construct and maintain, repair and use engines, fire boats and other

appliances for the purpose of extinguishing fire on its property and in the port;

(g) to construct and maintain and operate vessels for the purpose of towing or rendering assistance to any vessel (whether in territorial waters or on the high seas and whether entering or leaving the port or bound elsewhere) and for the purpose of saving life or property or of recovering property lost, sunk or stranded;

(h) to supply water to shipping in the port;

(i) to construct, operate and maintain ferry vessels to carry passengers, vehicles and goods, and use the same for plying for hire;

(j) to carry on the business of bunkerers and of suppliers of stores to ships;

(k) to construct and maintain, and, within the limits of the lands vested in it, to operate railways, warehouses, sheds, engines, cranes, scales and other appliances for conveying, receiving, handling and storing goods to be landed or shipped or otherwise dealt with by the authority; 12 Laws of Malaysia ACT 488

(l) to carry on the business of builders and repairs of ships and machinery;

(m) to construct, lay and maintain moorings;

(n) to construct, maintain and operate all means and appliances for berthing, loading and discharging vessels;

(o) to construct, maintain and moor vessels and hulks for the storage and working of cargo and goods;

(p) to reclaim, excavate, enclose or raise any part of the lands vested in the authority;

(q) to clean, deepen or improve any portion of the port, and for any of such purposes, to construct, maintain, and operate dredgers or other appliances;

(r) to erect or cause to be erected houses and buildings on the lands vested in the authority;

(s) to construct, maintain, and keep in repair such works without the limits of the land vested in it as are necessary for the protection of works belonging to it within the limits of the lands vested in it;

(t) to be insurers of goods in the custody of the authority; (u) (Deleted by Act A784);

(v) to undertake or grant licence on such conditions as the authority may think fit to any company, firm, person or persons to undertake, any activities in the Port as may appear to the authority to be necessary;

(w) to dispose by sale or otherwise any report, booklet, periodical or any other publications in relation to the port that has been approved and printed by the authority, its agents, contractor or any other person duly authorized or requested by the authority;

(x) to regulate the issue of permits upon such terms and conditions deemed necessary on entry to and exit from the port premises as demarcated by notification in the Gazette and to impose fees payable on issue of such permits; (y) to provide facilities for laying-up of vessel and to prescribe fees thereof.

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(2A) The authority with the approval of the Minister and the concurrence of the Minister of Finance, may--

(a) enter into any arrangement for sharing profits, union of interests, cooperation or joint adventure with any person or body of persons; or

(b) establish or promote the establishment and expansion of companies under the Companies Act 1965 [Act 125]. (3) It shall be the duty of the authority in the discharge of its functions--

(a) to maintain, or provide for the maintenance adequate and efficient port services and facilities (including ferry services) at reasonable charges for all users of the port, consistent with the best public interest;

(aa) to provide pilotage services within the limits of the port and the approaches to the port;

(b) to provide such number of public landing places as are in the opinion of the Minister sufficient;

(c) to coordinate the activities of the port;

(d) to promote the improvement and development of the port; and

(e) to do such acts as may be necessary to the performance of the duties mentioned in paragraphs (a) to (d). (4) The Minister may give to the authority directions of a general nature, not inconsistent with this Act, as to the exercise of the functions of the authority.

(5) Subsection 3(1) of the Insurance Act 1963 [Act 89], shall not apply to the authority in relation to its powers under paragraph (2) (t).

#### Protection from personal liability

3A. (1) No matter or thing done and no contract of any kind entered into by the authority and no matter or thing done by any member of the authority or by any employee thereof or any person whomsoever, acting under the direction, of the authority shall, if the matter or thing was done and the contract entered into bona fide for the purposes of carrying out this Act, subject any such 14 Laws of Malaysia ACT 488

member or employee or any other person acting under the direction of the authority personally to any action, liability, claim or demand wheresoever in respect thereof.

(2) Any expenses incurred by the authority or any member, employee or other person so acting under the direction of the authority shall be paid out of the funds of the authority. Additional function of the authority

3B. (1) In addition to the functions provided under this Act, the authority may, with the approval of the Minister, operate any port-related activities.

(2) In the exercise of the function in subsection (1) the authority may expend such moneys as are necessary.

(3) For the purposes of this section, "port-related activities" means--

(a) activities performed outside a port which relate to any function or duty of the authority to operate or maintain a port or the transportation of goods through the port; or (b) the development, operation or maintenance outside the port of marinas and other properties necessary for the furtherance of any function or duty of the authority. Acquisition of land by the authority

4. It shall be lawful for any land required by the authority for the purpose of discharging its functions to be acquired on behalf of the authority, in accordance with the Land Acquisition Act 1960 [Act 486], as if the said purpose were a public purpose within the meaning of that Act:

Provided that no such acquisition shall be made so long as the land aforesaid

may be acquired by agreement.

#### Transfer of property to the authority

5. (1) The Minister may from time to time by order authorize the transfer to the authority of any movable or immovable property of the Government which he considers should be vested in that authority.

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(2) The authority shall cause any property transferred under this section to be valued as at the date of transfer, and shall forthwith cause details of such valuation to be shown on its accounts. Disposal of land to the Government and the Government's power to grant leases of same

5A. (1) Where the authority disposes of any land to the Government, it shall be lawful for the Government to grant a lease of such land for a period not exceeding ninety-nine years or, in the case of land held under a State lease or a Mukim lease, for a period not exceeding the residue of the term of such lease, to any person or body of persons for use by such person or body of persons for any federal purposes including the purpose of the port to be specified in the terms of the lease.

(2) For the purpose of this section "lease" shall have the meaning assigned thereto in the National Land Code [Act 56 of 1965]. Government may provide the authority with working capital

6. The authority may be provided with such sums for its working capital as the Dewan Rakyat may determine; and any sums so provided shall be subject to such terms and conditions as the Minister of Finance may specify.

#### Port Consultative Committee

7. (1) For the purpose of advising the authority, the Minister may appoint for any port, a Port Consultative Committee, consisting of--

- (a) the Chairman of the authority;
- (b) the General Manager of the port; and
- (c) such other persons as the Minister may from time to time appoint.

(2) In appointing the persons under paragraph (1) (c), the Minister shall have regard to any representations relating thereto made by users of the port and

by persons providing port service, and any person so appointed shall, unless his appointment is sooner resigned or revoked, hold office for one year, and shall be eligible for reappointment.

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(3) The Minister may, if it appears to him to be necessary, without assigning any reason therefor, remove from office all or any of the members (other than the Chairman or General Manager) of the Port Consultative Committee.

(4) The Minister may appoint any person to be a temporary member of the Port Consultative Committee during the temporary incapacity through illness or during the temporary absence from Malaysia of any member.

(5) Paragraph 1 of the Second Schedule shall apply to the members of the Port Consultative Committee as they apply to the members of the authority.

(6) The authority may consult the Port Consultative Committee on any matter concerning the port, and shall consult the said Committee upon the following matters--

- (a) any substantial alteration in the charges or scales of charges prescribed by the authority;
- (b) any major scheme relating to the expansion or development of the port; and
- (c) any other matter upon which they are required by the Minister to consult the Committee.

(7) The Chairman shall cause a copy of the minutes of the meeting of the Committee to be transmitted to the Minister. Finances of the authority

8. (1) The authority shall keep proper and regular accounts and other records of moneys received and paid by the authority and of the several purposes for which such moneys have been received or paid, and of the assets, credits and liabilities. (2) The revenues of the authority for any financial year shall be applied in defraying the following charges for that year: (a) working and establishment expenses;

(b) the maintenance, depreciation and renewal of the property of and the discharge of the functions of the authority properly chargeable to revenue;

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(c) interest on loans and repayments of moneys borrowed; (d) such capital

expenditure as the authority may determine to charge to the revenues.

(3) The amount remaining of the revenues of the authority for any financial year, after defraying the charges referred to in subsection (2), shall be applied in making good any deficiencies in the revenue carried forward from previous years, and the whole or any part of the balance (if any) may as soon as may be after the end of that year be carried to such reserves approved by the authority as the authority thinks fit.

(4) Moneys standing to the credit of reserves may be employed in the undertaking of the authority.

(5) The authority may open a current account with any bank approved by the Minister of Finance.

(6) Moneys which are not immediately required to be expended in the discharge of any of the functions of the authority shall, if invested, be invested by the authority in investments for the time being authorized by law for the investment of trust funds or in such other investments or securities as may from time to time be approved by the Minister of Finance, or may be deposited in any bank or financial institution approved by the Minister of Finance: Provided that the authority shall not make any investment in securities issued or registered or other property situated, outside Malaysia except with the approval of the Minister of Finance to the making of that investment.

(7) The authority may, with the approval of the Minister, make any financial contributions to public, staff welfare fund or charitable objects.

#### Power to borrow money

8A. The authority may, from time to time with the approval of the Minister of Finance, borrow, by way of overdraft or otherwise, such sums as it may require for meeting its obligations and discharging its functions under this Act and may secure the repayment of any sum borrowed by way of a mortgage or charge, legal or equitable, of any property vested in the authority, or of any revenue received by the authority under this Act.

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#### Accounts and records to be open for inspection

9. (1) The accounts and records shall at all reasonable times be open to the inspection of--

(a) any member of the authority;

(b) (Deleted by Act A784);

(c) any other person specially authorized to inspect the accounts by the Minister.

(2) The books of accounts shall be kept at the Head Office of the authority.

(3) (Deleted by Act A784).

#### Annual statement of accounts

10. (1) As soon as practicable after the end of a financial year the authority shall prepare in respect of that financial year a statement of accounts in such form as the Minister may direct. (2) So soon as the statement of accounts has been audited, the authority shall send a copy thereof to the Minister, together with any report or observations made by the auditor or auditors on the said statement of accounts.

(3) The Minister shall cause a copy of every statement and report or observations referred to in subsection (2) to be laid before each House of Parliament.

#### Estimates of revenue and expenditure and annual report

11. (1) The authority shall, as soon as may be after the end of each financial year, make a report to the Minister, dealing generally with its activities during that year and its proposed undertakings for the ensuing year and the report shall contain such information with respect to the proceedings and policy of the authority as the Minister may require.

(2) The authority shall furnish to the Minister such financial and statistical returns or such other reports on the financial position of the authority as the Minister may from time to time require. 19Port Authorities

(3) Not later than three months before the commencement of the financial year to which they relate, the annual estimates of revenue and expenditure (including capital expenditure) shall be submitted by the authority to the Minister for his approval and the Minister may at any time within one month of receipt of the same, disallow or amend any item of capital expenditure appearing in such estimates, or any portion thereof, and return the same to the authority for amendment.

(4) The authority shall forthwith amend any estimates returned to it under



subsection (3) and shall resubmit such estimates (as amended) to the Minister.

