

Acts Supplement (Amendment Acts)



LAWS OF MALAYSIA

ACT A792

Merchant Shipping (Amendment) Act 1991

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Section 1. Short title and commencement.

(1) This Act may be cited as the **Merchant Shipping (Amendment) Act 1991**.

(2) This Act shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint and the Minister may appoint different dates for different provisions of this Act.

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Section 2. Amendment of section 2.

Section 2 of the Merchant Shipping Ordinance 1952, which in this Act is referred to as the "Ordinance", is amended-

(a) by inserting, immediately after the definition of "buoys and beacons", the following new definition:

' "cargo ship construction and survey rules" means rules made under section 256B;'

(b) by substituting the words "by Her Majesty in Council" in paragraph (a) of the definition of "country to which the Load Line Convention applies" with the words "under section 331A";

(c) by substituting the words "by Her Majesty in Council" in paragraph (a) of the definition of "country to which the Safety Convention applies" with the words "under section 306A";

(d) by substituting the words "the Federation" and "home-trade ships" in the definition of "foreign going ship" with the words "Malaysia" and "nearcoastal trade ships" respectively;

(e) by deleting the definitions of "home-trade ship", "home-trade passenger steamer", "home-trade voyage", "local-trade voyage", "local trade ship" and "local trade passenger steamer";

(f) by inserting, immediately after the definition of "native sailing ship", the following new definitions:

' "near-coastal trade passenger steamer" means every near-coastal trade ship which is a passenger steamer;

"near-coastal trade ship" means a ship plying solely upon a near-coastal trade voyage;

"near-coastal trade voyage" means a voyage within such limits as may be defined by the Minister by rules made under this definition;'; and

(g) by substituting the definition of "Safety Convention" with the following:

' "Safety Convention" means the International Convention for the Safety of Life at Sea signed in London on the 1st November 1974; and if any amendment of the Safety Convention comes into force with respect to Malaysia, references in this Ordinance to the Safety Convention shall, unless the context otherwise requires, be construed as references to the Safety Convention as amended;'

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Section 3. Amendment of section 10.

Section 10 of the Ordinance is amended-

(a) by deleting the words ", either generally or for special purposes and on special occasions," in subsection (1);

(b) by inserting, immediately after subsection (2), the following new subsection (2A):

"(2A) The Minister may appoint, for special purposes and on special occasions, any person, whether or not a citizen of Malaysia, to perform any specific functions of a Surveyor of Ships or a Radio Surveyor under this Ordinance at any place, whether within or outside Malaysia; and in connection with the performance of those functions such a person shall be deemed for the purposes of this Ordinance to be a Surveyor of Ships or a Radio Surveyor, as the case may be, appointed under subsection (1)."; and

(c) by substituting the word "persons" in subsection (4) with the words "public officers".

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Section 4. Amendment of section 18.

Section 18 of the Ordinance is amended-

(a) by inserting, immediately after the word "yellow" and the word "black" in paragraph (a) of subsection (1), the words "Roman capital";

(b) by substituting the semicolon at the end of paragraph (a) of subsection (1) with a colon and inserting the following proviso to that paragraph:

"Provided that the use of any script in addition to the Roman capital letters for the name of the ship may be approved by the Registrar General upon such terms and conditions as he may deem fit to impose;"
and

(c) by inserting, immediately after subsection (2), the following new subsection (2A):

"(2A) The Registrar General may require that the proposed name for a ship intended to be registered under this Part be submitted to him for his approval and he may for this purpose prescribe such form as he thinks fit."

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Section 5. Amendment of section 69.

Section 69 of the Ordinance is amended-

- (a) by substituting the words "British and Malayan" in the fifth line of subsection (2) with the word "Malaysian";
- (b) by deleting the words "agreements with Asian seamen who are British subjects or who are citizens," and "within the Federation" in paragraph (a) of subsection (2);
- (c) by deleting all the words in paragraph (b) of subsection (2) appearing after the words "every sea-going ship";
- (d) by substituting the words "sea-going ships" in paragraph (c) of subsection (2) with the words "every sea-going ship" and deleting all the words in that paragraph appearing after those words;
- (e) by substituting the words "or going between any port in" in paragraph (d) of subsection (2) with the words "exclusively within" and deleting all the words in that paragraph appearing after those words; and
- (f) by substituting the words "British or Malayan" in subsection (3) with the word "Malaysian" and deleting the words "under the Merchant Shipping Acts or" in that subsection.

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Section 6. Deletion of sections 71 to 87.

The Ordinance is amended by deleting sections 71 to 87 and the caption "*Certificates of Competency*" for those sections.

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Section 7. New section 71.

The Ordinance is amended by inserting, immediately after section 70, the following caption and new section 71:

" Qualifications and Manning

71. Rules relating to qualifications of officers and seamen, the manning of ships, etc.

The Minister may make such rules as he considers necessary or expedient to provide for the qualifications of officers and seamen of, and officers the manning requirements for, ships and for matters connected therewith, and without prejudice to the generality of such powers, may make rules providing for-

- (a) requiring officers and seamen and other persons performing prescribed functions in relation to the operation and maintenance of ships to be holders of certificates of competency, efficiency or authorisation or letters of proficiency or otherwise and to satisfy such other conditions as may be prescribed, and providing for the grant, revocation, extension, validation, suspension, endorsement, grading or variation of such certificates;
- (b) the holding and conduct of examinations for such certificates, the qualifications of applicants for such examinations and the qualifications, appointment, removal, reappointment and remuneration of a board of examiners, and all such matters as the Minister considers necessary or expedient for the purpose of such examinations;
- (c) the issue, form and recording of certificates of competency, efficiency or authorisation or letters of proficiency and other documents;
- (d) the exemption of persons with prescribed qualifications or experience from the whole or parts of examinations for such certificates;
- (e) the recognition, subject to such conditions as may be prescribed, of specified certificates of competency or proficiency issued by other countries, the declaration that such certificates shall have the same force and effect as if they had been granted in Malaysia, and the application to such certificates of all or any of the provisions and regulations relating to certificates of competency, efficiency or authorisation issued in Malaysia;
- (f) the exemption of holders of certificates of competency or proficiency issued in other specified countries from all or such part or parts as may be prescribed of the examinations for corresponding Malaysian certificates of competency or proficiency;
- (g) the manning requirements in relation to different classes and types of ships, including the minimum number and grades of certified or qualified officers and seamen, if necessary according to nationalities, to be carried on such classes and types of ships, and the exemption by the Director of Marine of any ship or class or type of ships from any of such requirement;
- (h) the production and admissibility in evidence of certificates and such other documents as may be prescribed;
- (i) the refusal of port clearance or the detention of any ship on failure to comply with the provisions of any rules made under this section;
- (j) the standards of health and vision for, and the issue of certificates of medical fitness to, officers and seamen and other persons performing prescribed functions in relation to the operation and maintenance of ships;
- (k) the fees to be paid for anything to be done or permitted to be done under the rules;
- (l) penalties for the contravention of the provision of any rules made under this section of a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding two years or both."

