LAWS OF SARAWAK

Chapter 86

SARAWAK PORTS AUTHORITY ORDINANCE, 2024

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SARAWAK PORTS AUTHORITY ORDINANCE, 2024

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SARAWAK PORTS AUTHORITY ORDINANCE, 2024

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation
3. Declaration of ports

PART II

ESTABLISHMENT OF THE AUTHORITY AND DISSOLUTION OF EXISTING PORT AUTHORITIES

4. Establishment of the Sarawak Ports Authority
5. Dissolution of existing port authorities
6. Licence for the successor company
7. Succession to existing licences and contracts, *etc*.
8. Continuance of role of and issuance of licence to an existing port authority
9. Officers and employees of a dissolved port authority

PART III

COMPOSITION AND MEMBERSHIP OF THE AUTHORITY

10. Composition of the Authority
11. Qualifications for membership
12. Tenure of office of a member
13. Duty to disclose personal interest
14. Meetings of the Authority
15. Restriction on voting
16. Establishment of committees

Sarawak LawNet

PART IV

FUNCTIONS AND POWERS OF THE AUTHORITY

Section

17. Functions of the Authority
18. Additional functions of the Authority
19. Powers of the Authority
20. Power of the Authority to enter into arrangement for profit sharing, *etc.*
21. Delegation of powers and functions of the Authority
22. Power of the Minister to issue directions
23. Power of the Authority as to property
24. Transfer of property to the Authority

PART V

OFFICERS AND EMPLOYEES OF THE AUTHORITY

25. Appointment of President
26. Appointment of Secretary to the Authority
27. Appointment of other officers and employees of the Authority
28. Conduct and disciplinary control
29. Power to make Standing Orders
30. Personal immunity and liability
31. Public servants
32. Public Authorities Protection Act 1948 ***[Act 198]***
33. Obligation of secrecy

PART VI

LICENCE TO OPERATE PORT OR PORT UNDERTAKINGS

34. Licence to operate port or port undertakings
35. Application for a licence
36. Taking over the management and operation of a port or any part of a port or port undertakings
37. Form of licence
38. Extension of term of a licence
39. Exclusion of liability of the Authority

Sarawak LawNet

Section

40. Suspension, revocation or cancellation of a licence
41. Rights of the Authority upon suspension, revocation or cancellation of a licence
42. Engagement of any person by the Authority for the purpose of carrying out any duty of the licensed port operator

PART VII

FINANCIAL PROVISIONS

43. Sarawak Ports Authority Fund
44. Financial assistance to the Authority
45. Port development cess
46. Investment of monies
47. Power of the Authority to borrow money
48. Power to make loans
49. Accounts and audit
50. Annual estimates of revenue and expenditure
51. Annual report and periodical reports
52. Financial year
53. Special audit

PART VIII

LEVYING OF DUES, CHARGES AND OTHER FEES, *ETC*.

Port dues, vessel dues, charges and other fees

54. Levying of port dues
55. Levying of vessel dues
56. Port charges and other fees
57. Master to supply information on arrival of vessel
58. Master to supply information on departure of vessel
59. Liability for payment of port dues
60. Liability for payment of vessel dues
61. Liability for payment of port charges and other fees
62. Consignor, consignee or agent may retain port dues out of owner's monies
63. Consignor, consignee or agent may retain vessel dues out of owner's monies

SarawakLawNet

General

Section

64. Authority's lien for over money outstanding
65. Power of entry to ascertain port dues, vessel dues, charges and other fees
66. Weighing and measuring of goods in event of disputes
67. Payment of expenses of weighing and measuring
68. Recovery of port dues, vessel dues, port charges *etc.*
69. Customs clearance to be withheld until dues are paid
70. Records of port dues, vessel dues, charges, fees and other payment and inspection thereof
71. Non-application of Part VIII to Government vessels
72. Continued application of dues, charges and fees made pursuant to the Port Authorities Ordinance, 1961 ***[Ord. No. 1/61]***

PART IX

PORTS, PREMISES AND PORT SECURITY

Ports and premises

73. Control of foreshores and landing or shipping of cargo
74. Power to direct vessels to anchor, moor or come alongside

Port security

75. Establishment of security force
76. Conditions of service of security force
77. Power of arrest and search
78. Power of investigation
79. Power to seize, remove and detain goods, *etc*.
80. Disposal of perishable goods or thing
81. Disposal of goods or other thing by court
82. Return of goods or other thing seized or detained
83. Identification or written authority

Sarawak LawNet

PART X

LIABILITY OF THE AUTHORITY

Section

84. Limitation of liability
85. Liability in respect of loading or discharging operations
86. Goods deposited with the Authority or a licensed port operator
87. Loss, destruction of or damage to goods other than transshipment of goods deposited with the Authority or a licensed port operator
88. Loss, destruction of or damage to transshipment goods
89. Force majeure*, etc.*
90. Limitation of liability in respect of one occasion
91. Liability for loss under contract

PART XI

OFFENCES, PENALTIES AND PROCEDURES

92. Failure to comply with directions of the Authority or a licensed port operator
93. Intoxication, *etc*., of officers and employees of the Authority or a licensed port operator
94. Offences by a body corporate, *etc*.
95. Penalty for evading dues, charges or fees
96. Evasion of dues, charges and fees not waived by subsequent acceptance of payment
97. Penalty for disobeying orders of Port Traffic Manager
98. Penalty for hindrances or obstructions
99. Penalty for not keeping vessel so loaded with ballast
100. Power to order scuttling or removal of vessel in case of fire
101. Boarding of vessel when commission of offence is suspected
102. Penalty for false information on draught
103. Penalty for giving false information in return
104. Penalty for throwing ballast, *etc.*
105. Recovery of damages for injury to property of the Authority or a licensed port operator
106. Offence may be tried by Sessions Court

Sarawak LawNet

Section

107. Conduct of prosecution
108. Service of documents
109. Restriction on execution against property of the Authority
110. Stay of arrest in certain cases
111. Legal representation
112. Power to compound offences
113. General penalty

PART XII

SUBSIDIARY LEGISLATIONS

114. Regulations
115. Power to amend the Schedules

PART XIII

MISCELLANEOUS

116. Ports Consultative Council

PART XIV

FINANCIAL ARRANGEMENTS OF THE AUTHORITY OR SUCCESSOR COMPANY, REPEAL AND SAVINGS

117. Financial arrangements of the Authority or successor company
118. Repeal, transitional and savings

SCHEDULES

FIRST SCHEDULE	-	SCHEDULED PORTS
SECOND SCHEDULE	-	POWERS OF THE AUTHORITY
THIRD SCHEDULE	-	THE FUNCTIONS, OBLIGATIONS AND POWERS OF A LISENCED PORT OPERATOR AND THE CONDITIONS AND RESTRICTIONS UNDER THE LICENCE
FOURTH SCHEDULE	-	FORM OF LICENCE

Sarawak LawNet

LAWS OF SARAWAK

Chapter 86

SARAWAK PORTS AUTHORITY ORDINANCE, 2024

An Ordinance to establish a central port authority to be known as the "Sarawak Ports Authority" to manage, regulate, control, and administer all ports in Sarawak and to provide for the functions and powers thereof, the licensing of port operators and port undertakings; and for matters connected therewith and incidental thereto.

[1.11.2026 for Parts I, II, III, IV, V, VII, X and XII (*Swk. L.N. 322/2026*)]

NOW IT IS ENACTED by the Legislature of Sarawak as follows—

PART I
PRELIMINARY

Short title and commencement

1.—(1) This Ordinance may be cited as the Sarawak Ports Authority Ordinance, 2024, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) The Minister may appoint different dates for the coming into force of different parts or provisions of this Ordinance.

Interpretation

2. In this Ordinance, unless the context otherwise requires—

"Authority" means the Sarawak Ports Authority established under section 4;

"ballast" includes water, gravel, sand and soil and every material commonly used for stabilizing or balancing of vessels;

"Chairman" means the Chairman of the Authority appointed under section 10, and includes the Deputy Chairman and any person appointed by the Minister to temporarily discharge the duties of a Chairman;

Sarawak LawNet

"container" means a receptacle of any size equipped with corner castings to facilitate the handling or conveyance of goods thereof by mechanical means;

"dues" means the port dues and vessel dues which the Authority or a licensed port operator, as the case may be, is entitled to collect under sections 54 and 55;

"existing port authority" means the port authority established under the repealed Ordinance;

"foreshore" means the land on the shoreline between the high and low water marks within the limits of a port;

"Fund" means the Sarawak Ports Authority Fund established under section 43;

"gas" includes liquefied natural gas, methane, ethane, propane, butane, or hydrocarbons, which may consist of one or more of the aforesaid gases, either in the form of gas or liquid;

"goods" includes baggage, containers, animals, livestock, carcasses, minerals, gas, petroleum, timber logs and products, vehicles, machinery equipment, and movable properties of whatever kind or description;

"Government" means the State Government of Sarawak;

"investment" means any mode of application of any money or financial asset for the purpose of obtaining a gain, whether by way of capital appreciation gains, dividends, profit, other income or any other form of returns;

"land" has the same meaning assigned to it under the Land Code ***[Cap. 81 (1958 Ed.)]***, and includes the bed of the sea below high water mark within the limits of a port;

"licensed port operator" means a person or body corporate or company licensed under Part VI;

"master" when used in relation to a vessel, means the person, other than a pilot, in command or in charge of the vessel;

"member" means a member of the Authority, and includes its Chairman and Deputy Chairman or any person appointed by the Minister to temporarily discharge the duties of a Chairman;

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"Minister" means the Minister having responsibility for the ports;

"owner", when used in relation to goods, includes his agent, any consignor, consignee, shipper, and any person having authority for the sale, custody, loading, unloading, discharge, warehousing, or delivery of such goods; and, when used in relation to any vessel, includes any charterer, part owner or mortgagee in possession thereof or any duly authorised agent of any such person;

"petroleum" shall have the same meaning as assigned to it under the Oil Mining Ordinance, 1958 ***[Cap. 85 (1958 Ed.)]***, and includes other bituminous substances, petro-chemical products, gasoline, kerosene, diesel fuel, biofuel and lubrication oil;

"pipelines" means all parts of those physical facilities through which petroleum, greenhouse gas, or any liquid conveyed from one place or vessel to any other place or vessel by pipelines within a port limit, including any machine, equipment, apparatus, pipes, valves and other appurtenances attached to pipelines, pumps, compressor units, meters, regulators and any other fabricated assemblies;

"port" means any of the ports specified in the First Schedule and any area declared to be a port under section 3;

"port charges" means the fees or other charges as determined under section 56 which the Authority or a licensed port operator may impose and collect for services rendered by, or the hire lease and use of equipment, machinery, appliances or facilities belonging to, the Authority or a licensed port operator;

"Ports Consultative Council" means the Council established pursuant to section 116;

"port limit" means the limit of a port as defined pursuant to section 3 and includes the port limits defined under the repealed Ordinance;

"Port Traffic Manager" means any person appointed or authorized by the Authority or a licensed port operator, as the case may be, to regulate maritime traffic within the port limit;

"port undertakings" means the undertakings that relate to the provision of any facility or service of any description including

Sarawak Laws Online

petroleum supply base, free zone, towage and pilotage service, ship to ship transfer and bunkering service, port terminal services and services for the handling, loading and unloading, storage delivery and transportation of goods on land and for the handling of passengers and includes any movable or immovable property used or needed for the performance or execution of such undertakings;

"port users" include—

(*a*) the owner, agent, charterer or mortgagee of any vessel;

(*b*) the owner, consignee, consignor or bailor of any goods or cargo; and

(*c*) the owner or agent of the vessel from which passengers disembark and embark;

"President" means the President of the Authority who is to be appointed by the Authority pursuant to section 25;

"repealed Ordinance" means the Port Authorities Ordinance, 1961 ***[Ord. No. 1/61]***;

"security force" means a security force established pursuant to section 75;

"State" means the State of Sarawak;

"successor company" means a company either wholly owned by the Authority or by the State Financial Secretary, a body incorporated under the State Financial Secretary (Incorporation) Ordinance, 2000 ***[Cap. 36]***, or any other company incorporated under the Companies Act 2016 ***[Act 777]***, and named in an Order made under section 5(1) to assume the functions, duties, obligations, responsibilities, rights, interests and entitlements of an existing port authority;

"transit shed" means a shed or godown used to receive goods offloaded from, or for direct loading to, any ship or vessel;

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

"warehouse" includes all godowns, transit sheds, open yards, buildings and premises, in which goods, when landed from or for

Sarawak LawNet

loading upon vessels, may be lawfully placed; and

"wharf" includes all jetties, piers, quays, docks, mooring buoys and premises in or upon which any goods when landed from or for loading upon vessels, may be lawfully placed including any sufferance wharf declared under sections 23 and 26 of the Customs Act 1967 ***[Act 235]***.