#### Supplementary estimates

12. (1) The authority may, at any time during the year for which estimates have been approved under section 11, cause a supplementary estimates to be prepared and submitted to the Minister. (2) Subsections 11(3) and (4) shall apply to supplementary estimates aforesaid as they apply to annual estimates of revenue and expenditure.

## PART II

### OFFICERS AND SERVANTS

#### Appointment of officers and servants

13. (1) The authority may from time to time appoint such officers and servants (including a General Manager and Deputy General Manager) as may be necessary for carrying out the purposes of this Act:

Provided that the authority shall not appoint any person to be a General Manager or Deputy General Manager unless and until the approval of the Minister has been obtained.

(2) The expression "authority" in this section, in relation to the appointment of the first General Manager of a port, means the authority consisting of the Chairman and the members appointed under paragraph 2(4) (b).

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#### Establishment of Port Security Force

13A. (1) The authority may, with the approval of the Minister, establish a security force for keeping order and security within any premises vested or deemed to be vested in, or in the possession or under the control of, the authority.

(2) The security force shall consist of such persons as may be appointed under subsection 13(1).

(3) A member of the security force shall have the power to arrest without warrant any person found on any premises of the authority or in premises in the possession or under the control of the authority, or any part thereof, without lawful excuse. (4) Every person arrested pursuant to subsection (3)

shall be taken to the nearest Police Station as soon as possible. (5) Any rules made under section 15 shall unless expressly excluded therein apply to members of the security force established in this section.

#### Duties of General Manager

14. The General Manager shall, subject to the directions of the authority on matters of policy, exercise supervision and control over the acts and proceedings of all officers and servants of the authority in matters of executive administration and in matters concerning the accounts and records of the authority, and, subject to any rules made under this Act, deal with matters relating to the service of such officers and servants and their pay, privileges and allowances.

Power to make rules relating to salaries, provident fund scheme, etc.

15. (1) The authority may with the approval of the Minister make rules for or in respect of the salaries, allowances and conditions of service of their officers and servants generally. 21Port Authorities

(2) Rules under this section may provide--

(a) for the establishment and management, as from such date (whether before or after the establishment of the authority) as may be specified in the rules, of a contributory provident fund, and for the transfer into that fund of contributions or parts of contributions paid into any other provident fund in anticipation of the establishment of the

first-mentioned fund;

(b) for retirement benefits to officers and servants who retire or otherwise cease to hold office as such officers or servants;

(c) for the making of loans to officers and servants for such purposes as approved by the Minister on such terms and conditions as the authority may think fit.

(3) The following provisions shall apply to any rules made by virtue of paragraphs (2) (a) and (b):

(a) no donation, contribution, gratuity, allowance or other payment payable under such rules, nor any right or interest acquired by any person to any gratuity, allowance or other payment thereunder, shall be assignable or transferable or liable to be attached, sequestrated or levied upon for or in respect of a debt or claim whatsoever, other than a debt due to the authority;

(b) any moneys paid under such rules on the death of any person shall be deemed to be impressed with a trust in favour of the persons entitled thereto under the will or intestacy of such deceased person, but shall not be deemed to form part of his estate or be subject to his debts; (c) any person may by his will or by a memorandum under his hand appoint a trustee of the moneys payable on his death under any such rules, and may provide for the appointment of a new trustees of such moneys and for the investment thereof;

(d) if at the time of the death of any person or at any time afterwards there is no trustee of such moneys or it is expedient to appoint a new trustee or trustees, then and in any such case a trustee or trustees or a new trustee or trustees may be appointed by the High Court or a Judge thereof;

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(e) the receipt of a trustee or trustees duly appointed, or in default of any such appointment the receipt of the legal personal representative of a deceased person, shall be a discharge for any moneys payable on his death under any such rules;

(f) no donation, contribution or interest paid under any such rules shall be subject to the debts of the contributor, nor shall such donation, contribution or interest be paid to the \*Director General of Insolvency on the bankruptcy of a contributor under any such rules, but if such contributor is adjudicated a bankrupt or is declared insolvent by judgment of the Court, such donation or contribution or interest shall, subject to such rules, be deemed to be impressed with a trust in favour of the person entitled thereto on the death of the contributor;

(g) the bankruptcy of a contributor shall not affect the making of deductions from the salary of the contributor in accordance with any such rules, but such deductions shall continue to be made notwithstanding any written law, and the portion of salary so deducted shall be deemed not to form part of his after-acquired property;

(h) any officer or servant who is a contributor under such rules shall, if he is dismissed from service as such officer or servant for fraud or dishonesty or misconduct which involves pecuniary loss to the authority, or retires or resigns his office with intent to escape discharge or dismissal in consequence of such fraud, dishonesty or misconduct, forfeit, subject to such conditions as may be provided by the rules all or any part of the contributions made by the authority and the interest accrued thereon, as the authority in its discretion thinks fit; an appeal shall lie to the Minister against any such

forfeiture.

(4) Rules made under this section, other than rules relating to provident funds, pensions and other retiring benefits of officers and servants, shall not be required to be published in the Gazette.

\*NOTE--Previously known as the "Official Assignee"?see section 17 of the Bankruptcy (Amendment) Act 2003 [Act A1197].

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PART III

CHARGES AND RECOVERY OF CHARGES

The authority may levy charges

16. (1) The authority may in relation to the port levy charges on, and for that purpose shall with the approval of the Minister from time to time prescribe charges or scales of charges and impose penalties or interests on outstanding dues in respect of, all or any of the following matters:

- (a) the landing, shipping, wharfage, lighterage, crantage, and storage of goods, and the use of the authority's vessels and vehicles and demurrage thereon;
- (b) the mooring of vessels and boats;
- (c) the carriage of goods by vehicles (whether plying for hire or otherwise);
- (d) the embarkation and landing of persons;
- (e) the carriage of passengers, vehicles, animals and goods by any ferry service maintained by the authority; (f) the use of any quay, wharf, dock, jetty, pier, landing place, foreshore or any other property vested in or under the control of the authority;
- (g) any services rendered to, or any material supplied to or made use of by, any vessel and person;
- (h) the use of tugs, firefloats and launches belonging to or maintained by the authority;
- (i) water supplied by the authority;

(j) the towing of and rendering of assistance to any vessel (whether entering or leaving the wharves, docks or piers in the possession of the authority, or whether within or without the port);

(k) the shipping and transshipping of goods or persons; and (l) any other matter upon which the authority is empowered to levy any charges.

(2) The authority may with the approval of the Minister from time to time alter or vary the charges or scales of charges referred to in subsection (1).

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(3) The authority may instead of levying the charges in accordance with the charges or scales of charges prescribed, enter into any agreement on any of the matters specified in subsection (1). (4) In relation to any matter in respect of which no charges or scales of charges have pursuant to subsection (1) been prepared, the authority may levy any charges it deems fit.

(5) The authority may with the approval of the Minister remit the whole or any portion of the charges leviable under this section: Provided that the authority may remit the whole or any part of rates for storage or demurrage.

(6) The Minister may in any case where it appears to him expedient, having regard to the liabilities which the authority has to meet, require the authority to increase any charges prescribed under subsection (1), and the authority shall accordingly carry out that requirement.

(7) The authority may cause the scale of charges to be printed in English and national language and shall, for the information of the public, exhibit such scales (either in whole or in part) at such places as the authority deem fit.

(8) Any charges or scales of charges prescribed shall be published in the Gazette.

Submission of memorandum for any change in existing structure of charges

16A. (1) Any person or body of persons licensed under this Act or the Ports (Privatization) Act 1990 [Act 422] shall prepare and submit to the authority a memorandum for any change in the existing structure of charges prescribed under any by-laws made under section 29.

(2) Where no reply is received from the authority as regards the memorandum submitted under subsection (1) within six months of its submission, the change in the existing structure of charges as contained in the memorandum shall take

effect on the expiration of such period.

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(2A) Where a reply is received from the authority as regards the memorandum submitted under subsection (1) indicating the decision of the authority to disallow the change in the existing structure of charges as contained in the memorandum, any person or body of persons who is aggrieved by the decision of the authority may, within fourteen days from the date of such decision, appeal to the Minister whose decision shall be final.

(3) The person or body of persons licensed under this Act or the Ports (Privatization) Act 1990 shall as soon as practicable publish the change in the existing structure of charges in the local newspapers, at least one in the national language and one in the English or Chinese language.

(4) The authority shall as soon as practicable make by-laws under section 29 in respect of the change in the existing structure of charges.

## Recovery of charges in arrears

17. (1) The authority shall in respect of charges which have not been paid on any goods, have a lien on such goods and shall be entitled to seize and detain such goods until the charges are fully paid.

(2) Such lien shall have priority over all other lien and claims, except claims for money payable to the Government. (3) Charges in respect of goods to be landed shall become payable immediately on the landing of such goods. (4) Charges in respect of goods to be shipped shall be payable before such goods are shipped.

(5) Charges in respect of goods to be removed from the premises of the authority shall be payable on demand.

## Recovery of pilotage dues

17A. (1) The authority may with the approval of the Minister from time to time by notification in the Gazette— (a) prescribe the pilotage dues which shall be paid to the authority by the master or owner of every vessel; and 26 Laws of Malaysia ACT 488

(b) define the circumstances and conditions under which pilotage dues are to be recoverable, in respect of the services of an authority pilot.

(2) If a vessel having on board an authority pilot leads another vessel having

no authority pilot on board, the authority shall be entitled to the full pilotage dues as if the authority pilot had actually been on board and had piloted that other vessel. Remission of dues

17B. (1) The authority may, if it thinks fit, remit the whole or any part of any pilotage dues paid under this Act.

(2) The authority may with the approval of the Minister exempt, upon such conditions as it may impose, any vessel or classes of vessels from any pilotage dues payable under this Act. (3) Notwithstanding subsection (4), the title of a bona fide purchaser shall not be invalidated by reason of the omission to send the said notice, and such purchaser shall not be required to inquire whether such notice has been sent.

(4) The proceeds of sale shall be applied by the authority for, and in accordance with the order of, the following payments: (a) duty payable to the Government;

(b) expenses of the sale;

(c) payment of the rates, charges and expenses due to the authority in respect of the goods; and

(d) freight and other claims or lien of which notice under the Merchant Shipping Ordinance 1952 [Ord. 70 of 1952], has been given.

(5) The balance of the proceeds of sale (if any) after making the payments under subsection (6), shall be paid to the person entitled thereto on demand or, where no such demand is made within one year from the sale of the goods, to the general account of the authority, and thereupon all rights to the same by such person shall be extinguished.

