

Bintulu Port Authority Act 1981

Bintulu Port Authority 1

LAWS OF MALAYSIA

REPRINT

Act 243

BINTULU PORT AUTHORITY

ACT 1981

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Act 243

BINTULU PORT AUTHORITY ACT 1981

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BINTULU PORT AUTHORITY ACT 1981

An Act to provide for the establishment of the Bintulu Port Authority, for the transfer to and vesting in the Authority of responsibility for the development, control and administration of Bintulu Port and for all other matters and things necessary therefor, incidental thereto or connected therewith.

[section 93--1 May 1981, P.U. (B) 257/1981;

All provisions except section 92--15 August 1981, P.U. (B) 458/1981; section 92--16 August 1981, Act A937] 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:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Bintulu Port Authority Act 1981 and shall come into force on such date as the Minister may, by notification in the Gazette, appoint and he may appoint different dates for the coming into force of different provisions. (2) Notwithstanding subsection (1), section 92 shall be deemed to have come into force on 16 August 1981.

(3) Any act or thing done or any money collected, expended or invested by the Authority before the commencement of this Act that would have been lawful if the provisions of this Act had been in force at the time when it was done is hereby validated and declared to have been lawfully done or collected,



expended or invested by it.

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Interpretation

2. In this Act, unless the context otherwise requires-- "Authority" means the Bintulu Port Authority established under section 3;

"Authority pilot" means a pilot employed by the Authority under section 55;

"Chairman" means the Chairman of the Authority appointed under paragraph 4(1) (a);

"charges" includes tolls, dues, rents and other rates leviable under this Act or any rules or by-laws made thereunder; "docks" includes basins, locks, cuts, entrances, graving-docks, keel-blocks, inclined-planes, slipways, gridirons, quays, warehouses and other works and things appertaining to docks; "General Manager" means the General Manager of the Port appointed under section 21;

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

"Government" and "Federal Government" mean 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 [Act 422]; "licensed warehouse" means a warehouse or other place licensed for the warehousing of dutiable goods under section 65 of the Customs Act 1967 [Act 235];

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

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"Minister" and "Minister of Finance" mean the Federal Ministers charged with responsibility respectively for ports and harbours, and for finance;

"owner", when used in relation to goods, includes a consignor, consignee, shipper or an agent for the sale, custody, shipping or landing of those goods; and, when used in relation to a vessel, includes a part-owner, charterer, consignee or mortgagee in possession of the vessel;

"pier" includes a stage, stairs, a landing-place, landing-stage, jetty, floating barge or pontoon and a bridge, and other works connected therewith;

"pilotage district" means an area in the Port or the approaches to the Port declared under section 53 to be a pilotage district; "Port" means Bintulu Port within the limits of the area declared under section 3 of the Act;

"rates" includes tolls, dues, rents, and other charges leviable under this Act or any rules or by-laws made thereunder; "ship" includes every description of vessel used in navigation not propelled by oars;

"the Act" means the Declaration of an Area in the Bintulu District to be a Federal Port Act 1979 [Act 217]; "vehicle" includes a carriage travelling on its own wheels or runners and used or intended to be used for the conveyance or carriage of persons, animals or goods;

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

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

"wharf superintendent" means the officer employed by the Authority to be in charge of the management of the wharves and docks of the Authority.

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## PART II

### BINTULU PORT AUTHORITY

#### Establishment of Bintulu Port Authority

3. (1) There is established in respect of Bintulu Port a port authority to be known as the Bintulu Port Authority.

(2) The Authority shall--

- (a) be a body corporate with perpetual succession and a common seal;
- (b) subject to sections 8 and 10, be capable of purchasing or otherwise acquiring, being vested with by way of gift or otherwise, holding or disposing of, movable and immovable property, including any interest therein;
- (c) be capable of entering into contracts and suing and being sued;

and the Authority may do and suffer all such other acts and things as bodies corporate may do and suffer.

#### Constitution of Authority

4. (1) The Authority shall consist of-- (a) a Chairman who shall be appointed by the Minister; (b) the General Manager; and

(c) not less than five nor more than nine members to be appointed by the Minister:

Provided that it shall be lawful for the Minister to appoint the General Manager to be the Chairman.

(2) Where the Chairman is a person other than the General Manager, then unless the Minister appoints any of the members appointed under paragraph (1) (c) to be the Deputy Chairman of the Authority, the General Manager shall be the Deputy Chairman. (3) A temporary Chairman or temporary member may be appointed as provided in subsection (1) during the temporary incapacity through illness, or during the temporary absence from the State of Bintulu Port Authority 13

Sarawak or from Malaysia, of the Chairman or member, and the provisions of this Act which apply in relation to the Chairman or member (including a person to be so appointed) shall mutatis mutandis apply in relation to a temporary Chairman or temporary member (including the person to be so appointed). (4) The Authority may act notwithstanding a vacancy in its membership, and no act of the Authority shall be invalid by reason only of some defect in the appointment of any of its members or on the ground that any person acting as a member thereof has ceased to be such member.

(5) Notwithstanding anything to the contrary in this Act or any other written law, the Minister may remove from office the Chairman or any of the members of the Authority without assigning any reason therefor.

(6) The provisions of the Schedule shall have effect with respect to the Authority and its members.

#### Functions of Authority

5. (1) The functions of the Authority shall be to develop, control and administer and otherwise operate and maintain the Port, and for the performance of its functions it 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 undertake all or any work of every description in connection with the Port as the Authority may think fit, or authorize by way of licence any person to undertake such work, subject to rules or by-laws made by the Authority, and such licence may contain such conditions as the Authority may think fit to impose;

(b) to construct, maintain and use wharves, docks, piers and bridges within the limits of the area vested in the Authority, with all necessary and convenient arches, drains, culverts, fences, roads, railways and approaches;

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(c) subject to the provisions of this Act, to levy such port dues and such general charges upon goods or cargo loaded or discharged in the Port as the Authority may think necessary for the maintenance, improvement or development of the Port;

(d) to control the berthing and movement of all vessels, whether in the road or alongside a quay, wharf, pier or landing-place vested in or under the control of the Authority; (e) to purchase or otherwise acquire or construct, and to maintain and use, engines, firefloats and other appliances for the purpose of extinguishing fire on the property of the Authority and in the Port;

(f) to purchase or otherwise acquire or construct, and to maintain and operate, vessels for the purpose of towing or rendering assistance to any vessel (whether in the territorial waters of Malaysia 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 recovering property lost, sunk or stranded;

