

A BILL

intituled

An Act to amend the Port Authorities Act 1963.

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BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Port Authorities (Amendment) Act 1990 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Short title and commencement.

2. Section 3 of the Port Authorities Act 1963, which in this Act is referred to as "the principal Act", is amended by deleting paragraph (u) of subsection (2).

Amendment of section 3. Act 21163

3. The principal Act is amended by inserting after section 3A the following new section 3B:

New section 3B.

3B. (1) In addition to the functions provided under this Act, the authority may, with the approval of the Minister, operate any port-related activities.

"Additional function of the authority

(2) In the exercise of the function in subsection (1) the authority may expend such moneys as are necessary.

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

(a) activities performed outside a port which relate to any function or duty of the authority to operate or maintain a port or the transportation of goods through the port; or

(B) the development, operation or maintenance outside the port of marinas and other properties necessary for the furtherance of any function or duty of the authority."

- New section 8A.
4. The principal Act is amended by inserting after section 8 the following new section 8A:
- "Power to borrow money.
- 8A. The authority may, from time to time with the approval of the Minister of Finance, borrow, by way of overdraft or otherwise, such sums as it may require for meeting its obligations and discharging its functions under this Act and may secure the repayment of any sum borrowed by way of a mortgage or charge, legal or equitable, of any property vested in the authority, or of any revenue received by the authority under this Act."
- Amendment of section 9,
5. Section 9 of the principal Act is amended—
- (a) by substituting for the words "Accounts and audit" in the marginal note the words "Accounts and records to be open for inspection";
- (b) by deleting paragraph (h) of subsection (1); and
- (c) by deleting subsection 3.
- New section; 29CA and 29CB.
6. The principal Act is amended by inserting after section 29C the following new sections 29CA and 29CB:
- "Power of Pilotage committee to license employees of a licensed operator.
- 29CA. (1) Notwithstanding anything to the contrary in the Act the authority may, if it considers expedient, authorise the Pilotage Committee to issue a licence to any employee of a licensed operator to pilot vessels in a pilotage district of such authority subject to such terms and conditions as the authority thinks fit:
- Provided that no such licence shall be issued to any such employee unless the Pilotage Committee has examined the employee and be satisfied as to the employee's general fitness and competency, including his physical fitness to act as a pilot for the licensed operator.
- (2) A licence issued under subsection (1) shall cease to be valid if the employee to whom it was issued ceases to be employed by the licensed operator.

Vessel to be piloted by authority pilot or employee of a licensed operator or an authorised person.

29cB. (1) No vessel shall be piloted in a pilotage district by any person other than the authority pilot or an employee licensed under section 29CA (1) of a licensed operator,

(2) Notwithstanding the provisions of subsection (1) the authority may, if it considers expedient, authorise any person to pilot vessels passing through its pilotage district, subject to such terms and conditions as the authority may impose."

7. Section 29D of the principal Act is amended—

Amendment of section 29D.

(a) by substituting for paragraph (a) thereof the following new paragraph (a):

"(a) holding examinations and issuing, on behalf of the authority, licences to act as an authority pilot or as a pilot employed by a licensed operator;

(b) by substituting for paragraph (b) thereof the following new paragraph (b):

"(b) holding inquiries concerning the conduct of—

- (i) authority pilots;
- (ii) employees, licensed to pilot vessels in a pilotage district pursuant to section 29CA (1), of a licensed operator;
- (iii) persons authorised under section 29CB (2) to pilot vessels passing through a pilotage district,

in the discharge of their duties as directed by the authority and make recommendations thereto;"

8. Section 29I of the principal Act is amended—

Amendment of section 29I.

(a) by inserting after the words "an authority pilot" in subsection (1) the words "or any person licensed under section 29CA (1) or any person authorised to pilot vessels under section 29CB (2)"; and

(b) by substituting for the words "five hundred dollars" in subsection (3) the words "two thousand ringgit".

Amendment
of section 29J.

9. Section 29J of the principal Act is amended—

- (a) by inserting after the words "an authority pilot" in subsection (1) the words "or an employee licensed under section 29CA (1) of a licensed operator or any person authorised by the authority to pilot vessels pursuant to section 29CB (2)";
- (b) by inserting after the words "such authority pilot" in subsection (2) the words "or employee licensed under section 29CA (1) of a licensed operator, or, in the case of such person authorised by the authority to pilot vessels pursuant to section 29CB (2), revoke such authorisation,"; and
- (c) by inserting after the words "Any authority pilot" in subsection (3) the words "or any employee licensed under section 29CA (1) of a licensed operator".