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Section 8. Amendment of section 98.

Section 98 of the Ordinance is amended by substituting the words "home-trade or local-trade" in subsection (2) with the words "near-coastal trade".

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Section 9. Amendment of section 101.

Section 101 of the Ordinance is amended by substituting the words "home-trade or local-trade" with the words "near-coastal trade".

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Section 10. Amendment of section 104.

Section 104 of the Ordinance is amended by substituting the words "home-trade ship or local-trade ship" in subsection (1) and the words "home-trade or local-trade" in the marginal note with, respectively, the words "near-coastal trade ship" and the words "near-coastal trade".

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Section 11. Amendment of section 113.

Section 113 of the Ordinance is amended by substituting the words "foreign-going, home-trade or local-trade" in subsection (1) with the words "foreign going or near-coastal trade".

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Section 12. Amendment of section 123.

Section 123 of the Ordinance is amended by substituting the words "home-trade or local-trade" in subsection (1) with the words "near-coastal trade".

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Section 13. Amendment of section 168.

Section 168 of the Ordinance is amended-

(a) by substituting the words "home-trade ship or a local-trade ship" in subsection (1) with the words near-coastal trade ship"; and

(b) by substituting the words "home-trade ship nor a local-trade ship" in subsection (2) with the words "near-coastal trade ship".

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Section 14. Amendment of section 198.

Section 198 of the Ordinance is amended by substituting the words "local-trade" in subsection (1) with the words "near-coastal trade".

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Section 15. Amendment of section 208.

Section 208 of the Ordinance is amended by deleting subsection (6).

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Section 16. Amendment of section 223.

Section 223 of the Ordinance is amended by substituting the words "home-trade or local-trade" in subsection (2) with the words "near-coastal trade".

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Section 17. Amendment of section 236.

Section 236 of the Ordinance is amended-

(a) by inserting, immediately after the words "on board" in subsection (1) the words ", or if there has been received on board of any passenger steamer,"; and

(b) by substituting the words "twenty-five" and "one week" in subsection (1) with, respectively, the words "three hundred" and "one month".

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Section 18. Amendment of section 244.

Section 244 of the Ordinance is amended-

(a) by inserting, immediately after the word "Federation" in paragraph (k) of subsection (1), the words "and the fees to be paid in respect of the embarkation or discharge of passengers"; and

(b) by substituting subsection (2) with the following:

"(2) The Minister, in making a rule under this section, may direct that any person who commits a breach of it shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both."

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Section 19. Amendment of section 245.

Section 245 of the Ordinance is amended by substituting the words "local-trade" with the words "near-coastal trade".

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Section 20. Substitution of caption for sections 256A to 264.

The Ordinance is amended by substituting the caption for sections 256A to 264 with the caption "*Construction, Life-saving Appliances and Equipment*".

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Section 21. Amendment of section 256A.

Section 256A of the Ordinance is amended by inserting, immediately after the words "and machinery of" in each place where they occur in subsection (1), the words "and the fuel used in".

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Section 22. New section 256B.

The Ordinance is amended by inserting, immediately after section 256A, the following new section 256B:

" 256B. Cargo ship construction and survey rules.

(1) The Minister may make rules (in this Ordinance referred to as "cargo ship construction and survey rules") prescribing requirements for the hull, equipment and machinery of and the fuel used in ships to which this section applies and requiring any such ships which are registered in Malaysia to be surveyed to such extent, in such manner and at such intervals as may be prescribed by the rules.

(2) The said rules shall include such requirements as appear to the Minister to implement the provisions of the Safety Convention relating to the hull, equipment and machinery of and the fuel used in such ships, except so far as those provisions are implemented by any other rules or regulations made under this Ordinance.

(3) The said rules-

(a) may provide for any surveys under the rules to be undertaken by persons appointed by such organisations as may be specified in the rules;

(b) may make modifications to sections 209(2), 211 and 213 in their application by virtue of section 271(1) in relation to surveys under the rules undertaken by such persons;

(c) may prescribe the fees that shall be paid in respect of surveys carried out under the rules; and

(d) may, in the case of surveys carried out by persons appointed by organisations specified in the rules, provide for fees to be payable to those persons or organisations.

(4) This section applies to-

(a) sea-going ships of not less than five hundred tons gross tonnage; and

(b) sea-going ships of not less than such lower tonnage and of such description as the Minister may by order specify,

other than passenger steamers, troopships, pleasure yachts, fishing vessels and ships not propelled by mechanical means; except that it applies to ships not registered in Malaysia only while they are within a port in Malaysia and are not exempted from the cargo ship construction and survey rules.

(5) In relation to surveys required by the cargo ship construction and survey rules which are carried out otherwise than by a Surveyor of Ships, the definition of "declaration of survey" in section 2 shall not apply.

(6) If the cargo ship construction and survey rules are contravened in any respect in relation to a ship, the owner or master of the ship shall be liable on conviction to a fine not exceeding ten thousand ringgit.

(7) A Surveyor of Ships may inspect any ship for the purpose of seeing that she complies with the provisions of the cargo ship construction and survey rules (other than those relating to survey) and for that purpose shall have all the powers of the Surveyor-General of Ships under this Ordinance; and if he finds that the ship fails to comply with those provisions he shall give to the owner or master notice in writing stating in what respect she fails to comply with them and what in his opinion is requisite to remedy the failure.

(8) A port clearance shall not be granted to the ship; and the ship shall be detained until a certificate under the hand of a Surveyor of Ships is produced to the effect that the failure has been remedied."



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Section 23. New section 268A.

The Ordinance is amended by inserting, immediately after section 268, the following new section 268A:

" 268A. Cargo ship safety construction certificates and exemption certificates.

(1) If the Surveyor-General of Ships or such person as he may authorise for the purpose is satisfied, on receipt of declarations of survey in respect of a ship to which section 256B applies and which is registered in Malaysia, that the ship complies with the cargo ship construction and survey rules applicable to the ship and such voyages as she is to be engaged on he shall, on the application of the owner, issue in respect of the ship-

- (a) if the ship is or not less than five hundred tons gross tonnage and is to be engaged on international voyages, a certificate in the form prescribed by the Safety Convention;
- (b) any other case, a certificate showing that she complies with the said rules,

and any such certificate is in this Ordinance referred to as a "cargo ship safety construction certificate".

(2) If the Surveyor-General of Ships, on receipt of declarations of survey in respect of such a ship, is satisfied that the ship is exempt, by virtue of any exercise by him of a power conferred on him by section 282 or the cargo ship construction and survey rules, from any of the requirements of those rules applicable to the ship and to such voyages as she is to be engaged on, and that she complies with the rest of those requirements, he shall, on the application of the owner, issue in respect of the ship-

- (a) if she is of not less than five hundred tons gross tonnage and is to be engaged on international voyages-
 - (i) an exemption certificate stating which of the requirements of the Safety Convention, being requirements implemented by the rules and applicable as aforesaid, the ship is exempt from and that the exemption is conditional on the ship's plying on the voyages and complying with the other conditions (if any) specified in the certificate; and
 - (ii) a certificate showing that the ship complies with the rest of those requirements;
- (b) in any other case, a certificate showing that the ship complies with such of the requirements of the cargo ship construction and survey rules applicable to the ship and to the voyages she is to be engaged on as she is not exempt from,

and any certificate issued under paragraph (a)(ii) or paragraph (b) of this subsection is in this Ordinance referred to as a "qualified cargo ship safety construction certificate".