(g) to supply water to shipping in the Port;

(h) to purchase or otherwise acquire or construct, and to maintain and operate, ferry vessels to carry passengers, vehicles and goods, and use the same for plying for hire; (i) to carry on the business of bunkerers and of suppliers of stores and materials to ships;

(j) to purchase or otherwise acquire or construct, and to maintain and, within the limits of the area vested in the Authority, operate such facilities including 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;

(k) to carry on the business of builders and repairers of ships and machinery;

(l) to purchase or otherwise acquire or construct, and to lay and maintain, moorings;

(m) to purchase or otherwise acquire or construct, and to maintain and operate, all means and appliances for berthing, loading and discharging of vessels;

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(n) to purchase or otherwise acquire or construct, and to maintain and moor, vessels and hulks for the storage and working of cargo and goods;

(o) to reclaim, excavate, enclose or raise any part of the area vested in the Authority;

(p) to clean, deepen or improve any part of the Port, and for any of such purposes to purchase or otherwise acquire or construct, and to maintain and operate, dredgers or other appliances;

(q) to erect or cause to be erected buildings on any part of the area vested in the Authority;

(r) to take such action as the Authority may think fit in relation to works without the limits of the area vested in it as are necessary for the protection of works belonging to it within the limits of the area vested in it; (s) to be an insurer of goods in its custody.

(t) (Deleted by Act A831).

(2A) The Authority may, with the approval of the Minister, grant a 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. (3) Subsection 3(1) of the \*Insurance Act 1963 [Act 89] shall not apply to the Authority in relation to its powers under paragraph (2) (s).

Power of Authority to enter into any arrangement for sharing of profits, etc.

5A. 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 venture 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]. \*NOTE--The Insurance Act 1963 [Act 89] has since been repealed by the Insurance Act 1996 [Act 553]?see Part A of the Schedule.

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Additional function of the Authority

5B. (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. Duties of Authority

6. In the discharge of its functions, the Authority shall-- (a) maintain, or provide for the maintenance of, adequate and efficient port services and facilities (including ferry services) at reasonable charges for all users of the Port, consistent with public interest;

(b) provide pilotage services within the limits of the Port and the approaches to the Port;

(c) provide such number of public landing-places as are in the opinion of the Authority sufficient;

(d) co-ordinate the activities in, and promote the improvement and development of, the Port; and

(e) do such acts and things as may be necessary towards the performance of the duties of the Authority mentioned in this section.

Powers of Minister in relation to Authority

7. (1) The Minister may, after consultation with the Authority, give to the Authority directions of a general character and not inconsistent with this Act as to the exercise and performance of Bintulu Port Authority 17

its functions and duties in relation to matters which appear to him to affect the interests of Malaysia and the Authority shall give effect to all such directions.

(2) In framing programmes of re-organization or development involving substantial capital outlay, the Authority shall act on guidelines laid down from time to time with the approval of the Minister.

#### Power of Authority as to property

8. (1) No acquisition or disposal of immovable property by the Authority, including an interest in the form of a lease of such property for a term exceeding three years or a mortgage of such property, shall be valid unless such acquisition, disposal, lease or mortgage has been made with the approval of the Minister in writing.

(2) The Authority shall cause any property purchased or otherwise acquired, vested by way of gift or otherwise, or disposed of to be valued at the date of its purchase or acquisition, vesting or disposal, and shall forthwith cause details of such valuation to be shown on its accounts.

(3) For the purposes of this Act, the Minister may, with the concurrence of the Minister of Finance, by order in the Gazette transfer to the Authority such movable and immovable property vested in or belonging to the Government as may be specified in the order, and any such property so transferred shall vest in the Authority without further assurance.

(4) Any transfer under subsection (3) shall be subject to such terms and conditions as the Minister may, with the concurrence of the Minister of Finance, specify and the order may include provision in respect of the rights, interests, debts, liabilities and obligations appertaining to such property which is to be transferred to and deemed to have been acquired or incurred by the Authority, as the case may be.

#### Acquisition of immovable property by Authority

9. When the Authority is unable to acquire by agreement any immovable property required for the purposes of this Act, proceedings may be taken by the Government for acquiring the same on behalf 18 Laws of Malaysia ACT 243

of the Authority in accordance with the provisions of the Federal Constitution relating to the acquisition of land for federal purposes.

## Disposal of land

9A. For the avoidance of doubt, where any interest in land is vested in the Federation for purposes of the Port, it shall be lawful for the Federation pursuant to Article 86 of the Constitution, to dispose of such interest in land to any person or body of persons for use by such person or body of persons for any federal purposes. Power of Authority to lease or grant licences in respect of foreshore

10. (1) The Authority may, for such rents or other payments, and periods, and subject to such covenants, conditions and restrictions as it thinks proper, lease or grant licences, under the hand of the Chairman, to any person to occupy or use any part of the foreshore which is vested in the Authority.

(2) Notwithstanding subsection 8(1), no lease or licence granted under subsection (1) for a period exceeding twelve months shall be valid unless the same has been made with the approval of the Minister in writing.

(3) The powers under subsections (1) and (2) shall not be exercised so as to cause any obstruction to navigation without first obtaining the approval of the Minister in writing.

## Port Consultative Committee

11. (1) For the purpose of advising the Authority, the Minister may appoint a Port Consultative Committee (referred to in this section as "the Committee") which shall consist of-- (a) the Chairman of the Authority as chairman of the Committee;

(b) the General Manager, where he has not been appointed to be the Chairman of the Authority; and

(c) such other persons as the Minister may determine. Bintulu Port Authority  
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(2) In appointing members 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 services. (3) The Authority may consult the Committee on any matter concerning the Port and shall, if the Committee has been appointed, consult it upon the following matters--

(a) any substantial alteration in the charges or scales of charges levied by



the Authority;

(b) any major scheme relating to the expansion or development of the Port; and

(c) any other matter upon which the Authority is required by the Minister to consult the Committee.

(4) The chairman of the Committee shall cause a copy of the minutes of its meetings to be transmitted to the Minister. (5) Subsections 4(3), (4) and (5) and the Schedule (except paragraphs 6, 7 and 9 thereof) shall mutatis mutandis apply to the Committee and its members as they apply to the Authority and its members.

#### Working capital of Authority

12. The Authority may be provided with such sums of money 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.

#### Finances and accounts of Authority

13. (1) The Authority shall keep proper and regular accounts and other records of moneys received and paid by the Authority and the several purposes for which such moneys have been received or paid, and of its 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, and the discharge of the functions, of the Authority properly chargeable to revenue;

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(c) interests on loans and repayments of moneys borrowed; and

(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 undertakings of the Authority.

