

PART I
MERCHANT SHIPPING ORDINANCE 1952*
(Federation of Malaya Ordinance No.70 of 1952)

* As amended by L.N.858/1953, Ordinance 49/1955, L.N. 332/1958, Acts 34/1964, 15/1966, A212/1973, A393/1977, A433/1978, A561/1983 and P.U.(A) 502/1983. A603/84, A792/91, A895/1994 & A___/1997).

[Date of coming into force: All provisions, other than Part XIII - 1.3.1953: L.N. 72/1953; Part XIII, other than paragraph (a) of 473(4) - 1.8.1953; L.N. 311/1953]

An Ordinance to consolidate and amend the law with respect to Merchant Shipping.

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:-

1. Short title

I)This Ordinance may be cited as the **Merchant Shipping Ordinance, 1952**, and shall come into force on such date as the High Commissioner may by notification in the Gazette appoint.

II)The High Commissioner may appoint different dates for the coming into force of different Parts and provisions of this Ordinance

2. Interpretation

In this Ordinance unless the context otherwise requires -

a) "British ship" has the same meaning as in the Merchant Shipping Acts;
"buoys and beacons" includes all other marks and signs of the sea;

"Cargo ship construction and Survey rules" means rules made under Section 256B (A792/91);

"certificated officer" includes an officer certificated under the Merchant Shipping Acts, the holder of a local certificate as defined in each case in Part III and the holder of any certificate of competency issued by the territories of the Federation, the State of Singapore, Sarawak, North Borneo and Brunei; (No.34 of 1963)

"coasting trade voyage" means a voyage in the course of which a ship does not proceed more than thirty miles from the coast of the Federation; (No.34 of 1963)

"collision regulations" means regulations made under section 252 of this Ordinance; (No.15 of 1966)

"conditions of assignment" means such of the load line rules as are made to give effect to Chapter (A895/194) II of Annex I to the Load Line Convention;

"construction rules" means rules made under section 256A of this Ordinance; (No.15 of 1966)

"consular officer" when used in relation to a foreign country, means the officer recognised by the Yang Di-Pertuan Agong (LN 332/58) as a consular officer of that foreign country;

"continental shelf" has the same meaning given to it in the Continental Shelf Act (A603/84).

"country to which the Load Line Convention applies" means -

I) a country the government of which has been declared under section 331A (A792/91) to have ratified or acceded to the Load Line Convention, and has not been so declared to have denounced that Convention;

II) a territory to which it has been so declared that the Load Line Convention has been applied under the provisions of Article twenty-one thereof, not being a territory to which it has been so declared that that Convention has ceased to extend;

"country to which the Safety Convention applies" means -

I) a country the government of which has been declared under section 306A (A792/91) to have accepted the Safety Convention, and has not been so declared to have denounced that Convention;

II) a territory to which it has been so declared that the Safety Convention extends, not being a territory to which it has been so declared that Convention has ceased to extend;

"Court" in relation to any proceeding includes any Court having jurisdiction in the matter to which the proceeding relates;

"deck passenger" means a passenger for whom no accommodation in any cabin, state-room or saloon is reserved;

"declaration of survey" means a declaration made under section 209;

"Director of Marine" means the Director of Marine, having authority over the port or place at which any ship is or will be registered; (A433/78 - A393/77)

"effects" includes clothes and documents;

"exclusive economic zone" means the exclusive economic zone of Malaysia, as proclaimed by the Yang di-Pertuan Agong vide P.U.(A) 115/80, being an area beyond and adjacent to the territorial sea of Malaysia and extending to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and where the limits of the exclusive economic zone are modified and altered in accordance with the provisions of any written law relating to the exclusive economic zone, the exclusive economic zone shall mean the exclusive economic zone as so modified and altered; (A603/84)

"Federation" means Malaysia; (A433/78 - A393/77))

"Federation waters" means the territorial waters of the Federation;

"foreign going ship" includes every ship employed in trading or going between some place or places in Malaysia (A792/91) and some place or places situate beyond the limits prescribed for near-coastal trade ships; (A792/91)

"foreign going passenger steamer" means every foreign-going ship which is a passenger steamer;

"High Court" means the High Court in Borneo, depending on where the cause or matter arose or occurred; (A433/78 - A393/77)

"international voyage" means a voyage from a port in one country to a port in another country, either of those countries being a country to which the Safety Convention applies, and "short international voyage" means an international voyage -

I) in the course of which a ship is not more than two hundred nautical miles from a port or place in which the passengers and crew could be placed in safety; and

II) which does not exceed six hundred nautical miles in length between the last port of call in the country in which the voyage begins and the final port of destination;

so however that for the purpose of the definitions contained in this paragraph:-

(i) no account shall be taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and

(ii) every colony, overseas territory, protectorate or other territory for whose international relations a government that has accepted the Safety Convention is responsible, or for which the United Nations are the administering authority, shall be deemed to be a separate country;

"legal personal representative" means the person so constituted executor, administrator or

other representative of a deceased person;

"lighthouse" shall, in addition to the ordinary meaning of the word, include any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals, and also any addition to a lighthouse of any improved light, or any siren, or any description of fog signal;