(3) A certificate issued under this section, other than an exemption certificate issued under subsection (2)(a)(i), shall remain in force for five years or such shorter period as may be specified therein, but without prejudice to the power of the Surveyor-General of Ships to cancel it; and an exemption certificate issued under subsection (2)(a)(i) shall remain in force for the same period as the corresponding qualified cargo ship safety construction certificate.

(4) Where a certificate under this section is in force in respect of a ship and the certificate was issued for a shorter period than is allowed under the foregoing provisions of this section, the Surveyor-General of Ships or any person authorised by him for the purpose may, if satisfied on receipt of declarations of survey in respect of the ship that it is proper to do so, grant an extension of the certificate for a period not exceeding one year, and not exceeding, together with the period for which it was issued and any period by which it has been previously extended under this subsection, the longest period for which it could have been issued under this section.

(5) In relation to a certificate issued or an extension granted under this section by a person authorised by the Surveyor-General of Ships-

(a) the provisions applied by section 271(7) (which relate to the transmission, cancellation, surrender, posting-up and falsification of certificates issued by the Surveyor-General of Ship); and

(b) section 271(10)(which relates to fees),

shall apply as they apply in relation to certificates issued by the Surveyor-General of Ships, but in making rules under section 271(10), the Minister may provide for fees to be payable to the authorised person."

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Section 24. Amendment of section 269.

Section 269 of the Ordinance is amended-

- (a) by substituting the words "five hundred" in subsection (3) with the words "five thousand"; and
- (b) by substituting the word "Minister" in subsection (4) with the words "Surveyor General of Ships".

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Section 25. New section 269A.

The Ordinance is amended by inserting, immediately after section 269, the following new section 269A:

" 269A. Notice of alterations and additional surveys in relation to cargo ships.

(1) The duty of the owner or master of a ship under subsection (2) of section 269 to notify alterations shall extend, in relation to any ship in respect of which any certificate under section 268A is in force, to the hull, machinery and any equipment other than that mentioned in that subsection, but may, if the certificate was issued by a person authorised under that section, be discharged by notifying him instead of the Surveyor-General of Ships.

(2) Subsection (4) of section 269 shall have effect, in relation to any such ship, as if-

- (a) paragraph (a) thereof extended to any alteration or renewal which is notifiable by virtue of this section; and
- (b) paragraph (b) and not paragraph (c) thereof were applicable, notwithstanding that the ship is not a passenger steamer;

and the power of the Surveyor-General of Ships under that subsection to cancel such a certificate shall be exercisable also where the ship has not been submitted for survey as required by the cargo ship construction and survey rules."

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Section 26. Prohibition on proceeding to sea without appropriate certificates in the case of cargo ships.

The Ordinance is amended by inserting, immediately after section 270, the following new section 270A:

270A.

(1) No ship to which section 256B applies and which is registered in Malaysia shall proceed to sea unless there is in force in respect of the ship either-

- (a) a cargo ship safety construction certificate; or
- (b) a qualified cargo ship safety construction certificate and, if the ship is about to proceed on an international voyage, a corresponding exemption certificate; or
- (c) such certificate or certificates as would be required if she were a passenger steamer,

applicable to the ship and to the voyage on which she is about to proceed.

(2) If any ship proceeds, or attempts to proceed, to sea in contravention of this section the owner or master of the ship shall be liable to a fine not exceeding ten thousand ringgit.

(3) The master of every ship to which section 256B applies and which is registered in Malaysia shall produce to the Port Officer at the time a clearance for the ship is demanded the certificate or certificates required by subsection (1); and the clearance shall not be granted, and the ship may be detained, until the said certificate or certificates are so produced."

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Section 27. Amendment of section 271.

Section 271 of the Ordinance is amended-

- (a) by inserting, immediately after the words "shall apply" in subsection (1), the words ", subject to any modification made by virtue of paragraph (b) of section 256B(3),";
- (b) by inserting, immediately after the words "registered in the Federation" in subsection (4), the words ", except a certificate issued under section 268A,";
- (c) by substituting the word "person" first appearing in subsection (6) with the words "public officer";
- (d) by inserting, immediately after the section number "267" in subsection (9), the words ", or paragraph (a) of section 268A(2)," and deleting the words "or under paragraph (a) of section 4(2) of the Merchant Shipping (Amendment) Act, 1965" in that subsection; and
- (e) by inserting, immediately after subsection (9), the following new subsection (10):
 - "(10) The Minister may make rules to prescribe the fees to be paid in respect of any certificate issued, or any extension of any certificate granted, under this Part."

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Section 28. New section 274A.

The Ordinance is amended by inserting, immediately after section 274, the following new section 274A:

" 274A. Exemption of ships holding appropriate Convention certificates from cargo ship construction and survey rules.

Where there is produced in respect of a ship not registered in Malaysia-

- (a) an accepted Safety Convention certificate equivalent to a cargo ship safety construction certificate; or
- (b) accepted Safety Convention certificates equivalent respectively to a qualified cargo ship safety construction certificate and to a corresponding exemption certificate,

the ship shall be exempt from the cargo ship construction and survey rules."

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Section 29. Amendment of section 284.

Section 284 of the Ordinance is amended by substituting the words "section 3 of the Merchant Shipping (Amendment) Act, 1965," and the words "section 4 of the Merchant Shipping (Amendment) Act, 1965" in paragraph (b) of subsection (4) with, respectively, the words "section 256B of this Ordinance" and the words "section 268A of this Ordinance".

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Section 30. Deletion of section 285 and Seventh Schedule.

The Ordinance is amended by deleting section 285 and the Seventh Schedule.

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Section 31. Amendment of section 286.

Section 286 of the Ordinance is amended by substituting the words "home-trade and local-trade" in subsection (1) with the words "near-coastal trade".

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Section 32. Amendment of section 289.

Section 289 of the Ordinance is amended-

- (a) by deleting the words ", British, Malayan or foreign," in subsection (1);
- (b) by substituting the words "one thousand" and "one hundred" in subsection (2) with, respectively, the words "ten thousand" and "one thousand"; and
- (c) by substituting subsection (3) with the following:

"(3) For the purpose of this Part "dangerous goods" means-

- (a) aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitroglycerine and petroleum;
- (b) any explosives within the meaning of any written law in force in the Federation relating to explosives;
- (c) any goods which by reason of their nature, quantity or mode of stowage are liable, either singly or collectively, to endanger the lives of persons on or near any ship, or to imperil any ship; and
- (d) any other goods which may be declared to be dangerous goods by rules made or, as the case may be, having application under section 293."

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Section 33. Substitution of section 290.

