

PART IIB

THE DOMESTIC SHIPPING LICENSING BOARD

65A. Interpretation

In this Part, unless the context otherwise requires, "domestic shipping" means the use of a ship-

- a) to provide services, other than fishing, in the Federation waters or the exclusive economic zone; or
- b) for the shipment of goods or the carriage of passengers-
 - i) from any port or place in Malaysia to another port or place in Malaysia; or
 - ii) from any port or place in Malaysia to any place in the exclusive economic zone or vice versa.

65B. The Board

1) There is hereby established a board to be called the Domestic Shipping Licensing Board (hereafter referred to as "the Board").

2) The Board shall consist of the following members to be appointed by the Minister:

- a) a Chairman;
- b) a representative of the Ministry responsible for merchant shipping;
- c) a representative of the Ministry of International (Vide A895/1994) Trade and Industry;
- d) a representative of the Marine Department, Peninsular Malaysia;
- e) a representative of the Royal Customs and Excise Department; and
- f) not less than three but not more than five other persons who have wide experience or special knowledge in matters relating to shipping;

2A) The Minister may in respect of each member of the Board other than the Chairman appoint an alternate member who may attend any meetings of the Board when the member, in respect of whom he is an alternate is, for any reason, unable to attend the meeting; and an alternate member when attending such a meeting shall be deemed to be a member of the Board.

2B) An alternate member, unless he sooner resigns or his appointment is sooner revoked, shall cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Board. (A603/84)

3) The Minister may appoint any member of the Board to exercise the functions of the Chairman

during the temporary absence due to incapacity or illness or absence from Malaysia of the Chairman and such member shall during the period in which he is exercising the functions of the Chairman shall be deemed to be the Chairman.

4) (i) A member of the Board appointed under this section shall unless he sooner resigns or his appointment is revoked or he otherwise vacates his office, hold office for a period of two years from the date of his appointment and shall be eligible for reappointment.

(ii) A member or an alternate member (A603/84) of the Board may at any time be removed from office by the Minister for disability, bankruptcy, negligence or misconduct or for any other cause which renders him unfit to continue his service as a member.

5) The Fifteenth Schedule shall have effect with respect to the Board.

65C. Functions of the Board

The function of the Board shall be to regulate and control the licensing of ships engaged in domestic shipping under this Ordinance or any regulation made thereunder.

65D. Regulation

The Board may, with the approval of this Minister, make such regulations as may be necessary or expedient for giving full effect to the provisions of this Part, and without prejudice to the generality of the foregoing, such regulations may -

a) prescribe the procedure for the application of a licence and the particulars to be supplied;

b) prescribe the conditions to be satisfied by any person applying for a licence;

c) provide for the issue of licences and the fees payable and the manner of payment in respect thereof, and the terms and conditions attached to such licences;

d) prescribe the rates which may be charged for the carriage of passengers or cargo by any ship engaged in domestic shipping;

e) prescribe anything required to be or may be prescribed under this Part; and

f) prescribe penalties for the contravention of the provisions thereof of a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding one year or to both such fine and imprisonment. (A603/84)

65E. Registers of licence and members' interest

The Board shall keep or cause to be kept a register of licences and a register of members' interest.

65F. Information on ship

1) The Board may by notice require the owner, master or agent of any ship in respect of which a licence was granted by the Board to furnish within the period specified in the notice information on -

- a) the classes of passengers or goods which the ship is to carry or is capable of carrying or has carried during any specified period;
- b) the rates of freight charges applicable to the ship; and
- c) any other relevant matter.

2) Any owner, master or agent on whom a notice has been served who fails to furnish the information or which he knows to be false on any material particular shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment not exceeding one year or both

65G. Minister's direction

The Minister may issue general directions not inconsistent with this Ordinance and the Board shall comply with such directions.

65H. Issue of Licence

1) Every application for a licence shall be made to the Board on a form and in the manner prescribed by the Board.

2) The applicant shall give to the Board such information as required by the Board.

3) The Board may refuse to determine an application made otherwise than in accordance with this Part and any (A603/84) regulations made thereunder.

4) The Board shall have a discretion to grant or to refuse the application.

5) A licence granted under this Part shall be in such form as may be prescribed, subject to such terms and conditions as may be imposed and to such duration as may be specified. (A603/84)

65I. Revocation of Licence

The Board may revoke any licence if it is satisfied that the licensee, his servant or agent has -

- a) contravened any of the provisions of this Part or any regulations made thereunder; or
- b) committed a breach of any of the terms or conditions of the licence:

Provided that no licence shall be revoked unless the licensee has been given a reasonable opportunity of making a representation against the intended revocation. (A603/84)

65J. Expiry of Licence

The licensee shall return the expired licence to the Board without any delay.

65K. Appeal

Any person aggrieved by the decision of the Board or of any person or body of persons delegated with the powers and duties of the Board under section 65T (vide A895/1994) to refuse to issue or renew or to revoke (A603/84) any licence may, within thirty days of the decision being made known to him in writing, appeal to the Minister, whose decision shall be final.