"Load Line Convention" means the International Load Line Convention signed in London on the 5th April 1966; and if any amendment of the Load Lines Convention comes into force with respect to Malaysia, references in this Ordinance to Load Lines Convention shall, unless the context otherwise requires, be construed as references to the Load Lines Convention as amended; (substituted vide A895/1994)

"load line rules" means rules made under section 309;

"Malaysian (A393/77) ship" has the meaning given to it in Part II;

"master" includes every person, except a pilot, having command or charge of any ship;

"the Merchant Shipping Acts" means the Merchant Shipping Acts from time to time in force in the United Kingdom;

"Minister" means the Minister charged with the responsibility for merchant shipping; (LN 332/58)

"name" includes a surname;

"native sailing ship" means any wooden ship of primitive build of less than two hundred tons gross tonnage and not fitted with any mechanical means of propulsion, and includes a junk, tongkang, twakow or other similar ship;

"near-coastal trade passenger steamer" means every near-coastal trade ship which is a passenger steamer; (A792/91)

"near-coastal trade ship" means a ship plying solely upon a near-coastal trade ship; (A792/91).

"near-coastal trade voyage" means a voyage within such limits as may be defined by Minister by Rules made under the definition; (A792/91)

"officer" includes a master, mate, engineer, gunner, helmsman and engine driver;

"passenger" means any person carried in a ship except

a) a person employed or engaged in any capacity on board the ship on the business of the ship;

b) a person on board the ship either in pursuance of the obligation laid on the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled; and

c) a child under one year of age;

"passenger steamer" means every British, Malaysian (A393/77) or foreign steamship carrying more than twelve passengers to or from any place, or between any places, in the Federation, and a steamer shall be deemed to be a passenger steamer notwithstanding that it carries such number of passengers on a single occasion only;

"pilot" means any person not belonging to a ship who has the conduct thereof;

"port" means a port or place declared to be a port under any written law in force in the State of Sabah or Sarawak as the case may be (A433/78 - A393/77) and includes all such navigable rivers and channels leading thereto as are declared to be part thereof;

"port officer" includes the Harbour Master at any port of the Federation and any person lawfully acting for him;

"radio navigational aid" means radio apparatus on board a ship being apparatus designed for the purpose of determining the position or direction of ships or other objects;

"radio rules" means rules made under section 262;

"registrar" means the registrar of Malaysian ships appointed under sub-section (1) of section 14 and includes the Registrar-General; (A603/84)

"Registrar-General" means the Registrar-General appointed under sub-section (1) of Section 14; (A603/84)

"representation" means probate, administration, confirmation or other instrument constituting a person the executor, administrator or other representative of a deceased person;

"rules for direction finders" means rules made under section 263;

"rules for life-saving appliances" means rules made under section 257;

"Safety Convention" means the International Convention for the Safety of Life at Sea signed in London on 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; (A792/91)

"Safety Convention ship" means a ship registered in a country to which the Safety Convention applies; and the expression "Safety Convention passenger steamer" shall be construed accordingly;

"sailing ship" means any ship not fitted with any mechanical means of propulsion;

"sea-going ship" means any ship going beyond port limits;

"seaman" includes every person, except masters, pilots and apprentices duly indentured and registered, employed or engaged in any capacity on board any ship;

"ship" includes every description of vessel used in navigation not propelled by oars;

"superintendent" means a Superintendent appointed under the Merchant Shipping Acts;

"Surveyor of Ships" means the Surveyor of Ships appointed under sub-section (1) of Section 10 and includes:-

a) Surveyor-General of Ships;

b) in relation to States of Sabah and Sarawak, a surveyor of ships appointed under the provision of any written law relating to Merchant Shipping in force in these States; (A603/84)

"Surveyor of Ships" in relation to the State of Sabah or Sarawak, includes a surveyor of ships appointed under the provisions of any written law relating to merchant shipping in force in the State concerned; (A433/78 - A 393/77)

"tidal water" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides;

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

"voyage" means the whole time and the whole distance between the ship's port or place of departure and her final port or place of arrival;

"wages" includes emoluments.

b) Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

c) Any reference to a ship belonging to or for the time being in the service of any foreign State shall not refer to a ship wholly or partially engaged in trade.

d) Any reference to a ship constructed before or after any date shall be construed as referring to a ship the keel of which has been laid before or after that date as the case may be.

e) The tonnage in this Ordinance referred to shall, unless the context otherwise requires, in the case of British and Malayan registered ships be the net registered tonnage, and, in the case of foreign registered ships, shall be the tonnage of such ships denoted in their certificates of registry where an order in Council has been made under section 84 of the Merchant Shipping Act, 1894, in respect of the country to which the ships belong, and, where no such Order in Council has been made, the tonnage of such ships as nearly as possible approximating to the net registered tonnage as measured in British or Malayan registered ships.

3. Application of Ordinance to ships propelled by electricity, etc

Any provision of this Ordinance applying to steamers or steamships shall apply to ships propelled by electricity, internal combustion engine (inserted vide A895/1994) or other mechanical power, with such modifications as the Minister (LN 332/58) prescribes for the purpose of adaptation.