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### Power to sell goods remaining in custody

18. (1) Subject to this section and without prejudice to section 19 the authority may, where any goods which have been placed in the custody of the authority are not removed from the premises of the authority within a period of twenty-one days from the time when such goods were placed in such custody, at the expiration of such period sell by public auction any or all of such goods as are still in the said custody:

Provided that--

(a) in the case of goods for which a through bill of lading has been issued there shall be substituted a period of forty-two days for the period of twenty-one days referred to in this subsection; and

(b) if the goods are of a perishable nature the authority may direct their removal within such shorter period (not being less than twenty-four hours after the landing) as the authority may think fit, and the said power of sale may be exercised at the expiration of such period.

(2) For the purposes of subsection (1) a sale shall not be rendered invalid by reason only that it takes place on premises or in an area to which the public is not admitted except on presentation of a pass.

(3) Before making such sale the authority shall give three days' notice thereof by advertisement in two local newspapers circulating in the State in which the said sale is to be held, unless the goods are of so perishable a nature as in the opinion of the authority to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case permits. (4) If their addresses are ascertainable from the manifest of the cargo or from any of the documents which have come into the hands of the authority or are otherwise known, notice shall also be given to the owners of the goods and to the agent of the discharging vessel.

Power to compound or compromise claim or demand

18A. The authority may compound, or compromise for or in respect of, any claim or demand made against it, for such sum of money or other compensation as it deems sufficient.

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Power to distrain for non-payment of charges, etc.

19. (1) In relation to a failure of the master of a vessel to pay any charges or part thereof payable on demand under this Act or any by-laws made thereunder, the authority may distrain or arrest the vessel aforesaid and the tackle, apparel or furniture or other article belonging to such vessel, and detain the same until the said charges are paid.

(2) Where any part of the charges or the costs of the distress, arrest or detention of the said vessel, tackle, apparel or furniture or other article remains unpaid for the space of fourteen days next after any such distress, arrest or detention, the authority may cause the vessel or the other articles so distrained, arrested or detained, to be sold, and may apply the proceeds



thereof to satisfy such charges and costs (including the costs of the sale) and the authority shall pay the balance thereof (if any) to the said master on demand. (3) Where the authority gives to the officer of the Government whose duty is to grant the port clearance of any vessel, a notice stating that an amount specified therein is due in respect of charges or penalties imposed under this Act or any by-laws made thereunder against the vessel, the owner, agent or master of the vessel, such officer shall not grant any port clearance to such vessel until the amount so leviable or chargeable has been paid or security has been given to the satisfaction of the authority for the amount thereof.

(4) This section (relating to the recovery of charges in arrears by the authority), shall be in addition to and not in derogation of the rights of the authority under any law.

## PART IIIA

### LIABILITY OF THE AUTHORITY

Limitation of authority's liability in other cases 19A. (1) The authority shall not where, without its actual fault or privity, any loss or damage, not being a loss or damage provided for by this Part, is caused to any vessel or vessels, or to any train, vehicle, animals, goods or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount not exceeding in the currency of Malaysia the equivalent of eight pounds sterling for each ton of the tonnage of the vessel. 29Port Authorities

(2) For the purposes of this Part, the tonnage of vessels shall be ascertained as provided by subsection 360(2) of the Merchant Shipping Ordinance 1952, and the register of any vessel shall be sufficient evidence that the gross tonnage and the deduction therefrom and the registered tonnage are as therein stated. Liability in respect of loading or discharging operations 19B. The authority shall not, without its actual fault or privity, be liable to damages--

(i) in respect of personal injury or death caused to any person; (ii) for loss or damage to any goods, merchandise or other things whatsoever,

where such injury, death, loss or damage is caused by or arises out of the operation of loading onto or discharging from a vessel of goods or any work incidental thereto.

Goods deposited for lighterage or shipment

19C. Any goods, merchandise or other things deposited with or placed in the custody of the authority for the purpose of lighterage or shipment shall

remain in the custody or control of the authority at the sole risk and expense of the owner thereof. Loss or destruction of or damage to goods other than transshipment goods deposited with the authority

19D. The authority and any person duly authorized by it shall, in respect of any goods other than transshipment goods deposited with or placed in the custody or control of the authority for the purpose of delivery, be deemed to be the agent of the owner of the vessel discharging such goods irrespective of duties in respect of such goods.

(2) Neither the authority nor any person duly authorized by it shall, in acting as an agent under subsection (1), be liable-- (a) either in damages or in any other respect for any loss caused to any person by reason of short delivery of any goods deposited with or placed in the custody or control of the authority or any failure by the authority to deliver or account for the same; or

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(b) for damages to, or destruction of, such goods in a sum of more than one thousand ringgit per package or unit unless the nature and value of the goods contained therein have, prior to delivery to the authority, been declared in writing to the authority by the person delivering or causing the same to be delivered, and the authority shall not in any event be liable therefor where the value of any such goods has been misstated or where there prevails any of the circumstances set out in section 19F.

(3) For the purposes of this section and of section 19E, the expression "transshipment goods" means goods landed from a vessel and placed in the custody of the authority for the purposes of shipment on another vessel on a through bill of lading dated at the port of loading of such goods and showing that the destination is via the port under the control and management of the authority, with the ultimate port of destination marked on each package or unit containing such goods and declared on a transshipment manifest lodged with the authority prior to or at the time such goods are placed in its custody.

Loss or destruction of or damage to transshipment goods deposited with the authority

19E. In respect of any transshipment goods delivered by any person to, or placed by any person in the custody of, the authority, the authority shall, from time of acknowledgement of the receipt of such goods and until delivery of such goods alongside the on-carrying vessel for loading, be liable, subject

to section 19D, for the loss or destruction of, or damage to, such goods: Provided that the authority shall not be liable for any such loss, destruction or damage in a sum of more than one thousand ringgit per package or unit unless the nature and value of the goods contained therein have, prior to delivery to the authority, been declared in writing to the authority by the person delivering or causing the same to be delivered, and the authority shall not in any event be liable therefor where the value of any such goods has been misstated.

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Force Majeure, etc.

19F. Paragraph 19D(2) (b) and section 19E shall not impose on the authority or any person duly authorized by it any liability for the loss or destruction of, or damage to, any goods arising from-- (a) fire or flood, unless caused by the actual fault or privity of the authority;

(b) an act of God;

(c) an act of war or of public enemies;

(d) seizure under any legal process;

(e) quarantine restrictions;

(f) any act, omission or default of the owner or carrier of such goods;

(g) strikes, lockouts or stoppages or restraints of labour from whatever cause, whether partial or general;

(h) riots and civil commotion;

(i) saving or attempting to save life or property; (j) insufficient or improper packing, defective or insufficient marks or leakage from defective drums, containers or packages;

(k) any inherent wastage in bulk or weight, latent or inherent defect or natural deterioration;

(l) any deficiency in the contents of unbroken packages; or (m) the dangerous nature of such goods.

Limitation of liability in respect of one occasion 19G. The limitation of liability under this Part shall relate to the whole of any losses and damages

which may arise upon any one distinct occasion, although such losses or damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law and notwithstanding anything contained in such written law.

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### Power of High Court to consolidate claims

19H. Where any liability is alleged to have been incurred by the authority in respect of loss of life, personal injury or loss of or damage to vessels, trains, vehicles, animals, goods or other things whatsoever, and several claims are made or apprehended in respect of that liability, then the authority may apply to the High Court, and that Court may determine the amount of the authority's liability and may distribute that amount rateably among the several claimants, and may stay any proceeding in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the authority and as to payment of any costs as the court thinks just. Liability for loss under contract

19I. (1) Notwithstanding this Part, the authority shall, on application made to it by the owner of any vessel, enter into a contract with such owner whereby the authority shall accept liability for any loss caused by reason of short delivery by the authority of any goods deposited with or placed in the custody or control of the authority or any failure by the authority to deliver or account for the same, and for the purposes of this section, the authority may prescribe the terms and conditions of such contract and may, with the approval of the Minister, from time to time prescribe the rates to be levied: Provided that the authority may refuse to enter into such contract unless such contract is in respect of all of the goods to be loaded into or discharged from a vessel, as the case may be. (2) Nothing in this Part shall affect the liability of the authority under any written law relating to compensation to workmen. PART IV

## PORT, WHARVES AND PREMISES

### Control of foreshores

20. The authority shall have control of the use of the foreshores within the port and no goods or cargo shall be handled across, over or under such foreshores without the written permission of the authority or otherwise than in accordance with such conditions as the authority may from time to time

prescribe.

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Landing or shipping of cargo over quays, wharves, etc.

21. No goods or cargo shall be handled across or over any quay, wharf, dock, pier or other place except under a written permission of the authority or in accordance with such conditions as the authority may from time to time prescribe.

Construction of quays, wharves, etc.

22. (1) The authority shall have jurisdiction over the construction or alteration of any quay, wharf, dock, pier or similar work and no such construction or alteration shall take place within the port without the written permission of the authority which, before granting such approval, may require the submission of plans of the proposed construction or alteration.

(2) Any person who acts in contravention of subsection (1) shall be liable to a fine not exceeding two thousand ringgit and if ordered to do so shall remove such construction or alteration at his own expense.

Permit for conveyance of goods

23. (1) No vessel shall be used for the conveyance of goods and cargo from one place to another within the port except under and in accordance with a permit granted by the authority. (2) A permit may be granted in respect of one or more vessels or to one or more persons.

(3) Any person to whom a permit is issued under this section shall from time to time supply to the authority such information as the authority may reasonably require relating to the nature and amount of the goods and cargo conveyed in accordance with such permit in any specified period, and for this purpose such person shall keep records thereof.

(4) Any failure to supply the information or to keep the records required under subsection (3) shall be deemed to be a breach of the conditions of such permit.

(5) The authority in its discretion may exempt from the requirements of this section any vessel or class of vessels of less than ten ton gross tonnage, and it may, at any time without assigning any reason therefor, terminate any such exemption. 34 Laws of Malaysia ACT 488

(6) Nothing in this section shall be deemed to affect or modify Part XIII of the Merchant Shipping Ordinance 1952, with regard to the licensing of boats for the conveyance of cargo, and no permit shall be issued under this section in respect of any vessel required to be licensed under those provisions unless such vessel has been duly licensed thereunder.

## Appeal

24. Any person aggrieved by the refusal of the authority to grant a permit under this Part, or by the cancellation or suspension of any permit already granted, may, not later than one month from the date of such refusal, cancellation or suspension appeal to the Minister whose decision thereon shall be final.

Minister may appoint any place for use as customs collecting centre

25. (1) The Minister may, notwithstanding anything provided by this Act, appoint any part of the wharves or premises vested in the authority to be a place for the collection of import duty or other revenues payable to the Government.

(2) Whenever any wharf or part of the premises of the authority has been so appointed as a place for the collection of import duty or other revenues, the authority shall set apart and maintain such place in such manner as the Minister may require, for the use of the persons entitled to collect such duties or revenues. (3) All charges payable in respect of any such wharf or part of the premises so set apart, or for the landing, shipping or storage of goods thereon, therefrom or therein, shall be paid to the authority. Licensed warehouse

26. (1) In respect of any warehouse of the authority, approved and appointed as a licensed warehouse under any written law for the time being in force, the authority may give general security by bond or otherwise for--

(a) the payment of the import duty payable in respect of goods stored in such licensed warehouse; or

(b) the due exportation of such goods.

