



LAWS OF MALAYSIA

Act A1316

**MERCHANT SHIPPING (AMENDMENT AND
EXTENSION) ACT 2007**

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LAWS OF MALAYSIA**Act A1316****MERCHANT SHIPPING (AMENDMENT AND
EXTENSION) ACT 2007**

An Act to amend the Merchant Shipping Ordinance 1952 and to extend specified provisions to the Federal Territory of Labuan and the States of Sabah and Sarawak, and to provide for matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Merchant Shipping (Amendment and Extension) Act 2007.

(2) Subject to subsection (3), this Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

(3) This Act comes into operation in the States of Sabah and Sarawak on such date as the Minister may, after consultation with the State Authorities, appoint by notification in the *Gazette*.

Amendment of section 2

2. The Merchant Shipping Ordinance 1952 [*Ord. 70/1952*], which in this Act is referred to as the “Ordinance”, is amended in section 2 by inserting after the definition of “load line rules” the following definition:

‘ “Malaysia Shipping Notice” means a notice described as such and issued by the Director of Marine in pursuance of section 519A in such manner as determined by him;’.

Amendment of heading of Part V

3. The Ordinance is amended in the heading of Part V by substituting for the word “SAFETY” the words “MARITIME TRANSPORT SAFETY AND SECURITY”.

New sections 249A, 249B, 249C, 249D, 249E, 249F, 249G, 249H, 249I, 249J, 249K, 249L, 249M, 249N, 249O, 249P, 249Q, 249R, 249S, 249T, 249U, 249V, 249W, 249X, 249Y, 249Z, 249AA and 249AB

4. The Ordinance is amended in Part V by inserting under the heading of that Part but before the subheading “*Prevention of Collisions.*” the following subheading and sections:

“Maritime Transport Security.

Interpretation. **249A.** In this subheading, unless the context otherwise requires—

“certificate” means the International Ship Security Certificate, Statement of Compliance of a maritime transport security area or Statement of Compliance of a designated marine facility issued in accordance with section 249K;

“company” means the owner of a ship or, any other organisation or person such as the ashore manager or bareboat charterer who has assumed responsibility for the operation of the ship from the owner of the ship

and who on assuming such responsibility has agreed to take over all duties and responsibilities relating to the safe operation of the ship;

“declaration of security” means an agreement between a ship and either a marine facility or another ship with which it interfaces, that specifies the security measures each must implement;

“interim certificate” means the Interim International Ship Security Certificate issued in accordance with subsection 249κ(4);

“marine facility” includes—

- (a) an area of land, water or other supporting surface used, designed, prepared, equipped or set apart for use, either in whole or in part, for the arrival, departure, movement or servicing of vessels;
- (b) a building or installation and equipment in the area associated with it or used or set apart for handling or storing goods that have been or are destined to be transported on a vessel;
- (c) equipment and facilities used to provide services relating to marine transportation;
- (d) a fixed and floating structure, including an off-shore industry structure;
- (e) an off-shore industry mobile unit;

“marine facility security assessment” means a process of risks identification in respect of a designated marine facility which contains the following elements:

- (a) identification and evaluation of assets and infrastructure that is important to protect;
- (b) identification of possible threats to the assets and infrastructure and the likelihood of their occurrence in order to establish and prioritise security measures;

- (c) identification, selection and prioritization of countermeasures and procedural changes and their level of effectiveness in reducing vulnerability; and
- (d) identification of weaknesses, including human factors, in the infrastructure, policies and procedures;

“marine facility security plan” means a plan developed to ensure the application of measures designed to protect a designated marine facility and ships, persons, cargo, cargo transport units and ship’s stores within the designated marine facility from the risks of a security incident;

“maritime transport security area security assessment” means a process of risks identification in respect of a maritime transport security area which contains the following elements:

- (a) identification and evaluation of assets and infrastructure that is important to protect;
- (b) identification of possible threats to the assets and infrastructure and the likelihood of their occurrence in order to establish and prioritise security measures;
- (c) identification, selection and prioritization of countermeasures and procedural changes and their level of effectiveness in reducing vulnerability; and
- (d) identification of weaknesses, including human factors, in the infrastructure, policies and procedures,

and does not include matters as contained in the ship security assessment and marine facility security assessment in respect of a ship and marine facility within that maritime transport security area;

“maritime transport security area security plan” means a plan developed to ensure the application of measures designed to protect a maritime transport security area

from the risks of a security incident, and does not include matters as contained in the ship security plan and marine facility security plan in respect of a ship and marine facility within that maritime transport security area;

“security incident” means any suspicious act or circumstance threatening the security of a ship, including a high-speed craft, or a marine facility, or any ship-marine facility interface or ship-to-ship activity;