Declaration of ports

3.—(1) The Majlis Mesyuarat Kerajaan Negeri may, by Order published in the *Gazette*, declare any area in Sarawak to be a port for the purposes of this Ordinance, in addition to the ports specified in the First Schedule and every declaration under this section shall define the limits of the port.

(2) The Majlis Mesyuarat Kerajaan Negeri may, for the better administration and regulation of the ports, by Order published in the *Gazette*, consolidate or merge two or more ports under one port limit for the purposes of this Ordinance.

(3) The Majlis Mesyuarat Kerajaan Negeri may, on the recommendation of the Authority, amend any Order made under subsection (1).

PART II

ESTABLISHMENT OF THE AUTHORITY AND DISSOLUTION OF EXISTING PORT AUTHORITIES

Establishment of the Sarawak Ports Authority

4.—(1) For the purposes of this Ordinance, there shall be established a central port authority to be known as the "Sarawak Ports Authority".

(2) The Authority shall be a body corporate and shall have—

(*a*) perpetual or continuous succession;

(*b*) a common seal;

(*c*) the legal capacity to enter into contracts and to sue and be sued;

(*d*) be capable of acquiring, owning, holding and

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developing or disposing of property, both movable and immovable; and

(*e*) doing such other acts or things as a body corporate may lawfully do.

Dissolution of existing port authorities

5.—(1) On a date after the coming into force of this Ordinance, Majlis Mesyuarat Kerajaan Negeri may, by Order publish in the *Gazette*, declare any existing port authority to be dissolved (in this Part referred to as the "dissolved port authority") and that:

(*a*) all its functions, powers and duties under the repealed Ordinance of the dissolved port authority shall be assumed by the Authority who may, by licence to be issued under section 6, confer any such functions, powers and duties to a successor company, subject to such terms and conditions as the Authority may approved;

(*b*) all lands registered in the name of the dissolved port authority shall be surrendered to the Government pursuant to section 45 of the Land Code ***[Cap. 81 (1958 Ed.)]***, and subject to the conditions contained therein, the surrender of the land shall be effected before the date of dissolution of the dissolved port authority;

(*c*) all properties other than lands of the dissolved port authority shall, unless otherwise specified in the Order, by virtue of this section, be vested in the Authority or a successor company, as the case may be, without further conveyance, transfer or assignment; and

(*d*) all rights, interests and entitlements accrued or belonging to or enforceable by the dissolved port authority shall accrue or belong to or be enforceable by the Authority or the successor company and shall become the rights, interests and entitlements of the Authority or the successor company.

(2) Nothing in this section shall affect or prejudice the right of the Government under section 15A(1)(*b*) of the Land Code ***[Cap. 81 (1958 Ed.)]*** to alienate or vest any land surrendered under this section, to the Authority or a successor company or any legal entity approved by Majlis Mesyuarat Kerajaan Negeri, for the purpose of the

Sarawak LawNet

development, operation of or use as port.

(3) Any subsequent transfer or disposal of shares in the successor company made on or after the date of the coming into force of the Order under subsection (1) shall be approved in writing by the Minister.

(4) For the purpose of this section—

(*a*) "property" means movable and immovable property including all lands, moneys and funds belonging to an existing port authority, amount or account receivables and money owing, damages, or compensation due under insurance policies of whatever description, court orders or judgments, arbitration or adjudication awards and the right of recovery, execution, enforcement, or satisfaction thereof; and

(*b*) "rights, interests or entitlements" includes all allowances, benefits, rebates, exemption, remission, incentives, waivers or credits granted to or enjoyed by the dissolved port authority under any written law relating to taxation or taxes of any nature.

Licence for the successor company

6.—(1) Where an Order made under section 5(1) named a successor company, the Authority shall issue to the successor company a licence under section 36(3) whereupon the successor company shall be a licensed port operator and, without prejudice to the foregoing, the successor company shall also have all the duties, functions, obligations and powers of a licensed port operator under this Ordinance in respect of the port or port undertakings specified in the licence aforesaid.

(2) A successor company shall not, unless with the approval of the Minister, carry on or be involved in any business or activities other than that specified in the licence issued under this section.

Succession to existing licences and contracts, *etc.*

7.—(1) All licences issued to a dissolved port authority to operate shall, prior to the date of the Order made under section 5(1), subject to the approval of the authorities who issue such licences, be transferred and assigned to the Authority or the successor company, as the case may be.

(2) All deeds, guarantees, agreements, undertakings, instruments

Sarawak Laws

and contractual or other obligations entered into by an existing port authority and subsisting immediately before the date of coming into force of this Ordinance, shall be enforced, and performed by the Authority or successor company, as the case may be, as fully and effectively as if, instead of the existing port authority, the Authority or successor company, as the case may be, has been named therein or a party thereto.

Continuance of the role of and issuance of licence to an existing port authority

8.—(1) Until an Order for the dissolution of an existing port authority is made under section 5(1), the Authority shall, on the date of coming into force of this Ordinance, issue to that existing port authority a licence under section 36(3), to operate, manage and administer the port specified in the licence in accordance with the terms and conditions contained therein.

(2) All deeds, guarantees, agreements, undertakings, instruments and contractual or other obligations entered into by the existing port authority and subsisting immediately before the date of coming into force of this Ordinance shall continue to be enforced and performed by the existing port authority.

Officers and employees of a dissolved port authority

9.—(1) The Authority or successor company, as the case may be, shall accept into its employment every person, who immediately before the coming into force of the Order made under section 5, is an officer or employee of an existing port authority and who has been given an option by the port authority to join the service of the Authority or successor company and has opted to serve as an officer or employee of such Authority or successor company.

(2) Every such person who opts to serve as an officer or employee of the Authority or successor company shall be employed by the Authority or successor company on terms and conditions of service not less favourable than those to which he was entitled to in the existing port authority immediately before the coming into force of the Order made under section 5.

(3) Any officer or employee of the existing port authority who has been transferred to the service of the Authority or successor company may consequent upon the privatization of such existing port

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authority pursuant to Part VI of this Ordinance, shall be offered employment by the licensed port operator, and the officer or employee may opt whether he will continue in the service of the Authority or successor company or accept the offer of employment of the licensed port operator.

(4) Any option made under this section shall be in writing addressed to the President of the Authority or the successor company and shall be irrevocable.

(5) Any officer or employee who opts to accept the offer of employment of the licensed port operator shall thereupon be employed on terms and conditions of service no less favourable, than those which would have attached to his service as if he had continued throughout in the service of the existing port authority.

PART III

COMPOSITION AND MEMBERSHIP OF THE AUTHORITY

Composition of the Authority

10. The members of the Authority shall be appointed by Majlis Mesyuarat Kerajaan Negeri and shall comprise of the following—

(*a*) a Chairman;

(*b*) a Deputy Chairman who shall be the Permanent Secretary of the Ministry having the responsibility for State ports;

(*c*) the State Attorney-General or his nominee;

(*d*) the State Financial Secretary or his nominee; and

(*e*) not less than five and not more than eight other members.

Qualifications for membership

11.—(1) A person shall not be appointed as a member of the Authority unless the Majlis Mesyuarat Kerajaan Negeri is satisfied that such person has experience, expertise, and knowledge in one or more of the following fields:

(*a*) management and operation of ports or port undertakings whether within or outside Sarawak;

(*b*) transportation and logistics businesses;

(*c*) provision of maritime navigation and services; or

(*d*) any other expertise or experience which is highly relevant to the effective discharge of the functions and powers of the Authority.

(2) A person is not eligible for appointment as a member if he—

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

(*b*) has been adjudged a bankrupt by a court of competent jurisdiction;

(*c*) has been convicted of an offence and sentenced to imprisonment; or

(*d*) has been convicted of an offence under any law relating to fraud, dishonesty, corruption, securities regulation, or money laundering.

Tenure of office of a member

12.—(1) A member, other than the members appointed under section 10(*a*), (*b*), (*c*) and (*d*), shall hold office for a term not exceeding three years but shall be eligible for re-appointment unless he has already served as a member for a period exceeding nine years from the date of his first appointment.

(2) The appointment of a member shall cease:

(*a*) upon his death;

(*b*) if he has been adjudged a bankrupt by a court of competent jurisdiction;

(*c*) if because of ill health or unsoundness of mind he is unable to discharge the duties as a member;

(*d*) if he absents himself for three consecutive meetings of the Authority without the approval of the Chairman;

(*e*) if he has been convicted of an offence and sentenced to imprisonment;

(*f*) if he has been convicted of any offence under any law

relating to fraud, dishonesty, corruption, securities regulation or money laundering; or

(*g*) if he resigns by letter addressed to the Minister.

(3) The Minister may, at any time by notice addressed to a member, suspend the appointment of such member for such period as he deems fit, with or without entitlement to payment of remuneration or other benefits during the period of suspension or revoke such appointment, if—

(*a*) the member is guilty of a misconduct;

(*b*) the member has breached any of the provisions of this Ordinance; or

(*c*) the member is under investigation by any regulatory agency for any offence under any law relating to fraud, dishonesty, corruption, securities, or money laundering.

Duty to disclose personal interest

13.—(1) Any member whether directly or indirectly, by himself or his spouse or children, having any interest in any company or undertaking with which the Authority proposes to make any contract or whether directly or indirectly having any interest in any such contract or in any matter under discussion by the Authority shall disclose to the Authority the fact of his interest and the nature thereof, and such disclosure shall be recorded in the minutes of the meetings of the Authority and, unless specifically authorized thereto by the Chairman, such member shall take no part in any deliberation or decision of the Authority relating to the contract or matter.

(2) A non-compliance of this section by a member shall constitute a misconduct for the purpose of section 12(3)(*a*).

(3) A non-compliance of this section by a member does not by itself affect the validity of any *bona fide* transaction by or resolution of the Authority.

(4) This section shall have effect in addition to, and not in derogation of, any other law relating to conflicts of interest or abuse of authority.

Meetings of the Authority

14.—(1) All meetings of the Authority shall be presided over by the Chairman or in his absence, by any member appointed for that purpose by the Chairman.

(2) The quorum of any meeting of the Authority shall be five including the Chairman.

(3) If for any question to be determined by the Authority there is an equality of votes, the Chairman shall have a casting vote.

(4) The Authority shall hold at least two meetings each calendar year.

(5) Meetings of the Authority shall be called by the Chairman and notice of such meetings shall be issued and signed by the Secretary or any person specifically authorized by the Secretary.

(6) The Authority may invite any person, for the purpose of advising it on any matter under consideration, to attend any meeting of the Authority but such person shall not be entitled to vote at any such meeting.

(7) The members and any person invited to attend any meeting of the Authority may be paid such allowances and other expenses as the Authority may determine.

(8) Subject to the above, the Authority shall regulate its own procedures.

Restriction on voting

15. A member who has a personal interest in a matter that is being considered at a meeting of the Authority shall not be present while such matter is being deliberated at the meeting and shall not vote thereon.

Establishment of committees

16.—(1) The Authority may establish such committees as may be necessary, and having such other functions as the Authority deems appropriate to facilitate the proper discharge of the functions and duties of the Authority.

(2) The committees established under subsection (1) shall have the duties and responsibilities as may be determined by the Authority

from time to time.

(3) The chairman of the committees established by the Authority shall report to the Authority at every meeting of the Authority on all decisions, recommendations or proposals made by the committees for the endorsement, approval, direction or information of the Authority.

(4) The committee shall determine and be regulated by its own procedures.

(5) A committee may invite any person, for the purpose of advising it on any matter under consideration, to attend any meeting of the committee but such person shall not be entitled to vote at any such meeting.

(6) Members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Authority may determine.

(7) The appointment of any member of a committee may at any time be revoked by the Authority without assigning any reason thereto.

(8) A member of a committee may at any time resign his office by a written notice addressed to the Chairman of the Authority.

(9) Sections 11 to 15 shall apply *mutatis mutandis* to any committee established under this section.