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(2) When such security has been given by the authority no further security shall be required by the Government from any other person to the same effect.

(3) Any person who is, or has the powers of, a revenue officer under any written law for the time being in force, shall at all times--

(a) be admitted to any part of premises approved and appointed as a licensed warehouse; and

(b) be permitted to inspect the books kept in connection therewith and the stock contained therein.

Power of authority to order vessels to come alongside

27. The authority may order any sea-going vessel within the port to come alongside any suitable quay, wharf, jetty, pier or landing stage which is vested in or is under the control of the authority, for the purpose of landing or shipping goods, cargo or passengers: Provided that such order may be made only where-- (a) such vessel has not commenced landing goods, cargo or passengers; or

(b) such vessel is about to ship goods, cargo or passengers, but has not commenced to do so, and in making such order the authority shall have regard, as far as possible, to the convenience of such vessel and of the shippers in respect of any particular quay, wharf, jetty, pier or landing stage.

Government's vessels

28. The Minister may at any time require that any vessel belonging to or in the service of the State or the Government shall be permitted to come alongside any quay, wharf, jetty, pier or landing stage which is vested in or is under the control of the authority, in preference to all other vessels at the time in port, and the authority shall give effect to such requirement.

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PART V

BY-LAWS

By-laws

29. (1) The authority may with the approval of the Minister make by-laws for--

(a) regulating, declaring and defining the wharves, docks, piers and places which are vested in or are under the control of the authority, on and from which goods may be landed or shipped in vessels;

- (b) regulating the manner in, and the conditions under, which the loading and discharging of vessels shall be carried out, and for varying the positions of vessels loading and discharging;
- (c) regulating the safe and convenient use of the docks, wharves, piers, landing places, warehouses, sheds and premises, which are vested in or are under the control of the authority, and of any ferry service maintained by the authority;
- (d) regulating the reception, storage and removal of goods within and from the premises of the authority, and declaring the procedure to be followed for taking charge of goods which have been damaged before landing or are alleged to have been so damaged;
- (e) settling the mode of payment of charges leviable under this Act, facilitating their collection and preventing their evasion;
- (f) keeping clean the basins, works and premises of the authority and the waters adjacent thereto, and preventing oil filth and rubbish from being thrown or from entering therein or thereon;
- (g) limiting the liability of the authority in respect of any loss, damage or injury to any person, occurring without the actual fault or privity of the authority (whether in any vessel operated or maintained by them or on any wharf, quay or other part of the port);
- (h) regulating the conveyance, loading and unloading of dangerous goods;

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- (i) prescribing the procedure relating to the calling of tenders and the making of contracts by the authority or other person on behalf of the authority;
- (j) regulating the issue and transfer of licences and prescribing the fees payable on the issue of such licences;
- (k) regulating vehicular traffic, preventing obstruction and keeping order at wharves and docks and for ensuring the safety of the same and any cargo thereon;
- (l) regulating the towage of or providing other assistance to vessels by the authority and the terms and conditions of such towage or assistance;



(m) prescribing anything that may be prescribed under this Act;

(n) otherwise carrying out the provisions of this Act. (2) Any regulation made under paragraph (1) (h) may-- (a) prescribe the notice to be given by ships and boats conveying, loading or unloading dangerous goods;

(b) regulate the navigation and place of berthing of ships and boats carrying dangerous goods;

(c) prohibit or regulate the conveyance in passenger ships, boats, trains or vehicles of any kind of dangerous goods with any other kind of dangerous goods, articles or substances;

(d) regulate the conveyance, loading and unloading of dangerous goods and prescribe the mode of stowing and keeping such goods on board any ship, boat or premises; (e) prohibit, in cases where the loading or unloading of dangerous goods within the jurisdiction of the authority appears to be specially dangerous to the public, such loading or unloading, and fix the places and times at which any dangerous goods are to be loaded or unloaded and the quantity to be loaded or unloaded or conveyed at one time or in one ship, boat or vehicle;

(f) prescribe the mode of and the precautions to be observed in, conveying or keeping dangerous goods, and regulate the loading or unloading of any ship, boat or vehicle conveying such goods;

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(g) prescribe the times at which lights or fires are to be allowed or prohibited on board any ship or boat conveying or keeping dangerous goods;

(h) generally provide for the safety of persons and property from damage.

(3) The authority may in the by-laws made under this section provide for the punishment of any contravention thereof by-- (a) a fine not exceeding one thousand ringgit; and (b) a further fine not exceeding two hundred and fifty ringgit for every day after the first during which the breach continued, where the breach is a continuing one.

(4) The authority may cause any by-laws made under this section to be printed in English and national language, and may for the information of the public, exhibit such by-laws (whether in whole or in part) at such places as the authority deems fit. PART VA

Declaration of pilotage district

29A. (1) The authority may from time to time by notification in the Gazette declare any area in the port or the approaches to the port to be a pilotage district.

(2) Every such declaration shall define the limits of the pilotage district.

(3) Notwithstanding the Merchant Shipping Ordinance 1952, this Part shall apply to any pilotage district declared under this section.

The authority may require vessels to be under pilotage 29B. (1) The authority may, if it appears to the authority to be necessary, require any vessel while navigating in any pilotage district or part thereof to be under pilotage, and the master or owner of such vessel shall comply with such requirement. (2) A vessel while being moved within any area of the port which is or forms part of a pilotage district shall be deemed to be a vessel navigating in a pilotage district.

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#### Authority to employ pilots

29C. (1) Subject to this Act, the authority may employ such number of pilots as it deems necessary or expedient for the purpose of providing an adequate and efficient pilotage service. (2) No person shall be employed as an authority pilot in a pilotage district unless he is in possession of a valid licence to act as a pilot in such district issued under section 29H. Power of Pilotage Committee to license employees of a licensed operator

29CA. (1) Notwithstanding anything to the contrary in this Act the authority may, if it considers expedient, authorize the Pilotage Committee to issue a licence to any employee of a licensed operator to pilot vessels in a pilotage district of such authority subject to such terms and conditions as the authority thinks fit: Provided that no such licence shall be issued to any such employee unless the Pilotage Committee has examined the employee and be satisfied as to the employee's general fitness and competency, including his physical fitness to act as a pilot for the licensed operator.

(2) A licence issued under subsection (1) shall cease to be valid if the employee to whom it was issued ceases to be employed by the licensed operator.

Vessel to be piloted by authority pilot or employee of a licensed operator or an authorized person

29CB. (1) No vessel shall be piloted in a pilotage district by any person other than the authority pilot or an employee licensed under subsection 29CA(1) of a licensed operator.

(2) Notwithstanding subsection (1) the authority may, if it considers expedient, authorize any person to pilot vessels passing through its pilotage district, subject to such terms and conditions as the authority may impose.

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Appointment and functions of the Pilotage Committee 29D. The authority with the approval of the Minister shall appoint a Pilotage Committee for the purpose of--

(a) holding examinations and issuing, on behalf of the authority, licences to act as an authority pilot or as a pilot employed by a licensed operator;

(b) holding inquiries concerning the conduct of-- (i) authority pilots;

(ii) employees, licensed to pilot vessels in a pilotage district pursuant to subsection 29CA(1), of a licensed operator;

(iii) persons authorized under subsection 29CB(2) to pilot vessels passing through a pilotage district, in the discharge of their duties as directed by the authority and make recommendations thereto;

(c) investigating and advising on such matters as may be referred to the Committee by the authority; and

(d) carrying out such other functions as are conferred on the Pilotage Committee by this Act.

Constitution of the Pilotage Committee

29E. (1) The Pilotage Committee shall consist of a Chairman and four other persons who, by reason of their knowledge of or experience in shipping, nautical or port matters are, in the opinion of the authority, fit and proper persons to be members of the Committee. (2) The appointment of a member of the Pilotage Committee may be for any period not exceeding three years but such member shall be eligible for reappointment on completion of every such period.

(3) Three members of the Pilotage Committee shall form a quorum at any meeting of the Committee.

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(4) The Chairman of the Pilotage Committee shall preside at all meetings thereof:

Provided that if the Chairman is absent from a meeting or any part thereof, such member as the members of the Pilotage Committee present shall choose, shall preside in his place. (5) The Chairman or member presiding at any meeting of the Pilotage Committee shall have a vote and, in the case of an equality of votes, a second or casting vote.

(6) Members of the Pilotage Committee who are not employees of the authority may be paid, out of the funds of the authority, such fees and allowances as the authority may, from time to time, determine.

#### Public servants

29F. The members of the Pilotage Committee shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

#### Rules

29G. Subject to this Act, the authority may from time to time make rules for the purpose of regulating the meetings and proceedings of the Pilotage Committee.

#### Examination for licence

29H. (1) The Pilotage Committee shall examine candidates for employment by the authority as pilots and on being satisfied as to a candidate's general fitness and competency, including physical fitness, to act as an authority pilot may, on behalf of the authority, issue to him a licence to act as such, and such licence may contain such conditions as the Pilotage Committee may deem fit.

(2) Subject to this Part, every pilot holding immediately prior to the coming into operation of the said Part, a licence issued under the Merchant Shipping Ordinance 1952 to act as a pilot in the Port Swettenham pilotage district, shall be deemed to be qualified 42 Laws of Malaysia ACT 488

for employment by the authority as a pilot, and the Pilotage Committee shall, on behalf of the authority, issue to such pilot when employed by the authority a licence to act as an authority pilot in the pilotage district, subject to such conditions as the Pilotage Committee may impose.

(3) Every authority pilot shall whenever the Pilotage Committee considers that, owing to changed conditions or for any other sufficient reason, the

further testing of the knowledge, efficiency or physical fitness of any such pilot is necessary, present himself for further examination, and shall in every such case first deposit with the Pilotage Committee his licence issued by the said Committee on behalf of the authority to be returned or cancelled by the said Committee on behalf of the authority as the result of such test or examination determines.

(4) The authority shall not continue to employ as a pilot any pilot whose licence to act as such is cancelled as the result of any test or examination carried out or held under subsection (3). (5) Any licence issued under this section shall cease to be valid upon the termination of any authority pilot's employment with the authority.

#### Inquiries by Pilotage Committee

29I. (1) The Pilotage Committee may, and when directed by the authority shall hold an inquiry into the conduct of an authority pilot or any person licensed under subsection 29CA(1) or any person authorized to pilot vessels under subsection 29CB(2) where it appears that he has been guilty of misconduct affecting his capability as a pilot or has failed in or neglected his duty as a pilot or has become incompetent to act as a pilot.