Amendment
of section
29M.

10. Section 29M of the principal Act is amended—

- (a) by inserting after the words "under section" in subsection (1) the words "29CA (1) or";
- (b) by inserting after the words "29H (1)" in subsection (1) the words "or the authorisation given by the authority to any person to pilot vessels passing through a pilotage district pursuant to section 29CB (2)".

Amendment
of section 29D.

11. Section 29O of the principal Act is amended by substituting for the words "two thousand dollars" in subsection (2) the words "five thousand ringgit".

Amendment
of section 31.

12. Section 31 of the principal Act is amended by substituting for the words "five hundred dollars" the words "two thousand ringgit".

Amendment
of section 32.

13. Section 32 of the principal Act is amended by substituting for the words "five hundred dollars" in subsections (2) and (4) the words "two thousand ringgit".

14. The principal Act is amended by inserting after section 34 the following new section 34A: New section 34A.

"Penalty for hindrances or obstructions to any member, officer or servant of the authority. 34A. Any person who hinders or obstructs any member, officer or servant of the authority in the performance or execution of his duty or in carrying out anything which he is empowered or required to do by virtue of or in consequence of this Act shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both such fine and imprisonment."

15. Section 35 of the principal Act is amended by substituting for the words "one thousand dollars" in subsection (2) the words "two thousand ringgit". Amendment of section 35.

16. Section 35A of the principal Act is amended— Amendment of section 35A.

(a) in subsection (1)—

- (i) by inserting after the words "not being an authority pilot" the words "or an employee licensed under section 29cA (1) of a licensed operator or a person authorised by the authority to pilot vessels pursuant to section 29CB (2)"; and
- (ii) by substituting for the words "one thousand dollars" the words "two thousand ringgit"; and

(b) in subsection (2)—

- (i) by inserting after the words "not an authority pilot" the words "or an employee licensed under section 29cA (1) of a licensed operator or any person authorised by the authority to pilot vessels pursuant to section 29cs (2)"; and
- (ii) by substituting for the words "one thousand dollars" the words "two thousand ringgit".

17. Section 35B of the principal Act is amended— Amendment of section 35B.

- (a) by inserting after the words "authority pilot" in subsection (1) the words "or an employee licensed under section 29cA (1) of a licensed operator";

- (b) by inserting after the words "authority pilot," in subsection (2) the words "an employee of a licensed operator,"; and
- (c) by substituting for the words "one hundred dollars" in subsection (2) the words "five hundred ringgit".

Amendment
of section 35c

18. Section 35c of the principal Act is amended—

- (a) by substituting for the words ", either within or without the districts for which he is licensed," in the first and second lines of subsection (1) the words "or any employee licensed under section 29CA (1) of a licensed operator or any person authorised by the authority to pilot vessels passing through a pilotage district pursuant to section 29CB (2)"; and
- (b) by inserting immediately after subsection (3) the following new subsection (4):

"(4) Any employee licensed under section 29CA (1) of a licensed operator or any person authorised to pilot vessels under section 29CB (2) who commits an offence under this section, or procures, aids, abets or connives at the commission of any such offence shall be liable on conviction to suspension or revocation of the licence or authorisation as the case may be."

Amendment
of section 35D.

19. Section 35D of the principal Act is amended—

- (a) by inserting immediately after the words "authority pilot" in the first line the words "or an employee licensed under section 29CA (1) of a licensed operator"; and
- (/ >) by substituting for the full stop appearing at the end thereof a colon and inserting immediately thereafter the following proviso:

"Provided that no employee licensed under section 29CA (1) of a licensed operator shall be dismissed by the authority."

20. The principal Act is amended by substituting for section 35n the following new section 35E: Substitution of section 35E.

"Failure to employ authority pilot or licensed pilot under certain circumstances. 35E. (1) The master, owner or agent of a vessel navigating in circumstances in which the vessel is required by the authority under section 29B to be under pilotage who does not employ an authority pilot or an employee licensed under section 29cA (1) of a licensed operator or a person authorised by the authority pursuant to section 29CB (2) for such purpose shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand ringgit.

(2) Upon being found guilty of any offence under subsection (1), the Court before which the master, owner or agent of the vessel is found guilty shall order such master, owner or agent to pay to the authority the amount certified by the accountant of the authority to be the amount of dues and rates which would have been payable to the authority if the vessel had been under pilotage as required by this Act and such amount shall be recoverable in the same manner as a fine."

21. Section 36 of the principal Act is amended by substituting for the words "one thousand dollars" the words "two thousand ringgit". Amendment of section 36.