Section 290 of the Ordinance is amended-

(a) by deleting the words ", British, Malayan or foreign,"; and

(b) by substituting the words "five thousand" and "six months" with, respectively, the words "twenty thousand" and "two years".

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Section 34. Amendment of section 291.

Section 291 of the Ordinance is amended by deleting the words "", British, Malayan or foreign," in subsections (1) and (2).

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Section 35. Amendment of section 292.

Section 292 of the Ordinance is amended by deleting the words ", British, Malayan or foreign," in subsection (1).

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Section 36. Substitution of section 293.

The Ordinance is amended by substituting section 293 with the following:

" 293. Carriage of dangerous goods.

(1) The Minister may make rules for regulating in the interests of safety the carriage of dangerous goods in ships to which this section applies.

(2) This section applies to-

(a) all Malaysian ships whether such ships ply on an international voyage or not;

(b) all other ships while they are within any port in Malaysia, or are embarking or disembarking passengers within the territorial waters of Malaysia, or are loading or discharging cargo or fuel within those waters.

(3) Rules made under subsection (1) may prescribe such certificates as may be necessary for the purposes of the rules and may prescribe the fees payable in respect of such certificates.

(4) Until rules are made under subsection (1), the rules made from time to time under the Merchant Shipping Acts with respect to the carriage of dangerous goods shall apply to ships to which this section applies.

(5) If any of the rules made under subsection (1) or, as the case may be, having application under subsection (4), is not complied with in relation to any ship to which the rule applies, the person specified in the rules as being guilty of an offence for the non-compliance or, if no person is so specified, the owner or master of the ship shall be liable in respect of each offence to a fine not exceeding fifteen thousand ringgit or such lesser amount as may be prescribed in the rules for the offence, and the ship shall be deemed for the purposes of this Part to be unsafe by reason of improper loading."

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Section 37. Amendment of section 297.

Section 297 of the Ordinance is amended-

- (a) by deleting the words ",British , Malayan or foreign," in subsection (1);
- (b) by inserting, between the words "Federation" and "unless" in subsection (1), the words ", and no Malaysian ship so laden shall proceed from or arrive at any port or place in any country,";
- (c) by substituting the words "three thousand" in subsection (2) with the words "fifteen thousand";
- (d) by substituting the words "with regulations" and all the words that follow them in subsection (3) with the words "in all respects with any provisions approved by the Minister as respects the loading in question other than regulations made under this subsection"; and
- (e) by substituting subsection (6) with the following:

"(6) In this section the expression "grain" includes wheat, maize or corn, oats, rye, barley, rice, pulses and seeds, and processed forms thereof whose behaviour is similar to that of grain in its natural state."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 38. New section 299A.

The Ordinance is amended by inserting, immediately after section 299, before the caption "*Unseaworthy Ships*", the following caption and new section 299A:

" 299A. Nuclear ship regulations.

The Minister may make regulations with respect to ships provided with nuclear power plants for the purpose of enabling effect to be given to the provisions of Chapter VIII of the Annex to the Safety Convention."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 39. New section 299B.

The Ordinance is amended by inserting, immediately after the new section 299A, before the caption "*Unseaworthy Ships*", the following caption and new section 299B:

" *Transitional Regulations*

299B. Power to make transitional regulations.

The Minister may make regulations to provide that for such purposes, for such a period and subject to such conditions as may be specified by or under the regulations-

- (a) any country which, immediately before the commencement of this section, was a country to which the International Convention for the Safety of Life at Sea 1960 applied shall be treated for the purposes of this Ordinance as if it were a country to which the Safety Convention applies; and
- (b) any certificate which, immediately before the commencement of this section, was an accepted Safety Convention certificate within the meaning then of this Ordinance may be treated as if it were an accepted Safety Convention certificate within the meaning presently of this Ordinance."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 40. Amendment of section 305.

Section 305 of the Ordinance is amended by deleting subsection (2).

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 41. New section 306A.

The Ordinance is amended by inserting in Part V, immediately after section 306, the following caption and new section 306A:

" Supplemental

306A. Countries to which safety convention applies.

The Minister, if satisfied-

- (a) that the government of a country has accepted, or denounced, the Safety Convention; or
- (b) that the Safety Convention extends, or has ceased to extend, to any territory,

may by order make a declaration to that effect."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 42. New Part VA.

The Ordinance is amended by inserting, immediately after Part V, the following new Part VA which shall apply throughout Malaysia:

" PART VA POLLUTION FROM SHIPS

306B. Application.

(1) This Part shall, unless the context otherwise requires, apply to-

- (a) registered Malaysian ships;
- (b) vessels licensed under this Ordinance or under the Merchant Shipping Ordinance 1960 of Sabah or Sarawak;
- (c) foreign ships while in Malaysian waters;
- (d) pleasure crafts in Malaysian waters;
- (e) fishing vessels; and
- (f) such vessels or class of vessels as the Minister may prescribe.

(2) This Part shall not, unless the context otherwise requires, apply to-

- (a) ships of war and troopships; or
- (b) Government vessels.

306C. Definition.

For the purposes of this Part and the rules made thereunder, unless it is expressly provided otherwise-

"authorised officer" includes any Surveyor of Ships, port officer and any person authorised by the Director of Marine;

"discharge" means any release of oil or harmful substances from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include-

- (i) release of harmful substances or chemicals for purposes of legitimate scientific research into pollution abatement or control; or
- (ii) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, or dumping with the consent of the Government;

"harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

"Malaysian coast" includes the coast of any island forming part of Malaysia and the shores of any internal waters, being tidal waters of Malaysia or of such an island;

"Malaysian waters" means the territorial waters of Malaysia;

"Malaysian reef" means a reef in Malaysian waters;

"oil" means any persistent or non-persistent hydrocarbon mineral oil in any form, including any mixture with any oil content, whether carried on board a ship as cargo in bulk or in the bunkers of the ship;

"oily mixture" means a mixture with any oil content;

"owner" includes a charterer or operator of a ship;

"ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushioned vehicles, submersibles, floating crafts and fixed or floating platforms.

(2) Where oil or harmful substance has been, is being or is likely to be discharged, intentionally or otherwise, from a ship, the discharge or likely discharge of the oil or harmful substance from the ship shall, for the purposes of this Part, be deemed to be an escape or likely escape of oil or harmful substance from the ship.

306D. Powers of Director of Marine.

(1) Where oil or harmful substance is escaping from, or where the Director of Marine is satisfied that oil or harmful substance is likely to escape from, a ship, then, for the purpose of preventing or reducing the extent of the pollution or likely pollution by the oil or harmful substance of any Malaysian waters, any part of the Malaysian coast or any Malaysian reef, the Director of Marine, in consultation with the Director-General of Environmental Quality, may, by notice in writing addressed to the owner of the ship and served in accordance with section 306E, do all or any of the following:

- (a) require such action to be taken in relation to the ship or its cargo as is specified in the notice;
- (b) prohibit the removal of the ship from a place specified in the notice except with his approval;
- (c) prohibit the removal from the ship of any cargo, or any cargo specified in the notice, except with his approval.