PART IV

FUNCTIONS AND POWERS OF THE AUTHORITY

Functions of the Authority

17.—(1) The Authority shall have the following functions—

(*a*) to develop, build, manage, administer, operate and maintain any State port;

(*b*) to regulate and control all ports, port operators and port undertakings in the State in accordance with this Ordinance;

(*c*) to plan, streamline and coordinate the development, expansion, and improvement of ports, including their facilities, operational and navigational systems;

(*d*) to promote the use and facilitate the development of port business, port hinterland and the ports' connectivity with other

ports and transportation hubs outside of the State;

(*e*) to ensure that all port undertakings are carried out to serve the interest and needs of ports users and, generally of the hinterland of the port;

(*f*) to license all port operators and port undertakings under Part VI;

(*g*) to regulate and control maritime traffic within the limits of the ports, disseminate navigational information and designate any area within a port limit for the anchorage or mooring of vessels;

(*h*) to maintain and dredge all navigable channels and waterways in the marine areas within the port limits so that at all times, they are safe for navigation by vessels entering and leaving the ports;

(*i*) to provide for bunkering services and supplying of stores to vessels;

(*j*) to reclaim, excavate, enclose or raise and enlarge land within the port limits;

(*k*) to provide pilotage services and to license and regulate pilots and vessel use for pilotage within a pilotage area;

(*l*) to ensure that any person licensed to carry out port undertakings shall comply with all the conditions stipulated in the licence and the provisions of this Ordinance and the regulations made hereunder;

(*m*) to promote efficiency and the reliability of ports, port undertakings, services, and facilities by the licensed port operators, in accordance with, as far as practicable, recognized international standards and best practices;

(*n*) to act as authority for any free zone established under and subject to section 3(2) of the Free Zones Act 1990 ***[Act 438]***;

(*o*) to adopt low carbon solutions in the management and operation of port undertakings; and

(*p*) to carry out such other functions or duties not inconsistent with this Ordinance as the Majlis Mesyuarat Kerajaan Negeri may by Order published in the *Gazette* assigned to the

Authority from time to time.

(2) In discharging the functions and duties imposed on it by subsection (1), the Authority shall—

(*a*) act in accordance with the provisions of this Ordinance and any Order given under this Ordinance; and

(*b*) have regard to the following matters—

(i) promoting the development and expansion of port, port undertakings, and port services and facilities in collaboration with other ports in the region and international maritime organizations;

(ii) the promotion of measures to ensure for the safety of persons and property in the ports;

(iii) collaboration with educational institutions to develop manpower, management or technical skills and competency required for the performance of port undertakings, and port services by the Authority or licensed port operators;

(iv) the promotion of energy efficiency and low carbon solutions in the delivery of services and usage of equipment and facilities within the port limits; and

(v) environmental protection of both the marine and land areas and ensure compliance with practices and principles of sustainable development of ports.

Additional functions of the Authority

18.—(1) Without prejudice to section 17, the Authority may, with the approval of Majlis Mesyuarat Kerajaan Negeri, undertake any port-related activities.

(2) In the exercise of the functions in subsection (1), the Authority may expend such monies as are necessary.

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

(*a*) activities performed outside a port which is relevant to the discharge or promotion of any function or duty of the Authority to operate or maintain a port or the transportation of goods through any 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.

Powers of the Authority

19.—(1) The Authority shall have powers prescribed in the Second Schedule but without prejudice thereto, the Authority shall carry on any activities and do all things that appear to the Authority to be advantageous, necessary, or convenient or expedient or reasonably necessary for or incidental to the carrying out of its functions and duties under this Ordinance or any other written law.

(2) This section does not limit any of the power of the Authority conferred by or under any other written law.

Power of the Authority to enter into arrangement for profit sharing, *etc*.

20. The Authority, with the approval of Majlis Mesyuarat Kerajaan Negeri, may—

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

(*b*) incorporate or acquire companies under the Companies Act 2016 ***[Act 777]*** for the operation, management and administration of ports and port undertakings:

Provided that the constitution of such company or agreement for the formation of the joint venture shall not contain provisions, which are inconsistent with or contrary to any of the provisions of this Ordinance or regulations made hereunder or affect directly or indirectly or abrogate or prejudice any of the functions or powers of the Authority.

Delegation of powers and functions of the Authority

21. The Authority may, with the approval of Minister, and subject to such conditions or restrictions as it deems fit, delegate to any committee appointed under section 16, or to the President or any officer of the Authority, or any company incorporated or acquired by the Authority or its subsidiaries or to a successor company or a licensed port operator all or any of the powers and functions vested in the

Authority by this Ordinance:

Provided that, the Authority may continue to perform any of its functions or exercise any of its power conferred upon it under this Ordinance, notwithstanding such delegation.

Power of the Minister to issue directions

22. The Minister may, with the approval of Majlis Mesyuarat Kerajaan Negeri, give to the Authority directions not inconsistent with this Ordinance as the exercise and performance of its functions and powers in relation to matters which appear to him to affect the interests of the State and the Authority shall give effect to all such directions.

Power of the Authority as to property

23.—(1) Subject to the terms of any direction issued under section 22, the Authority may, for the purposes of this Ordinance and the discharge of its functions—

(*a*) acquire any movable and immovable property on such terms and conditions as the Authority deems fit;

(*b*) hold, own and exercise rights of a registered proprietor of any land alienated or vested in the Authority by Majlis Mesyuarat Kerajaan Negeri under section 24 for the purpose of development, operation, maintenance or use of a port;

(*c*) lease, sublease or grant the use of any such property to any licensed port operator and any other persons at such rent, fees, charges or consideration as may be determined by the Authority;

(*d*) sell or otherwise dispose of any property which are no longer required for the operation or business of any port or port undertakings;

(*e*) accept the transfer, vesting or gift of any property from the Government or any other person for the discharge of its functions under this Ordinance; and

(*f*) create any charge, mortgage, debenture, or pledge over any property as security for any loans or borrowings obtained by the Authority or licensed port operator in accordance with section 47 with the approval in writing of the Minister.

(2) Any acquisition, sale, disposal, lease, sublease or licence, mortgage, charge, or creation of security of or over any property shall be reported in writing to the Minister within thirty days from the date thereof.

Transfer of property to the Authority

24.—(1) The Majlis Mesyuarat Kerajaan Negeri may, from time to time, enable the Authority to discharge its functions under this Ordinance, by Order—

(*a*) authorize the vesting or transfer of any immovable property to the Authority under the Land Code ***[Cap. 81 (1958 Ed.)]***; or

(*b*) transfer to or vest in the Authority any movable property subject to such terms and conditions as may be specified in the Order.

(2) Where any property of the Government is transferred to or vested in the Authority pursuant to subsection (1), the Authority shall cause such property to be valued by a qualified valuer as at the date of transfer or vesting and shall forthwith cause details of such valuation to be shown on its accounts.

PART V

OFFICERS AND EMPLOYEES OF THE AUTHORITY

Appointment of President

25.—(1) The Authority, in consultation with the Minister, shall appoint a President, on such terms and conditions as the Authority may determine.

(2) The President shall be responsible for the overall administration and management of the Authority and be responsible for the control and operation of the ports in accordance with the provisions of this Ordinance and the directions, decisions, and strategies of the Authority.

(3) The President shall attend meetings of the Authority and any committee of the Authority established by the Authority pursuant to section 16 but shall have no right to vote on any issue, matter, or resolution before, or under consideration, by the Authority or any such committee.

(4) If the President is temporarily unable to perform his duties by reason of illness or otherwise, another person may be appointed by the Chairman to act in the place of the President during any such period of absence from duty.

Appointment of Secretary to the Authority

26.—(1) The Authority, may appoint a Secretary to the Authority, on such terms and conditions as the Authority deems fit, who shall perform the functions of the Secretary to the Authority.

(2) The Secretary to the Authority shall maintain and keep at the principal office of the Authority all documents which it is required to keep and maintain under this Ordinance.

(3) The Secretary to the Authority may resign from his office by giving a notice in writing to the Authority.

(4) Until the appointment of a Secretary is made, the President shall be responsible for carrying out the duties of a Secretary under this Ordinance.

Appointment of other officers and employees of the Authority

27.—(1) The Authority may, from time to time, appoint such other officers or employees as it thinks fit for the effective discharge of its functions and powers on such terms and conditions as it may determine.

(2) For the purposes of subsection (1), the Authority may create such number of posts, either permanent or temporary, as the Majlis Mesyuarat Kerajaan Negeri may approve from time to time, as is necessary to enable the Authority to perform its functions and exercise its powers under this Ordinance and for the efficient management and administration of its affairs and activities.

Conduct and disciplinary control

28. The Statutory Bodies (Conduct and Discipline) Ordinance, 2004 ***[Cap. 57]***, shall apply to the President, Secretary and all officers and employees of the Authority.

Power to make Standing Orders

29.—(1) The Authority may, with the approval of Majlis

Mesyuarat Kerajaan Negeri, by Standing Orders provide for a scheme and conditions of service for officers and employees of the Authority.

(2) Without prejudice to the generality of subsection (1), such Standing Orders may provide for—

(*a*) regulating the grant of leave to the Authority's officers and employees;

(*b*) authorising the payment of allowances to the officers and employees while absent on leave;

(*c*) determining the remuneration to be paid to the persons appointed to act for any such officers or employees during their absence on leave;

(*d*) regulating the period of service of all such officers and employees;

(*e*) determining the conditions under which gratuities or compassionate allowances may be paid to the officers and employees injured or to the surviving relatives of any such officers or employees, died in the execution of their duty;

(*f*) determining such benefits and privileges, including medical and multiple group insurance; and

(*g*) establishing and maintaining a provident fund and housing loan scheme for the benefit of the Authority's officers and employees.

Personal immunity and liability

30.—(1) No member, President, any member of a committee established under this Ordinance, or any officer, employee or agent of the Authority appointed under this Ordinance shall be made personally liable for any loss or damage caused by any act or omission in connection with the performance of their duties under this Ordinance except to the extent that such loss or damage is caused by or materially contributed to by his reckless or negligent act or omission, or a breach of his duty under this Ordinance or any other written law.

(2) A member, President, any member of a committee established under this Ordinance, or any officer, employee or agent of the Authority who causes or materially contributes to loss or damage to the Authority or the ports by reason of his reckless or negligent act or

omission, or a breach of his duty under this Ordinance or any other written law, shall be liable to compensate the Authority for such loss and damage.

(3) Subsection (2) does not derogate from any other law imposing any liability on any member, President, any member of the committee established under this Ordinance or any officer, employee or agent of the Authority, in relation to his office, his employment, or his duties under this Ordinance.

Public servants

31. All members, President, committee member, officers, employees, and agents of the Authority while performing their functions or discharging their duties under this Ordinance shall be deemed to be "public servants" within the meaning of the Penal Code ***[Act 574]***.

Public Authorities Protection Act 1948 *[Act 198]*

32. The Public Authorities Protection Act 1948 ***[Act 198]*** shall apply to any action, suit, prosecution, or proceedings against the Authority or against any member, President, any committee member or officer, employee or agent of the Authority or any committee members in respect of any act, neglect or default done or committed by him in such capacity.

Obligation of secrecy

33.—(1) Except for the purpose of this Ordinance or of any criminal proceedings under this Ordinance, no member, President, member of the committee established under this Ordinance, officer, employee or agent of the Authority shall disclose any information which has been obtained by him in the course of his duties and which has not been published in pursuance to this Ordinance, save and except when disclosure is authorized by direction given by the Majlis Mesyuarat Kerajaan Negeri.

(2) Any person contravening the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years, or to both.

PART VI

LICENCE TO OPERATE PORT OR PORT UNDERTAKINGS

Licence to operate port or port undertakings

34.—(1) No person shall establish, develop, operate, manage or administer a port, or any part of a port or carry out any port undertakings without a licence issued by the Authority.

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

Application for a licence

35. Any application for the issuance of a licence under this Part shall be made in a form as may be determined by the Authority accompanied by such information and documents necessary for the purposes of determining the application and the suitability of the applicant for the licence and such other relevant information and document as may be required by the Authority:

Provided that—

(*a*) no licence shall be issued except to a body corporate incorporated under any State law or a company incorporated under the Companies Act 2016 ***[Act 777]***; and

(*b*) this section shall not apply to a licence issued to a successor company pursuant to section 6 or 8.

Taking over the management and operation of a port or any part of a port or port undertakings

36.—(1) Where the application is for the taking over the management and operation of a port or any part of a port or port undertakings from a successor company or a licensed port operator, the applicant shall also submit a port management and operational plan which shall—

(*a*) identify all the port undertakings comprised in the plan;

(*b*) state the estimated value of those port undertakings;

(*c*) state the assets and the approximated value thereof to

be taken over by the applicant and any proposed new assets to be acquired to improve the operation and management of the port;

(*d*) state the nature and extent of the liabilities, if any, to be assumed by the applicant;

(*e*) state the manner in which those port undertakings and liabilities are to be transferred or disposed of;

(*f*) state the arrangement relating to the transfer of the relevant officers and employees from the successor company or a licensed port operator to the prospective licensed port operator;

(*g*) if only a part of the port is to be managed or operated, state the area of such part of the port; and

(*h*) state such other matters as the Authority considers appropriate.