“security level” means the quantification of the degree of risk that a security incident will be attempted or will occur;

“security level 1” means the level for which minimum appropriate protective security measures shall be maintained at all times;

“security level 2” means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident;

“security level 3” means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target;

“ship security assessment” means a process of risks identification in respect of a ship which contains the following elements:

- (a) identification of existing security measures, procedures and operations;
- (b) identification and evaluation of key shipboard operations that is important to protect;
- (c) identification of possible threats to key shipboard operations and the likelihood of their occurrence in order to establish and prioritise security measures; and

- (d) identification of weaknesses, including human factors, in the infrastructure, policies and procedures;

“ship security plan” means a plan developed to ensure the application of measures on board a ship designed to protect persons on board, cargo, cargo transport units, ship’s stores or the ship from the risks of a security incident;

“ship-to-ship activity” means any activity not related to a marine facility that involves the transfer of goods or persons from one ship to another ship.

Application. **249B.** This subheading applies to—

- (a) maritime transport security areas and ships in Malaysia and Malaysian waters;
- (b) marine facilities in Malaysia, Malaysian waters, the exclusive economic zone and continental shelf, and ships entering such marine facilities; and
- (c) Malaysian ships and off-shore industry mobile units registered under the Ordinance, wherever they are.

Exemption. **249c.** The Minister may exempt any ship or class of ships or designated marine facilities from any of the provisions of this subheading or any rules made hereunder, upon such terms and conditions as he deems fit.

Designated Authority. **249d.** (1) The Director of Marine shall be the Designated Authority for the purposes of implementing the provisions of this subheading.

(2) The Designated Authority shall be responsible for—

- (a) approving the ship security assessment and ship security plan and subsequent amendments to a previously approved assessment and plan;
- (b) approving the maritime transport security area security assessment and marine facility security

assessment, and the maritime transport security area security plan and marine facility security plan and any subsequent amendments to any previously approved assessments and plans;

- (c) verifying the compliance of maritime transport security areas, ships and designated marine facilities with the approved security assessments and security plans;
- (d) exercising control and compliance with security measures to be adopted at the different security levels declared; and
- (e) testing approved security plans.

(3) The Designated Authority shall notify the company or master of the ship, or operator of a designated marine facility the security level declared for the ship or designated marine facility, respectively.

Maritime transport security area.

249E. The Designated Authority may by notification published in the *Gazette*—

- (a) declare any area or part of an area in Malaysia and Malaysian waters as a maritime transport security area; or
- (b) declare that a maritime transport security area ceases to be a maritime transport security area.

Designated marine facility.

249F. The Designated Authority may by notification published in the *Gazette*—

- (a) designate any marine facility as a designated marine facility, including the delineation of its boundary, its hours of operation and its name;
- (b) vary any particulars of a designated marine facility; or
- (c) declare that a designated marine facility ceases to be a designated marine facility.

Appointment
of
Maritime
Transport
Security
Officer.

249G. (1) The Designated Authority may appoint a Maritime Transport Security Officer in respect of a maritime transport security area.

(2) The Maritime Transport Security Officer shall be responsible for the development, implementation, revision and maintenance of the maritime transport security area security assessment and maritime transport security area security plan.

(3) The Maritime Transport Security Officer may establish a committee to monitor and coordinate security matters within the maritime transport security area.

Appointment
of Marine
Facility
Security
Officer.

249H. (1) Every designated marine facility shall have a Marine Facility Security Officer who shall be accountable to—

(a) the Designated Authority in respect of a designated marine facility situated outside the maritime transport security area;

(b) the Maritime Transport Security Officer in respect of a designated marine facility situated within the maritime transport security area.

(2) The operator of a designated marine facility shall appoint a Marine Facility Security Officer.

(3) The Marine Facility Security Officer shall be responsible for the development, implementation, revision and maintenance of the marine facility security assessment and marine facility security plan, and for liaison with the Ship Security Officers and Company Security Officers.

Appointment
of
Company
Security
Officer.

249I. Every company shall appoint one or more Company Security Officers to be responsible for the development and supervision of the implementation of the ship security assessment and ship security plan in respect of its ships.

Appointment
of Ship
Security
Officer.

249J. (1) Every ship shall have a Ship Security Officer who shall be responsible for the security of the ship, including the implementation and maintenance of the ship

security plan, and for liaison with the Company Security Officers and Marine Facility Security Officers.

(2) Subject to subsection (3), the Ship Security Officer shall be accountable to the master of the ship.

(3) Where the Ship Security Officer is also the master of the ship, he shall be accountable to the Company Security Officer.

Issuance of
certificate
or interim
certificate.

