

STATE OF SABAH

SABAH PORTS (PRIVATISATION) ENACTMENT 1998 (Sabah No. 2 of 1998)

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.

PART II TRANSFER OF PORT UNDERTAKINGS AND PORT PRIVATISATION PLAN

3. Application.
4. Transfer of port undertakings.
5. Port privatisation plan.
6. Port undertakings to be transferred to licensed operator.
7. Liabilities in respect of port undertakings.
8. Powers, functions and duties of the Port Authority.

PART III LICENSING

9. Licensing of port operator.

10. Suspension and revocation of licence.
11. Engagement of any person by the Port Authority for the purpose of carrying out any duty of the licensed operator.

PART IV
DUTIES OF LICENSED OPERATOR

12. General duties of licensed operator.
13. Submission of reports, accounts, statistical information, etc.
14. Licensed operator to keep Port Authority informed of certain matters.

PART V
REGULATIONS, GENERAL PENALTY, OFFENCE BY A BODY
CORPORATE AND CONDUCT OF PROSECUTION

15. Regulations.
16. General Penalty.
17. Offence committed by a body corporate.
18. Conduct of prosecution.

PART VI
MISCELLANEOUS

19. Licensed operator to employ officers or servants of the Port Authority.
20. Imposition and variation of charges by a licensed operator.
21. Inspectorial power.
22. Special powers in emergency.

PART VII
TRANSITIONAL PROVISION

23. Transitional provision.

LIST OF AMENDMENTS

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
12/2003	11 (5), (6), 22 (3)	01-07-2003

Sabah LawNet

An Enactment to facilitate privatisation of the port undertakings of the Sabah Ports Authority and for matters connected therewith.

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

PART I
PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the Sabah Ports (Privatisation) Enactment 1998 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint. [18.08.2001]

Interpretation.

2. In this Enactment, unless the context otherwise requires –

"licence" means a licence issued under subsection (3) of section 9 of this Enactment;

"licensed operator" means any person or body of persons licensed under Part III of this Enactment;

"Minister" means the Minister for the time being charged with the responsibility for matters relating to communications and works;

"Port Authority" means the Sabah Ports Authority;

"port privatisation plan" means a plan approved by the Minister under section 5 of this Enactment;

"port undertakings" means the undertakings of the Port Authority that relate to the provision by the Port Authority of any facility or service of any description in connection with the exercise and performance of its powers and duties under any written law and includes any movable and immovable property and the rights of the Port Authority that relate to such facility or service;

"principal Enactment" means the Sabah Ports Authority Enactment 1981 [En. No. 17 of 1981.].

PART II
TRANSFER OF PORT UNDERTAKINGS AND PORT
PRIVATISATION PLAN

Application.

3. (1) This Enactment shall apply to any transfer or disposal by the Port Authority, whether by one transaction or by a series of transactions, of all or part of its port undertakings.

(2) No port undertakings of the Port Authority shall be transferred or disposed of to any person except pursuant to and in accordance with the provisions of this Enactment.

Transfer of port undertakings.

4. Notwithstanding the provisions of any written law to the contrary, the Port Authority shall, subject to section 5, have the power to transfer or dispose of all or any part of its port undertakings to any operator licensed under this Enactment.

Port privatisation plan.

5. (1) Before exercising its power under section 4, the Port Authority shall prepare and submit to the Minister a port privatisation plan for his approval.

(2) The port privatisation plan required by subsection (1) shall –

- (a) identify the port undertakings of the Port Authority;
- (b) state the estimated value of those port undertakings;
- (c) state the nature and extent of the liabilities, if any, to be transferred;
- (d) state the manner in which those port undertakings and liabilities are to be transferred or disposed of;

- (e) state the arrangement relating to the transfer of the relevant officers and servants from the Port Authority to a prospective operator; and
- (f) state such other matters as the Port Authority considers appropriate.

(3) Where any matter is not included in the port privatisation plan and the Minister considers that it should be so included, the Minister may direct the Port Authority to consider the matter and report to the Minister concerning its inclusion in the port privatisation plan.

