

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

19TH NOVEMBER, 2002.

No. 5 of 2002

An Enactment to provide for the control and regulation of traffic by water in ports and harbours and on rivers wholly within Sabah and in the foreshores and shipping under fifteen registered tons, including the carriage of passengers and goods by such shipping and for matters connected therewith and incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

Short title and commencement.

1. This Enactment may be cited as the Ports and Harbours Enactment 2002 and shall come into force on such date as the Minister may by notifications in the *Gazette*, appoint.
[c.i.f. 01.03.2004]

Interpretation.

2. In this Enactment –

“authorized officer” means any person authorised by the Director, either generally or in a particular capacity, to exercise powers under this Enactment;

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

“harbours” includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter, or ship and unship goods or passenger;

“master” includes every person, except a pilot, having for the time being command, control or charge of any ship or lawfully acting as the master thereof;

“Minister” means the Minister for the time being charged with the responsibility for ports and harbours;

“owner” in relation to a ship includes a charterer and operator of the ship and agent of the owner;

“Passenger” means any person carried in a ship, other than

- (a) the master and the member of the crew or other person employed or engaged in any capacity on board the ship; or
- (b) a child under one year of age.

“passenger ship” means a ship which carries more than twelve passengers;

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

“public jetties” means jetties vested under the Ports and Harbour Department.

“ship” includes every description of vessel used in navigation; and

“vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a mean of transportation on water.

ADMINISTRATION

Application.

3. Subject to the provision of Sabah Ports Authority Enactment 1981, this Enactment is applicable throughout the State of Sabah.

Appointment of Officers.

4. (1) There shall be a State Director of Ports and Harbours who shall be appointed by the State Public Service Commission and the Director shall be responsible

–

- (a) in administering this Enactment and any regulations made thereunder; and
- (b) to exercise such powers, to perform such duties and to carry out such functions as may be conferred upon the Director by this Enactment and any regulations made thereunder.

(2) There shall be such number of other officers as may be necessary or expedient for the due administration of this Enactment appointed by the State Public Service Commission.

Duties and Functions of Director.

5. The Director shall be generally responsible for the carrying into effect the provisions of this Enactment and in particular but without derogating from the generality of this provision his duties and functions shall include –

- (a) to control and regulate traffic by water in ports and harbours or on rivers and in the foreshores within the limits of Sabah;
- (b) to control and regulate shipping under fifteen net registered tons, including the carriage of passengers and goods by such shipping within the limits of Sabah;
- (c) to control and regulate ports and harbours other than those declared as federal ports under the federal law;
- (d) to provide beacons, mooring buoys and other navigation aids for the guidance of vessels in the ports and harbours and on the rivers for the improvement of traffic system in Ports and Harbours and riverine;
- (e) to provide facilities such as State Government wharves, public jetties and jetties used exclusively for barter trade, passenger landing terminals, and the maintenance thereof;
- (f) to control laid-up anchorage;
- (g) to make recommendations for the safety of vessels plying in ports and harbours and on rivers and the prevention of collisions,

- (h) to define and establish anchorage areas for vessels in ports, harbours or on rivers wherever it is manifest to the Director that the commercial interest requires such anchorage areas for safe navigation;
- (i) to license ship under 15 net registered tonnage (NRT);
- (j) to control pilotage activities in ports and harbours and on rivers; and
- (k) to do all things necessary for carrying out any of the purposes of this Enactment which the Director is authorized to carry out or for any purposes not specifically provided for this Enactment.

PORTS

A declaration of ports.

6. (1) This Enactment shall apply to any ports declared by the Minister under this Enactment and shall not apply to any port which is declared to be Federal Ports by or under the Federal Laws.

(2) The Minister may declare the boundary lines or erect signs to indicate the limits of the navigable waters of a port.

(3) The Minister may, by order published in the *Gazette*, repeal the declaration of a port made or deemed to have been made under this Enactment.

Obstruction of ports.

7. (1) Where an Authorized Officer is of the opinion that a ship or goods left or abandoned within the port area, impede, interfere with or render difficult or unsafe the use of that area, the Authorized Officer may direct the person who appears as to be in charge of the ship or goods to remove the ship or goods to a place that the Authorized Officer considers suitable within or outside the area.

(2) If a Person fails to remove a ship or goods as directed by an Authorized Officer under subsection (1) or if no person appears to be in charge of the ship or goods, the Authorized Officer may detain the ship or goods and remove them to a place that the Authorized Officer considers suitable, and the costs of the detention and removal are recoverable as though it is a debt owed due to the Government.

(3) Notwithstanding the above provision, any goods not claimed within 21 days, shall be sold by public auction or where goods are perishable in nature, the Director shall dispose off the goods in a manner, he deems fit. And the proceeds of the sale shall be deposited with the State Consolidated Fund.

SABAH LICENSED SHIP

Issuance of license.

8. (1) All ships under 15 net registered tonnage shall be licensed under this Enactment.

(2) Any person who uses a ship or causes or permits a ship to be used without a licence issued under this Enactment or for a purpose other than the purpose for which it was licensed or contrary to the conditions, if any, of such licence shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM25,000.00 or to imprisonment for a term not exceeding one year or to both.