4. Exemption of Her Majesty's ships and ships belonging to a Ruler

1) This Ordinance shall not, except where specially provided and subject to the other provisions of this section, apply to ships belonging to Her Majesty or to His Highness the Ruler or His Excellency the Governor (LN 332/58) of any State.

2) This Ordinance shall, with the exception of Part IV and except where special provision is made by rule made by the Minister (LN 332/58), apply to all ships belonging to or in the employment of the Government of the Federation and in such application any reference to the "owner" shall be construed as a reference to the Director of Marine.

5. The Minister may declare ports, etc

The Minister (LN 332/58) may declare any port or place in the Federation and any navigable river or channel leading into such port or place to be a port within the meaning of this Ordinance

6. Particulars in declaration

I) Every declaration by which any port or place is made, a port within the meaning of this Ordinance, shall define the limits of such port and of any navigable river or channel declared to be part thereof.

II) Such limits shall extend always up to high-water mark, and may include any piers, jetties, landing places, wharves, quays, docks and other similar works, whether within or without the line of high-water mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water mark.

III) The limits so declared may be altered by the Minister. (LN 332/58)

7. Declaration to be published

I) Every declaration of the Minister (LN 332/58) made in pursuance of section 5 shall be published in the Gazette or in such other public manner as the Minister (LN 332/58) directs.

II) A copy thereof shall be fixed up in some conspicuous place in the Port Office to which such declaration relates.

8. Director of Marine, Port Office and Port Officers

1) The Yang di-Pertuan Agong (LN 332/58) shall appoint an officer to be called the Director of Marine, who shall have the general supervision of all matters relating to merchant shipping throughout the Federation.

II) In each of the ports of the Federation a Port Office shall be maintained under the charge of a Port Officer to be appointed by the Yang di-Pertuan Agong (LN 332/58) and to be called the Harbour Master.

III) The Harbour Masters shall perform their duties under the direction of the Director of Marine.

IV) The Director of Marine may delegate the exercise of any of the powers conferred upon him by this Ordinance to such persons as he may think fit.

V) The Yang di-Pertuan Agong (LN 332/58) may appoint a deputy or deputies to any Port Officer, either generally for all the purposes of this Ordinance and of the rules made under it or for the purpose of particular Parts, sections or rules.

VI) Any act done by, to or before a deputy within the powers conferred upon him shall have the same effect as if done by, to or before a Port Officer.

9. Appointment of Health Officer

1) The Yang di-Pertuan Agong (LN 332/58) may appoint at any port an officer to be called the Port Health Officer.

II) The Port Health Officers shall perform their duties under the direction of the Director of Medical Services, who shall have the powers of a Port Health Officer at each of the ports of the Federation.

III) The Yang di-Pertuan Agong (LN 332/58) may appoint a deputy or deputies to any Port Health Officer, either generally for the purposes of this Ordinance and of the rules made under it or for the purposes of particular Parts, sections or rules.

IV) Any act done by, to or before a deputy Port Health Officer within the powers conferred upon him shall have the same effect as if done by, to or before a Port Health Officer.

10. Appointment of Surveyor of Ships and Radio Surveyor

I) The Yang di-Pertuan Agong (LN 332/58) may, at such ports as he thinks fit, appoint (A792/91) any person he thinks fit to be a Surveyor of Ships or a Radio Surveyor for the purpose of this Ordinance.

II) The Yang di-Pertuan Agong (LN 332/58) may also appoint a Surveyor-General of Ships for the Federation.

Iia) 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 purpose of this Ordinance to be a Surveyor of Ships or a Radio Surveyor, as the case may be, appointed under Sub-section (1); (A792/91).

III) The Yang di-Pertuan Agong (LN 332/58) may appoint Surveyors of Ships to be Senior Ship and Engineer Surveyors or Senior Ship Surveyors either generally for the purposes of this Ordinance and of the rules made thereunder or for the purposes of particular Parts, sections or rules.

IV) The Surveyor-General of Ships with the approval of the Minister, (LN 332/58) may delegate the exercise of any of the powers conferred upon him by this Ordinance to such public officers (A792/91) as he may think fit;

V) The Minister (LN 332/58) may make rules (15 of 66) as to the performance of the duties of Surveyors of Ships and Radio Surveyors, and in particular as to -

a) the manner in which surveys of such steamers and ships shall be made;

b) the notice to be given by the owners, masters or agents of such ships when surveys are required; and

c) the amount and payment of any travelling or other expenses incurred by Surveyors of Ships and Radio Surveyors in the execution of their duties, and of the fees to be charged for the inspections and other services performed by them; and the persons by whom, and the conditions under which, the payment of such fees and expenses to be made.

VI) For the purposes of this section, and without prejudice to the generality of the powers therein contained, the construction rules made from time to time by the Minister of Transport under the Merchant Shipping Acts shall unless varied by or repugnant to construction rules made under this section be deemed to be construction rules made under this section. VII) The duties of a Surveyor of Ships and of the Radio Surveyor shall be performed under the direction of the Surveyor-General of Ships and in accordance with rules to be made by the Minister (LN 332/58).