(2) For the purposes of such inquiry, the Pilotage Committee may summon any person to attend any meeting of the said Committee to give evidence on oath or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession relative to the matters which are the subject matter of such inquiry.

(3) Any person who--

(a) being summoned to attend any such inquiry, fails to do so;

(b) offers any act of disrespect or any insult or threat to the Pilotage Committee or any member thereof during an inquiry; or

(c) being required by the Pilotage Committee to give evidence on oath or affirmation or to produce a document or other thing, refuses to do so,

shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand ringgit. Submission of Pilotage Committee's findings and

recommendations to the authority

29J. (1) Where the Pilotage Committee, after due inquiry in accordance with this Part and after hearing any statement that may be offered in defence, finds that an authority pilot or an employee licensed under subsection 29CA(1) of a licensed operator or any person authorized by the authority to pilot vessels pursuant to subsection 29CB(2) has been guilty of misconduct affecting his capability as a pilot or has failed in or neglected his duty as a pilot or has become incompetent to act as a pilot, it shall submit to the authority a copy of the record of the inquiry and its findings and recommendations in respect of the inquiry.

(2) The authority may, after considering the findings and recommendations of the Pilotage Committee, suspend or cancel the licence of such authority pilot or employee licensed under subsection 29CA(1) of a licensed operator, or, in the case of such person authorized by the authority to pilot vessels pursuant to subsection 29CB(2), revoke such authorization, or impose such other punishment as the authority may think fit.

(3) Any authority pilot or any employee licensed under subsection 29CA(1) of a licensed operator who is aggrieved by any decisions of the authority in respect of suspension or cancellation of the licence made under subsection (2) may, within fourteen days from the date of such decision, appeal to the Minister whose decision shall be final.

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Liability of the master or owner in the case of a vessel under pilotage

29K. The master or owner of a vessel navigating in circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would if pilotage were not compulsory.

Limitation of pilots liability when bond is given 29L. An authority pilot who has given a bond in accordance with subsection (2) shall not be liable for neglect, want of skill or incapacity in office beyond the penalty of such bond and the amount payable to the authority on account of pilotage in respect of the voyage in which he was engaged when he became so liable. (2) Every authority pilot shall undertake to give a bond in favour of the authority, in such sum as the authority considers reasonable, for the proper performance of his duties under this Part and any rules or by-laws under this Act.

(3) Any bond by an authority pilot in accordance with this section shall not be liable to stamp duty.

(4) Where any proceedings are taken against an authority pilot for any neglect, want of skill or incapacity in office in respect of which his liability is limited as provided by this section, and other claims are made in respect of the same neglect, want of skill or incapacity in office, the court in which such proceedings are taken may--

(a) determine the amount of such pilot's liability and, upon payment by him of such amount to court, distribute such amount rateably among the several claimants;

(b) stay any proceedings pending in any other court in relation to the same matter; and

(c) proceed in such manner and subject to such directions as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who have not submitted their claims within a certain time, and as to requiring security from such pilot and as to payment of any costs as the court thinks fit.

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#### Pilotage Committee and authority not liable for loss or damage occasioned by pilots

29M. (1) The issue of a licence to a pilot by the Pilotage Committee on behalf of the authority under subsection 29CA(1) or 29H(1) or the authorization given by the authority to any person to pilot vessels passing through a pilotage district pursuant to subsection 29CB(2) shall not impose any liability on the Pilotage Committee for any loss or damage occasioned by any act, omission or default of such pilot.

(2) Any authority pilot whilst engaged in any pilotage act shall, notwithstanding that he may be employed at a salary by the authority, be deemed to be the servant only of the master or owner of the vessel under pilotage and the authority shall not be liable for any loss or damage occasioned by any act, omission or default of such pilot.

#### Summary proceedings

29N. A Court may, if it thinks fit, call upon two members of the Pilotage Committee to sit with it as assessors in any proceedings affecting authority pilots under this Act or any regulations made thereunder.

By-laws regulating pilotage and conduct of pilots 290. (1) The authority may, with the approval of the Minister, make by-laws for regulating pilotage in any

pilotage district and, for the maintenance of good conduct and discipline of authority pilots and for matter relating to their duties.

(2) The authority may, in making any by-laws under this section, provide that any contravention of or failure to comply with any by-law shall be an offence and may prescribe as a penalty in respect of any one offence a fine not exceeding five thousand ringgit.

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## PART VI

### OFFENCES, DAMAGES, PENALTIES AND PROCEDURES

Refusal or neglect to appear before auditor or to produce books for inspection

30. (1) For the purposes of audit and examination of accounts under this Act, the auditor may by notice in writing-- (a) require the production before him of all books, deeds, contracts, vouchers and all other documents and papers which he deems necessary;

(b) require any person holding or accountable for any such books, deeds, contracts, vouchers, documents or papers to appear before him at any such audit and examination or adjournment thereof, and to make and sign a declaration with respect to the same.

(2) Any person failing to comply with the requirement of an auditor, made under subsection (1) or failing to produce any books of account to any person entitled to inspect the same shall be liable to a fine not exceeding two hundred ringgit.

Penalties on evading charges

31. Any master or owner of any vessel, or any owner, consignor or consignee of any goods imported into or exported out of the port, who by any means whatsoever eludes or evades, or attempts to elude or evade, or neglects or omits to pay, any of the charges leviable under this Act, shall pay to the authority by way of damages in addition to such charges, a sum equal to the charges so eluded or evaded, or attempted to be eluded or evaded, or neglected or omitted to be paid, and shall also be liable to a fine not exceeding two thousand ringgit.

List of all goods imported or exported to be left at office of authority



32. (1) The master or owner of every importing vessel or his agent shall sign and leave at the office of the authority, within fourteen days next after the final discharge of all goods imported 47Port Authorities

by such vessel, a full and accurate list of the said goods, containing all particulars as to--

(a) the gross weight measurement, marks, numbers and contents of each package; and

(b) the names of the consignees according to the bills of lading or the names of the person actually paying the freight for such goods.

(2) Any owner, master or agent who fails to sign and leave such list shall be liable to a fine not exceeding two thousand ringgit. (3) The owner, charterer, consignor, agent or other person acting in the loading and clearing of every exporting vessel shall prepare a full and accurate list or manifest of all goods exported by such vessel, from the bills of lading and freight list thereof, and shall sign and leave at the office of the authority within fourteen days after such vessel has cleared from the port, a correct transcript of such list or manifest, distinguishing therein the names of the several shippers of such goods according to the bills of lading. (4) Any such owner, charterer, consignor, agent or other person who fails to prepare such list or manifest, and to sign and deliver such transcript, shall be liable to a fine not exceeding two thousand ringgit.

Penalties to extend as well to principals as servants

33. All penalties imposed by section 30 or section 31 shall extend-- (a) to the principals in any house of business--

(i) by whom or on whose account, or for whose profit or advantage, such payment has been eluded, evaded, neglected or omitted to be made; or

(ii) by whom such lists, manifests and transcripts have been omitted to be made, signed, deposited and

left; and

(b) to any clerk and servant of such principals employed or acting in such house of business.

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Penalty for disobeying orders of officers in charge of wharves

34. (1) If the master of any vessel without the permission of the authority--

(a) brings in vessel, or causes it to be placed, alongside any wharf or dock entrance;

(b) acts contrary to the directions, or fails to comply with the order, of the wharf superintendent in relation to the time and manner--

(i) of coming into or going out of any dock; or

(ii) of coming alongside any wharf; or

(iii) as to the berth allotted for his vessel to occupy; or (c) disobeys any order to remove his vessel from any berth, such master or the owner of such vessel shall for every such offence be liable to a fine not exceeding one thousand ringgit. (2) Where the master of any vessel which has finished loading or discharging or is waiting for cargo or ballast fails to comply with a notice given to him or to the officer in charge of such vessel by the wharf superintendent, directing the master or officer in charge to leave the wharf, such master or the owner of such vessel shall in addition to such fine be liable to pay a sum (by way of damages) assessed at the rate of one-quarter cent per gross registered ton for every hour that such vessel remains at the wharf after the time for departure required by such notice has expired. Penalty for hindrances or obstructions to any member, officer or servant of the authority

34A. Any person who hinders or obstructs any member, officer or servant of the authority in the performance or execution of his duty or in carrying out anything which he is empowered or required to do by virtue of or in consequence of this Act shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

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Penalty for not keeping a vessel so loaded with ballast or otherwise as to be safely removed

35. (1) Every vessel lying alongside a wharf or within any dock shall be kept so equipped, provided and loaded or ballasted as to enable her to be removed with safety whenever it is necessary in the judgment of the wharf superintendent that it shall be removed. Offences of an authority pilot

(2) Any master or owner of a ship contravening subsection (1) shall be liable to a fine not exceeding two thousand ringgit. Penalties as to employment of pilot other than authority pilot 35A. (1) Any person who, not being an authority pilot or an employee licensed under subsection 29CA(1) of a licensed operator or a person authorized by the authority to pilot vessels pursuant to subsection 29CB(2), engages in any pilotage act or attempts to obtain employment as a pilot of a vessel entering or being within any pilotage district shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand ringgit.

(2) Any master or owner of a ship entering or being within any pilotage district who knowingly employs as pilot any person who is not an authority pilot or an employee licensed under subsection 29CA(1) of a licensed operator or any person authorized by the authority to pilot vessels pursuant to subsection 29CB(2) shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand ringgit.

(3) For the purposes of this section an authority pilot acting beyond the limits for which he is licensed or in contravention of any conditions imposed under section 29H, shall be deemed not to be an authority pilot.

(4) Any person may, without subjecting himself or his employer to any penalty, act as the pilot of a vessel entering or leaving any pilotage district when such vessel is in distress or under circumstances making it necessary for the master to avail himself of the best assistance that can be found at the time.

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Receiving or offering improper rates of pilotage

35B. (1) An authority pilot or an employee licensed under subsection 29CA(1) of a licensed operator shall not demand or receive, and a master, owner or agent shall not offer or pay to any pilot, any other rate in respect of pilotage services, whether greater or less than the rate which is prescribed by law.

(2) An authority pilot, an employee of a licensed operator, master, owner or agent who acts in contravention of this section shall be liable for each offence to a fine not exceeding five hundred ringgit and the licence of the pilot may be suspended or cancelled. Offences of an authority pilot

35C. (1) Any authority pilot or any employee licensed under subsection 29CA(1) of a licensed operator or any person authorized by the authority to pilot vessels passing through a pilotage district pursuant to subsection 29CB(2) who--

(a) is in any way directly or indirectly concerned in any corrupt practices relating to vessels, their tackle, furniture, cargoes, crews or passengers, or to persons in distress at sea or by shipwreck or to their moneys, goods or chattels; (b) lends his licence;

(c) acts as a pilot while suspended;

(d) acts as a pilot when in a state of intoxication; (e) refuses or wilfully delays, when not prevented by illness or other reasonable cause, to pilot any vessel within the limits for which he is licensed by the authority upon being required to do so by any employee of the authority duly authorized in that behalf; or

(f) quits the vessel under his pilotage without the consent of the master, before the service for which he was engaged has been performed,

shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand ringgit. (2) Any person who procures, aids, abets or connives at the commission of any offence under this section shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand ringgit.