(4) No port privatisation plan shall be put into effect until it has been approved by the Minister.

(5) Every port privatisation plan shall be put into effect in the form approved by the Minister.

(6) The Minister may grant approval of part of a port privatisation plan if he considers it appropriate and this Enactment shall apply to that part as if it were a port privatisation plan.

(7) The Minister may, after consultation with the Port Authority as he considers appropriate or on the application of the Port Authority, amend any approved port privatisation plan.

Port undertakings to be transferred to licensed operator.

6. The port undertakings of the Port Authority that are to be transferred to an operator in accordance with the port privatisation plan shall be transferred as soon as practicable after –

- (a) the approval of the plan by the Minister under section 5;
- (b) the execution of any necessary agreement between the Port Authority and the operator; and
- (c) the issue of the licence to the operator under subsection (3) of section 9.

Liabilities in respect of port undertakings.

7. (1) Where any port undertakings are to be transferred to a licensed operator, the Port Authority shall identify its liabilities in relation to the same undertakings in the port privatisation plan.

(2) The liabilities so identified shall remain liabilities of the Port Authority except to the extent of any written agreement to the contrary between –

- (a) the Port Authority; and
- (b) the licensed operator; and
- (c) the person to whom the liability is owed; and
- (d) any guarantor of the liability.

Powers, functions and duties of the Port Authority.

8. The Port Authority shall, in addition to the powers conferred, and the functions and duties imposed upon it by any written law, exercise regulatory functions in respect of the conduct of the port activities and the running of port facilities and services in the port by a licensed operator including the determination of its performance standards and standards of facilities and services provided by it and the enforcement thereof.

PART III
LICENSING

Licensing of port operator.

9. (1) No port undertakings included in any approved port privatisation plan shall be transferred to or managed by any person other than a person licensed by the Port Authority under subsection (3).

(2) Any application for the grant of a licence under this Part shall be made in writing and shall contain, or be accompanied by, such information and documents as may

be specified by the Port Authority for the purposes of determining the application and the suitability of the applicant for the licence.

(3) Upon receiving any application made in accordance with subsection (2), the Port Authority may –

- (a) subject to the provisions of subsection (4) and the payment of such fees as the Port Authority thinks fit, issue the licence to the applicant; or
- (b) refuse to issue the licence.

(4) Every licence issued under subsection (3) shall set out the duration of the licence and shall further prescribe -

- (a) the types of services or facilities to be provided by the licensee;
- (b) the annual licence fee payable by the licensee;
- (c) the particular duties of the licensee in respect of the services or facilities provided by it; and
- (d) such other matters or conditions as the Port Authority thinks fit.

(5) The issue of licence to a port operator by the Port Authority under subsection (3) shall not impose any liability on the Port Authority for any loss or damage occasioned by any act, omission or default of such operator.

Suspension and revocation of licence.

10. (1) The Port Authority may at any time suspend or revoke any licence issued under section 9 upon the breach of any of the conditions of the licence or upon any failure to comply with any provision of this Enactment, the principal Enactment or any of the regulations made thereunder.

(2) A licensed operator may appeal to the Minister against the suspension or revocation of its licence by the Port Authority under subsection (1).

(3) Every such appeal shall be made in writing within thirty days from the date on which the decision of the Port Authority is served on the licensed operator.

(4) The decision of the Minister under this section shall be final and conclusive.

(5) A decision of the Port Authority under subsection (1) shall be of immediate effect notwithstanding any appeal made under subsection (2).

(6) Where a licence is suspended or revoked under subsection (1), the Port Authority may, if it considers that such suspension or revocation would materially affect the movement of cargoes or passengers at the port and with the consent of the Minister –

(a) take temporary possession of any port undertaking;

(b) operate any such port undertaking; and

(c) engage any servant or employee,

of the operator.

Engagement of any person by the Port Authority for the purpose of carrying out any duty of the licensed operator.

11. (1) Without prejudice to the provisions of subsection (1) of section 10, if it appears to the Port Authority that a licensed operator has failed to carry out any of its duties under the licence, the Port Authority may give notice in writing to the licensed operator requiring it to perform such duties within the period prescribed in the notice.

