

PORTS AND HARBOURS (TOWAGE) REGULATIONS 2008

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

Citation and commencement

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

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

Interpretation

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

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

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

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

“port” means a port declared or deemed to be a port under section 6 of the Enactment;

“towage” means any operation by tugs in connection with the holding, pushing, moving, or attending for that purpose, of any vessel.

Towage

3. (1) No vessel or other floating object requiring the assistance of tugs for the purpose of approaching, leaving or operating within a port shall make use of any towage or other assistance other than that provided by the Department.

(2) Any assistance for tug services other than those provided by the Department shall be with the written permission of the Director.

Compulsory requirement of tugs

4. All vessels berthing or unberthing at any port limits as specified in the Ports and Harbours (Ports, Harbours and Dues) Regulations 2008 or to any single buoy mooring shall be required to use such number of tugs as the Department may decide.

Contracting out towage services

5. The Director may contract out towage services within the compulsory pilotage areas.

Registration of shipping agent

6. Any corporation or agent engaged in towage services shall be required to register with the Department upon paying the fees as prescribed under the Ports and Harbours (Fees) Regulations 2008.

Terms and conditions of towage

7. (1) Towage of and other assistance to vessels and object within the compulsory pilotage areas shall only be undertaken by the Department on the following terms and conditions:

- (a) the Department shall not, without its actual fault or privity, be liable to the ship owner for any loss or damage which the ship owner may suffer or incur during the course of or in connection with the towage or other assistance;
- (b) the ship owner shall bear and be responsible for any and for all such loss or damage and shall indemnify the Department in respect thereof if any claim be preferred against the Department on that account;
- (c) the Department may, at any time, whether before or after the commencement of towage or other assistance as aforesaid, substitute one tug for another and may tow or otherwise assist more than one vessel at a time;

- (d) the Director shall be at liberty to employ a tug or tugs belonging to other tug owners for the whole or any part of the towage or other assistance;
- (e) in the event of the Department employing a tug belonging to other tug owners, for the whole or any part of the towage or assistance, the ship owners' responsibility and liability are towards the Department. On no account, shall the ship owners institute any legal action against the tug owners unless permitted in writing by the Department;
- (f) no servant or agent of the Department who may be employed or engaged in or about or in connection with towage or other assistance whether as a master or member of the crew of a tug or in any capacity shall be personally liable to any ship owner for any act, omission, default or negligence whether in breach of a statutory duty or otherwise or for the consequences thereof;
- (g) the ship owner shall not be entitled to bring any suit against any such servant or agent of the Department arising out of or in connection with any towage or assistance rendered;
- (h) the Department shall not be accountable for any delay, stoppage or slackness of the speed of the tugs howsoever occasioned for whatever purposes;
- (i) the Department shall not be responsible for any damage to vessel or craft occasioned during towage operations from any cause whatsoever including defects or imperfections of the tug, its machinery or towing gear, but not including negligence at any time of the Department and its employees; and
- (j) the ship owner shall make good any loss or damage to any of the Department's properties howsoever incurred in the course of towage operations.

(2) The terms and exceptions in this regulation shall remain in force at all times notwithstanding any deviation or interruption or failure in the performance of the towage or other assistance and whether or not there has been substitution of tugs.

(3) Nothing in this regulation shall preclude the Department from claiming or receiving any salvage award or other payment in respect of towage or other assistance rendered.

Tug charges

8. Every owner, agent and the master of a ship engaging a towage shall be liable to pay the tug charges as prescribed under the Ports and Harbours (Fees) Regulations 2008, failing which the Director may take appropriate action which he deems fit.

Exemption

9. (1) Subject to the provision of these Regulations, compulsory towage shall not apply to vessels belonging to the Government of the State of Sabah.

(2) The Minister may, by notification in the *Gazette*, exempt any vessels or any description or classes of vessels from the requirement of compulsory towage.

Penalty

10. Any person or corporation who contravenes any of the provisions under these Regulations commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or for a term of imprisonment not exceeding two years or to both.

Made this 24 November 2008.

DATUK RAYMOND TAN SHU KIAH,
Minister of Infrastructure Development.