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

(3) The Authority shall, subject to the approval of Majlis Mesyuarat Kerajaan Negeri and upon payment of a prescribed fee in the regulations made under section 114, together with the lodgment of a performance security of an amount to be determined by the Authority, issue a licence as prescribed in the Fourth Schedule to the applicant.

Form of licence

37.—(1) Every licence issued under sections 6, 8 and 36 shall be in the form as prescribed in the Fourth Schedule, and for such duration as may be stipulated therein and shall further prescribe—

(*a*) the type of services or facilities or port undertakings to be provided by the licensed port operator;

(*b*) the functions and powers which the licensed port operator may perform on behalf of the Authority or subject to the direction of the Authority;

(*c*) the area or land upon which the licensed port operator may operate and manage a port or any part of a port or port undertakings and whether such land would be leased, subleased,

licensed, transferred or vested in the licensed port operator and the fundamental terms of such lease, sublease, licence, transfer, and vesting;

(*d*) the annual license fee payable by the licensed port operator;

(*e*) the duties of the licensed port operator in respect of the services or facilities provided by it; and

(*f*) such other matters or conditions as the Authority thinks fit to impose or which may be prescribed in regulations made under this Ordinance.

(2) Without prejudice to subsection (1), a licensed port operator shall have the functions, obligations, powers and be subjected to the conditions and restrictions prescribed in the Third Schedule.

(3) A licensed port operator shall not, unless with the approval of the Minister, carry on or be involved in any business or activities other than that specified in the licence issued under this section.

Extension of term of a licence

38.—(1) The Authority may grant an extension of the term of the licence on such terms and conditions as it deems fit, upon the receipt of an application in writing from the licensed port operator for extension of its licence at least six months before the expiry of the licence.

(2) Where an application for extension of the term of a licence is not granted, the Authority shall give notice in writing to the licensed port operator to vacate the port or the area of the port covered by the licence on the date of expiry of the licence and remove all its properties and its servants, employees and staff therefrom and hand possession of the port or that part thereof to the Authority or any person nominated by the Authority in such notice.

Exclusion of liability of the Authority

39.—(1) The appointment of a licensed port operator shall not impose any liability on the Government or the Authority in any circumstances for any death, injury, loss, damage, or cost sustained by any person occasioned by any act, omission, neglect or default of such licensed port operator or its agent or servants.

(2) Unless otherwise provided in this Ordinance or regulations made hereunder, a licensed port operator shall be deemed as an independent contractor and not an agent of the Authority.

Suspension, revocation or cancellation of a licence

40.—(1) The Authority may at any time suspend or revoke any licence issued to a licensed port operator upon:

(*a*) breach of any of the terms and conditions of the licence;

(*b*) failure to pay the rent, fee and other consideration for any land leased, subleased or licensed by the Authority to the licensed port operator;

(*c*) failure to pay the price, value or other consideration for the transfer or vesting of land on the licensed port operator; or

(*d*) failure to comply with any provision of this Ordinance or regulations made hereunder.

(2) The Authority may cancel any licence issued to a licensed port operator upon:

(*a*) the expiry of the licence; or

(*b*) the dissolution or winding up of the licensed port operator.

(3) A licensed port operator may appeal in writing to the Minister against the decision of the Authority to suspend, revoke or cancel its licence within thirty days from the date on which the decision is served on it.

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

(5) A decision of the Authority under subsection (1) shall be of immediate effect notwithstanding any appeal made under subsection (3).

(6) Notwithstanding subsection (1), if it appears to the Authority that a licensed port operator has failed or unable to perform its duties to the satisfaction of port users or there has been a breach of the terms and conditions of the licence, the Authority may give notice in writing addressed to the licensed port operator requiring it to:

(*a*) take such remedial measures as may be specified in the notice to improve the port undertakings or other service in respect of which there have been complaints or dissatisfaction expressed by port users; and

(*b*) remedy any breach of the terms and conditions in the licence,

within twenty-one days from the date of the notice or such extended period as the Authority may approve in writing.

Rights of the Authority upon suspension, revocation or cancellation of a licence

41. Where a licence is suspended, revoked or cancelled under section 40, the Authority may, during the period of suspension or upon the revocation or cancellation of the licence, after consultation with the Minister, make an Order to be published in the *Gazette* to—

(*a*) take possession of the land used for the operation of the port or any part of a port or any port undertakings;

(*b*) appoint any suitable person to operate the port or any part of a port or port undertakings on such terms and conditions as the Authority deems fit; and

(*c*) authorize or issue a licence, as the case may be, to the person appointed under paragraph (*b*) to carry out such functions of the Authority as may be specified in such Order.

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

42.—(1) If upon expiry of the period stipulated in section 40(6) or any extension thereof, the licensed port operator fails to carry out the duties mentioned therein, the Authority may engage any other person to perform those duties and all costs and expenses incurred by the Authority in respect thereof shall on demand be immediately reimbursed by the licensed port operator.

(2) A person engaged by the Authority under subsection (1) may enter into any of the premises of the licensed port operator and bring into the premises any equipment or machinery as may be necessary or proper for the purposes of carrying out those duties.

(3) In every licence issued by the Authority, there shall, in the absence of any express provision therein to the contrary, be the implied condition that any person engaged by the Authority under subsection (1) may in respect of the duties stated in the notice given by the Authority—

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

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

(4) Where any equipment or machinery of the licensed port operator is temporarily taken over and operated under subsection (3), compensation shall be paid to the licensed port operator by the person taking over and operating such equipment or machinery.

(5) The person engaged by the Authority under subsection (1) shall continue to perform the duties for which he was engaged notwithstanding any dispute as to the adequacy of compensation referred to in subsection (4).

(6) In the event that the dispute as to adequacy of compensation cannot be resolved, such dispute shall be referred by either the person engaged by the Authority or the person whose licence had been suspended or revoked, to arbitration in accordance with the provisions of the Arbitration Act 2005 ***[Act 646]***.

(7) The Authority shall not be liable for any damage or injury occasioned by any act, omission or default of the person engaged by the Authority under subsection (1).

PART VII

FINANCIAL PROVISIONS

Sarawak Ports Authority Fund

43.—(1) There shall be established a fund to be known as the "Sarawak Ports Authority Fund" which shall be under the control of the Authority and shall be managed and maintained in accordance with the provisions of this Part.

(2) There shall be paid into the Fund—

(*a*) all monies from time to time appropriated from the

State Consolidated Fund;

(*b*) all monies authorized to be paid into the Fund by this Ordinance or any other written law;

(*c*) any grants or loans or advance or financial assistance or monetary contributions from any source accepted or received by the Authority;

(*d*) fees, charges and other payments received from the ports and the licensing of ports and port undertakings;

(*e*) income from investments made in accordance with this Ordinance;

(*f*) where financial assistance in the form of loans or advances have been granted by the Authority, all sums received by way of repayment thereof and interest earned, derived, or accrued thereon;

(*g*) all sums or monies obtained by the Authority through loans, borrowings or credit or banking facilities in accordance with this Ordinance; and

(*h*) any other form of income or revenue which the Authority may be entitled to from time to time including income from sublease or rental, and the sale or disposal of any property movable or immovable.

(3) The Fund shall be used and applied by the Authority—

(*a*) to perform its functions and discharge its duties under this Ordinance;

(*b*) to enable the Authority to exercise the powers conferred by this Ordinance;

(*c*) to pay the salaries, allowances, fees, remuneration, pensions, superannuation allowances and gratuities of members, officers or employees of the Authority, and any other payment duly authorized by the Authority;

(*d*) to pay the interest due on any charge, mortgage, issued by, and on any advance or loan made to or raised by, the Authority;

(*e*) to pay the sums required to be transferred to a sinking fund, or otherwise set aside for the purpose of making provision for the redemption of any charge, mortgage, or for the repayment

of advances, loans, and credit or banking facilities;

(*f*) to pay expenditure and other incidental costs for the maintenance, upkeep and repairs of property of the Authority;

(*g*) to pay for the cost of acquisition of any property, both movable and immovable necessary for the management and operation of any port managed, administered or operated by the Authority;

(*h*) to make such payment to contingencies or other reserves as the Authority may determine;

(*i*) to pay for port development cess and any other expenses lawfully incurred by the Authority in the execution of its functions under this Ordinance; and

(*j*) to make payment for such other purposes incidental to or connected with the functions of the Authority as the Majlis Mesyuarat Kerajaan Negeri may direct in writing.

(4) No withdrawal from or expenditure shall be charged to the Fund unless authorized by this Ordinance or by a resolution passed by the Authority.

(5) The Authority shall, at the end of each financial year, carry forward as working capital such monies as are reasonably necessary to meet its operational expenses.

Financial assistance to the Authority

44.—(1) The Government may, on such terms and conditions as may be imposed by Majlis Mesyuarat Kerajaan Negeri, provide any grants, loans or other form of financial assistance to the Authority to undertake any plans or programmes for the development, improvement, or expansion of any port.

(2) All monies received by the Authority under subsection (1) shall be paid into the Fund and accounted for in a separate account.

(3) At the end of each financial year, the Authority shall render to the Minister an account of all monies provided under subsection (1) and the amount expended during that year for the development, improvement or expansion of any port and the progress made in regards to such development, improvement or expansion.

Port development cess

45.—(1) There shall be payable annually to the Government a port development cess in respect of any area used exclusively for the purposes of the Authority at such amount as may be determined by the Minister.

(2) The Minister, with the approval of Majlis Mesyuarat Kerajaan Negeri, may exempt the Authority from liability to pay any port development cess or part thereof under subsection (1).

Investment of monies

46. Any funds of the Authority not immediately required to be expended in meeting any of the obligations of the Authority, or the discharge of any of the functions of the Authority may be invested from time to time in and upon such investments and securities as are allowed by law in the Federation or in the State for the investment of funds, or in such other investments or securities as may from time to time be approved by the State Financial Secretary or may be placed on deposit in a bank or banks approved by the Authority.

Power of the Authority to borrow money

47.—(1) Subject to this section and to the approval of the Majlis Mesyuarat Kerajaan Negeri, the Authority may borrow, by way of loan, overdraft or other facilities including Islamic finance facilities such sums of money as it may require for meeting its financial obligations and discharging its functions.

(2) Such loans, overdraft and facilities may be secured by way of:

(*a*) a charge, either fixed or floating charge or mortgage or pledge over any of its property including its future income or revenues;

(*b*) any instrument acceptable as security under the Islamic banking principles or upon the ruling or advice of a Shariah Advisory Council under Part IV of the Islamic Financial Services Act 2013 ***[Act 759]*** or any other banking services as approved by Bank Negara Malaysia; or

(*c*) guarantees, promissory notes, and other instruments acceptable as bankable security, issued by the Authority.

Power to make loans

48. Subject to any direction given by Minister under section 22, the Authority may, out of its funds, make loans in accordance with the provisions of this Ordinance in the execution of its duty or in the discharge of its functions under sections 17 and 18.

Accounts and audit

49.—(1) Subject to this section, the Authority shall—

(*a*) cause to be kept proper accounts and other records in relation thereto; and

(*b*) prepare an annual statement of accounts in such form, and containing such particulars and compiled in such manner, as the Minister may, having regard to subsection (2), direct.

(2) The annual statement of accounts of the Authority shall present a true and fair view of the financial position of the Authority and of the results, for the year to which it relates, of its operations.

(3) The accounts of the Authority shall be audited annually by the Auditor-General or such auditor as may be appointed by the Authority with the approval of the Minister.

(4) The Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995 ***[Cap. 15]***, shall apply to the Authority.

Annual estimates of revenue and expenditure

50.—(1) The Authority shall, not later than the fifteenth day of October of each year, submit for the approval of the Majlis Mesyuarat Kerajaan Negeri estimates of revenue and expenditure of the Authority for the next financial year; and, where during any financial year additional provision is required, a supplementary estimate thereof shall be submitted for the approval of the Majlis Mesyuarat Kerajaan Negeri.

(2) The Authority shall not incur expenditure which has not been included in estimates approved by the Majlis Mesyuarat Kerajaan Negeri unless—

(*a*) such expenditure is urgently required to ensure the continued efficient functioning of the Authority; and

(*b*) such expenditure is not more than one hundred

thousand ringgit and does not increase the approved expenditure within any one financial year.