(2) If upon the expiry of the period prescribed in such notice the licensed operator fails to carry out the duties mentioned therein, the Port Authority may engage any other person to perform those duties and all costs and expenses incurred by the Port Authority in respect thereof shall on demand be immediately reimbursed by the licensed operator.

(3) A person engaged by the Port Authority under subsection (2) may enter into any of the premises of the licensed operator and bring into the premises any equipment or machinery as may be necessary or proper for the purposes of carrying out those duties.

(4) In every licence issued under section 9, there shall, in the absence of any express provision therein to the contrary, be the implied condition that any person engaged by the Port Authority under subsection (2) may in respect of the duties stated in the notice given by the Port Authority –

(a) take temporary possession of and operate any equipment or machinery belonging to or utilised by the licensed operator; and

(b) employ any servant or employee of the licensed operator.

(5) Where any equipment or machinery of the licensed operator is temporarily taken over and operated under subsection (4), no compensation shall be paid to the licensed operator by the person taking over and operating such equipment or machinery.

(6) Notwithstanding subsection (5), the person engaged by the Port Authority under subsection (2) shall continue to perform the duties for which he was engaged.

(7) The Port Authority shall not be liable for any damage or injury occasioned by any act, omission or default of the person engaged by the Port Authority under subsection (2).

PART IV

DUTIES OF LICENSED OPERATOR

General duties of licensed operator.

12. (1) It is duty of a licensed operator to provide port services and facilities specified in its licence to such extent as is necessary for the licensed operator to meet the performance standards determined by the Port Authority under section 8.

(2) A licensed operator shall have due regard to the efficiency, economy and safety of operation in respect of the services and facilities provided by it.

Submission of reports, accounts, statistical information, etc.

13. (1) Every licensed operator shall -

- (a) within three months after the end of each financial year or such longer period as the Port Authority may allow, submit to the Port Authority -
 - (i) a report of its operation during the financial year containing such information as is necessary to enable the Port Authority to make an informed assessment of such operation; and
 - (ii) its audited annual balance sheet, profit and loss account, together with any note thereon, and the reports of the auditor and the directors; and
- (b) submit to the Port Authority –
 - (i) such statistical information relating to its operation as may be required by the Port Authority from time to time;
 - (ii) its cargo forecast over such period and in such form as may be determined by the Port Authority from time to time; and
 - (iii) future development plans relating to any service or facility which it is bound to provide under the conditions of the licence.

(2) The Port Authority may require a licensed operator to submit such further or additional information as it may deem necessary either by way of an explanation, amplification or otherwise with reference to any report or information forwarded by the licensed operator under subsection (1) and such information shall be submitted within the period and in such manner as the Port Authority may require.

Licensed operator to keep Port Authority informed of certain matters.

14. (1) It shall be the duty of every licensed operator at all times to immediately inform the Port Authority of the following matters:

- (a) any change in the control of the licensed operator;
- (b) any industrial dispute between the licensed operator and its employees;

- (c) any industrial accident or mishap involving any servant, employee or agent of the licensed operator;
- (d) any fire occurrence within its premises;
- (e) any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control; and
- (f) any proceeding or claim instituted or made against the licensed operator which may affect its ability to perform any condition under the licence.

(2) For the purposes of paragraph (a) of subsection (1), the expression "control" in relation to a licensed operator means the power to direct the management and policy of the licensed operator.

PART V
REGULATIONS, GENERAL PENALTY, OFFENCE BY A
BODY CORPORATE AND CONDUCT OF PROSECUTION

Regulations.

15. (1) The Port Authority may, with the approval of the Minister, from time to time, make such regulations as may be necessary or expedient for carrying out or achieving the objects and purposes of this Enactment.