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(3) Any authority pilot who commits an offence under this section, or procures, aids, abets or connives at the commission of any such offence shall be liable on conviction to suspension or dismissal by the authority.

(4) Any employee licensed under subsection 29CA(1) of a licensed operator or any person authorized to pilot vessels under subsection 29CB(2) who commits an offence under this section, or procures, aids, abets or connives at the commission of any such offence shall be liable on conviction to suspension or revocation of the licence or authorization as the case may be.

#### Penalty on pilot endangering ship, life or limb

35D. Any authority pilot or an employee licensed under subsection 29CA(1) of a licensed operator who, when engaged in the pilotage of a vessel, by wilful breach of duty or by neglect or by reason of drunkenness, either--

(a) does any act tending to the immediate loss, destruction or serious damage of the vessel, or tending immediately to endanger the life or limb of any person on board the vessel; or

(b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from loss, destruction or serious damage, or for preserving any person belonging to or on board the vessel from danger to life or limb,

shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding two years, and shall also be liable on conviction to suspension or dismissal by the authority: Provided that no employee licensed under subsection 29CA(1) of a licensed operator shall be dismissed by the authority. Failure to employ authority pilot or licensed pilot under certain circumstances

35E. (1) The master, owner or agent of a vessel navigating in circumstances in which the vessel is required by the authority under section 29B to be under pilotage who does not employ an authority pilot or an employee licensed under subsection 29CA(1) 52 Laws of Malaysia ACT 488

of a licensed operator or a person authorized by the authority pursuant to subsection 29CB(2) for such purpose shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand ringgit.

(2) Upon being found guilty of any offence under subsection (1), the Court before which the master, owner or agent of the vessel is found guilty shall order such master, owner or agent to pay to the authority the amount certified by the accountant of the authority to be the amount of dues and rates which would have been payable to the authority if the vessel had been under pilotage as required by this Act and such amount shall be recoverable in the same manner as a fine.

Penalty for giving a false draught of water

36. Any master of a vessel-- (a) entering or leaving any dock; or

(b) intending to enter or leave any dock, or to come alongside or to depart from any wharf,

who gives false information relating to the draught of water of such vessel to any officer of the authority whose duty it is to ascertain the same, shall be liable to a fine not exceeding two thousand ringgit.

Penalty for giving false statement in return, etc. 36A. Any person who makes any statement which is false in any material particular in any return, claim,

application, declaration or other document which is requested or authorized to be made by or under this Act or any by-laws made thereunder, shall be liable to a fine not exceeding five thousand ringgit.

Penalty for throwing ballast, etc., into docks

37. Any person who throws or empties into any dock any ballast, rubbish, dust, ashes, stones or other refuse or things, or does any act to prejudice any of the works of the authority, shall be liable to a fine not exceeding two thousand ringgit.

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Authority to recover expenses incurred for act done pursuant to a lawful direction

37A. (1) When any person without lawful excuse refuses or neglects to obey any direction lawfully given under this Act or the by-laws made thereunder, the authority may, irrespective of whether any proceedings have been instituted against or any punishment imposed on such person for the refusal or neglect, do or cause to be done all such acts as are in its opinion reasonable or necessary for the purpose of carrying out such direction.

(2) The powers conferred by subsection (1) include the power to hire and employ such persons as are necessary and proper for making good whatever loss or damage that has been caused by any refusal or neglect of the person to whom the direction has been given.

(3) Any expenses incurred in the exercise of the powers conferred under subsection (1) or (2) shall be recoverable from the person to whom the direction has been given as a civil debt. Contravention of section 20 or 21

38. Any person contravening section 20 or 21 shall be liable to a fine not exceeding one thousand ringgit.

General penalty

39. Any person contravening any of the provisions of this Act or any by-laws made thereunder shall be guilty of an offence and shall, if no penalty is prescribed therefor, be liable to a fine not exceeding five hundred ringgit.

Offence committed by a body corporate: officers deemed to be guilty

39A. Where an offence under this Act or under any of the regulations or by-laws made thereunder is committed by a body corporate (whether or not the body

corporate has been prosecuted), every director, secretary or manager of the body corporate shall be deemed to be guilty of the offence unless he proves that the offence was 54 Laws of Malaysia ACT 488

committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances of the case. Evasion of charges not waived by subsequent acceptance of payment

40. The tender to, or acceptance by, the authority or any of its officers of the payment of any charge, which payment has previously been evaded or not made, shall not release or discharge any person from any liability for any damages or penalty provided by this Act, consequent upon such evasion or non-payment.

Recovery of damages for injury done to property of authority

41. (1) The amount of any damage done to any gate, bridge, pier, jetty, quay, wharf, warehouse, shed, graving dock, graving block, building or other work belonging to the authority by any vessel or by any of the persons belonging to or employed about any vessel, may be recovered from the master or owner of such vessel. (2) The authority may detain such vessel until--

- (a) such damage has been paid for;
- (b) a deposit equal in amount to the claim or demand made by the authority for the estimated amount of the damage so done by such vessel has been made by the master or owner of such vessel; or
- (c) security has been given for the payment of the entire amount of such damage.

(3) Where a deposit has been made, the authority shall receive and retain such deposit until the entire amount of such damage has been ascertained by the authority and paid to the authority by the master or owner of such vessel.

(4) Every deposit aforesaid shall be considered to have been made as payment of or towards the claim or demand for damage referred to in subsection (1), unless notice that the claim is disputed is given to the authority within seven days after such deposit is made.

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(5) After the expiration of seven days next following such deposit, the authority may unless--

(a) in the meantime notice has been given to them that the claim is disputed; or

(b) the amount of damage done by such vessel has been sooner paid,

apply such deposit or a sufficient part thereof in making good the damage aforesaid, and the authority shall return the residue (if any) to the said master or owner.

(6) Every notice declaring that a claim is disputed shall be in writing and shall contain the name and address of some person within Malaysia, who is authorized to act on behalf of such master or owner in reference to such claim.

(7) Service of any documents or legal process on the person, specified under subsection (6), shall be deemed good service on such master or owner for all purposes.

#### Power to board and seize

41A. (1) The General Manager or such person as may be authorized by him may board any vessel within the port whenever he suspects that an offence under this Act or any by-laws made thereunder has been or is about to be committed on board such vessel or whenever he considers it necessary to do so in the discharge of his duties under this Act or any by-laws made thereunder.

(2) The General Manager or such person as may be authorized by him may, in exercising his powers and carrying out his duties under subsection (1), seize any article, document or thing which he has reasonable ground for believing has been used for the commission of, or is the subject matter of, or is required for the purpose of investigation and prosecution of, an offence under this Act or any by-laws made thereunder.

(3) Any master of such vessel who wilfully delays, fails to comply with any order lawfully given, withholds any information or obstructs in any manner whatsoever the General Manager or such person as may be authorized by him pursuant to subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit.

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Power of General Manager or authorized person to order scuttling or removal of



vessel in case of fire

41B. (1) In the event of fire breaking out on board any vessel in the port, the General Manager or any person authorized by him may proceed to board the vessel with such persons and assistance as may seem fit to him and may give such orders to the master of the vessel as are necessary for scuttling the vessel or for removing that vessel or any other vessel, and he may take such other measures as are necessary and proper for the protection of life or property. (2) If the orders given pursuant to subsection (1) are not carried out forthwith by the master of the vessel, the General Manager or the person authorized by him may himself proceed to carry the orders into effect.

(3) Any expenses incurred in the exercise of the powers conferred by subsections (1) and (2) shall be recoverable from the master or the owner of the vessel concerned as a civil debt. Offences to be tried before a Magistrate's Court

42. All offences under this Act or under any by-laws made thereunder shall be triable by a Magistrate's Court and notwithstanding any law to the contrary, the Magistrate shall be empowered to impose the penalties prescribed therefor. Distress in the event of failure to pay damages or costs

43. (1) The authority shall, in the event that any damages or costs awarded to them by a court are not forthwith paid, have power to recover the same by way of distress under a warrant issued by the Court.

(2) The Court may order any person against whom a warrant of distress has been levied under this section to be kept in safe custody until return can be made to such warrant, unless such person gives a security by way of recognizance or otherwise for his appearance before the Court on the day appointed for such return.

(3) If it appears to the Court by the admission of the person aforesaid or otherwise that no sufficient distress can be had within the jurisdiction of the Court for the purpose of recovering the 57Port Authorities

damages or costs awarded to the authority under this section, the Court shall commit such offender to prison for a term not exceeding six months unless such damage or costs are sooner paid and satisfied. Limitation of period of prosecution

44. No prosecution for an offence under this Act or any by-laws made thereunder shall be instituted later than three years from the date of the commission of the offence.

## Service on company or summons of offence

45. (1) It shall be sufficient in any summons issued by a Magistrate's Court under this Act or any by-laws made thereunder, against any firm or company, to direct that the summons be served on the firm, company, or any officer or manager thereof.

(2) Service of the summons at the usual place of business of such firm shall be deemed to be a sufficient service thereof. Conduct of prosecutions

46. Prosecutions in respect of any offence against this Act or of any regulations or by-laws made thereunder may be conducted by any officer authorized in writing by the Chairman. Power to compound offence

46A. (1) The Minister may by order to be published in the Gazette prescribe any offence against this Act or any regulations or by-laws made thereunder as an offence which may be compounded by the authority.

(2) The General Manager may in his discretion compound such offence prescribed under subsection (1) by accepting from the person reasonably suspected of having committed any such offence a sum of money not exceeding five hundred ringgit. (3) The Minister may by the same order made under subsection (1) prescribe the method and procedure for compounding any offence against this Act or any regulations or by-laws made thereunder.

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## PART VII

### NEW PORTS

#### Establishment of new ports

47. (1) The Yang di-Pertuan Agong may by order apply all or any of the provisions of this Act to any new port, and shall by such order amend the First Schedule by adding (in the appropriate columns) to that Schedule the name of the said new port and of the port authority established for that port, and the date on which such authority is so established.

(1A) The powers referred to in subsection (1) shall include the power to amend the name of any port under the First Schedule. (2) Any order made under this section may provide for the management or operation of the new port during any transitional period, for the transfer of and vesting in the authority of any undertakings made in respect of the port before the establishment of the

authority and for the transfer of any officers and servants to the service of the authority.

## PART VIIA

### EXTENSION OF THE FUNCTIONS, ETC., OF A PORT

#### AUTHORITY TO OTHER PORTS

##### Power of Minister to extend port authority's functions to other ports

47A. (1) The Minister may by order published in the Gazette extend the functions, powers, duties and jurisdiction of such port authority to another port or ports.