(5) The Authority may open and maintain a current account with a bank approved by the Minister of Finance.

#### Power to borrow money

13A. 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.

#### Investment of moneys not immediately required to be expended, and contributions to charity

14. (1) 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 authorized by any written law for the investment of trust funds, or in such other investments or securities as may be approved by the Minister of Finance, or may be deposited in a bank or financial institution approved by him:

Provided that the Authority shall not invest moneys in securities issued or registered, or other property situated, outside Malaysia except with the approval in writing of the Minister of Finance to the making of that investment.

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(2) The Authority may, with the approval of the Minister, make financial contributions to its staff or to public or charitable objects. Inspection and audit of accounts

15. The accounts and records of the Authority shall at all times be open to the inspection of--

(a) any member of the Authority;

(b) the Auditor General or an auditor specially authorized by the Auditor General to inspect the accounts and records; (c) any other person specially authorized by the Minister to inspect the accounts and records.

Books of accounts and records to be kept at head office

16. The books of accounts and records of the Authority shall be kept at its head office but may be removed therefrom where authorized by any written law.

Statutory Bodies (Accounts and Annual Reports) Act 1980 to apply

17. The provisions of the Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240] shall apply in respect of the Authority. Authority to furnish Minister with certain returns and other reports and information

18. The Authority shall furnish to the Minister such financial and statistical returns and such other reports and information of its financial position, property, activities, proceedings, policy and proposed undertakings as the Minister may from time to time require.

Estimates of revenue and expenditure

19. (1) 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 22 Laws of Malaysia ACT 243

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.

(2) 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

20. (1) The Authority may at any time during the year for which estimates have been approved under section 19 cause supplementary estimates to be prepared and submitted to the Minister. (2) The provisions of section 19 shall mutatis mutandis apply to supplementary estimates as they apply to annual estimates of revenue and expenditure.

PART III

OFFICERS AND SERVANTS

Appointment of officers and servants

21. (1) The Authority may from time to time appoint and employ, at such remuneration and on such terms and conditions as it may think fit, such officers and servants (including a General Manager and Deputy General Manager) as may be necessary for the purposes of this Act:

Provided that the Authority shall not appoint any person to be the 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 General Manager, means the Authority consisting of the Chairman and the members appointed under paragraph 4(1)(c).

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#### Establishment of Port security force

22. (1) The Authority may, with the approval of the Minister, establish a security force for keeping order and security within the area 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 21(1).

(3) Notwithstanding any written law to the contrary, a member of the security force shall have the power to arrest without warrant any person found without lawful excuse within the area vested in, or in the possession or under the control of, the Authority. (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 24 shall unless expressly excluded therein apply to members of the security force established under this section.

#### Duties of General Manager

23. 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

24. (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 its officers and servants generally. (2) Without prejudice to the generality of subsection (1), the rules may provide--

(a) for retirement benefits to officers and servants of the Authority who retire or otherwise cease to hold office as such officers and servants; and

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(b) for the making of loans to officers and servants of the Authority for such purposes as may be approved by the Minister, having regard to the purposes for which persons in the employment of the Government are granted loans. (3) The following provisions shall apply to any rules made by virtue of paragraph (2) (a) and (2) (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, transferable or liable to be attached, sequestered or levied upon for or in respect of a debt or claim whatsoever, other than a debt due to the Government of Malaysia or of a State or 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 such rules, and may provide for the appointment of a new trustee or trustees of such moneys and for the investment thereof;

(d) if at the time of the death of a 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;

(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 the deceased person, shall be a discharge for any moneys payable on his death under such rules;

(f) no donation, contribution or interest paid under 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, but if such contributor is adjudicated a Bintulu Port Authority

bankrupt or is declared insolvent by judgment of the court, such donation or contribution or interest shall, subject to the provisions of 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 such rules and such deduction shall continue to be made notwithstanding the provisions of any written law to the contrary, and the portion of salary so deducted shall be deemed not to form part of his after-acquired property;

(h) any officer or servant of the Authority who is a contributor under such rules shall, if he is dismissed from service as such officer or servant for fraud, dishonesty or misconduct which involves pecuniary loss to the Authority, or retires or resigns from 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 as it thinks fit; an appeal shall lie to the Minister against any such forfeiture.

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

Public servants for purposes of Penal Code

25. All members, officers and servants of the Authority and all members of the Port Consultative Committee, the Pilotage Committee and a committee of the Authority shall be deemed to be public servants within the meaning of the Penal Code [Act 574]. Application of Public Authorities Protection Act 1948, and protection from personal liability

26. (1) The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceeding against the Authority, or against any member, officer, servant or agent thereof in respect of any act, neglect or default done or committed by him in that capacity.

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(2) No matter or thing done and no contract entered into by the Authority and no matter or thing done by a member, an officer, a servant or an agent of the Authority acting under the direction of the Authority shall, if the matter or thing was done or the contract entered into bona fide for the purposes of this

Act, subject such member, officer, servant or agent personally to any action, liability, claim or demand in respect thereof, and expenses incurred by the Authority or such member, officer, servant or agent in connection therewith shall be paid out of the funds of the Authority. PART IV

## CHARGES AND RECOVERY OF CHARGES

Authority may levy charges

27. (1) The Authority may levy charges in respect of services, works or facilities rendered, performed or provided in the exercise of its functions under this Act and for that purpose it shall with the approval of the Minister from time to time prescribe charges or scales of charges and impose penalties or interests for late payment of any 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 a ferry service maintained by the Authority;
  - (f) the use of a quay, wharf, dock, jetty, pier, landing-place, foreshore or other property vested in or under the control of the Authority;
  - (g) services rendered or material supplied to, or made use of by, a vessel, body corporate or an individual;
  - (h) the use of tugs, firefloats and launches belonging to or maintained by the Authority;
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- (i) water supplied by the Authority;
  - (j) the towing of, and rendering of assistance to, a 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 (1) any other matter in respect of which the Authority is empowered to levy 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).

(3) The Authority may, instead of levying the charges in accordance with the charges or scales of charges prescribed, enter into an 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 been prescribed pursuant to subsection (1), the Authority may levy any charges it thinks 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 in its discretion remit the whole or any part of the 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 and may, for the information of the public, exhibit such scales (either in whole or in part) at such places as the Authority deems fit.