Annual report and periodical reports

51.—(1) After the end of each financial year, the Authority shall submit to the Minister within such time as stipulated in the Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995 ***[Cap. 15]***—

(*a*) the annual statement of accounts of the Authority prepared and audited pursuant to section 49;

(*b*) a report dealing with and touching upon the activities, during that financial year, of the Authority; and

(*c*) the Minister shall, upon receipt of the said account and report, forward the same to the Majlis Mesyuarat Kerajaan Negeri for its consideration and thereafter, the aforesaid account and report shall be laid before the Dewan Undangan Negeri.

(2) The Authority shall supply the Minister with such financial and statistical returns as he may from time to time require.

Financial year

52. The financial year of the Authority shall be the period commencing on the 1st day of January and ending on the 31st day of December in each year.

Special audit

53.—(1) The Minister may, at any time, if he considers it necessary in the public interest, appoint in writing an auditor or any other qualified person to conduct a special audit on the Authority or on any development or investment made or the administration or management of the ports or performance by a licensed operator of any port or port undertaking licensed to him under Part VI.

(2) The scope of the special audit shall be stated in the letter of appointment by the Minister.

PART VIII

LEVYING OF DUES, CHARGES AND OTHER FEES, *ETC*.

Port dues, vessel dues, charges and other fees

Levying of port dues

54.—(1) Subject to this Part, the Authority or any licensed port operator duly authorized by the Authority may charge and collect port dues as may be prescribed by regulations made under section 114 in respect of—

(*a*) passengers, cargo and other goods carried in the vessel entering or leaving the limit of any port in Sarawak; or

(*b*) any cargo or goods transported through, into or out of the limit of any port in Sarawak from any place or vessel to any other place or vessel by any means or mode including the conveyance of petroleum or gas by pipelines, both onshore or offshore, on land or underground, in water or underwater, including greenhouse gases for storage under the Land (Carbon Storage) Rules, 2022 ***[Swk. L.N. 349/2022]***.

(2)(*a*) All port dues so received by the Authority under subsection (1) shall be accounted for to the Government and paid into the State Consolidated Fund as revenue for the Government.

(*b*) Where port dues are collected by a licensed port operator, the amount so collected shall be remitted before the end of the following calendar month to the Authority for payment into the State Consolidated Fund:

Provided that Majlis Mesyuarat Kerajaan Negeri may, by Order published in the *Gazette*, direct that port dues may be collected and paid to a licensed port operator.

Levying of vessel dues

55.—(1) Subject to this Part, the Authority may levy on a vessel such vessel dues in respect of berthing or mooring at any berth or property of the Authority as may be prescribed by regulations made under section 114 and those regulations may prescribe when such dues shall be paid.

(2) All vessel dues so received by the Authority under subsection (1) shall be accounted for to the Government and paid into the State Consolidated Fund as revenue for the Government.

(3) Where vessel dues are collected by a licensed port operator, the amount so collected shall be remitted before the end of the following calendar month to the Authority for payment into the State Consolidated Fund:

Provided that Majlis Mesyuarat Kerajaan Negeri may, by Order published in the *Gazette*, direct that vessel dues may be collected and paid to a licensed port operator.

Port charges and other fees

56.—(1) Subject to this Part and any regulations made under section 114, a licensed port operator may impose, collect and retain, as its revenue from any port user, the following port charges and fees for:

(*a*) the discharge and loading of any cargo from any vessel;

(*b*) any vessel berthing alongside any wharf of a port or for anchorage in any area within a port limit;

(*c*) any service rendered by a licensed port operator including stevedoring, pilotage, towing of vessels, roll-on or roll-off services, bunkering, water and other materials supplied, warehousing or storage of goods or acting as bailee or custodian of any goods;

(*d*) the handling, storage or disposal of scheduled wastes, and the handling and storage of inflammable, poisonous or dangerous goods or substances;

(*e*) passengers disembarking or embarking any vessel whilst berthed or anchored at any port;

(*f*) the hire or use of equipment, machineries or other tools belonging to the Authority or a licensed port operator; and

(*g*) any other fees and charges as may be approved in writing from time to time by the Minister.

Master to supply information on arrival of vessel

57.—(1) The master of a ship arriving in a port shall, if so required by the Authority or a licensed port operator, produce to it—

(*a*) the ship's register and documents of ownership or charter;

(*b*) particulars of all inward passengers and a list of the names of consignees of cargo intended to be discharged;

(*c*) a copy of the manifest giving full details (including the weight, measurement, quantity, and packing) of all cargoes to be landed at the port; and

(*d*) other information in relation to the vessel and her passengers, cargoes and other goods as may be prescribed by by-laws made under section 114(4).

(2) The particulars specified in subsection (1) shall, if required, be produced, or supplied in such form and within such time as may be prescribed by by-laws made under section 114(4).

Master to supply information on departure of vessel

58.—(1) On loading cargo and embarking passengers and goods outwards from a port, the master of a vessel shall, if so required by the Authority or licensed port operator, produce to it—

(*a*) a list of all outward passengers including transit passengers;

(*b*) the best account in writing, of the description, quantities and weights of all cargoes shipped on board in that port; and

(*c*) such other information in relation to the vessel and her passengers, cargoes and other goods as may be prescribed by by-laws made hereunder.

(2) Any particulars required by subsection (1) shall be delivered to such officers of the Authority or the licensed port operator and in such form, as may be prescribed by by-laws made under section 114(4).

Liability for payment of port dues

59.—(1)(*a*) The owner, agent or charterer of a vessel coming or entering the port limit of any port shall be liable for the payment of port dues levied under this Part.

(*b*) Where port dues are levied for conveyance of

petroleum or gases including greenhouse gases by pipelines, both onshore or offshore, on land or underground, in water or underwater, over the limit of a port, the owner of the petroleum or gases shall be liable for the payment thereof and shall be paid upon receipt of the invoice issued by the Authority or licensed port operator and within the period stipulated in that invoice.

(2) Port dues shall be paid, or sufficient security furnished for the payment before a vessel departs from a port.

(3) In the event of port dues or any part thereof is not paid, the Authority or a licensed port operator shall take such measures so as to recover payment thereof.

Liability for payment of vessel dues

60. The following persons shall be liable for the payment of vessel dues levied on a vessel in accordance with section 55:

(*a*) the ship owner; and

(*b*) all consignors, consignees and agents who shall have paid, or made themselves liable to pay, any dues on account of the vessel in the port on her arrival or discharge.

Liability for payment of port charges and other fees

61. The owner, agent, charterer of any vessel or the owner, consignee, consignor or bailee of goods shall be liable for payment of port charges and other fees which may be imposed upon them under section 56 of this Ordinance.

Consignor, consignee or agent may retain port dues out of owner's monies

62. Where port dues are paid by a person, who is made liable therefor by section 59(*a*) or (*b*), that person may retain, out of all monies in his hands received on account of the vessel or her owner, the amount of the port dues paid by him, together with all reasonable expenses he may have incurred by reason of the payment or the liability to pay.

Consignor, consignee or agent may retain vessel dues out of owner's monies

63. Where a vessel dues are paid by a person who is made liable therefor by section 60 that person may retain, out of all monies in his hands received on account of the vessel or her owner, the amount of the vessel dues paid by him together with all reasonable expenses he may have incurred by reason of the payment or the liability to pay.

General

Authority's lien for over money outstanding

64.—(1) The Authority or any licensed port operator shall have a lien over any property of any person who has failed or neglected or refused to pay any money due to the Authority or a licensed port operator in respect of port dues, vessel dues, charges, fees and other payments imposed upon him in accordance with this Ordinance.

(2) The Authority or the licensed port operator shall have the right in accordance with applicable law and procedure to enforce its rights under the lien obtained under subsection (1).

(3) The Authority may require any person to furnish security that the Authority thinks fit for the payment of any dues, charges, fees and other payment payable under this Ordinance or for any other purpose of this Ordinance.

Power of entry to ascertain port dues, vessel dues, charges and other fees

65. In order to ascertain the port dues, vessel dues, charges and other fees payable in respect of a vessel, any person authorized by the Authority or licensed port operator may, either alone or with any other authorized person, enter into that vessel within the port.

Weighing and measuring of goods in event of disputes

66. Where a difference arises, between the Authority or a licensed port operator and the master of a vessel or the owner of the goods, concerning the weight or quantities of the goods in respect of which port dues, vessel dues, charges, fees and other payment are payable, the Authority or licensed port operator—

(*a*) shall cause those goods to be weighed and measured;

and

(*b*) may, if necessary, detain the vessel containing the goods until they are weighed or measured.

Payment of expenses of weighing and measuring

67. If the weight or quantity of the goods is, after weighing and measuring under section 66, found to be more than that shown by the particulars provided under section 57 or 58, or the Merchant Shipping (Ports and Rivers) Regulations, 1961 ***[G.N.S. 43/61]***, the expenses of the weighing or measuring shall be paid to the Authority or the licensed port operator by the master of the vessel and shall be recoverable in the same manner as dues leviable under this Part.

Recovery of port dues, vessel dues, port charges *etc*.

68.—(1) Notwithstanding this Part or Part VIII of the Merchant Shipping (Ports and Rivers) Regulations, 1961 ***[G.N.S. 43/61]***, the Authority or a licensed port operator may recover, by civil proceedings any port due, vessel due, port charge, fee, expense, and cost which are owing and outstanding from the person liable for the same under sections 59, 60 and 61 of this Ordinance as if the same were a civil debt or liquidated sum due to the Authority or licensed port operator.

(2) Where the master of a vessel refuses, fails or neglects to pay, on demand, any dues, charges, fees and other payments to the Authority or licensed port operator, the Authority or licensed port operator may, without prejudice to subsection (1) and section 59(3), in accordance with applicable rules of court, apply for a warrant of arrest against the vessel or distrain the vessel and the tackle, apparel or furniture thereof, and other things, and may detain it until the amount so payable is paid or commence legal proceedings against its owner or mortgagee in possession.

(3) If, after a period of fourteen days following the arrest or distrain, any of—

(*a*) those port dues, port charges, fees, and other payments; or

(*b*) the expenses of arrest or distrain or of the detention of the vessel, tackle, apparel or furniture,

remain unpaid, the Authority may cause the vessel and the tackle, apparel or furniture thereof, or other things distrained or arrested to be sold pursuant to order of court to satisfy the amount owing to the Authority or a licensed port operator.

(4) The Authority or licensed port operator may retain the amount of the dues, charges, fees and other payment and expenses including expenses of sale which is owing, and shall deliver, on demand, the balance to the master of the vessel.

Customs clearance to be withheld until dues are paid

69.—(1) If the Authority or a licensed port operator gives to the proper officer of customs a notice stating that an amount therein specified, is due in respect of dues, leviable under this Ordinance, against a vessel, or the master or owner of a vessel the proper officer of customs shall not give clearance for departure from the port of that vessel (not being a vessel exempted under the Customs Act 1967 ***[Act 235]*** from requiring a clearance) until—

(*a*) the amount of dues has been paid; or

(*b*) security for the payment of the dues has been given to the satisfaction of the Authority or a licensed port operator.

(2) In this section, "proper officer of customs" means the officer of Customs acting in the performance of duties under the Customs Act 1967 ***[Act 235]*** as to the grant of a clearance in respect of the departure of a vessel from a port.

Records of port dues, vessel dues, charges, fees and other payment and inspection thereof

70.—(1) The Authority or a licensed port operator shall keep at its principal or registered office proper records and accounts of:

(*a*) all port dues, vessel dues, charges, fees, and other payments imposed and collected during every financial year;

(*b*) the amount of port dues and vessel dues remitted or paid to the State Consolidated Fund; and

(*c*) the amount of port dues, vessel dues, charges, fees, and other payments already due but unpaid and any civil or admiralty proceedings instituted to recover the same.

(2) The records and accounts kept under subsection (1) may be inspected by any person duly authorized by the Authority or licensed port operator upon the payment of fee as may be determined by the Authority.

Non-application of Part VIII to Government vessels

71. This Part shall not apply to any vessel other than a vessel which is habitually used for carrying passengers or goods for hire or reward belonging to the Government of Malaysia or of any state or to the government of any other country but shall apply to goods the property of, or imported or exported by or on behalf of, the Government of Malaysia or of any state.