65KA. Prohibition of non-Malaysian ships to engage in domestic shipping

- 1) No ship other than a Malaysian ship may engage in domestic shipping.
- 2) A person not qualified to own a Malaysian ship as provided by section 11 shall not charter or otherwise engage any Malaysian ship for domestic shipping except under and in accordance with such conditions as the Minister may direct or prescribe.
- 3) The master, owner or agent of any ship who contravenes subsection (2) or any person who contravenes subsection (2), shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit.

65L. Licence for domestic shipping

- 1) No ship shall engage in domestic shipping without a licence.
- 2) Any owner, charterer (A603/84), master or agent of any ship contravening this section, shall be guilty of an offence and on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment not exceeding one year or both.
- 3) The following vessels are exempted from subsection (1):
 - a) any ship under fifteen tons nett;
 - b) any vessel licensed under section 475;
 - c) in relation to the State of Sabah, any vessel licensed under the Merchant Shipping Ordinance 1960 of Sabah;
 - d) in relation to the State of Sarawak, any vessel licensed under the Merchant Shipping Ordinance 1960 of Sarawak; and
 - e) any ship belonging to or in the employment of the Government of Malaysia or any State thereof or any Port Authority therein. (A603/84)

65M. Port clearance

No port clearance shall be granted to a ship engaged in domestic shipping unless the owner, charterer, master or agent satisfies the proper officer of customs or such other authority authorised to issue port clearance that the ship is licensed to engage in domestic shipping or is exempted under section 65L from being required to be licensed. (A603/84)

65N. Disclosure of interest

1) A member of the Board acquiring any financial interest in any shipping undertaking which carries goods or passengers shall within four weeks after so doing or if he does not know of the interest within four weeks after it comes to his knowledge, give notice in writing to the Minister specifying the interest so acquired; and the Minister may if he deems fit declare the membership of the member vacant.

2) A person shall be deemed to have an interest in shipping where a corporation has an interest in shipping and -

a) the corporation is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to any shipping matter;

b) that person has a controlling interest in the corporation; or

c) that person, or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than one-tenth of the votes attached to the voting shares in the corporation.

65O. Interest of a spouse or child of a member

1) The interest of the spouse or the child under the age of majority of a member of the Board (not being himself or herself a director) in shipping, shall be deemed to be an interest belonging to the member.

2) The member of the Board shall within 4 weeks of his spouse or child under the age of majority acquiring any interest in shipping notify the Minister in writing and any member of the Board who fails to disclose the interest belonging to the spouse or the child under the age of majority shall be guilty of an offence and on conviction be liable to a fine of twenty thousand ringgit or two years' imprisonment or both.

3) Any interest in shipping shall not be disregarded by reason only of-

a) its remoteness;

b) the manner in which it arose; or

c) the fact that the interest is, or is capable of being made subject to restraint and restriction.

65P. Register of member's interest

The Board shall keep and maintain a register of members' interest; and within fourteen days of receiving information thereof shall inscribe the information and the date of inscription against the members' name.

65Q. Annual report

The Board shall not later than the 30th day of June of each year cause to be made and transmitted to the Minister a report dealing with the activities of the Board during the preceding year and containing such information as the Minister may from time to time require.

65R. Power of Port Officer or officer of customs to board ship

1) For the purpose of seeing that the provisions of this Part have been complied with, any Port Officer or officer of customs may go on board any ship in any port or place or within Federation waters or the exclusive economic zone and require the master of such ship to give such information relating to the ship, cargo, stores, crew, passengers or voyage as he may consider necessary; and such officer may demand all documents which ought to be on board and require all or any of such documents to be brought to him for inspection.

2) Any master of such ship who, without lawful excuse, refuses to allow any such officer to enter such ship or when so required refuses or fails to submit the required documents to such officer or who, in submitting any required information, knowingly or recklessly makes any statement that is false in any material particular or who, with intent to deceive, submits a document that is false in any material particular, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. (A603/84)

65S. Power to detain vessel

Any Port Officer or officer of customs may detain any ship if such officer has reasonable cause to suspect that in respect of such ship there has been a contravention of any of the provisions of section 65KA or section 65L. (A603/84)

65T. Delegation of powers and duties

1) The Board, with the approval of the Minister, may by notification in the Gazette delegate to any person or body of persons any of its powers or duties under this Part except the power to make regulations.

2) A delegation under subsection (1) may:-

a) be made subject to such conditions, qualifications and exceptions as may be prescribed in the notification;

b) be revoked or varied by a subsequent notification made in a like manner.

3) The Board may exercise a power or perform a duty notwithstanding that it has delegated its powers or duties under this section. (A603/84)

65U. Exemption by Minister

Without prejudice to any other powers conferred by this Part, the Minister may, by notification in the Gazette, exempt any ship from any of the provisions of this Part or any regulations made thereunder upon such terms and conditions as he may deem fit. (inserted vide A895/1994)