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

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Submission of memorandum for any change in existing structure of charges

27A. (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 67 for the approval of the Minister. (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.

(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 Malay language and one in the English or Chinese language.

(4) The Authority shall as soon as practicable make by-laws in respect of the change in the existing structure of charges. Charges to become due and payable where request withdrawn without reasonable notice

28. Any charges prescribed under this Act for any services, works or facilities shall become due and payable as if such services, works or facilities had been rendered, performed or provided, if the request for the services, works or facilities was withdrawn or cancelled without reasonable notice thereof being given to the Authority.

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##### Recovery of charges in arrears

29. (1) The Authority shall in the case of charges which have not been paid in respect of 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 liens and claims, except claims for moneys payable to the Government. (3) Charges in respect of goods to be--

(a) landed;

(b) shipped; or

(c) removed from the premises of the Authority, shall be payable respectively--

(i) on the landing of the goods;

(ii) before the goods are shipped; or

(iii) on demand.

##### Recovery of pilotage dues

30. (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 (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. (3) The Authority may, if it thinks fit, remit the whole or any part of pilotage dues paid.

(4) 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. 30 Laws of Malaysia ACT 243

Power to sell goods remaining in custody

31. (1) Subject to this section and without prejudice to section 33, the Authority may, where any goods which have been placed in its custody are not removed therefrom within a period of twenty-one days from the time when such goods are so placed in custody, at the expiration of such period sell by public auction any or all of such goods as are still in its 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 power of sale of the goods 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 of Sarawak, 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.

(5) Notwithstanding subsection (4), the title of a bona fide purchaser shall not be invalidated by reason of the omission to give such notice, and the purchaser shall not be required to inquire whether notice has been given.

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(6) 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 has been given to the Authority before the day of the sale. (7) 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, into the general account of the Authority, and thereupon all rights to the same by that person shall be extinguished.

#### Power to compound or compromise claim or demand

32. 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.

#### Power to distrain for non-payment of charges

33. (1) Where the master of a vessel fails to pay any charges or part thereof payable on demand under this Act or any rules or by laws made thereunder, the Authority may distrain or arrest the vessel and the tackle, apparel, furniture or other article belonging to the vessel and detain the same until the charges are paid. (2) Where any part of the charges or the costs of the distress, arrest or detention of the vessel, tackle, apparel, furniture or other article remain 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 distrainted, 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 master of the vessel on demand.

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(3) Where the Authority has given to the officer of the Government whose duty it is to grant the port clearance of a vessel, a notice stating that an amount specified therein is due in respect of charges (leviable under this Act or any rules or by-laws made thereunder) against a vessel, the officer shall not grant any port clearance in respect of that vessel until the amount so leviable has been paid. (4) The provisions of 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 other law. PART V

## LIABILITY OF THE AUTHORITY

### Limitation of Authority's liability

34. (1) The Authority shall not where, without its actual fault or privity, any loss or damage, not being loss or damage provided for by this Part, is caused to a vessel, or to a train, vehicle, animals, goods or other things whatsoever on board a vessel, 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.

(2) For the purposes of this Part, the tonnage of vessels shall be ascertained from the register of such vessels which 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

35. The Authority shall not, without its actual fault or privity, be liable to damages--

(a) in respect of personal injury or death caused to any person; (b) 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.

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## Goods deposited for lighterage or shipment

36. 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, destruction of or damage to goods other than transshipment goods deposited with Authority

37. (1) The Authority and any person authorized by it shall, in respect of any 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 goods irrespective of whosoever pays or is to pay any charges or duties in respect of the goods.

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

(b) for damage 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 39.

(3) For the purposes of this section and of section 38, 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, 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.

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Loss or destruction of or damage to transshipment goods deposited with Authority

38. In respect of any transshipment goods delivered by a person to, or placed by a 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 39, 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.

Force majeure, etc.

39. Paragraph 37(2) (b) and section 38 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 the 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;

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(k) any inherent liability to 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

40. The limitation or 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.

## Exemption from liability for failure to run ferry boat as advertised

41. The Authority shall be exempt from all liability in respect of any loss or damage whether arising from the variation in the time of departure or arrival of any of its ferry boats or by reason of its failure to run any ferry boat as advertised or at all. Power of High Court to consolidate claims

42. 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 proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such rules 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.

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### Liability for loss under contract

43. (1) Notwithstanding this Part, the Authority shall, on application made to it by the owner of a vessel, enter into a contract with that 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 the contract and may, with the approval of the Minister, from time to time prescribe the rates to be levied:

Provided that the Authority may in its discretion refuse to enter into such contract unless the 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 VI

## PORT, WHARVES AND PREMISES

### Control of foreshores

44. The Authority shall have control of the use of 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 prescribe.

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

45. No goods or cargo shall be handled across or over any quay, wharf, dock, pier or other place without the written permission of the Authority or otherwise than in accordance with such conditions as the Authority may prescribe.

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### Construction of quays, wharves, etc.

46. (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 permission, may require the submission of plans of the proposed construction or alteration.

(2) Any person who acts in contravention of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit and if ordered so to do shall remove the construction or alteration at his own expense. Permit for conveyance of goods

47. (1) No vessel shall be used for the conveyance of goods or 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 vessel or more or to one person or more.

(3) Any person to whom a permit is granted 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 the permit in any specified period, and for this purpose the 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 the permit.

(5) The Authority may exempt from the requirements of this section any vessel or class of vessels of less than ten tons gross tonnage and it may also, without assigning any reason therefor, terminate the exemption.

(6) Nothing in this section shall be deemed to affect or modify the provisions of any written law relating to the licensing of boats for the conveyance of cargo, and no permit shall be granted under this section in respect of a vessel required to be licensed under those provisions unless that vessel has been duly licensed thereunder. 38 Laws of Malaysia ACT 243

## Appeal

48. Any person aggrieved by the refusal of the Authority to grant a permit under this Part, or by the cancellation or suspension of a 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

49. (1) The Minister may, notwithstanding anything in 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 the 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 a part, or for the landing, shipping or storage of goods thereon, therefrom or therein, shall be paid to the Authority.

## Licensed warehouse

50. (1) In respect of any of its licensed warehouses 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.

(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 shall at all times--

(a) be admitted to any part of a licensed warehouse; and (b) be permitted to inspect the books kept in connection therewith and the stock contained therein.