249K. (1) The Designated Authority may, upon receipt of a written application from a company and upon being satisfied that a ship of the company has complied with all the requirements of this subheading and the rules made hereunder, issue an International Ship Security Certificate in the prescribed form in respect of such ship upon payment of the prescribed fee.

(2) The Designated Authority may, upon receipt of a written application from a Maritime Transport Security Officer or operator of a designated marine facility and upon being satisfied that the maritime transport security area or designated marine facility has complied with all the requirements of this subheading and the rules made hereunder, issue—

- (a) a Statement of Compliance of a maritime transport security area; or
- (b) a Statement of Compliance of a designated marine facility,

in the prescribed form in respect of such maritime transport security area or designated marine facility, upon payment of the prescribed fee.

(3) The Designated Authority may issue the certificate in pursuance of subsection (1) or (2) subject to any conditions or restrictions that he may deem fit to impose.

(4) The Designated Authority may, pending the issuance of the International Ship Security Certificate, issue an Interim International Ship Security Certificate subject to such conditions or restrictions that he may deem fit to impose.

Revocation
of
certificate
or interim
certificate.

249L. (1) The Designated Authority may at any time revoke the certificate or interim certificate issued under section 249K if he is satisfied that—

- (a) there has been a contravention of any provision of this subheading or any rules made hereunder; or
- (b) there has been a breach of any condition or restriction of the certificate or interim certificate,

provided that no certificate or interim certificate shall be revoked unless the holder of the certificate or interim certificate has been given a reasonable opportunity of making a representation against the intended revocation.

(2) Notwithstanding subsection (1), the International Ship Security Certificate shall be deemed to have been revoked—

- (a) when a company assumes responsibility for the operation of a ship not previously operated by that company; or
- (b) upon transfer of the ship to the flag of another State.

Surrender
of
certificate
or interim
certificate.

249M. (1) Upon the revocation or expiry of the International Ship Security Certificate or Interim International Ship Security Certificate, the company or master of the ship shall surrender such certificate or interim certificate—

- (a) to the Designated Authority within fourteen days of the ship's arrival at a Malaysian port; or
- (b) to the nearest Malaysian diplomatic or consular officer who shall immediately forward the certificate to the Designated Authority, where the ship is at a port outside Malaysia.

(2) Upon the revocation or expiry of the Statement of Compliance of a maritime transport security area or Statement of Compliance of a designated marine facility, the Maritime Transport Security Officer or operator of

the designated marine facility, as the case may be, shall surrender the certificate to the Designated Authority within fourteen days from the date of its revocation or expiry.

(3) Any company, master of a ship, Maritime Transport Security Officer or operator of a designated marine facility who fails to surrender the certificate or interim certificate upon the revocation or expiry of such certificate or interim certificate in the manner as specified in subsection (1) or (2) shall be liable for each offence to a fine not exceeding twenty-five thousand ringgit.

Replacement
of
certificate
or interim
certificate.

249n. (1) Where the certificate or interim certificate issued under section 249k is lost, defaced or destroyed, the Designated Authority may, upon receipt of an application from the company, Maritime Transport Security Officer or operator of the designated marine facility and upon payment of the prescribed fee, issue a certificate or interim certificate in lieu of the original certificate or interim certificate, provided that the company, Maritime Transport Security Officer or operator of the designated marine facility proves to the satisfaction of the Designated Authority that he or it has not caused or contributed to the loss, defacement or destruction of the original certificate or interim certificate.

(2) Where the original certificate or interim certificate is found after the certificate or interim certificate has been issued in pursuance of subsection (1), the original certificate or interim certificate shall be deemed to have been revoked and of no effect.

Pre-arrival
notification.

249o. (1) Every master of a ship shall report to the Maritime Transport Security Officer before entering any designated marine facility within a maritime transport security area in accordance with the prescribed procedures.

(2) Every master of a ship shall report to the Designated Authority before entering any designated marine facility outside a maritime transport security area in accordance with the prescribed procedures.

Requirement for declaration of security. **249P.** The Designated Authority may require a declaration of security to be completed if he is satisfied that a ship-marine facility interface or ship-to-ship activity poses a risk to persons, property or the environment.

Request for declaration of security. **249Q.** (1) The master of a ship or the Ship Security Officer may lodge a request with the Designated Authority, Marine Facility Security Officer or with the master or the Ship Security Officer of another ship for a declaration of security or modification of such declaration of security if—

- (a) the ship is operating at a higher security level than the designated marine facility or the other ship with which it is interfacing or intends to interface;
- (b) the ship is registered in a State that is a party to the Safety Convention, and there is an agreement on a declaration of security between that State and Malaysia covering certain international voyages or specific ships on those voyages;
- (c) a security incident involving the ship or the marine facility it is using or intends to use, has occurred; or
- (d) the ship is at a marine facility that is not required to have and implement an approved marine facility security plan.