(2) The Director of Marine shall specify in the notice under subsection (1) the time by which the action required to be taken is to be accomplished.

(3) Without prejudice to the generality of paragraph (a) of subsection (1), the action that the Director of Marine may require to be taken includes-

- (a) action to prevent the escape of oil or harmful substance from the ship;
- (b) the removal of oil or harmful substance from the ship, or a specified part of the ship, in such manner, if any, as is specified by the Director of Marine to such place, if any, as is so specified; and
- (c) the removal of the ship to a place specified by the Director of Marine.

(4) Nothing in this section shall be construed as preventing the service under subsection (1) of more than one notice in respect of a ship.

(5) Where a notice has been served under subsection (1), including a notice that has been varied under this subsection, the Director of Marine may, by further notice in writing addressed to the owner of the ship and served in accordance with section 306E, revoke or vary the earlier notice, and where such notice has been varied, it shall have effect from the date of service of the variation.

(6) This section applies to a ship registered in Malaysia and to a foreign ship which is in Malaysian waters.

306E. Service of notice.

Service of a notice under section 306D in respect of a ship shall be effected by-

- (a) serving it personally on the owner of the ship or, if the owner is a body corporate, on a director, secretary or other officer of the body corporate; or
- (b) serving it personally on the agent of the ship or, if the agent is a company, on a director, secretary or other officer of the company; or
- (c) serving it personally on the master of the ship or, if for any reason, including the absence of the master from the ship, it is not practicable to do so, by handing it to any person on board the ship who appears to be in charge of the ship; or
- (d) serving it on the person who appears to be in charge of the salvage operations in the case of a ship in the possession of a salvor.

306F. Offence.

(1) Where-

- (a) a notice under subsection (1) of section 306D is served; and
- (b) a requirement specified in the notice under paragraph (a) of that subsection is not complied with before the time specified in the notice,

the owner and master shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand ringgit in respect of each period of twenty-four hours within the default period as defined in subsection (3):

Provided that the Minister may prescribe a lower fine in accordance with the amount of oil or harmful substance carried by the ship.

(2) Where-

- (a) a notice under subsection (1) of section 306D is served; and
- (b) a prohibition specified in the notice under paragraph (b) or (c) of that subsection is contravened,

the owner and master of the ship shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand ringgit.

(3) In subsection (1), "default period" means the period commencing from the time when the requirement was to have been complied with as specified in the notice and ending at the time when the requirement was complied with or, if the owner of the ship proves that, after a particular time, compliance with the requirement was not possible or compliance with the requirement would not have prevented oil or harmful substance escaping from the ship, that last-mentioned time.

(4) Where any person is charged for any offence against this Part it shall be a defence to prove that the discharge or failure to comply with a notice was caused for the purpose of securing the safety of the ship or for the purpose of saving life but the defence shall not operate if the court is satisfied that the discharge or non-compliance was not necessary for the alleged purpose or was not a reasonable step to take in the circumstances.

306G. Powers of Director of Marine in cases of non-compliance with notice.

(1) Where a requirement specified in a notice served under section 306D is not complied with, the Director of Marine may, whether or not the owner or master of the ship has been convicted of an offence against this Part by reason of the requirement not having been complied with, cause such things to be done as he thinks proper for the carrying out of the action required by the notice.

(2) Where a notice under subsection (1) of section 306D is served and-

(a) a requirement specified in the notice is not complied with or a prohibition specified in the notice is contravened; and

(b) oil or harmful substance escapes from the ship by reason of the requirement not having been complied with or by reason of the prohibition having been contravened,

the Director of Marine may, whether or not the owner or master of the ship has been convicted of an offence against this Part by reason of the requirement not having been complied with or the prohibition having been contravened, cause such things to be done as he thinks proper to prevent or reduce the extent of the pollution by the oil or harmful substance of any Malaysian waters, any part of the Malaysian coast or any Malaysian reef, or to remove or reduce the effects of the pollution by the oil or harmful substance of any such waters, coast or reef.

(3) Any expense or other liability incurred by the Director of Marine in, or by reason of, the exercise of his powers under subsection (1) or (2)-

(a) shall be a debt due to the Government by, and may be recovered by the Government from, the owner of the ship; and

(b) shall be a charge upon the ship which, except as provided otherwise in international law or in any international agreement to which Malaysia is a party, may be detained by a person authorised by the Director of Marine and may be so detained until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Director of Marine.

(4) For the purposes of paragraph (b) of subsection (3) the word "ship" includes every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of the ship.

306H. Escape of oil or harmful substance from two or more ships.

Where oil or harmful substance has escaped or is likely to escape from two or more ships and it is not reasonably practicable to identify the oil or harmful substance that has escaped from a particular ship, then all the oil or harmful substance that has escaped from those ships shall, for the purposes of this Part, be deemed to have escaped from each of those ships:

Provided that the Government shall not, by virtue of this section, be entitled to recover from the owners of those ships amounts that, in the aggregate, exceed the total amount of the expenses and liabilities incurred by the Director of Marine in the exercise of his powers under this Part.

306I. Action to be taken in cases of maritime casualty.

(1) Where as a result of a maritime casualty or in consequence of any act resulting therefrom, there is or is likely to be, in the opinion of the Director of Marine, an escape of oil or harmful substance or any other threat of pollution to Malaysian waters, any Malaysian coast or Malaysian reef, the Director of Marine, in consultation with the Director-General of Environmental Quality, may take such actions as he deems necessary and issue the notice under the provisions of section 306D.

(2) If in the opinion of the Director of Marine the actions taken and the notice issued under subsection (1) are ineffective to prevent, reduce or eliminate the pollution or threat of pollution, the Director of Marine may, after giving due consideration to the rights of the flag state, any third state or any other person having an interest in the ship-

(a) direct that measures be taken to sink or destroy the ship or cargo or any part thereof; or

(b) direct the taking over of control of the ship.

(3) For the purposes of this Part, the term "maritime casualty" means any event where a ship-

(a) has been abandoned or is not in command; or

(b) has received any material damage causing or likely to cause a discharge; or

(c) has been stranded; or

(d) has experienced any occurrence on board which results in the escape of oil or harmful substance or which, in the opinion of the Director of Marine, may result in the escape of oil or harmful substance or which causes pollution to Malaysian waters, any Malaysian coast or Malaysian reef.

306J. Report of maritime casualty.

(1) The master of a ship in Malaysian waters which experiences a maritime casualty as defined in section 306I or which has discharged any oil or harmful substance shall report such incident to-

(a) the port officer, within twenty-four hours or as soon as possible, where the ship is in a port;

(b) the Director of Marine, as soon as possible, where the ship is outside a port.

(2) The report required by subsection (1) shall be made in writing or by telex or other means of radio communication:

Provided that where a report is made by verbal radio communication, it shall be followed up in writing or by telex as soon as possible.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

306K. Powers of Minister.