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### Power of Authority to order vessels to come alongside

51. The Authority may order any sea-going vessel within the Port to come alongside a suitable quay, wharf, jetty, pier or landing stage which is vested in or 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) the vessel has not commenced landing goods, cargo or passengers; or

(b) the 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 the vessel and of the shippers in respect of a particular quay, wharf, jetty, pier or landing-stage. Government vessels

52. The Minister may at any time require that a vessel belonging to or in the service of the Government of Malaysia or of a State be permitted to come alongside a 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.

## PART VII

### PILOTAGE

#### Declaration of pilotage district

53. (1) The Authority may from time to time by notification in the Gazette declare an area in the Port or the approaches to the Port to be a pilotage district and shall define therein the limits of the pilotage district.

(2) This Part shall apply to a pilotage district declared under this section.

Vessels of certain tonnage to be under pilotage

54. (1) The Authority may require such vessel or class of vessels as it may from time to time specify to be under pilotage while navigating in a pilotage district and the master or owner of every such vessel or every vessel of that class 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.

Authority to employ pilots

55. (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 that district issued under section 59. Power of Pilotage Committee to license employees of a licensed operator

55A. (1) Notwithstanding anything to the contrary in the 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.

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Vessel to be piloted by Authority pilot or a licensed person 55B. No vessel shall be piloted in a pilotage district by any person other than the Authority pilot or a person licensed under subsection 55A(1).

Appointment and functions of Pilotage Committee

56. The Authority shall with the approval of the Minister appoint a Pilotage

Committee for the purpose of--

- (a) holding examinations and issuing, on behalf of the Authority, licences to act as Authority pilots or as pilots employed by a licensed operator;
- (b) holding inquiries concerning the conduct of Authority pilots or persons licensed under subsection 55A(1) in the discharge of their duties as directed by the Authority, and making recommendations to the Authority;
- (c) investigating and advising on such matters as may be referred to the Pilotage Committee by the Authority; and (d) carrying out such other functions as are conferred on the Pilotage Committee by this Act.

#### Constitution of Pilotage Committee

57. (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 Pilotage Committee.

(2) The appointment of a member of the Pilotage Committee may be for any period not exceeding three years but the member shall be eligible for reappointment on completion of every such period.

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

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(4) The chairman of the Pilotage Committee shall preside at all its meetings:

Provided that in the absence of the chairman the members present shall choose one of their number to preside in his place. (5) If on any question to be determined there is an equality of votes, the chairman or member presiding shall have the casting vote in addition to his original vote.

(6) Members of the Pilotage Committee who are not officers or servants of the Authority may be paid out of the funds of the Authority such fees and allowances as the Authority may determine. (7) Paragraphs 1 and 10 of the Schedule shall mutatis mutandis apply to the Pilotage Committee and its members as they apply to the Authority and its members.

#### Rules in relation to Pilotage Committee

58. Subject to this Act, the Authority may make rules for the purpose of

regulating the meetings and proceedings of the Pilotage Committee.

Examination for and issue of licence to act as pilot

59. (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 (including physical fitness) and competency to act as an Authority pilot may, on behalf of the Authority, issue to him a licence to act as such and the licence may contain such conditions as the Pilotage Committee may impose. (2) Subject to this Part, every pilot holding immediately prior to the coming into force of this Part a licence to act as a pilot issued under any written law shall be deemed to be qualified for employment by the Authority as a pilot, and the Pilotage Committee may, on behalf of the Authority, issue to such pilot when employed by the Authority a licence to act as an Authority pilot in a pilotage district, subject to such conditions as the Pilotage Committee may impose.

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(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 general fitness (including physical fitness) and competency of any such pilot is necessary, present himself for further examination, and shall in every such case first deposit with the Pilotage Committee the licence issued by that Committee on behalf of the Authority to be returned or cancelled by the Committee on behalf of the Authority as the result of such test or examination.

(4) The Authority shall not continue to employ as a pilot any person whose licence to act as a pilot is cancelled pursuant to subsection (3).

(5) A licence issued under this section shall cease to be valid upon the termination of the pilot's employment with the Authority. Inquiries by Pilotage Committee

60. (1) The Pilotage Committee may, and when directed by the Authority shall, hold an inquiry into the conduct of an Authority pilot or a person licensed under subsection 55A(1) where it appears that he has been guilty of misconduct affecting his capability, or has failed in or neglected his duty, or has become incompetent to act, as such pilot.

(2) For the purposes of the inquiry, the Pilotage Committee may summon any person to attend any of its meeting 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 so to do;

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

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

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*two thousand ringgit.

Submission of Pilotage Committee's findings and  
recommendations to Authority

61. (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 a person licensed under subsection 55A(1) has been guilty of misconduct affecting his capability, or has failed in or neglected his duty, 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 the Authority pilot or person licensed under subsection 55A(1) or impose such other punishment as the Authority may think fit.

(3) Any Authority pilot or any person licensed under subsection 55A(1) who is aggrieved by a decision of the Authority made under subsection (2) may, within fourteen days from the date of such decision, appeal to the Minister whose decision thereon shall be final.

Liability of master or owner in case of vessel under pilotage

62. 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 be if pilotage were not compulsory.

\*NOTE--Previously "five hundred ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

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Limitation of Authority pilot's liability when bond is given

63. (1) 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 the 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 made under this Act.

(3) Any bond given 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 the pilot's liability and, upon payment by him of the amount to court, distribute the 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 claimant who has not submitted his claim within a certain time, and as to requiring security from the pilot and as to payment of any costs as the court thinks fit.

Pilotage Committee and Authority not liable for loss or damage occasioned by pilot

64. (1) The issue of a licence to a pilot by the Pilotage Committee on behalf of the Authority under subsection 55A(1) or 59(1) shall not impose liability

on the Pilotage Committee for any loss or damage occasioned by an act, omission or default of such pilot. 46 Laws of Malaysia ACT 243

(2) An Authority pilot whilst engaged in an act of pilotage 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

65. 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 rules or by-laws made thereunder.

#### By-laws regulating pilotage and conduct of pilots

66. (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 matters relating to their duties.

(2) The Authority may, in making by-laws under this section, provide that the contravention of 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.

### PART VIIA

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

##### AUTHORITY TO OTHER PORTS

##### Power of Minister to extend Authority's functions to other ports

66A. (1) The Minister may, by order published in the Gazette, extend the functions, powers, duties and jurisdiction of the Authority to other ports.

(2) An order under subsection (1) may provide that the Authority shall, in carrying out the administration of the port to which its control is extended, include among its members such other person or persons as may be specified in the order either by name or by office.

\*NOTE--Previously "two thousand ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].