- (2) Without prejudice to the generality of subsection (1), regulations may be made –
- (a) to provide for the control by the Port Authority of any project for the improvement and development facilities and services at the port;
 - (b) to regulate the safe use of docks, wharves, piers, landing places, warehouses, sheds and premises vested in or are under the control of any person engaged in the carrying out of any port operation or in the provision of any port facility or service;
 - (c) to provide for the cleanliness of the basins, works and premises within the limits of the port and to prevent pollution of the waters therein;

- (d) to provide for the safety of persons employed in the port and on ships or vessels using the port;
- (e) to provide for the prevention of nuisance and misuse of the premises within the port;
- (f) to provide for the classification and regulation of the conveyance, loading and unloading of dangerous goods by any licensed operator; and
- (g) generally to give effect to the provisions of this Enactment.

General penalty.

16. Any licensed operator who contravenes or fails to comply with any condition of the licence or any of the provisions of this Enactment, the principal Enactment or any of the regulations made thereunder for which no penalty is expressly provided shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Offence committed by a body corporate.

17. Where an offence under this Enactment or under any of the regulations 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 had 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.

Conduct of prosecution.

18. Prosecutions in respect of offences committed under this Enactment or any regulation made thereunder may be conducted by any officer or servant of the Port Authority.

PART VI
MISCELLANEOUS

Licensed operator to employ officers or servants of the Port Authority.

19. (1) A licensed operator shall employ such officer or servant of the Port Authority who, upon being given an option by the Port Authority, has opted to serve as an employee of such operator, in accordance with such arrangement as provided by an approved port privatisation plan.

(2) Section 13 of the Statutory and Local Authorities Pensions Act 1980 [Act 239.] shall apply to an officer or servant of the Port Authority who is employed by any licensed operator in accordance with an approved port privatisation plan as though such officer or servant was appointed with the approval of the Government to serve in an organisation pursuant to that section.

Imposition and variation of charges by a licensed operator.

20. (1) Notwithstanding any provision of the principal Enactment or any other written law, a licensed operator may, in relation to any facility or service provided by it pursuant to the conditions of the licence levy such charges as are prescribed under any regulation made under the principal Enactment and in respect thereof –

- (a) give any discount at such rate as it thinks fit;
- (b) impose interest on any sum outstanding; and
- (c) in the case of any package facility or package service provided by it, levy such percentage of the prescribed charges as may be approved by the Port Authority.

(2) Where, in respect of any facility or service provided by a licensed operator, no charges have been prescribed under any regulation, the licensed operator shall, notwithstanding the provisions of any written law, be entitled to levy charges at the rate as may be approved in writing by the Port Authority.

(3) For the purposes of this section, "package facility" or "package service" means a combination of two or more facilities or services in respect of which the charges have been prescribed under any regulation.

Inspectorial power.

21. The Port Authority may for the purposes of this Enactment, the principal Enactment or any of the regulations made thereunder enter upon any of the premises occupied by a licensed operator to inspect and examine the state of such premises or any building or facility therein.

Special powers in emergency.

22. (1) The Yang di-Pertua Negeri or any officer specifically authorised by him in that behalf may, on the occurrence of any industrial unrest, strike, lock-out or any other event which gives rise to an emergency, or in the interest of public safety, authorise the Port Authority to –

- (a) suspend the licence of the licensed operator, take temporary possession of any undertaking of such licensed operator and operate it in such manner as it deems fit; or
- (b) withdraw either partially or totally the use of any port service of facility from any person or class of persons or from the public at large.

(2) If any doubt arises as to the existence of an emergency or whether any act done under subsection (1) was in the interest of public safety, a certificate signed by the Yang di-Pertua Negeri or any officer specifically authorised by him in that behalf and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

(3) Where the Port Authority takes possession of any port undertaking under subsection (1) (a) no compensation shall be paid.

PART VII
TRANSITIONAL PROVISION

Transitional provision.

23. (1) Any licence which has been granted to any person under the principal Enactment for the purpose of enabling such person to take over or operate any undertaking of the Port Authority and is in force at the commencement of this Enactment shall be deemed to have been granted under this Enactment and shall remain valid until it is revoked under this Enactment and the provisions of this Enactment shall apply to such person as if he were a licensed operator.