22. Section 36A of the principal Act is amended— Amendment of section 36A.

(a) by deleting the words "either knowingly or recklessly,"; and

(/?) by substituting for the words "one thousand dollars" the words "five thousand ringgit".

23. The principal Act is amended by inserting after section 37 the following new section 37A: New section 37A.

"Authority to recover expenses incurred for act done pursuant to a lawful direction. 37A. (1) When any person without lawful excuse refuses or neglects to obey any direction lawfully given under this Act or the by-laws made thereunder, the authority may, irrespective of whether any proceedings have been instituted against or any punishment imposed on such person

for the refusal or neglect, do or cause to be done all such acts as are in its opinion reasonable or necessary for the purpose of carrying out such direction.

(2) The powers conferred by subsection (1) include the power to hire and employ such persons as are necessary and proper for making good whatever loss or damage that has been caused by any refusal or neglect of the person to whom the direction has been given.

(3) Any expenses incurred in the exercise of the powers conferred under subsection (1) or (2) shall be recoverable from the person to whom the direction has been given as a civil debt."

Amendment
of section 38.

24. Section 38 of the principal Act is amended by substituting for the words "five hundred dollars" the words "one thousand ringgit".

New
section 39A.

25. The principal Act is amended by inserting after section 39 the following new section 39A:

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

39A. Where an offence under this Act or under any of the regulations or by-laws made thereunder is committed by a body corporate (whether or not the body corporate has been prosecuted), every director, secretary or manager of the body corporate shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances of the case."

26, The principal Act is amended by inserting after section 41 A the following new section 41B: New section 41B.

"Power of General Manager or authorised person to order scuttling or removal of vessel in case of fire. 41 B. (1) In the event of fire breaking out on board any vessel in the port, the General Manager or any person authorised by him may proceed to board the vessel with such persons and assistance as may seem fit to him and may give such orders to the master of the vessel as are necessary for scuttling the vessel or for removing that vessel or any other vessel, and he may take such other measures as are necessary and proper for the protection of life or property,

(2) If the orders given pursuant to subsection (1) are not carried out forthwith by the master of the vessel, the General Manager or the person authorised by him may himself proceed to carry the orders into effect.

(3) Any expenses incurred in the exercise of the powers conferred by subsections (1) and (2) shall be recoverable from the master or the owner of the vessel concerned as a civil debt."

27. The principal Act is amended by inserting after section 46 the following new section 46A: New section 46A.

"Power to compound offence. 46A. (1) The Minister may by order to be published in the *Gazette* prescribe any offence against the provisions of this Act or of any regulations or by-laws made thereunder as an offence which may be compounded by the authority.

(2) The General Manager may in his discretion compound such offence prescribed under subsection (1) by accepting from the person reasonably suspected of having committed any such offence a sum of money not exceeding five hundred ringgit.

(3) The Minister may by the same order made under subsection (1) prescribe the method and procedure for compounding any offence against the provisions of this Act or of any regulations or by-laws made thereunder."

Amendment
of section 59.

28. Section 59 of the principal Act is amended by inserting immediately after the definition of the word "land" the following new definition:

Act 422.

' "licensed operator" means a licensed operator licensed under Part III of the Ports (Privatisation) Act 1990;'

EXPLANATORY STATEMENT

This Bill seeks to amend the Port Authorities Act 1963.

1. *Clause 1* enables the Minister to appoint the commencement date of this Bill.
2. *Clause 2* seeks to amend subsection (2) of section 3 by deleting paragraph (U) which gives the authority the power to borrow money.
3. *Clause 3* seeks to introduce a new section 3B to provide for the additional function of the authority to undertake, with the approval of the Minister, the operation of any port-related activities. In the exercise of such function the authority may expend such moneys as are necessary.
4. *Clause 4* seeks to introduce a new section 8A to enable the authority to borrow money with the approval of the Minister of Finance.
5. *Clause 5* seeks to amend section 9 by deleting subsection (1) (b) and subsection (3). With this amendment the Statutory Bodies (Accounts and Annual Reports) Act 1980 will now automatically apply to the authority.
6. *Clause 6* seeks to introduce two new sections, namely, sections 29CA and 29CB. Section 29CA enables the authority to authorise the Pilotage Committee to license any employee of a licensed operator to pilot vessels in a pilotage district subject to such terms and conditions as the authority thinks fit. Section 29CB prohibits any vessel to be piloted in a pilotage district other than by an authority pilot or licensed under section 29CA (1) or a person authorised under section 29CB (2).
7. *Clause 7* seeks to amend paragraphs (a) and (b) of section 29D to enable the Pilotage Committee to hold examinations and issuing licences to and, to hold inquiries on the conduct of any person licensed under section 29CA (1) or any person authorised under section 29CB (2) in the discharge of his duties.
8. *Clause 8* seeks to amend section 29r to enable the Pilotage Committee to inquire into matters concerning the misconduct, failure of duty or negligence of persons licensed under section 29CA (1) or authorised under section 29cs (2). It also seeks to amend subsection (3) of the same section to increase the fine from a sum not exceeding five hundred dollars to a sum not exceeding two thousand ringgit.