(2) An order under subsection (1) may provide that the port authority in respect of which it is made shall, in carrying out the administration of the port to which its control, is extended, to include among its members such other persons or persons as may be specified in the order either by name or by office. (3) A port authority in respect of which an order is made under subsection (1) shall be deemed for all purposes to be the port authority in respect of the port specified in the order as if it were 59Port Authorities

a port authority established in respect of that port under this Act and shall in carrying out its functions be styled by such name as may be provided in the order.

Port authority in carrying out its extended functions shall be deemed to be an independent port authority

47B. A port authority in carrying out its functions in respect of the port to which they are extended shall carry them out as if it were an independent port authority established in respect of such port.

##### Power of Minister to make provisions for the port authority to carry out its functions

47C. An order of the Minister under section 47A may contain all such provisions as the Minister may deem necessary to enable the port authority specified in the order to carry out its functions in relation to the port over which they are extended. PART VIIB

## SPECIAL POWERS

### Special powers in emergency

47D. (1) On the occurrence of any public emergency or in the interest of public safety, the Prime Minister or any officer specially authorized by him in that behalf may--

(a) take temporary possession of any port service or facility established, maintained or worked by any person licensed under this Act; or

(b) withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public at large.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under subsection (1) was in the interest of public safety, a certificate signed by the Prime Minister and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

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## \*PART VIII

### TRANSITIONAL

#### Application of this Part

48. The following provisions of this Part shall have effect in respect of Port Kelang Authority (hereinafter referred to as "the Authority").

Assistance to the authority by the Malayan Railway Administration for a period of three years

49. (1) The Malayan Railway Administration (hereinafter referred to as "the Administration") shall, for a period of not less than three years from the date of the establishment of the Authority, continue to render to the Authority such assistance as that Authority may require.

(2) The Authority shall reimburse the Administration any expenses incurred by the Administration in respect of any assistance rendered to the Authority in pursuance of subsection (1).

(3) Any dispute as to the amount required to be reimbursed to the Administration or as to the reasonableness of a request for any assistance made by the Authority to the Administration shall be determined by the Minister who, in respect of a dispute relating to the request aforesaid, shall specify whether the request made is to be complied with in whole or in part,

and, if in part, the extent thereof; and the determination of the Minister shall be final. Transfer of undertakings

50. (1) For the convenience of administration, there shall be transferred to the Authority on the date of its establishment (1 July 1963) only such of the undertakings made by the Administration in respect of Port Kelang (before the date of establishment of the Authority) as the Minister may specify, the remainder thereof to be finally transferred by the 1 January 1964.

\*NOTE--This Part is not applicable to Johore Port and Kuantan Port vide P.U. (A) 248/1973 and P.U. (A) 427/1974 respectively. Johore Port has since been changed to Pasir Gudang Port?see P.U. (A) 290/1999.

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(2) The extent of the remainder of the undertakings required to be transferred by 1 January 1964, shall be as agreed to by the Authority and the Administration, or, in default of agreement, as may be determined by the Minister whose determination thereon shall be final.

(3) Notwithstanding the foregoing provisions of this section, all rights and liabilities which immediately before the date of the establishment of the Authority aforesaid were the rights and liabilities of the Administration in respect of Port Kelang, or of officers and servants of the Administration mentioned in subsection 52(1) shall on the said date be the rights and liabilities of the Authority. (4) There shall be made between the Authority and the Administration consequent upon the transfer of undertakings and of rights and liabilities under this section such financial adjustment as may be agreed to by the Authority and the Administration or, in default of such agreement, as shall be determined by the Minister. (5) In this section the expression "undertakings" includes lands and other movable or immovable property held or enjoyed in connection with Port Kelang or appertaining thereto. Repayment of loan charges to Administration

51. (1) The Authority shall be responsible for the payment to the Accountant General of interest and redemption on loans drawn by the Administration on behalf of Port Kelang.

(2) In the case of such loans drawn prior to 1 January 1959, which were drawn for both the purposes of the Administration and of Port Kelang 18.451 per centum of the loan interest and redemption thereon shall be paid by the Authority annually to the Administration. (3) Any dispute arising between the Authority and the Administration as to the payment of any loan charges under this section shall be referred to the Minister of Finance whose decision thereon shall be final.

## Transfer of officers and servants of the administration

52. (1) Subject to this Act, any person who immediately before the date of establishment of the Authority was an officer or servant of the Administration and who in the opinion of the Minister is 62 Laws of Malaysia ACT 488

necessary to the proper operation of the port shall as from the said date become an officer or servant of the Authority, on terms and conditions of service not less favourable than those which were attached to his service immediately before that date. (2) Any officer or servant of the Administration who has by virtue of subsection (1) become an officer or servant of the Authority may not later than twelve months from the making of any rules under section 15 (relating to salaries, allowances and conditions of service of officers and servants) by the Authority elect in writing whether to continue in the service of the Authority or to revert to the service of the Administration; and if he elects to revert to the service of the Administration, shall thereupon revert to the service of the Administration on terms and conditions not less favourable than those which would have attached to his service had he not become an officer or servant of the Authority by virtue of subsection (1); and his service with the Authority shall be deemed to be service with the Administration.

(3) Any officer or servant who reverts to the service of the Administration under subsection (2) may, by reason that no vacancy is immediately available for him in the service of the Administration, be required by the Administration, and the Authority shall permit him, to continue to serve with the Authority for a period not exceeding five years.

(4) In determining whether the terms and conditions of service are or are not less favourable, as aforesaid, regard shall be had to salary or wages, conditions relating to termination of service, retirement benefits, medical attention, quarters, allowances, leave and overseas passages (if any) for himself and his family and any other benefits whether provided for himself or his widow or dependants.

(5) Any question arising as to whether any terms and conditions of service are less favourable than those attached to the service mentioned in subsection (1) or (2) shall be referred to the Minister whose decision thereon shall be final.

(6) For the purpose of subsection (2), the rules under section 15 therein mentioned shall be made as soon as possible and in any case not later than 24 months after the date of establishment of the Authority.

Officers and servants of the Authority by virtue of subsection 52(1) to be deemed for the purpose of pensions to continue in the service of the Administration

53. (1) Any person who joined the Administration prior to 1 July 1936 and who by virtue of subsection 52(1) becomes an officer or servant of the Authority and who immediately before the date of his becoming such officer or servant of the Authority held an office which was a pensionable office under the Pensions Ordinance 1951 [Ord. 1 of 1951], shall for the purpose of the said Ordinance be deemed to continue to hold such pensionable office so long as he is in the service of the Authority and shall be eligible for the grant of a pension, gratuity, or any allowance based on his last drawn pensionable emoluments as if his service under the Authority were service under the Administration, and he may be granted such pension, gratuity or allowance in accordance with the said Ordinance.

(2) Any person who joined the Administration prior to 1 July 1952, and who by virtue of subsection 52(1) becomes an officer or servant of the Authority and who immediately before the date of his becoming such officer or servant of the Authority held an office which was a non-pensionable office under the Pensions Ordinance 1951, shall for the purpose of the said Ordinance be deemed to continue to hold such office so long as he is in the service of the Authority and subject to the said Ordinance shall be eligible for the grant of a gratuity or retiring allowance as if his service under the Authority were service under the Administration, and may be granted such gratuity or allowance based on his last drawn salary.

(3) Subsection (2) shall not affect any agreement relating to gratuity or to retirement or other allowances entered into by any person mentioned in the said subsection with the Administration. Proportion of pensions and other allowances of officers and servants of the Administration to be borne by the Authority

54. (1) The Authority shall pay to the Administration in respect of pensions, gratuities and other retirement allowances due to officers and servants of the Administration who retired from the service of the Administration before the date of establishment of the Authority, 8.8 per centum of the expenditure borne on the funds of the Administration in respect of such pensions, gratuities or allowances.

(2) All pensions, gratuities and other retirement allowances payable to any person who by virtue of subsection 52(1) becomes an officer or servant of the Authority shall be charged on the funds of the Authority, and the Authority shall in respect of such proportion of the said pensions, gratuities and retirement allowances as is attributable to the service of such person with the Administration, be reimbursed by the Administration.

(3) The Authority shall meet such proportion of any pensions, gratuities or other retirement allowances payable to officers and servants of the Administration retiring after the date of establishment of the Authority, as is attributable to service at Port Kelang. (4) Any dispute arising as to whether any period of service of any officer or servant is service with the Administration or Authority shall be determined by the Minister whose decision thereon shall be final.

#### Depositor in Railway Provident Fund transferred to the Authority

55. (1) Any person who by virtue of subsection 52(1) becomes an officer or servant of the Authority and who immediately before becoming such officer or servant was a depositor in the Malayan Railway Provident Fund (hereinafter referred to as "the Provident Fund") shall, so long as he remains an officer or servant of the Authority until a provident fund has been established or other retirement benefits provided by the Authority under this Act continue to be a depositor to the Provident Fund, and subject to this section shall be subject to the \*Malayan Railway Provident Fund Ordinance 1952 [Ord. 21 of 1952], and of any rules made thereunder as if he had remained an officer or servant of the Administration. (2) Where any person who continues to be a depositor in the Provident Fund ceases to be an officer or servant of the Authority, the Malayan Railway Provident Fund Ordinance 1952, and any rules made thereunder which would have been applicable upon his ceasing to be an officer or servant of the Administration shall apply as if he had remained an officer or servant of the Administration and had ceased to be such an officer or servant at the time at which and in circumstances similar to those in which he ceased to be an officer or servant at the Authority.

\*NOTE--The Malayan Railway Provident Fund Ordinance 1952 [Ord. 21 of 1952] has since been repealed by the Malayan Railway Provident Fund (Dissolution) Act 1995 [Act 534]. 65Port Authorities

(3) The following provisions shall, as respects a person continuing to be a depositor in the Provident Fund, have effect: (a) the Board of Managers of the Provident Fund may in respect of such person grant benefits and make payments into and out of the Fund as if his employment by the Authority were employment by the Administration.



(b) the Authority shall deduct from his remuneration such amounts as he is liable to deposit in the Provident Fund and shall from time to time pay to the Administration the amounts so deducted to be carried by the Administration to his credit in the said Fund; and

(c) the Authority shall from time to time pay to the Administration such amounts as the Administration would be liable to pay to the Provident Fund by way of bonuses in respect of his remuneration if his employment by the Authority were employment by the Administration and such amounts shall be carried by the Administration to his credit in the said Fund.