Continued application of dues, charges and fees made pursuant to the Ports Authorities Ordinance, 1961 *[Ord. No. 1/61]*

72. The dues, charges and fees applied by the Port Authorities immediately before the coming into force of this Ordinance and made pursuant to the Port Authorities Ordinance, 1961 ***[Ord. No. 1/61]***, shall continue to be valid as though determined by the Authority under this Ordinance until rescinded, varied or otherwise determined by the Authority.

PART IX

PORTS, PREMISES AND PORT SECURITY

Ports and premises

Control of foreshores and landing or shipping of cargo

73.—(1) The Authority or a licensed port operator shall have control of the use of foreshores within each of the port limits.

(2) No goods or cargo shall be handled across, over or under such foreshores without the written permission of the Authority or otherwise in accordance with such conditions as the Authority may determine.

(3) Any person who acts in contravention of subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years, or to both.

Power to direct vessels to anchor, moor or come

74.—(1) The Authority or licensed port operator may direct any vessel:

(*a*) to anchor or moor at any place or area within a port limit under their respective jurisdiction;

(*b*) to come alongside or berth at wharf, jetty, pier or landing stage which is under the control of the Authority or a licensed port operator, for the purpose of discharge or loading of goods, or the disembarkation or embarkation of passengers,

and in making such direction the Authority or licensed port operator shall have regard to any delay or inconvenience caused to the vessel, or other port users and to maintain efficiency in the handling of the goods and passengers.

(2) The Minister may at any time require that a vessel belonging to or in the service of the Government or the Government of Malaysia or of a state be permitted to come alongside a quay, wharf, jetty, pier or landing stage under the control of the Authority or licensed port operator in precedence to all other vessels at the time in port, and the Authority or licensed port operator shall give effect to such requirement.

Port security

Establishment of security force

75. The Authority may, with the approval of Majlis Mesyuarat Kerajaan Negeri, establish a security force for keeping order and security within any premises vested or deemed to be vested in, or in the possession or under the control of, the Authority.

Conditions of service of security force

76. Sections 28 and 29 shall be applicable to the security force established under section 75.

Power of arrest and search

77.—(1) A member of the security force or any other person duly authorized by the President by notification in the *Gazette* (in this Part referred to as "an authorized person") or any police officer may

arrest without warrant any person whom he reasonably suspects of having committed an offence under this Ordinance or regulations or by-laws made thereunder if—

(*a*) he has reasons to believe that the person is about to abscond;

(*b*) the person is suspected of committing an offence,

(*c*) the person refuses to give his identity or address; or

(*d*) the person has given an identity or address which he has reasons to believe to be false.

(2) A member of a security force or an authorized person or any police officer may search or cause to be searched, any person arrested pursuant to this section:

Provided that no female shall be searched except by a female.

(3) Where a person is arrested pursuant to subsection (1), he shall, as soon as reasonably and conveniently possible, be brought to the nearest police station.

Power of investigation

78.—(1) Any authorized person or any police officer not below the rank of inspector may investigate any offence committed under this Ordinance or its subsidiary legislation and call any person to produce such goods, books, accounts or other documents or things and to furnish any information as the authorized person or police officer may consider necessary for the purpose.

(2) An authorized person or any police officer in carrying out investigation under this section may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(3) The person referred to in subsection (2) shall be bound to answer all questions relating to the case put to him by an authorized person or any police officer:

Provided that the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge, penalty or forfeiture.

(4) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(5) An authorized person or any police officer in examining a person under this section shall first inform the person of the provisions of subsections (3) and (4).

(6) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish, and an authorized person or any police officer shall endorse thereon under his hand the fact of the refusal and the reasons for it, if any, as stated by the person examined.

(7) Whenever such an authorized person or any police officer exercises any of the powers under this Ordinance, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under section 83.

Power to seize, remove and detain goods, *etc*.

79.—(1) Any authorized person or any police officer exercising the power of investigation under section 78 may seize, remove and detain any goods, or any other thing which he reasonably believes to be or has been used in the commission of an offence or to contain evidence relating to such an offence under this Ordinance or its subsidiary legislation:

Provided that a court or the Authority may release anything so seized under this section upon the furnishing of a bond or other security sufficient to cover the value of the goods, or any other thing seized, or to produce such goods, or any other thing in court as and when required.

(2) An authorized person or police officer seizing, removing, or detaining any goods, or any other thing under this section shall prepare a list thereof and forthwith deliver a copy of the list signed by him to the owner or agent of the goods, or any other thing, as the case may be.

(3) Any goods, or any other thing seized or detained under this section may deal with or dispose of in accordance with any regulations made under section 114 or in such manner as a court may order.

(4) No claim or action shall lie against the Authority, or an authorized person or police officer in respect of the seizure, removal, or detention of anything under this section unless it is proved that such seizure, removal or detention was made without reasonable or probable cause.

Disposal of perishable goods or thing

80.—(1) Where any goods or any other thing has been seized or detained pursuant to section 79 is of a perishable nature, the Authority may, by order in writing, direct the goods or such other thing to be sold or to be disposed of in such manner as he deems fit.

(2) A proper account of the proceeds of sale shall be kept and held by the Authority pending the completion of any investigation, prosecution, or proceedings in respect of the offence for which the goods or such other thing was seized or detained.

Disposal of goods or other thing by court

81. Where it is proved to the satisfaction of a court that any goods or any other thing seized or detained pursuant to section 79 was the subject matter of an offence or used in the commission thereof, the court shall order the goods, or any other thing or the proceeds of sale thereof to be forfeited to the Authority or to be disposed of in such manner as the court may direct.

Return of goods or other thing seized or detained

82. Where any goods, or any other thing is seized or detained under section 79 and there is no prosecution within a period of ninety days of such seizure or detention, the goods, or any other thing seized or detained shall be deemed to be forfeited to the Authority upon the expiry of that period unless, before the expiry thereof, a written claim is made by the lawful owner thereof or his duly authorized agent to the Authority for the return of the goods or other thing seized or detained.

Identification or written authority

83. Any member of a security force or any authorized person when discharging his duties or exercising his powers under this Ordinance or its subsidiary legislation shall, on demand, produce to any person against whom he is taking action, such identification or written authority to show that he is a member of a security force or an

authorized person for purposes of this Ordinance or its subsidiary legislation.

PART X

LIABILITY OF THE AUTHORITY

Limitation of liability

84.—(1) The Authority or a licensed port operator shall not where, without actual fault or privity, any loss or damage is caused to any vessel, or to any goods, merchandise or other things whatsoever on board any 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 vessel's tonnage.

(2) The limits impose by this section to the liabilities mentioned therein shall apply to the aggregate of such liabilities which are incurred on any distinct occasion and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(3) This section applies without prejudice to any limitation of liability for loss or damage which may be available to the Authority or a licensed port operator under any written law.

Liability in respect of loading or discharging operations

85. The Authority or a licensed port operator shall not, without its actual fault or privity, be liable to damages—

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

(*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.

Goods deposited with the Authority or a licensed port operator

86. Any goods, merchandise or other things deposited with or placed in the custody of the Authority or the licensed port operator for the purpose of storage, shipment or transshipment shall remain in the custody or control of the Authority or a licensed port operator at the

sole risk and expense of the owner thereof.

Loss, destruction of or damage to goods other than transshipment of goods deposited with the Authority or a licensed port operator

87.—(1) The Authority and licensed port operator shall, in respect of any other than transshipment goods deposited with or placed in the custody or control of the Authority or licensed port operator 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 a licensed port operator 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 a licensed port operator or any failure by the Authority or a licensed port operator 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 or a licensed port operator been declared in writing to the Authority or a licensed port operator by the person delivering or causing the same to be delivered, and the Authority or a licensed port operator 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 89.

(3) For the purposes of this section and of section 88, the expression "transshipment goods" means goods landed from a vessel and placed in the custody of the Authority or a licensed port operator 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 scheduled 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 or a licensed port operator prior to or at the time such goods are placed in its custody.

Loss, destruction of or damage to transshipment of goods

88. In respect of any transshipment goods delivered by a person to or placed by a person in the custody of the Authority or a licensed port operator, the Authority or the licensed port operator shall, from the 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 89, for the loss or destruction of, or damage to, such goods:

Provided that the Authority or the licensed port operator 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 or the licensed port operator, been declared in writing to the Authority or the licensed port operator by the person delivering or causing the same to be delivered, and the Authority or the licensed port operator shall not in any event be liable therefor where the value of any such goods has been misstated.

Force majeure, *etc*.

89. Section 87(2)(*b*) and section 88 shall not impose on the Authority or a licensed port operator 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 or a licensed port operator;

(*b*) an act of God;

(*c*) an act of war or civil unrest or riots or declaration of emergency;

(*d*) seizure under any legal process;

(*e*) quarantine restrictions or outbreak of pandemic diseases;

(*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*) saving or attempting to save life or property;

(*i*) insufficient or improper packing, defective or insufficient marks or labeling and leakage from defective drums, pipelines, containers, packages, *etc*;

(*j*) any inherent liability to wastage in bulk or weight, latent or inherent defect or natural deterioration; or

(*k*) the dangerous or inflammatory nature of such goods.

Limitation of liability in respect of one occasion

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

Liability for loss under contract

91.—(1) This Part, shall not preclude or prejudice the rights of the Authority or a licensed port operator on application made to it by the owner of a vessel from entering into a contract with that owner whereby the Authority or a licensed port operator shall accept liability for any loss caused by reason of short delivery by the Authority or a licensed port operator of any goods deposited with or placed in the custody or control of the Authority or a licensed port operator or any failure by the Authority or a licensed port operator to deliver or account for the same; and for the purposes of this section, the Authority or a licensed port operator may determine the terms and conditions of the contract:

Provided that the Authority or the licensed port operator may in its discretion refuse to enter into such contract.

(2) Nothing in this Part shall affect the liability of the Authority or a licensed port operator under any written law relating to compensation to owner of such goods.

PART XI

OFFENCES, PENALTIES AND PROCEDURES

Failure to comply with directions of the Authority or a licensed port operator

92. Any person who fails without reasonable cause to comply with any lawful direction given by any officer or employee of the Authority (including any member of a security force) or a licensed port operator when acting in the course of his duties under this Ordinance or its subsidiary legislation shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or imprisonment not exceeding one year, or to both.

Intoxication, *etc*., of officers and employees of the Authority or a licensed port operator

93. Any officer or employee of the Authority or a licensed port operator who, while on duty, is unable to perform properly his duties due to the influence of drink or a drug shall be guilty of an offence, and shall, on conviction:

(*a*) in the case of a member of a security force or any officer or employee the improper performance of whose duty would be likely to endanger the safety of any person, be liable to a fine not exceeding twenty thousand ringgit and imprisonment not exceeding one year, or to both; and

(*b*) in any other case, be liable to a fine not exceeding fifteen thousand ringgit and imprisonment not exceeding one year, or to both.

Offences by a body corporate, *etc*.

94. Where an offence under this Ordinance or its subsidiary legislation has been committed by a company, firm or society or any other body of persons, any person who at the time of the commission of such offence was a director, secretary or other similar officer of the company, or a partner or manager of the firm, or an office-bearer of the society or body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves to the satisfaction of a court that the offence was committed without his consent or connivance, and that he has exercised such 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.

Penalty for evading dues, charges or fees

95.—(1) 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 dues or charges or fees leviable under this Ordinance or its subsidiary legislation, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years, or to both.

(2) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay the Authority a sum not less than ten times the dues or charges or fees leviable, as the case may be, and any sum ordered to be so paid be recoverable by the Authority as a civil debt.

Evasion of dues, charges and fees not waived by subsequent acceptance of payment

96. The tender to, or acceptance by or on behalf of, the Authority or licensed port operator of the payment of any due, fees, charge and other payment, 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 Ordinance, consequent upon such evasion or non-payment.

Penalty for disobeying orders of Port Traffic Manager

97.—(1) If the master of a vessel, without the permission of the Port Traffic Manager, 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 Port Traffic Manager 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 ten thousand ringgit or imprisonment not exceeding one year, or to both.

(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 Port Traffic Manager 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 ten 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

98. Any person who hinders or obstructs any member, officer or employee of the Authority or a licensed port operator 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 Ordinance shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or imprisonment not exceeding one year, or to both.

Penalty for not keeping vessel so loaded with ballast

99.—(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 Port Traffic Manager that it shall be removed.

(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 twenty thousand ringgit or imprisonment not exceeding one year, or to both.

Power to order scuttling or removal of vessel in case of fire

100.—(1) In the event of fire breaking out on board any vessel in any port, the Port Traffic 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 complied with by the master of the vessel, the Port Traffic Manager or the person authorized by him may himself proceed to carry the orders into effect.