(3) Where an order is made under subsection (1), the Authority shall be deemed for all purposes to be the port authority in respect of the port specified in the order as if it were 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.

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

66B. The 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 Authority to carry out its functions

66C. An order of the Minister under section 66A may contain all such provisions as the Minister may deem necessary to enable the Authority to carry out its functions in relation to the port to which they are extended.

#### Interpretation

66D. For the purposes of this Part, "port" means a Federal port or a place declared to be a Federal port by Federal law. PART VIII

#### BY-LAWS

#### By-laws

67. (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;

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(b) regulating the manner in which 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 rates and 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 a vessel operated or maintained by the Authority or on any wharf, quay or other part of the Port);

(h) regulating the conveyance, loading and unloading of dangerous goods;

(i) regulating the issue and transfer of licences and prescribing the fees payable in relation thereto;

(ia) prescribing the procedure in respect of any tender or contract to be followed by the Authority or any person acting on behalf of the Authority;

(ib) controlling the facilities for the laying up of vessels and prescribing the fees payable in respect thereof;

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

(k) otherwise carrying out the provisions of this Act. Bintulu Port Authority  
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(2) Any by-laws 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 a ship or boat or on any premises;

(e) prohibit, in cases where the loading or unloading of dangerous goods appears to be especially 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 a ship, boat or vehicle conveying such goods;

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

(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 that the contravention of any by-law shall be an offence and may prescribe as penalties--

(a) a fine not exceeding one thousand ringgit; and (b) a further fine not exceeding two hundred and fifty ringgit for every day during which the offence is continued. (4) The Authority may cause any by-laws made under this section to be printed 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.

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## PART IX

### OFFENCES, DAMAGES, PENALTIES AND PROCEDURES

Refusal or neglect to appear before Auditor General or to produce books for inspection

68. (1) For the purposes of audit and examination of accounts under this Act, the Auditor General or an auditor authorized by the Auditor General 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 who fails to comply with any requirement made under subsection (1) or fails to produce any book of account to any person entitled to inspect the same shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred ringgit.

#### Penalty for evading rates or charges

69. The master or owner of a vessel, or the 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 rates or charges leviable under this Act, shall pay to the Authority by way of damages in addition to such rates or charges, a sum equal to the rates or charges so eluded or evaded, or attempted to be eluded or evaded, or neglected or omitted to be paid, and he shall also be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*two thousand ringgit.

\*NOTE--Previously "five hundred ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

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

70. (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 by the vessel, a full and accurate list of the goods, containing all particulars as to--

(a) the gross weight or 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 the goods.

(2) Any owner, master or agent who omits or fails to comply with subsection (1) shall be guilty of an offence and shall, on conviction, 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 the vessel from the bills of lading and freight list thereof, and

shall sign and leave at the office of the Authority within fourteen days next after the vessel has cleared from the Port a correct transcript of the list or manifest, distinguishing therein the names of the several shippers of the goods according to the bills of lading. (4) Any owner, charterer, consignor, agent or other person who fails to comply with subsection (3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*two thousand ringgit.

Penalties to extend as well to principals as servants

71. All penalties imposed by section 69 or 70 shall extend-- (a) to the principals in any house of business--

(i) by whom or on whose account, or for whose profitor advantage, such payment has been eluded, evaded,

neglected or omitted to be made; or

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

left; and

\*NOTE--Previously "five hundred ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

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

Penalty for disobeying orders of wharf superintendent

72. (1) If the master of a vessel, without the permission of the Authority, brings or causes his vessel to be placed alongside any wharf or dock entrance, or acts contrary to the directions or neglects to obey the orders of the wharf superintendent in relation to the time and manner of coming into or going out of any dock, or of coming alongside any wharf, or as to the berth allotted for his vessel to occupy, or disobeys an order to remove his vessel from the berth or to alter the same, the master or owner of the vessel shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

(2) Where the master of a 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 the vessel by the wharf superintendent directing that the vessel leave the wharf, the master or the owner of the vessel shall, in addition to the 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 the vessel remains at the wharf after the time for departure required by the notice has expired.

Penalty for hindrances or obstructions to any member, officer or servant of the Authority

72A. 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 and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

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

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

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(2) The master or owner of a vessel who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*two thousand ringgit.

Powers of General Manager or authorized person to order scuttling or removal of vessel in case of fire

74. (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 on board the vessel with such assistance and persons as to him seems fit and may give such orders as seem to him necessary for scuttling the vessel or for removing that vessel or any other vessel to such place as to him seems proper to prevent danger to that vessel or any other vessel, and he may take such other measures that appear to him expedient for the protection of life or property.

(2) If orders given pursuant to subsection (1) are not forthwith carried out 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 owner of the vessel concerned as if it were a fine and in the manner provided by the Criminal Procedure Code [Act 593] or as a civil debt.

#### Boarding of vessel when commission of offence suspected

75. (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 rules or by-laws made thereunder has been or is about to be committed on or in the vessel or whenever he considers it necessary so to do in the discharge of his duties under this Act or any rules or by-laws made thereunder. (1A) 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.

\*NOTE--Previously "one thousand ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

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(2) The master of such vessel who, without lawful excuse, refuses to allow the boarding of such vessel pursuant to subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*one thousand ringgit.

#### Penalties as to employment of pilot other than Authority pilot

76. (1) Any person who, not being an Authority pilot or a person licensed under subsection 55A(1), engages in an act of pilotage or attempts to obtain employment as a pilot of a vessel entering or being within a pilotage district shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*\*two thousand ringgit.

(2) The master or owner of a vessel entering or being within a pilotage district who knowingly employs as pilot a person who is not an Authority pilot or a person licensed under subsection 55A(1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*\*two thousand ringgit. (3) For the purposes of this section, an Authority pilot acting

beyond the limits of a pilotage district for which he is licensed or in contravention of any condition imposed in his licence shall be deemed not to be an Authority pilot.

(4) Any person may, without subjecting himself or his employer to a penalty, act as the pilot of a vessel entering or leaving a pilotage district when the 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.

#### Receiving or offering improper rates of pilotage

77. (1) An Authority pilot or a person licensed under subsection 55A(1) shall not demand or receive, and a master, owner or agent shall not offer or pay to the pilot any rate in respect of pilotage services other than the prescribed rate.