9. *Clause 9* seeks to amend section 29J to allow the Pilotage Committee to submit its findings after due inquiry on any person licensed under section 29cA (1) or authorised under section 29cs (2) to the authority. The authority is then empowered to suspend or cancel the licence of such pilot or to impose such other punishment as it thinks fit.
10. *Clause 10* seeks to amend section 29M (1) to extend its protection to the Pilotage Committee against any liability that may arise from any act or omission of any pilot, licensed under section 29CA (1) or section 29n (1) or authorised under section 29cB (2).
11. *Clause 11* seeks to amend section 29o to increase the fine from a sum not exceeding two thousand dollars to a sum not exceeding five thousand ringgit.
12. *Clause 12* seeks to amend section 31 to increase the fine from a sum not exceeding five hundred dollars to a sum not exceeding two thousand ringgit,
13. *Clause 13* seeks to amend subsections (2) and (4) of section 32 to increase the fine from a sum not exceeding five hundred dollars to a sum not exceeding two thousand ringgit.
14. *Clause 14* seeks to introduce a new section 34A. It makes it an offence for any person to hinder or obstruct any member, officer or servant of the authority in the performance or execution of his duty.
15. *Clause 15* seeks to amend subsection (2) of section 35 to increase the fine from a sum not exceeding one thousand dollars to a sum not exceeding two thousand ringgit.
16. *Clause 16* seeks to amend subsections (1) and (2) of section 35A to increase the fine from a sum not exceeding one thousand dollars to a sum not exceeding two thousand ringgit. It also seeks to bring within the ambit of subsections (1) and (2) of the same section any person licensed under section 29CA (1) or authorised under section 29CB (2).
17. *Clause 17* seeks to amend subsection (2) of section 35s to increase the fine from a sum not exceeding one hundred dollars to a sum not exceeding five hundred ringgit.
18. *Clause 18* seeks to amend section 35C to widen its scope in order to bring within its ambit any offence committed by any authority pilot or by any person, licensed under section 29CA (1) or authorised under section 29CB (2) in any pilotage district.
19. *Clauses 19 and 20* seek to amend sections 35D and 35E respectively to bring within its ambit any person licensed under section 29CA (1). *Clause 20* also seeks to increase the fine under section 35E from a sum not exceeding one thousand dollars to a sum not exceeding five thousand ringgit. It further provides for the Court to make an order that upon being found guilty of the offence the master, owner or agent of a vessel pays the pilotage dues and rates that are payable to the authority.

20. *Clause 21* seeks to amend section 36 to increase the fine from a sum not exceeding one thousand dollars to a sum not exceeding two thousand ringgit.

21. *Clause 22* seeks to amend section 36A with the deletion of the words "either knowingly or recklessly", the scope of section 36A is widened. It makes it an offence for any person to make any statement which is false in any material particular in any document requested or authorised to be made under the Act. It also increases the fine from a sum not exceeding one thousand dollars to a sum not exceeding five thousand ringgit.

22. *Clause 23* seeks to introduce a new section 37A. It enables the authority to recover all expenses incurred for making good any loss or damage caused by any person who had not complied with any directions lawfully given under the Act. The expenses shall be recoverable as a civil debt.

23. *Clause 24* seeks to amend section 38 to increase the fine from a sum not exceeding five hundred dollars to a sum not exceeding one thousand ringgit.

24. *Clause 25* seeks to introduce a new section 39A to provide for offences committed by a body corporate including its director, secretary or manager.

25. *Clause 26* seeks to introduce a new section 41B to empower the General Manager or any person authorised by him to order the removal of a vessel in the event of a fire.

26. *Clause 27* seeks to introduce a new section 46A to enable the General Manager of the authority to compound any offence against the provisions of the Act or of any regulations or by-laws made thereunder. The offence to be compounded, the method and procedure for compounding such offence shall be prescribed by the Minister by order to be published in the *Gazette*.

27. *Clause 28* seeks to amend section 59 of the Act and introduces a new definition of a licensed operator.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure. [PN. (U²) 1350.]