

PART VA
POLLUTION FROM SHIPS

(THIS PART APPLIES THROUGHOUT MALAYSIA)

(Inserted vide A 792/91)

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. Definitions

(1) 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. Power 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 considered 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.

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 purpose 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 purpose 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 owner of those ships amounts that, in the aggregate, exceed the total amount of the expenses and liabilities incurred by the Director of Marine on 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 in 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 of 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. (A792/91)