(2) An Authority pilot or a person licensed under subsection 55A(1), a master, an owner or agent who acts in contravention of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*\*\*five hundred ringgit and the licence of the pilot may be suspended or cancelled by the Authority. \*NOTE--Previously "two hundred ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

\*\*NOTE--Previously "one thousand ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

\*\*\*NOTE--Previously "one hundred ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

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#### Offences by Authority pilot

78. (1) An Authority pilot, or any person licensed under subsection 55A(1) who--

(a) is in any way directly or indirectly concerned in any corrupt practice 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 a



vessel within the limits of the pilotage district for which he is licensed upon being required so to do by an officer or servant 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 and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

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

(3) An 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 person licensed under subsection 55A(1) who commits an offence under this section, or procures, aids, abets or connives at the commission of any such offence shall, on conviction, be liable to suspension or revocation of the licence. 56 Laws of Malaysia ACT 243

Penalty on pilot endangering ship, life or limb

79. An Authority pilot or a person licensed under subsection 55A(1) who, when engaged in the pilotage of a vessel, by wilful breach of duty or by neglect or by reason of drunkenness— (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 the life of any person belonging to or being on board the vessel from danger to life or limb,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding two years or both, and shall also be liable on conviction to suspension or dismissal by the Authority: Provided that no person licensed under subsection 55A(1) shall be dismissed by the Authority.

Failure to employ Authority pilot or licensed pilot under certain circumstances

80. (1) The master, owner or agent of a vessel navigating in circumstances in which the vessel is required by the Authority under section 54 to be under pilotage who does not employ an Authority pilot or a person licensed under subsection 55A(1) for such purpose shall be guilty of an offence and shall, on conviction, be liable 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.

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Penalty for false information on draught

81. The 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 the vessel to an officer of the Authority whose duty it is to ascertain the same, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*two thousand ringgit. Penalty for giving false statement in return

82. Any person who makes a statement which is false in any material particular in a return, claim, application, declaration or other document which is required or authorized to be made under this Act or any rules or by-laws made thereunder, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \*\*five thousand ringgit.

Penalty for throwing ballast, etc., into dock

83. Any person who throws or empties into a dock any ballast, rubbish, dust, ashes, stones or other refuse or things, or does an act to prejudice any of the works of the Authority, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

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

83A. (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.

\*NOTE--Previously "one thousand ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

\*\*NOTE--Previously "one thousand ringgit"--see Bintulu Port Authority (Amendment) Act 1992 [Act A831].

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(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. General penalty

84. Any person who contravenes any of the provisions of this Act or of any rules or by-laws made thereunder shall be guilty of an offence and shall, on conviction, if no penalty is provided therefor, be liable to a fine not exceeding five hundred ringgit. Penalty for contravening section 44 or 45

84A. Any person who contravenes section 44 or 45 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

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

84B. Where an offence under this Act or under any of the 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 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 rates or charges not waived by subsequent acceptance of payment

85. The tender to, or acceptance by or on behalf of, the Authority of the

payment of any rate or charge, which payment has previously been evaded or not made, shall not release or discharge any person from any liability for damages or penalty provided under this Act, consequent upon such evasion or non-payment.

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Recovery of damages for injury to property of Authority

86. (1) Where damage is caused to a gate, bridge, pier, jetty, quay, wharf, warehouse, shed, graving dock, graving block, building or other work belonging to the Authority by a vessel or by any of the persons belonging to or employed about a vessel, an amount to make good the damage may be recovered from the master or owner of the vessel.

(2) For the purposes of subsection (1), the Authority may detain the vessel until--

(a) the amount to make good the damage has been paid; (b) a deposit equal in amount to the claim or demand made by the Authority for the estimated amount to make good the damage has been made by the master or owner of the vessel; or

(c) security is given for the payment of the entire amount to make good the damage.

(3) Where a deposit has been made, the Authority shall receive and retain the deposit until the extent of and the amount to make good such damage has been ascertained by the Authority and paid to it by such master or owner.

(4) Every deposit made under subsection (2) 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 next after the deposit is made.

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

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

(b) the amount to make good the damage done by the vessel has been sooner paid,

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

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

(7) Notwithstanding any written law to the contrary, service of any document or legal process on the person authorized to act under subsection (6) shall be deemed good service on such master or owner for all purposes.

Offence may be tried by Magistrate's Court

87. Any offence under this Act or any rules or by-laws made thereunder may be tried by a Magistrate's Court of the First Class and, notwithstanding the provisions of any written law to the contrary, such Magistrate may impose the full penalty provided in respect of such offence.

Distress in the event of failure to pay damages or costs

88. (1) The Authority shall, in the event that any damages or costs awarded to it 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 a 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 the warrant, unless the person gives security by way of recognisance or otherwise for his appearance before the court on the day appointed for the return. (3) If it appears to the court by the admission of the person concerned or otherwise that no sufficient distress can be had within its jurisdiction for the purpose of recovering the damages or costs awarded to the Authority under this section, the court shall commit the offender to prison for a term not exceeding six months unless the damages or costs are sooner paid and satisfied. Bintulu Port Authority 61

Limitation of period of prosecution

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

89A. (1) The Minister may, by order to be published in the Gazette, prescribe any offence against the provisions of this Act or of any 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 the provisions of this Act or of any rules or by-laws made thereunder.

#### Service on company of summons

90. (1) It shall be sufficient in any summons issued by a Magistrate's Court under this Act or any rules or by-laws made thereunder, against a firm or company, to direct that the summons be served on the firm or company, or an officer or manager thereof. (2) Service of the summons at the usual place of business of the firm or company shall be deemed to be sufficient service thereof. Conduct of prosecution

91. Without prejudice to the provisions of any other written law, any prosecution in respect of an offence under this Act or any rules or by-laws made thereunder may be conducted by an officer of the Authority authorized in writing by the Chairman in that behalf.

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#### PART IXA

##### SPECIAL POWERS

##### Special powers in emergency

91A. (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.

(3) Where the Government takes possession of any port service or facility under paragraph (1) (a), adequate compensation shall be paid.

## PART X

### TRANSFER, TRANSITIONAL AND GENERAL

Transfer of responsibility, etc., from Federal Government to Authority

92. (1) Upon the coming into force of this section, the responsibility of the Federal Government under the Act and all movable and immovable property and other assets, rights, powers, interests and privileges acquired by, accruing to or vested in the Federal Government as a result of its exercising its powers and discharging its responsibility and duties under the Act shall be transferred to and vest in the Authority without further assurance. Bintulu Port Authority 63

(2) Upon such transfer, such of the debts, liabilities and obligations incurred by the Federal Government under the Act as the Minister may, with the concurrence of the Minister of Finance, specify by order in the Gazette shall be transferred to and be deemed to have been incurred by the Authority.