(1) The Minister may make such rules as he considers necessary or expedient to provide for the carriage or storage of oil or harmful substance at sea, the control of pollution from ships and for matters connected therewith, and without prejudice to the generality of such powers may make rules for-

(a) the design, construction, subdivision and alteration of ships, their equipment, machinery and electrical installations;

(b) the inspection and survey of ships, their hull, machinery, equipment and installations;

(c) the form, issue, validity, duration and extension of certificates or exemption certificates;

(d) the storage, carriage, loading and discharging of oil or harmful substance as cargo, fuel or store;

(e) prescribing a list of harmful substances;

(f) the method and level of discharge of oil or harmful substance by ships into the sea, where permitted;

(g) the cleaning or washing of tanks or other compartments or parts of a ship;

(h) the form and maintenance of an oil or harmful substance record book and its production for inspection as and when required;

(i) prescribing fees for anything to be done or permitted to be done under the rules;

(j) the implementation in whole or in part of any international convention, code or resolution relating to marine pollution or any matter incidental thereto or connected therewith;

(k) the exemption of a ship or a class of ships from any requirement under this Part;

(l) prescribing the authority for the issue of certificates prescribed under this Part;

(m) prescribing the form and manner in which a ship which has suffered a maritime casualty is required to report;

(n) such other matters as are necessary or expedient for carrying out the purposes of this Part.

(2) Any person who contravenes any such rule shall, where no other penalty is provided, be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 43. Amendment of section 309.

Section 309 of the Ordinance is amended by inserting, immediately after subsection (3), the following new subsection (4):

"(4) Rules made under subsection (1)-

- (a) may provide for any surveys or inspections under the rules to be undertaken by persons appointed by such organisations as may be specified in the rules;
- (b) may prescribe the fees that shall be paid in respect of surveys and inspections carried out under the rules; and
- (c) may, in the case of surveys and inspections carried out by persons appointed by organisations specified in the rules, provide for fees to be payable to those persons or organisations."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 44. Amendment of section 315.

Section 315 of the Ordinance is amended-

(a) by inserting, immediately after subsection (2), the following new subsection (2A):

"(2A) In prescribing the fees under subsection (1) the Minister may provide for the fees to be payable to a person authorised under subsection (2) in relation to a certificate issued by such person."; and

(b) by substituting the word "person" first appearing in subsection (3) with the words "public officer".

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 45. New section 331A.

The Ordinance is amended by inserting in Part VI, immediately after section 331, the following new section 331A:

"331A. Countries to which Load Line Convention applies.

The Minister, if satisfied-

- (a) that the government of a country has ratified or acceded to, or denounced, the Load Line Convention; or
- (b) that the Load Line Convention has been applied, or has ceased to apply, to any territory,

may by order make a declaration to that effect."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 46. Substitution of section 332.

The Ordinance is amended by substituting section 332 with the following:

" 332. Shipping casualties.

For the purpose of inquiries and investigations under this Part a shipping casualty shall be deemed to occur-

- (a) when on or near the coasts of the Federation any ship is lost, abandoned or materially damaged;
- (b) when on or near the coasts of the Federation any ship has been stranded or damaged;
- (c) when on or near the coasts of the Federation any ship causes loss or material damage to any other ship or to any property;
- (d) when any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of the Federation;
- (e) when in any place any such loss, abandonment, material damage or casualty as above mentioned occurs, and any witness is found in the Federation;
- (f) when in any place any loss, abandonment, material damage or casualty occurs to any Malaysian ship or any Malaysian ship is stranded or damaged;
- (g) when any Malaysian ship is lost or is supposed to have been lost."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 47. Amendment of section 333.

Section 333 of the Ordinance is amended by substituting the definition of "the holder of a local certificate" with the following:

' "the holder of a local certificate" means the holder of any certificate granted under this Ordinance; '.

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 48. Amendment of section 335.

Section 335 of the Ordinance is amended by substituting the words "that part of Her Majesty's dominions" in the proviso to subsection (1) with the words "the country".

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 49. Substitution of Part IX.

The Ordinance is amended by substituting Part IX with the following Part:

" PART IX LIABILITY OF SHIPOWNERS

358. Interpretation and application.

(1) In this Part-

"Convention" means the International Convention relating to the limitation of the liability of owners of sea-going ships signed in Brussels on the 10th October 1957;

"Convention country" means any country in respect of which the Convention is in force, including any country to which the Convention extends by virtue of article 14 thereof; and for the purpose of this definition an order made by the Minister declaring a country to be a Convention country shall be conclusive evidence that that country is a Convention country;

"Malaysian ship" means any ship registered or licensed under this Ordinance;

"owner" includes the charterer to whom a ship is demised and any owner, builder or other party interested in any ship built at any place in Malaysia and also includes-

- (a) where it occurs in section 359, every person whose liability is excluded by subsections (2) and (3); and
- (b) elsewhere, except in the second place where it occurs in section 364, every person whose liability is limited by subsections (2) and (3);

"relevant port"-

- (a) in relation to any claim, means the port where the event giving rise to the claim occurred or, if that event did not occur in a port, the first port of call after the event occurred; and
- (b) in relation to a claim for loss of life or personal injury or for damage to cargo, includes the port of disembarkation or discharge;

"ship" includes any structure, whether completed or in the course of construction, launched and intended for use in navigation as a ship or part of a ship.

(2) The person whose liability in connection with a ship is excluded or limited by this Part shall include any charterer and any person interested in or in possession of the ship, and in particular, any manager or operator of the ship.

(3) In relation to a claim arising from the act or omission of any person in his capacity as master or member of the crew, or otherwise than in that capacity, in the course of his employment as a servant of the owners or of any such person as is mentioned in subsection (2)-

- (a) the person whose liability is excluded or limited as aforesaid shall also include the master, member of the crew or servant and, in the case where the master or member of the crew is the servant of a person whose liability would not be excluded or limited apart from this paragraph, the person whose servant he is; and

(b) the liability of the master, member of the crew or servant himself shall be excluded or limited as aforesaid notwithstanding his actual fault or privity in that capacity, except in the cases mentioned in paragraph (b) of section 359.

(4) This Part shall apply to any ship qualified to be registered as a Malaysian ship notwithstanding that it has not yet been registered.

359. Limitation of shipowner's liability in certain cases of loss of or damage to goods.

The owner of a Malaysian ship, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases:

(a) where any goods, merchandise or other thing whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or

(b) where any gold, silver, diamonds, watches, jewels or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, theft, breach of trust or misappropriation thereof.

360. Limitation of owner's liability in certain cases of loss of life, injury or damage.

(1) The owner of a Malaysian or foreign ship shall not, where all or any of the following in certain occurrences take place without his actual fault or privity, namely:

(a) where any loss of life or personal injury is caused to any person being carried in the ship;

(b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;

(c) where any loss of life or personal injury is caused to any person not carried in the ship through the act of any person, whether on board the ship or not, in the navigation or management of the ship, or in the loading, carriage or discharge of her cargo, or in the embarkation, carriage or disembarkation of her passengers, or through any other act of any person on board the ship; or

(d) where any loss or damage is caused to any property, other than any property mentioned in paragraph (b), or any rights are infringed through the act of any person, whether on board the ship or not, in the navigation or management of the ship, or in the loading, carriage or discharge of her cargo, or in the embarkation, carriage or disembarkation of her passengers, or through any other act of any person on board the ship,

be liable to damages beyond the following amounts:

(aa) in respect of loss of life or personal injury, either alone or together with such loss, damage or infringement as is mentioned in paragraphs (b) and (d), an aggregate amount not exceeding an amount equivalent to three thousand one hundred gold francs for each ton of the ship's tonnage; and

(bb) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), whether there is in addition loss of life or personal injury or not, an aggregate amount not exceeding an amount equivalent to one thousand gold francs for each ton of the ship's tonnage.