(3) Any person who fails to comply with subsection (1) shall be guilty of an office and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or imprisonment not exceeding one year, or to both.

(4) 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 civil debt pursuant to section 68.

Boarding of vessel when commission of offence is suspected

101.—(1) The Port Traffic Manager or such person as may be authorized by the Authority or licensed port operator may board any vessel within the port whenever he suspects that an offence under this Ordinance or any regulation 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 Ordinance or any regulations or by-laws made thereunder.

(2) The Port Traffic Manager or such person as may be authorized by the Authority or licensed port operator 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 Ordinance or any regulations or by-laws made thereunder.

(3) The master of such vessel who, without lawful excuse, refuses to allow the boarding of such vessel pursuant to subsection (1) shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or imprisonment not exceeding one year, or to both.

Penalty for false information on draught

102. The master of a vessel—

(*a*) entering or leaving any wharf within port limit; or

(*b*) intending to enter or leave any such wharf, or to come

alongside or to depart from any wharf,

who gives false information relating to the draught of the vessel to an officer of the Authority or licensed port operator 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 twenty-five thousand ringgit or imprisonment for a term not exceeding two years, or to both.

Penalty for giving false information in return

103. Any person who makes a statement which is false or omits to furnish in any material particular in a return, claim, application, declaration or other document which is required or authorized to be made under this Ordinance or of its subsidiary legislation, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years, or to both.

Penalty for throwing ballast, *etc.*

104. Any person who throws or discharges into a wharf or the waters within a port limit any ballast, wastes of any description, stones or other materials or does any act which causes pollution to the environment or the waters of a port shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or imprisonment for a term not exceeding three years, or to both.

Recovery of damages for injury to property of the Authority or a licensed port operator

105.—(1) Where damage is caused to a wharf, warehouse, building, premises, machinery equipment or other work belonging to the Authority or a licensed port operator by a vessel or by any of the persons belonging to or employed by 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 or a licensed port operator 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 or licensed port operator 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 or security has been given under subsections 2(*b*) and (*c*) the Authority or a licensed port operator shall receive and retain the deposit or security until the extent of and the amount to make good such damage has been ascertained by the Authority or a licensed port operator and paid to it by such master or owner.

(4) Every deposit or security 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 or a licensed port operator within seven days after the deposit is made.

(5) After the expiration of seven days following such deposit, the Authority or a licensed port operator 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 or a licensed port operator shall return the balance of the deposit, 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 Sessions Court

106. Any offence under this Ordinance or any regulations or by-laws made thereunder may be tried by the Sessions Court and, notwithstanding the provisions of any written law to the contrary, the Sessions Court may impose such sentence or fine and grant such relief or order as may be prescribed by this Ordinance.

Conduct of prosecution

107. The prosecution of any offence under this Ordinance or any regulations or by-laws made thereunder shall be instituted and conducted by the Public Prosecutor or any person duly authorized by him under section 377(*b*) of the Criminal Procedure Code ***[Act 593]***.

Service of documents

108.—(1) Service of any summons, notice or other document required or authorized to be served upon the Authority or a licensed port operator in connection with any action by or against the Authority or a licensed port operator may be affected by delivering it to, or sending it by registered post addressed to, the President of the Authority or a licensed port operator, as the case may be.

(2) It shall be sufficient in any summons issued by a Session's Court under this Ordinance or any regulations 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.

(3) Service of the summons at the usual place of business of the firm or company shall be deemed to be sufficient service thereof.

Restriction on execution against property of the Authority

109.—(1) In any civil proceedings against the Authority, where any order including order for costs is made, no enforcement of that order by way of execution or attachment or process in the nature thereof shall be issued against the Authority.

(2) The enforcement of any such order against the Authority shall be in accordance with the procedure and process provided in section 33 of the Government Proceedings Act 1956 ***[Act 349]*** or any regulations made under section 114.

Stay of arrest in certain cases

110. Where his immediate removal from duty might result in danger to life or goods, a person connected with the direct working of the Authority or a licensed port operator shall not, whether in execution of a warrant or otherwise, be removed under arrest on civil process if he is then actually engaged in the performance of his duties, until—

(*a*) the head of the department in which that person is

employed; or

(*b*) the officer in immediate charge of the work in which that person is engaged,

has been given an opportunity of providing a substitute for the performance of the duties.

Legal representation

111. In any suit, action, or proceedings of a civil nature, before any court, tribunal or arbitrator, the Authority may be represented by—

(*a*) the State Attorney General or any State Legal Officer authorized by him; or

(*b*) an advocate appointed by the Authority; or

(*c*) any officer or employee of the Authority duly authorized in writing by its President.

Power to compound offences

112.—(1) The President or any person authorized by the President may, with the consent in writing of the Public Prosecutor or any person appointed by him under section 376(3) of the Criminal Procedure Code ***[Act 593]***, accept from any person who has committed an offence under this Ordinance or any regulations or by-laws made thereunder, a sum not exceeding one half of the maximum amount of the fine provided for the offence has been committed.

(2) All sums of money received under this section shall be credited to the State Consolidated Fund.

(3) Any power vested in an authorized person may, at any time, be withdrawn by the President, by notification in the *Gazette*.

General penalty

113. Any person who commits an offence under this Ordinance or under any regulations or by-laws made hereunder, for which no penalty is expressly provided, shall on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years, or to both.

PART XII

SUBSIDIARY LEGISLATIONS

Regulations

114.—(1) The Majlis Mesyuarat Kerajaan Negeri may make such regulations not inconsistent with the provisions of this Ordinance, as may be expedient or necessary for the better carrying out of the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), such regulations may—

(*a*) provide for the levying of dues, fees and charges and the mode and procedure for the enforcement of payment thereof including different dues or charges or fees for different classes of vessels, passengers, cargoes or goods;

(*b*) provide that the Authority or a licensed port operator may enter into any agreement in respect of any matter coming under section 56;

(*c*) provide for the exemption of any vessel, passenger, cargo, goods or any class of vessels, passengers, cargoes or goods, from all or any dues, charges or fees, or for the remission of any such dues, charges or fees, or of any part thereof;

(*d*) prohibit, control or regulate the laying, placing, erection and maintenance of pipelines, cables or other structures within the port limits;

(*e*) provide for the levying of dues, charges or fees on all petroleum or gas conveyed or transported through, into or out of any port by means of pipelines;

(*f*) provide for the levying of port charges on cargoes or fees on goods transported through, into or out of the port and the leasing, subletting, and use of equipment, machineries, tools and warehouses, godowns and other premises or facilities at any port;

(*g*) provide for the levying of dues, charges or fees on pipelines, cables or any floating or other structures laid, placed, erected or maintained on land or underground, in or under the waters;

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(*h*) prescribe the offences which may be compounded and the procedures and conditions for compounding of such offences;

(*i*) provide for the establishment of pilotage area, the establishment of pilotage committees, the examination and licensing of pilots and their rights, duties and liabilities, pilotage dues or fees, the liability of masters and others when employing a pilot and all other matters relating to pilotage, and use of pilot or pilotage services, by vessels within a port limit and to designate areas for anchorage or mooring of vessels;

(*j*) provide for the procedure for seizure, forfeiture or disposal of goods and other things seized or detained under this Ordinance;

(*k*) provide for procedure and process for the enforcement of any order against the Authority;

(*l*) provide for all matters or things which this Ordinance are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Ordinance;

(*m*) regulate any of the activities or prescribing any procedures of the Authority and generally the performance of the functions, the exercise of the powers and discharge of the duties of the Authority under this Ordinance; and

(*n*) provide for such other matters as are contemplated by, or necessary for giving full effect to the provisions of this Ordinance and for their due administration.

(3) The Majlis Mesyuarat Kerajaan Negeri may make regulations on the matters stipulated in subsection (2) in relation to or for the purposes of a licensed port operator and may confer such powers and authority on a licensed port operator to enforce compliance with such regulations.

(4) The Authority may make by-laws for—

(*a*) the proper conduct of the business of the Authority including the preservation of its property and the safety of operations within its premises;

(*b*) prescribing the conditions of business to which the liability of the Authority shall be subject in its capacity as a carrier of passengers, as a bailee or custodian of goods;

Sarawak Laws Net

(*c*) specifying the officer to whom, the place at which and the time within which—

(i) returns or information required by the Authority shall be delivered; and

(ii) dues, or fees or charges shall be paid;

(*d*) prohibiting, controlling and regulating the entry of persons and goods to any land or premises under the control of the Authority;

(*e*) such particulars relating to vessels entering or leaving a port as may be required for the purposes of Part VIII and the form of such particulars and time in which such vessels shall be supplied;

(*f*) such provision relating to the officers and employees matters; and

(*g*) any of the activities or prescribing any procedures necessary for the performance of the functions and discharge of the duties of the Authority under this Ordinance.

(5) Such regulations or by-laws may provide that the contravention of any regulations or by-laws shall constitute an offence and may provide for the punishment of any such offence by penalties not exceeding a fine of two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years, or to both.

Power to amend the Schedules

115. Majlis Mesyuarat Kerajaan Negeri may, by Order published in the *Gazette*, amend any of the Schedules in this Ordinance.

PART XIII

MISCELLANEOUS

Ports Consultative Council

116.—(1) The Minister may, by notification in the *Gazette*, constitute a Ports Consultative Council consisting of the following members:

(*a*) Permanent Secretary to the Ministry having responsibility for ports, as Chairman;

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(*b*) the President; and

(*c*) not less than five and not more than eight other persons to be appointed by the Minister, to represent port users and organizations or institutions in the State established with the objectives to promote trade, transportation, marine shipping and investment.

(2) Any person appointed by the Minister under subsection (1)(*c*) shall be for a period not exceeding three years and may be removed or replaced by the Minister at his discretion but shall be eligible for re-appointment.

(3) The Council shall have the following functions:

(*a*) to make recommendation to the Minister on measures to improve the efficiency and operations of ports and port undertakings and services and facilities provided by the Authority or licensed port operators;

(*b*) to make proposals to the Government on the future development of ports in the State;

(*c*) to study and make recommendations on dues, charges, fees and other payments that may be levied under this Ordinance, and the possible standardization of such dues, charges, fees and payments;

(*d*) to study measures to enhance the usage of facilities and services of ports, and to improve the standard and quality of services or facilities provided by the Authority or licensed port operators;

(*e*) to enhance cooperation and understanding between the Authority and other related agencies in the State;

(*f*) to make recommendations to the Minister, for improvement in navigation and marine safety in waters within port limits; and

(*g*) in consultation with the Minister to undertake such programme or activities for the improvement of a management and operations of ports and to adopt measures and policies for the sustainable development of the ports in accordance with climate change goals.

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(4) All meetings of the Council shall be presided over by the Chairman, or in his absence by any member of the Council elected by the majority of the members.

(5) Three members of the Council including at least a member referred to in subsection (1) (*a*), (*b*) or (*c*) shall constitute a quorum for any of its meetings.

(6) The Secretary appointed under section 26 shall be appointed as Secretary to the Council but shall not be a member with no right to vote on any matters under its consideration.

(7) The Secretary shall keep records of all the Council's proceedings.

(8) The President shall attend all meetings of the Council but shall not be entitled to vote on any matters under the Council's consideration.

(9) Subject to subsections (4), (5) and (6), the Council shall determine its own procedures for the conduct of its meetings.

(10) The Chairman shall transmit a copy of the records of the proceedings of the Council with all recommendations and proposals of the Council to the Minister, after the conclusion of each meeting.

(11) All members of the Council and its Secretary may be paid such allowances as may be approved by the Authority in consultation with the Minister.

PART XIV

FINANCIAL ARRANGEMENTS OF THE AUTHORITY OR SUCCESSOR COMPANY, REPEAL AND SAVINGS

Financial arrangements of the Authority or a successor company

117. For the purposes of any statutory accounts of the Authority or successor company—

(*a*) the transfer and vesting effected by virtue of section 24 shall be taken to have been a transfer and vesting of property, rights and liabilities to which the existing port authorities were entitled or subject to immediately before the end of the last complete accounting year of the existing port authorities ending before the transfer date and to have been effected immediately after the end of that year;

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(*b*) the value or amount of any asset or liability of the existing port authorities vested in the Authority or successor company shall be the value or amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by the existing port authorities, in respect of that year;

(*c*) the amount to be included in respect of any item shall be determined as if anything done by the existing port authorities, whether by way of acquiring, revaluing or disposing of any asset or liability, or by carrying any amount to any provision or reserve, or otherwise had been done by the Authority or successor company;

(*d*) the amount to be included from time to time in any reserves of the Authority or successor company as representing its accumulated realized profits shall be determined as if any profit realized and retained by the existing port authorities had been realized and retained by the Authority or successor company; and

(*e*) references in this section to the statutory accounts of the Authority or successor company are references to any accounts prepared by the Authority or successor company for the purposes of any provision of this Ordinance or Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995 ***[Cap. 15]***.