Minister may appoint persons on temporary basis for purposes of this Act

93. (1) Notwithstanding anything to the contrary in this Act, where the Authority has not been established and its officers and servants not yet appointed and employed, the Minister may, in the interests of the Port, appoint on a temporary basis such persons by such designations as he may determine to carry out such functions and duties as may be entrusted to them for the purposes of this Act, subject to his direction and control.

(2) Such persons may be engaged or employed on such terms and conditions as the Minister may specify and they shall cease to be so engaged or employed on the establishment of the Authority but this shall be without prejudice to their being considered for subsequent appointment and employment as officers and servants of the Authority under section 21.

## SCHEDULE

[Subsection 4(6)]

Persons disqualified for being appointed members of Authority

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 one year or more.

Member to hold office for one year

2. (1) A member (other than the Chairman and the General Manager) of the Authority shall, unless he sooner resigns his office or his appointment is sooner revoked, hold office for one year and shall be eligible for re-appointment. 64 Laws of Malaysia ACT 243

(2) A member of the Authority shall be deemed to have vacated his office if he is absent from Malaysia for a period of more than three months without the prior approval in writing of the Minister.

Chairman and three other members to form quorum of Authority

3. (1) The Chairman, or any member presiding in the absence of the Chairman, and three other members shall form a quorum at a meeting of the Authority. (2) In the absence of the Chairman the temporary Chairman and, in his absence, the Deputy Chairman shall preside at a meeting of the Authority and, in the absence of all three of them, the members present shall choose one of their number to preside and such member may exercise all the powers of the Chairman in respect of that meeting.

Chairman to have casting vote

4. (1) If on any question to be determined there is an equality of votes, the Chairman shall have the casting vote in addition to his original vote. (2) Where the Chairman is also the General Manager, he shall have no vote in his capacity as the General Manager.

Authority to determine its procedure

5. Subject to this Act, the Authority shall determine its procedure. Authority may appoint committees

6. (1) The Authority may appoint such committees of its members, with or without other persons, as it may determine.



(2) Any committee so appointed shall conform to instructions that may from time to time be given to it by the Authority, and the Authority may at any time discontinue or alter the constitution of such committee. (3) Subject to this Act and to the direction of the Authority, the quorum and procedure of a committee shall be determined by the committee. Delegation

7. Subject to its direction and control, the Authority may delegate the exercise of any of its functions and powers under this Act to any of its members or officers or to any of its committees consisting of such number of persons as it shall think fit.

#### Common seal of Authority

8. (1) The common seal of the Authority shall bear such impression as the Authority may approve and such seal may from time to time be broken, changed, altered or made anew by the Authority as it may think fit. Bintulu Port Authority 65

(2) Until a seal is approved by the Authority a stamp bearing the description "Bintulu Port Authority" may be used and shall be deemed to be the common seal.

(3) The common seal or the stamp under subparagraph (2) shall be kept in the custody of the Chairman and shall be authenticated by him and an officer authorized by the Authority in writing to act in that behalf, and all deeds, documents and other instruments purporting to be sealed with the seal or stamp so authenticated shall until the contrary is proved be deemed to have been validly executed:

Provided that a document or an instrument which if executed by a person not being a body corporate would not be required to be under seal may in like manner be executed by the Authority; and such document or instrument may be executed on behalf of the Authority by any of its officers or servants generally or specially authorized in writing to so act. (4) The seal of the Authority shall be officially and judicially noticed. Allowances to members

9. There may be paid to such members of the Authority out of its funds such allowances including travelling and subsistence allowances as the Minister may from time to time determine.

#### Declaration of share or interest and disqualification

10. (1) A member of the Authority or of a committee who has or acquires, directly or indirectly by himself, his partner or agent-- (a) any share or

interest--

(i) in a contract or an arrangement made with the Authority; (ii) in any work done for the Authority; or

(iii) in a company, firm or an undertaking with which the Authority proposes to enter into a contract or an agreement; or (b) any beneficial interest in immovable property proposed to be purchased or otherwise acquired, or leased or otherwise dealt with, by the Authority, shall declare the nature and extent of his share or interest to the Authority or committee, as the case may be.

(2) The declaration required to be made by a member under sub-paragraph (1) shall be made at the meeting of the Authority or committee at which any question relating to such contract, arrangement, work, purchase or other acquisition or lease or other dealing is first taken into consideration or at the earliest opportunity after the acquisition of such share or interest. 66 Laws of Malaysia ACT 243

(3) For the purposes of this paragraph, a notice given to the other members by a member to the effect that he has such share or interest as is specified in subparagraph (1) and is to be regarded as interested in any such contract, arrangement, work, purchase or other acquisition, or lease or other dealing which may, after the date of the notice, be made with, or be required to be carried out by, the company, firm or undertaking in question shall be deemed to be sufficient declaration of interest in relation thereto: Provided that such notice shall be of no effect unless it is given at a meeting of the Authority or committee or the member concerned takes reasonable steps to ensure that it is brought up and read at the next meeting of the Authority or committee after it is given.

(4) Every declaration made in pursuance of this paragraph shall be recorded in the minutes of the meeting at which it is made or read and shall have no effect until it is so recorded.

(5) A member shall not vote upon any resolution or question relating to any such contract, arrangement, work, purchase or other acquisition, or lease or other dealing in which he has any share or interest, whether or not he has declared the same, nor shall he take part in any deliberation (except on the invitation of the Authority or committee) or decision relating thereto or to any matter incidental thereto, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting for the purposes of such resolution or question.

(6) A member shall not be deemed to have a share or an interest under this paragraph by reason only of his being a shareholder in the company with which it is proposed that the Authority should enter into a contract or an

arrangement unless he has a controlling interest in that company. (7) A member who contravenes any of the provisions of this paragraph shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or both.

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LIST OF AMENDMENTS

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Act A680 Bintulu Port Authority 28-06-1991

(Amendment) Act 1987

Act 422 Ports (Privatization) Act 1990 02-04-1990 Act A831 Bintulu Port Authority 15-11-1992

(Amendment) Act 1992

Act A937 Bintulu Port Authority 10-11-1995

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2 Act A831 15-11-1992

5 Act A680 28-06-1991

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83A Act A831 15-11-1992

84A Act A831 15-11-1992

84B Act A831 15-11-1992

89A Act A831 15-11-1992

91A Act A680 28-06-1991

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KUALA LUMPUR

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