(2) For the purposes of this section-

(a) a gold franc shall be taken to be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred;

(b) the Minister may from time to time by order to be published in the *Gazette* specify the amount equivalent to three thousand one hundred gold francs and one thousand gold francs;

(c) the tonnage of a Malaysian ship, other than a sailing ship, shall be her registered tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage;

(d) the tonnage of a Malaysian sailing ship shall be her registered or licensed tonnage;

(e) where a ship built at any port or place in Malaysia but not registered or licensed under this Ordinance or the law of any other country, or a foreign ship, has been or can be measured according to Malaysian law, her tonnage as ascertained by that measurement shall be deemed to be her tonnage;

(f) where a ship built at any port or place in Malaysia but not registered or licensed under this Ordinance or the law of any other country, or a foreign ship, has not been and cannot be measured according to Malaysian law, the Surveyor General shall, on receiving from or by the direction of the Court hearing the case in which the tonnage of the ship is in question such evidence concerning the dimensions of the ship as it is practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship if she had been duly measured according to Malaysian law, and the tonnage so stated in that certificate shall for the purposes of this section be deemed to be the tonnage of the ship;

(g) the tonnage of any structure included in the definition of the expression "ship" by virtue of subsection (1) of section 358 shall, for the purposes of this Part, be ascertained as provided in this subsection for a foreign ship; and

(h) in the case of paragraph (aa) of subsection (1), a ship of less than three hundred tons shall be deemed to be a ship of three hundred tons.

(3) The limits set by this section to the liabilities mentioned therein shall apply to the aggregate of such liabilities which are incurred on any distinct occasion without regard to any liability incurred on another occasion.

(4) The application of this section to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

(5) Nothing in this section shall apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property or infringement of any right of a person who is on board or employed in connection with the ship under a contract of service with all or any of the persons whose liabilities are limited by this section, if that contract is governed by the law of any country outside Malaysia and that law either does not set any limit to that liability or sets a limit exceeding that set to it by this section.

361. Release of ship, etc.

(1) Where a ship or other property is arrested in connection with a claim which appears to the Court to be founded on a liability to which a limit is set by section 360, or security is given to prevent or obtain release from such an arrest, the Court may, and in the circumstances mentioned in subsection (3) shall, order the release of the ship, property or security if the conditions specified in subsection (2) are satisfied; but where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim.

(2) The conditions referred to in subsection (1) are:

(a) that security which in the opinion of the Court is satisfactory (in this section referred to as "guarantee") has previously been given, whether in Malaysia or elsewhere, in respect of such liability any other liability incurred on the same occasion, and the Court is satisfied that, if the claim is established, the amount for which the guarantee was given, or such part thereof as corresponds to the claim will be actually available to the claimant; and

(b) that either the guarantee is for an amount not less than such limit or further security is given which, together with the guarantee, is for an amount not less than that limit.

(3) The circumstances mentioned subsection (1) are that the guarantee was given in a port which, in relation to the claim, is the relevant port (or, as the case may be, a relevant port) and that that port is in a Convention country.

(4) For the purposes of this section-

(a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given;

(b) any question whether the amount of any security is either by itself or together with any other amount not less than any limit set by section 360 shall be decided as at the time at which the security given; and

(c) where part only of the amount for which a guarantee was given will be available to a claimant, that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1).

362. Restriction on enforcement after giving of security.

(1) No judgment or decree for a claim founded on a liability to which a limit is set by section 360 shall be enforced, except so far as it is for costs, if security for an amount not less than that limit has been given, whether in Malaysia or elsewhere, in respect of the liability or any other liability incurred on the same occasion and the court is of opinion that the security is satisfactory and is satisfied that the amount for which it was given, or such part thereof as corresponds to the claim, will be actually available to the person in whose favour the judgment or decree was given or made.

(2) For the purposes of this section-

(a) any question whether the amount of any security is not less than any limit set by section 360 shall be decided as at the time at which the security is given; and

(b) where part only of the amount for which security has been given will be available to the person in whose favour the judgment or decree was given or made that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1).

363. Power of Court to consolidate claims against owners, etc.

(1) Where any liability is alleged to have been incurred by the owner of a Malaysian or foreign ship in respect of any occurrence in respect of which his liability is limited under section 360, and several claims are made or apprehended in respect of that liability, then the owner may apply to the High Court, and that Court may determine the amount of the owner's liability, and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such directions as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs. as the Court thinks just.

(2) In making any distribution in accordance with this section the Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court in any country outside Malaysia.

(3) No lien or other right in respect of any ship or property shall affect the proportions in which, under this section, any amount is distributed amongst several claimants.

364. Part owners to account in respect of damages.

All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under this Part, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

365. Insurances of certain risks not invalid.

An insurance effected against the happening, without the owner's fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part shall not be invalid by reason of the nature of the risk.

365A. Proof of passengers on board ship.

In any proceeding under this Part against the owner of a ship or share therein with respect to loss of life, the passenger lists under Part IV of this Ordinance shall be received as evidence that the person upon whose death proceedings are taken under this Part was a passenger on board the ship at the time of death."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 50. Substitution of section 381.

The Ordinance is amended by substituting section 381 with the following:

" 381. Removal of wreck by receiver.

(1) Where any ship is sunk, stranded or abandoned in any port, navigable river, tidal waters or in any place within Malaysian waters in such manner as, in the opinion of the receiver, to be or likely to become an obstruction or danger to navigation or a public nuisance or to cause inconvenience, the receiver may either-

- (a) take possession of, and raise, remove or destroy, the whole or any part of the ship;
- (b) light or buoy any such ship or part until the raising, removal or destruction thereof;
- (c) sell, in such manner as he thinks fit, any ship or part so raised or removed and also any other property recovered in the exercise of his powers under this section, and, out of the proceeds of the sale, reimburse himself for the expenses incurred by him in relation thereto under this section, and the receiver shall hold the surplus, if any, of the proceeds in trust for the persons entitled thereto; and
- (d) take all necessary measures to prevent pollution from the ship;

or alternatively-

- (e) consent to the owner or master of the ship taking such action under paragraphs (a) to (d) as the receiver thinks fit; and
- (f) require the owner or master to furnish security in such reasonable amount as the receiver may consider necessary for the purpose of ensuring the performance of all actions which the owner or master has agreed to undertake.

(2) Apart from the proceeds of any sale carried out by the receiver pursuant to paragraph (c) of subsection (1), the receiver may also resort to the security furnished under paragraph (f) to reimburse himself and if the proceeds of sale together with any security are insufficient to cover the costs incurred by the receiver when acting under paragraphs (a) to (d) of subsection (1), he may recover the difference from the owner or master of the ship concerned."