Repeal, transitional and savings

118.—(1) The Port Authorities Ordinance, 1961 ***[Ord. No. 1/61]***, is repealed.

(2) Notwithstanding subsection (1), all regulations, by-laws, orders, directions, appointments, proclamations, licences, rights, privileges, notifications or other acts or things made or done under or in accordance with the repealed Ordinance, in so far as they are not inconsistent with this Ordinance, be deemed to be made under this Ordinance and shall continue to be in force until amended, revoked, or replaced pursuant to this Ordinance.

(3) Save as otherwise provided in this Ordinance—

(*a*) the provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any agreements, undertakings or arrangements executed by the existing port authorities before or after the commencement of this

Sarawak Law Net

Ordinance;

(*b*) any provisions contained in such agreements, undertakings or arrangements shall to the extent to which it is repugnant to the provisions of this Ordinance become void;

(*c*) any prosecution, suit, proceeding or cause of action pending or existing or subsisting immediately before the date of the Order made under section 5, by or against the dissolved port authorities may be continued and enforced by or against the Authority or successor company; and

(*d*) nothing in this Ordinance or its subsidiary legislation shall—

(i) affect any liability that may be imposed on the Authority or a licensed port operator by the Workmen's Compensation Act 1952 ***[Act 273]*** or any other written law relating to health and safety of workers of the Authority or licensed port operator; or

(ii) impose any liability in respect of any loss or damage on the Authority or a licensed port operator in any case where no such liability would have existed if this Ordinance had not been enacted.

Sarawak Law Net

SCHEDULES

FIRST SCHEDULE

SCHEDULED PORTS

(Section 3)

(1)	(2)
Port	*Port Limit Gazette Notification*
Kuching	*Swk. L.N. 98/2012* dated 10 July 2012
Rajang	*Swk. L.N. 98/2012* dated 10 July 2012
Miri	*Swk. L.N. 98/2012* dated 10 July 2012
Samalaju	*Swk. L.N. 98/2012* dated 10 July 2012
Tanjung Manis	*Swk. L.N. 98/2012* dated 10 July 2012

Sarawak LawNet

SECOND SCHEDULE

POWERS OF THE AUTHORITY

(Section 19)

1. To give directions to any person granted a licence under this Ordinance or the regulations.

2. To lay down standards and codes to be observed by all licensed port operators and users of port undertakings, services and facilities.

3. To levy such charges and fees for the granting of licences, approvals, consents and concurrences and for port undertakings, services and facilities provided by the Authority as may in its opinion be appropriate.

4. To open and maintain one or more accounts with such banks or other financial institutions, whether in Malaysia or elsewhere as the Authority thinks fit, and to authorize such officers of the Authority or other person as the Authority thinks fit to operate such accounts, including to sign orders or cheques against such accounts in conventional and online banking system.

5. To invest the monies in the Fund in accordance with section 46.

6. To undertake all or any work of every description in connection with any or all ports as the Authority may think fit or authorize by way of licensing any person to undertake such work, subject to regulations made pursuant to section 114 or by-laws made by the Authority, and such licence may contain such conditions as the Authority may think fit to impose.

7. 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.

8. 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 the State or Malaysia or on the high seas and whether entering or leaving the ports or bound elsewhere) and for the purpose of saving life or property or recovering property lost, sunk or stranded.

9. To provide for services of bunkerers and of suppliers of stores and materials to ships.

10. 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, warehouse, 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.

11. To provide for services of builders and repairers of vessels and machinery.

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12. To purchase or otherwise acquire or construct, and to lay and maintain, moorings.

13. To purchase or otherwise acquire or construct, and to maintain and operate, all means and appliances for berthing, loading, and discharging of vessels.

14. To purchase or otherwise acquire or construct, and to maintain and moor, vessels and hulks for the storage and working of cargo and goods.

15. To clean, deepen or improve any part of ports, and for any of such purposes to purchase or otherwise acquire or construct, and to maintain and operate, dredgers or other appliances.

16. To erect or cause to be erected buildings on any part of the area vested in the Authority.

17. 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.

18. To insure goods in its custody, as the Authority thinks fit.

19. To berth, tow, moor, move or dry dock any vessel within the port, and 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.

20. To load or unload any goods and to embark or disembark any passengers in or from any vessel.

21. To provide lighterage and to sort, weigh, warehouse or handle any goods within the port.

22. To acquire, construct, manufacture, maintain or repair any vessel or other thing required for the purposes of the Authority.

23. To provide for services of carrier of passengers or goods by land or water, and of wharfinger, warehouseman or lighterman.

24. To provide or purchase and to maintain and use engines, vessels and appliances for towage or for the protection of life or property, or for the prevention or extinguishment of fire.

25. To acquire any undertaking affording or intending to afford facilities, in the port, for the loading and unloading or warehousing of goods.

26. To supply water, fuel, electricity, or gas to vessels in the ports.

27. To control the erection and use of landing stages on any wharf.

28. Subject to section 23, to sell, let or otherwise dispose of any of the immovable or movable property of the Authority.

29. To enter into agreements with any person—

Sarawak LawNet

(*a*) for the supply, construction, manufacture, maintenance, or repair by that person of property, immovable or movable, necessary or desirable for the purposes of the Authority; or

(*b*) for the operation of port services, facilities or activities, or the provision of such port operating equipment, as may be operated or provided by the Authority.

30. To appoint and regulate weighers and meters of goods in the port.

31. To reclaim, excavate, enclose or raise any part of any land vested or deemed to be vested in the Authority.

32. To do anything for the purpose of—

(*a*) improving the skill of persons employed by the Authority;

(*b*) improving the efficiency of the equipment of the Authority;

(*c*) improving the manner in which that equipment is operated; or

(*d*) providing for training and research in connection with the operations of the Authority.

33. To provide houses, hostels and other like accommodation for persons employed by the Authority.

34. To make and guarantee loans to a person employed by the Authority for—

(*a*) building a house;

(*b*) purchasing or leasing a plot of land on which to build a house;

(*c*) purchasing or leasing for his residential use, or that of his family, any premises; or

(*d*) such other purpose as the Authority may approve.

35. To improve the welfare of, and to build or provide such recreational facilities or amenities for, persons under the employment of the Authority.

36. To make provision for gratuities, pensions, allowances or other benefits for employees or former employees of the Authority or its predecessors.

37. To offer bursaries and scholarships for study at any school or institution of higher learning to members of the public and officers or employees of the Authority and members of their families.

38. To engage in such other activities, whether similar to those specified in this Schedule or not, as may be sanctioned by the Minister.

39. Subject to the approval of the Minister, to incorporate or form companies or to acquire, subscribe and pay for shares in companies to enable the Authority to better

Sarawak LawNet

perform its functions and enhance the standard or quality of its services and facilities., or to participate in any joint venture or partnership.

40. To own, operate and maintain any vessel or to hire or enter into contract for the hire of pilots or for the purpose of providing services and facilities which the Authority is empowered or required to provide or to ensure the navigational and marine safety of vessels or shipping within the port limits.

41. Subject to the approval of Majlis Mesyuarat Kerajaan Negeri and Part VI, to appoint a licensed port operator to manage any of the ports or port undertakings and to levy such fees or charges on any such licensed operator for the use, hire or lease of any port facilities or equipment for the business of the licensed port operator.

42. To do anything incidental to any of its functions.

Sarawak LawNet

THIRD SCHEDULE

THE FUNCTIONS, OBLIGATIONS AND POWERS OF A LISENCED PORT OPERATOR AND THE CONDITIONS AND RESTRICTIONS UNDER THE LICENCE

(Section 37(2))

1. A licensed port operator shall manage, operate and administer the port or carry out port undertakings and provide port services in accordance with the terms and conditions stipulated in the licence issued to him and in strict compliance and observance of the provisions of this Ordinance and any regulations made hereunder.

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

(*a*) any change in the control of the licensed port operator;

(*b*) any industrial dispute between the licensed port operator and its employees;

(*c*) any industrial accident or mishap involving any servant, employee or agent of the licensed port operator;

(*d*) any fire occurrence within its premises;

(*e*) any theft or pilferage within its premises or involving any cargo in its possession or control; and

(*f*) any proceeding or claim instituted or made against the licensed port operator which may affect the licensed port operator's ability to perform any condition under the licence.

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

3. To engage, employ or appoint sufficient number of staffs, personnels, employees or workers, on such terms and conditions as the licensed port operator may deemed fit and proper, so as to enable it to discharge its functions and obligations as a licensed port operator, in particular to appoint a Port Traffic Manager whose duty shall be to regulate traffic, both maritime and vehicular traffic, movement of goods and the deployment of equipment and the machineries in a port.

4. To install navigational control systems for the efficient and safe movement, berthing, mooring and anchorage of vessels within the port limit.

5. To maintain the port and its premises and facilities in good, clean and safe condition at all times and to deploy and adapt to low carbon solutions in the operation and administration of the port.

Sarawak Laws Net

6. To maintain and dredge its waterways and access channel within port limit for the safe navigation of vessels entering or leaving the port.

7. To levy on port users such fees and charges for the provisions of port undertakings and port services as prescribed by regulations made under Part XII of this Ordinance and to collect the dues on behalf of the Authority.

8.—(1) Every licensed port operator shall—

(*a*) within three months after the end of each financial year or such longer period as the Authority may allow, submit to the Authority—

(i) a report of its operation during that financial year containing such information as is necessary to enable the Authority to make an informed assessment of such operation; and

(ii) its audited financial statements, together with the notes therein, and the reports of the Auditor-General or an auditor appointed by the Authority and the directors; and

(*b*) submit to the Authority—

(i) such statistical information relating to its operation as may be required by the Authority from time to time;

(ii) its cargo forecast over such period and in such form as may be determined by the 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 Authority may require a licensed port 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 port operator under subparagraph (1) and such information shall be submitted within the period and in such manner as the Authority may require.

9. A licensed port operator shall not carry out any business except that of the management operation or administration of the port or port undertakings stipulated in its licence.

10.—(1) A licensed port operator, which is a company incorporated under the Companies Act 2016 ***[Act 777]***, shall not allow the transfer or cause to be transferred, the controlling shares in the company.

(2) For the purpose of subparagraph (1), controlling shares means shares which constitute more than fifty percent of the issued and paid up capital of the company at the material time.

(3) Notwithstanding subparagraph (1), the Minister may under special circumstances approve the transfer of controlling shares.

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11. A licence issued to a licensed port operator shall not be transferred or assigned to, or the benefits thereof enjoyed by or conferred on, any third party.

12. Upon expiry of the licence, unless the term thereof has been extended, to return the licence to the Authority for cancellation.

13. To comply with all other written laws affecting the operation, management and administration of ports or the performance of port undertakings under the licence.

Sarawak LawNet

FOURTH SCHEDULE

FORM OF LICENCE

(Section 37(1))

_____of_____

(name of licensed port operator) *(address)*

is hereby authorized to develop/ build/ manage/ administer/ operate/ maintain*

_____

(name of port)

and/or to provide the following port undertakings and services*:-

_____

(description of port undertakings and services)

from_____to_____

(date) *(date)*

subject to the provisions of the Sarawak Ports Authority Ordinance, 2024, and shall have the functions and powers set out in the Third Schedule and subject further to the following terms and conditions, namely—

(i)

(ii)

(iii)

(iv)

2. The licence fee shall be RM _____ per annum.

3. During the duration of the licence or until the revocation or cancellation thereof, the licensed port operator shall enter into a sublease agreement with the proprietor for such period consistent with the duration of the licence.

4. The licence shall not have an implied right to a renewal of this licence, but application for extension of the term of the licence may be made in accordance with the provisions of the Ordinance.

5. This licence shall not be transferred to or acquired by any other party.

6. The transfer or disposal of controlling shares in a company which is the holder of this licence shall be deemed a transfer of this licence.

7. Failure, without reasonable cause, to comply with any provisions of the

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Ordinance, its regulations and by-laws and any terms and conditions of this licence shall entitle the Authority to suspend, revoke or cancel this licence.

Dated this day of _____.

_____
Chairman
Sarawak Ports Authority

We hereby confirm that we acquire this licence upon the terms and conditions stipulated herein.

_____
(name of licensed port operator)

**delete where inapplicable*

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