#### Widows' and orphans' pensions

56. Any person who by virtue of subsection 52(1) becomes an officer or servant of the Authority and who immediately before the date of establishment of the Authority, was a contributor to the widows' and orphans' pension scheme established under the Widows' and Orphans' Pensions Enactment of the Federated Malay States [F.M.S Cap. 26] shall continue to contribute to such scheme and shall be entitled to benefit thereunder in all respects as if his service with the Authority were service with the Administration:

Provided that if, at any time, the Board establishes a widows' and orphans' pension scheme, any such persons who has accepted permanent employment with the Authority may elect to contribute to such last mentioned scheme, and, in that event, paragraph 12(i) of the said Enactment shall apply, and for such purpose, service with the Authority shall be deemed to be service to which such subsection relates.

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#### Repeal

57. (1) So much of the Railway Ordinance 1948 [Ord. 8 of 1948], as relates to Port Swettenham shall cease to have effect: Provided that any regulations made and tariffs of rates and charges levied under that Ordinance in respect of Port Swettenham shall until amended or revoked by the Authority continue to apply to the Port as if such regulations, tariffs and charges were charges or scales of charges levied by the Authority under section 16 of this Act.

(2) Consequent upon subsection (1), on the date of the establishment of the Authority--

(a) the Port Swettenham Board established under section 44A of the Railway Ordinance 1948, and any committees appointed by that Board shall cease to

exist; and (b) Part VA of the said Ordinance shall be repealed. PART IX

## SAVINGS

### Savings

58. Nothing in this Act contained shall affect the Customs Act 1967 [Act 235].

## PART X

## INTERPRETATION

### Interpretation

59. In this Act, unless the context otherwise requires-- "authority" means the port authority established under section 2;

"authority pilot" means a pilot employed by the authority pursuant to section 29c;

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"Chairman" means the chairman of the authority and in the absence of the Chairman, the Deputy Chairman or temporary Chairman;

"charges" includes any toll, due, rent or other charge leviable under this Act;

"dock" includes basins, locks cuts, entrances, graving, docks, keel blocks, inclined planes, slipways gridirons, quays, warehouses and other works and things appertaining to any dock; "estimates" means in respect of recurrent revenue the best possible commercial forecast of revenue taking into account the general conditions of world trade and all other relevant factors and in respect of recurrent expenditure the best possible commercial forecast of expenditure likely to be incurred having regard to the estimates of revenue;

"General Manager" means the General Manager of the port appointed under section 13;

"goods" includes livestock, minerals and wares and merchandise of every description;

"Government" means the Government of Malaysia;

"land" includes the bed of the sea below high water mark; "licensed operator"

means a licensed operator licensed under Part III of the Ports (Privatization) Act 1990;

"licensed warehouses" has the meaning assigned to it in the Customs Act 1967;

"master" includes every person, except a pilot, having for the time being the command or charge of any vessel;

"Minister" means the Minister charged with the responsibility for ports;

"owner" in relation--

(a) to goods includes any consignor, consignee, shipper or agent for the sale, custody, shipping or landing of such goods; and

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(b) to any vessel includes any part owner, charterer, consignee or mortgagee in possession of the vessel;

"pier" includes any stage, stairs, landing places, landing stage, jetty, floating barge or pontoon and any bridge or other works connected therewith;

"pilotage district" means any area in the port or approaches to the port declared under section 29A to be a pilotage district; "Pilotage Committee" means the Pilotage Committee appointed under section 29D;

"port" means the port specified in the Schedule within the limits declared under section 6 of the Merchant Shipping Ordinance 1952;

"revenue" means any moneys received by the Authority by way of charges, scales of charges or other duties imposed by or under this Act and includes any moneys provided under section 6; "ship" includes every description of vessel used in navigation not propelled by oars;

"vessel" includes any ship or boat or any other description of vessel used in navigation;

"wharf" includes any wall and building adjoining the foreshore, sea-bed or river-bed;

"wharf superintendent" means an officer of the authority in charge of the wharf or wharves of the authority.

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### FIRST SCHEDULE

[Subsection 2(1) and Section 48]

(1) (2) (3)

Port Port Authority Date of establishment

Port Kelang Port Kelang Authority 1 July 1963

Kuantan Port Kuantan Port Authority 1 September 1974 Pasir Gudang Port Johore  
Port Authority 1 January 1975 Kemaman Port 1 September 1993

Authority

### SECOND SCHEDULE

[Subsection 2(3)]

1. (1) The following persons shall be disqualified for being appointed or being members of the authority:

(a) a person who is of unsound mind or is otherwise incapable of performing his duties;

(b) a bankrupt;

(c) a person who has been convicted of an offence and sentenced to imprisonment for a term of not less than one year. (2) A member of the authority shall vacate his office if he is absent from Malaysia for a period of more than three months, without the approval of the Minister.

(3) There shall be paid out of the fund to members of the authority, or to such of those members as the Minister may determine, such allowances as he may determine.

2. (1) The quorum of the authority shall be four. (2) Where the Chairman is also the General Manager, such Chairman shall have no vote in his capacity as the General Manager. (3) If on any question to be determined by the authority there is an equality of votes, the Chairman shall have a casting vote. (4) In the absence of the Chairman, the Deputy Chairman shall preside at a meeting.

(5) Subject to subparagraphs (1) to (4) the authority shall determine its

procedure.

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(6) The seal of the authority shall be authenticated by either the Chairman and the General Manager or General Manager and any one officer duly authorized by the authority to act in that behalf and any document purporting to be sealed with the said seal, authenticated as aforesaid, shall until the contrary is shown be deemed to have been validly executed.

3. (1) The authority may appoint such committees of its members, with or without other persons, as they may determine.

(2) Subject to any directions of the authority, the quorum and procedure of a committee shall be determined by the committee.

4. The authority may delegate to the Chairman or to any member or officer of the authority or to any committee any of their functions.

5. Any member of the authority (as well as any officer and servant) shall be deemed to be a public servant within the meaning of the Penal Code.

6. A member of the authority having any interest in any company or undertaking with which the authority proposes to make any contract or having any interest in any such contract shall disclose to the authority the fact of his interest and the nature thereof, and such disclosure shall be recorded in the minutes of the authority and unless specifically authorized thereto by the Chairman, the member shall take no part in any deliberation or decision of the authority relating to the contract.

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### LAWS OF MALAYSIA

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### PORT AUTHORITIES ACT 1963

### LIST OF AMENDMENTS

Amending law Short title In force from

Act 18/1965 Port Authorities (Amendment) 21-01-1965 Act 1965

P.U. (A) 450/1969 Essential (Port Authorities) 31-10-1969 Regulations 1969

Act A8 Port Authorities (Amendment) 27-02-1969

Act 1969

Act A83 Port Authorities (Amendment) 24-09-1971

Act 1971

Act A99 Port Authorities (Amendment) 01-04-1972

Act 1972

Act A137 Port Authorities (Amendment) 07-07-1972

(No. 2) Act 1972

P.U. (A) 248/1973 Port Authorities (Johore Port) 01-05-1973 Order 1973

P.U. (A) 427/1974 Port Authorities (Kuantan Port) 01-09-1974 Order 1974

Act A394 Port Authorities (Amendment) 01-04-1977

Act 1977

P.U. (A) 286/1981 Port Authorities (Johore Port) 01-01-1975 (Amendment) Order 1981

Act A560 Port Authorities (Amendment) 13-05-1983

Act 1983

Act A618 Port Authorities (Amendment) 31-05-1985

Act 1985

Act 422 Ports (Privatization) Act 1990 02-04-1990 Act A784 Port Authorities (Amendment) 12-11-1990

Act 1990

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P.U. (A) 235/1992 Revision of Laws (Rectification 18-03-1992 of Port

Authorities Act) Order

1992

P.U. (A) 278/1993 Port Authorities (Kemaman Port) 01-09-1993 Order 1993

Act A935 Port Authorities (Amendment) 10-11-1995

Act 1995

P.U. (A) 252/1996 Revision of Laws (Rectification of 18-03-1992 Port Authorities Act) Order 1996

P.U. (A) 290/1999 Port Authorities (Amendment of 11-11-1995 First Schedule) Order 1999

Amending law Short title In force from

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LIST OF SECTIONS AMENDED

Section Amending authority In force from

2 P.U. (A) 450/1969 31-10-1969

Act A83 24-09-1971

3 Act A99 01-04-1972

Act A394 01-04-1977

Act A560 13-05-1983

Act A618 31-05-1985

Act A784 12-11-1990

3A Act A99 01-04-1972

3B Act A784 12-11-1990

5A Act A618 31-05-1985

8 Act A394 01-04-1977

Act A560 13-05-1983

8A Act A784 12-11-1990

9 Act A784 12-11-1990

13A Act A8 27-02-1969

15 Act 18/1965 21-01-1965

Act A560 13-05-1983

16 Act 18/1965 21-01-1965

Act A560 13-05-1983

16A Act A618 31-05-1985

Act 422 02-04-1990

Act A935 10-11-1995

17A Act A99 01-04-1972

17B Act A99 01-04-1972

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18A Act A394 01-04-1977

19 Act A560 13-05-1983

PART IIIA Act A394 01-04-1977

29 Act A394 01-04-1977

Act A560 13-05-1983



PART VA Act A99 01-04-1972

29CA Act A784 12-11-1990

29CB Act A784 12-11-1990

29D Act A784 12-11-1990

29I Act A784 12-11-1990

29J Act A784 12-11-1990

29M Act A784 12-11-1990

29O Act A784 12-11-1990

31 Act A784 12-11-1990

32 Act A784 12-11-1990

34A Act A784 12-11-1990

35 Act A99 01-04-1972

Act A784 12-11-1990

35A Act A99 01-04-1972

Act A784 12-11-1990

35B Act A99 01-04-1972

Act A784 12-11-1990

35C Act A99 01-04-1972

Act A784 12-11-1990

35D Act A99 01-04-1972

Act A784 12-11-1990

Section Amending authority In force from

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35E Act A99 01-04-1972

Act A784 12-11-1990

36 Act A784 12-11-1990

36A Act A83 24-09-1971

Act A784 12-11-1990

37A Act A784 12-11-1990

38 Act A784 12-11-1990

39A Act A784 12-11-1990

41A Act A560 13-05-1983

41B Act A784 12-11-1990

44 Act A394 01-04-1985

46A Act A784 12-11-1990

PART VIIA Act A560 13-05-1983

PART VIIB Act A618 31-05-1985

47 Act A935 10-11-1995

48 Act A137 07-07-1972

51 Act A83 24-09-1971

52 Act 18/1965 21-01-1965

54 Act 18/1965 21-01-1965

57 Act 18/1965 21-01-1965

59 Act A99 01-04-1972

Act A784 12-11-1990

FIRST SCHEDULE Act A137 07-07-1972

P. U. (A) 248/1973 01-05-1973

P. U. (A) 427/1974 01-09-1974

P. U. (A) 278/1993 01-09-1993

P. U. (A) 290/1999 11-11-1995

SECOND SCHEDULE Act A560 13-05-1983

DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA

Section Amending authority In force from