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 51. Amendment of section 445.

Section 445 of the Ordinance is amended-

- (a) by renumbering paragraph (s) of subsection (1) as paragraph (u);
- (b) by inserting, immediately after paragraph (r) of subsection (1), the following new paragraphs (s) and (t):
 - "(s) ensuring the provision in the port of facilities for the reception of-
 - (i) oily residues and oily mixtures;
 - (ii) residues and mixtures containing harmful substances;
 - (iii) residues and mixtures containing noxious liquid substances;
 - (iv) sewage; and
 - (v) garbage;
 - (t) requiring vessels to discharge all residues and mixtures containing oil, or containing harmful substances, or sewage, garbage, which remains on board, for disposal to the reception facilities before entering or leaving the port;"
- (c) by substituting the words "one hundred dollars" in subsection (2) with the words "ten thousand ringgit or to imprisonment for a term not exceeding one year or to both." .

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 52. Amendment of section 477.

Section 477 of the Ordinance is amended-

(a) by substituting subsection (1) with the following:

"(1) Every licence issued shall be valid for a period not exceeding twelve months from the date of issue."; and

(b) by substituting the words "one hundred" in subsection (3) with the words "one thousand".

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 53. Amendment of section 492.

Section 492 of the Ordinance is amended by deleting the words ", provided that no Magistrate's Court shall, except where the context otherwise requires, try any such offence which is punishable with a fine exceeding five hundred dollars, or with imprisonment of either description for a term which may exceed six months".

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 54. Miscellaneous amendments: penalties.

The Ordinance is amended-

- (a) by substituting the word "five" in section 211(2) with the word "fifty";
- (b) by substituting the words "one hundred" in section 218(2) with the words "one thousand";
- (c) by substituting the words "one hundred" in section 219(2) with the words "five hundred";
- (d) by substituting the words "one thousand" and "two hundred" in section 219(3) with, respectively, the words "five thousand" and "one thousand";
- (e) by substituting the words "one thousand" in section 220 with the words "ten thousand" and inserting, at the end of that section, the words "or to both";
- (f) by substituting the words "one thousand" and "six months" in section 221 with, respectively, the words "ten thousand" and "two years";
- (g) by substituting the words "one thousand" and "five hundred" in section 223(4) with, respectively, the words "five thousand" and "three thousand";
- (h) by substituting the words "one thousand" in section 224 with the words "five thousand";
- (i) by substituting the word "twenty" in section 225(1) with the words "five hundred";
- (j) by substituting the words "two hundred" in section 225(2) and (4) with the words "two thousand";
- (k) by substituting the words "two hundred and fifty" and "one month" in section 227(4) with, respectively, the words "five thousand" and "six months";
- (l) by substituting the word "ten" in section 230(1) with the words "one hundred";
- (m) by substituting the words "one thousand" in section 231(2) with the words "five thousand" and inserting, at the end of that section, the words "or to imprisonment for a term not exceeding one year or to both";
- (n) by substituting the words "five hundred" and "ten" in section 232(2) with, respectively, the words "five thousand" and "one hundred";
- (o) by substituting the words "two hundred" in section 233(2) with the words "one thousand";
- (p) by substituting the words "five thousand" in section 234(2) with the words "ten thousand" and inserting, at the end of that section, the words "or to imprisonment for a term not exceeding one year or to both";
- (q) by substituting the words "five hundred" in section 235 with the words "five thousand";
- (r) by substituting the words "two hundred" and "twenty" in section 237(1) with, respectively, the words "five thousand" and "three hundred";
- (s) by substituting the words "one hundred" and "one month" in section 238 with, respectively, the words "one thousand" and "six months";
- (t) by substituting the words "two hundred and fifty" and "three months" in section 239 with, respectively, the words "five thousand" and "six months";
- (u) by substituting the words "five hundred" in section 240(1) with the words "five thousand";
- (v) by substituting the words "one thousand five hundred" in section 240(4) with the words "ten thousand";
- (w) by substituting the words "one hundred" and "ten" in section 248(2) with, respectively, the words "one thousand" and "one hundred";
- (x) by substituting the words "one hundred" in section 251(2) with the words "one thousand";

- (y) by substituting the words "one hundred" in section 252(3) with the words "ten thousand";
- (z) by substituting the words "two hundred" in section 253(2) with the words "five thousand";
- (aa) by substituting the words "five hundred" in section 254(2) with the words "five thousand";
- (ab) by substituting the words "five hundred" in section 255(2) with the words "five thousand";
- (ac) by substituting the words "five hundred" in section 256(2) with the words "five thousand";
- (ad) by substituting the words "one hundred" in section 259(3) with the words "one thousand";
- (ae) by substituting the words "one thousand" and "five hundred" in section 260(1) with, respectively, the words "ten thousand" and "five thousand";
- (af) by substituting the words "one hundred" and "five thousand" in section 262(7) with, respectively, the words "one thousand" and "ten thousand" and deleting the words ", or if the offence is prosecuted before a Magistrate's Court, to a fine not exceeding one thousand dollars" in that section;
- (ag) by substituting the words "one thousand" in section 264(3) and (4) with the words "ten thousand";
- (ah) by substituting the words "one hundred" in section 270(3)(a) with the words "one thousand"
- (ai) by substituting the words "one thousand" in section 270(3)(b) with the words "ten thousand";
- (aj) by substituting the words "one thousand" in section 270(6) with the words "ten thousand";
- (ak) by substituting the words "one thousand" in section 276(4) with the words "ten thousand";
- (al) by substituting the words "one thousand" in section 277(3) with the words "ten thousand";
- (am) by substituting the words "five hundred" in section 278(2) with the words "five thousand";
- (an) by substituting the words "five hundred" in section 279(2) with the words "five thousand";
- (ao) by substituting the words "one thousand" in section 280(5) with the words "ten thousand";
- (ap) by substituting the words "one thousand" in section 280(6) with the words "five thousand";
- (aq) by substituting the words "two hundred" in section 283(2) with the words "two thousand";
- (ar) by substituting the words "one thousand" and "five hundred" in section 286(2) with the words "five thousand";
- (as) by substituting the words "one thousand" in section 287 with the words "ten thousand";
- (at) by substituting the words "two hundred" in section 288 with the words "one thousand";
- (au) by substituting the words "two hundred and fifty" in section 295(3) with the words "three thousand";
- (av) by substituting the words "three thousand" in section 298(2) with the words "fifteen thousand";
- (aw) by substituting the words "five thousand" in section 300(4) with the words "twenty thousand" and inserting, at the end of that section, the words "or to both"; and
- (ax) by substituting the words "twenty-five" in section 485 with the words "five hundred".

ACT A792

Merchant Shipping (Amendment) Act 1991

Section 55. Repeal of Act 15/1966 and Act A212.

The Merchant Shipping (Amendment) Act 1966 and the Merchant Shipping (Amendment) Act 1973 are repealed.