Exemption.

9. (1) The provisions of this Enactment shall not apply –

- (a) any ship (not being a fishing vessel) which is duly registered in accordance with the law of any country outside Malaysia;
- (b) a ship's life boat; and
- (c) any class or description of ship under 15 net registered tonnage specified by the Director published in the *Gazette*.

GENERAL

Power to prosecute.

10. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code may conduct prosecutions for offences under this Enactment or the regulations made thereunder.

Offence and fine.

11. A person or a corporation who contravenes a provision of this Enactment where the Enactment or the regulation does not provide the penalty thereof, if found guilty, shall be liable to a fine not exceeding RM500,000.00.

Separate offence.

12. For the purpose of this Enactment, for every single day the person fails to comply with the requirement of this Enactment, it shall be construed as a separate offence.

Compounding of offences.

13. An offence committed under this Enactment can be compounded by the Director. The compound shall be a minimum of RM30.00 and not exceeding RM1,000.00.

Miscellaneous prohibitions.

14. (1) It shall not be lawful –
- (a) to construct any structure in any port area or otherwise which may affect the traffic and the safety of the navigation; or
 - (b) to do activities such as hydrographic survey, dredging and reclamations or any activities in any designated area, foreshore, port or harbour to which this Enactment applies which will impede the traffic safety of navigation;
 - (c) to tie up or anchor any vessel or other craft in any port or river to which this Enactment applies which is likely to prevent or obstruct the passage of other vessels or craft; or
 - (d) to permit or cause to be sunk any vessel or other craft in any port and harbour or river; or
 - (e) to dump the carcass of any animal or bird, dredging materials, earth, garbage and any other refuse materials into any port, harbour or river to which this Enactment applies which may affect the traffic and the safety of the navigation.

(2) Any person who contravenes subsection (1) shall be guilty of an offence, and shall, on conviction, be liable to a fine not exceeding RM30,000.00 or to imprisonment for a term not exceeding two years or to both.

(3) If as a result of the offence committed, remedial works have to be undertaken to ensure safety for navigation, the Director shall direct the offender to do the remedial works. Failing which the cost of remedial works shall be recovered as though it is a debt owed to the Government.

Regulations.

15. (1) The Minister may, make regulations –
- (a) to regulate the speed of vessels between any definite points or in any defined port and harbour or river;
 - (b) to regulate and control pilotage within the waters in ports and harbours and rivers;
 - (c) to regulate and control detention of ships within the waters in ports and harbours;
 - (d) to regulate the navigation, movement and anchorage of vessels in any ports, harbours and rivers;
 - (e) to regulate traffic and obstruction in ports and harbours and any river;
 - (f) to prevent erosion and damage to foreshores and river banks caused by marine craft wash;
 - (g) to prevent collision involving vessels in ports, harbours and rivers;
 - (h) to prohibit the use of certain rivers or water-courses by vessels having more than a certain draught;
 - (i) to restrict and control any class or description of vessels from operating in certain rivers or water-courses and to restrict the area within which any class or description of vessel may ply in the river or water-course;

- (j) to regulate the usage of navigational lights to be displayed by vessels at night;
- (k) to regulate the manner in which vessels shall be loaded and the precautions to be taken for ensuring the safety of passengers;
- (l) to regulate the conditions subject to which, and the times at which, goods or passengers may be loaded or taken into or out from vessels;
- (m) to provide for the precedence to be observed as between traffic proceedings in the same direction or in opposite direction or when crossing in a river;
- (n) to regulate for the conduct of passengers boarding, travelling in or alighting from vessels and of intending passengers waiting to board a vessel;
- (o) to regulate landing places, wharves, jetties or ports, and to prohibit the use of any landing place, wharf, jetty or port not so prescribed;
- (p) to regulate the towing or drawing of vessels by other vessels and the manner of attachment;
- (q) to fix the maximum fares that may be charged for passengers or freight;
- (r) to regulate for the establishment of an inquiry committee to investigate accidents or casualties occurring to vessels in any river or watercourse;
- (s) to prescribe forms;
- (t) to fix fees;
- (u) to regulate a Riverine Traffic Code;
- (v) to regulate any matter which this Enactment is required to be regulated;
- (w) generally for the purpose of protecting and improving the navigability of ports, harbours, waters, rivers or watercourses;

- (x) to provide for the offences under this Enactment or regulations made thereunder which may be compounded, the persons who may compound, the limit of the sum of money to be collected for compounding such offences and the procedure and forms to be complied when compounding;
- (y) to regulate licensing ships under 15 net registered tonnage and other matters connect therewith; and
- (z) such other purposes which may be considered to be necessary for carrying out the provisions of this Enactment.

(2) Until the Minister makes such regulations relating to the control of traffic on water in ports, harbours or on rivers and in the foreshores within the State and other matters connected therewith have been made under subsection (1), the provisions contained in the Merchant Shipping Ordinance, 1960 and its subsidiary legislation, shall, in so far as they are not inconsistent with this Enactment, apply to vessels operating in such areas, subject to such modifications and adoptions as may be necessary.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Friday, the 25th day of October, 2002.

DATUK FRANCIS T.N. YAP,
Deputy Speaker,
Sate Legislative Assembly.