(2) The master of a ship or the Ship Security Officer may lodge a request with the master of another ship for a declaration of security or modification of such declaration of security if the ship is conducting ship-to-ship activities with that other ship which is not required to have and implement an approved ship security plan.

(3) A Marine Facility Security Officer may, before or during ship-marine facility interface, lodge a request with the master of the ship or Ship Security Officer for a declaration of security or modification of such declaration of security, if—

- (a) the marine facility security plan identifies the ship-marine facility interface as being susceptible to a security incident; or

- (b) the designated marine facility is operating at a higher security level than the ship with which it is interfacing or intends to interface with.

Reporting of security incident.

249R. (1) The company, master of a ship, Maritime Transport Security Officer or operator of a designated marine facility shall report immediately to the Designated Authority upon the occurrence of the following security incidents:

- (a) an explosion that is not the result of an accident;
- (b) a bomb threat, armed attack, hostage taking, stowaway or hijacking; or
- (c) any breach of security.

(2) Any company, master of a ship, Maritime Transport Security Officer or operator of a designated marine facility who fails to report the security incident shall be liable for each offence to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Direction to ships.

249s. (1) Where the Designated Authority has reasonable grounds to suspect that a ship is a threat to the security of any person or thing, including any goods, maritime transport security area, ship or marine facility, the Designated Authority may direct the ship to—

- (a) proceed to a place specified by the Designated Authority in accordance with any instructions given by him and to remain at the place until he is satisfied that the security threat no longer exists;
- (b) proceed out of Malaysian waters in accordance with any instructions the Designated Authority may give regarding the route and manner of proceeding; or
- (c) remain outside Malaysian waters.

(2) The Designated Authority may in writing authorise any Maritime Transport Security Officer or port officer to exercise the power to issue directions to any ship in pursuance of subsection (1).

(3) The direction given to the company or master of a ship is evidence that reasonable steps were taken to notify the ship that it is a threat to the security of any person or thing, including any goods, maritime transport security area, ship or marine facility.

(4) The company or master of a ship who fails to comply with the direction shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Prohibition of ships entering Malaysian waters when there is a security incident.

249t. (1) Where there is a security incident, the Designated Authority may prohibit any ship or class of ships from entering any area of Malaysian waters, or any marine facilities in the exclusive economic zone or continental shelf.

(2) Any company or master of a ship who contravenes this section shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Master's discretion for ship security.

249u. If the master during the operation of the ship, in his professional judgement takes or executes any decision which is in conflict with the safety and security requirements applicable to the ship that is necessary to maintain the safety of the ship, the taking or execution of that decision shall not by itself constitute a breach of any duty owed to any person by him under any contract, including a contract of employment.

Detention of ship.

249v. Where the Designated Authority has reasonable cause to suspect that a ship fails to comply with any provision of this subheading or any rules made hereunder, the Designated Authority may direct that the ship be detained for the purposes of conducting an investigation and examination of the ship, including that in respect of all persons on board the ship.

Equivalent security arrangements.

249w. The Designated Authority may allow any Malaysian ship, maritime transport security area or designated marine facility to implement other security measures that are equivalent to and at least as effective as the security measures prescribed under this subheading.

Security
organisation.

249x. (1) The Designated Authority may in writing, subject to any conditions as he deems fit, appoint any organisation which has appropriate expertise in security matters and appropriate knowledge of ships and marine facility operations as a security organisation.

(2) Notwithstanding subsections 249D(2), 249K(1) and 249L(1), the Designated Authority may authorise in writing the security organisation to undertake certain security-related activities in respect of a ship only, including—

- (a) the approval of the ship security assessment and ship security plan and subsequent amendments to a previously approved assessment and plan;
- (b) the verification of compliance of ships with the approved ship security assessments and ship security plans; and
- (c) the issuance, replacement and revocation of the International Ship Security Certificate in accordance with this subheading.

(3) The Designated Authority may revoke the appointment of a security organisation under subsection (1) if he is satisfied that the security organisation fails to meet the conditions as imposed by him.

Alternative
security
arrangements.

249y. (1) This subheading shall not apply to—

- (a) any ship engaged on short international voyages on fixed routes between designated marine facilities and marine facilities outside Malaysia; and
- (b) the designated marine facilities as mentioned in paragraph (a),

if it is covered by an agreement between the Government of Malaysia and another government on alternative security arrangements.

(2) No ship covered by the agreement referred to in subsection (1) shall conduct any ship-to-ship activity with any ship not covered by such agreement.

Power to
inspect.

249z. The Designated Authority, port officer or any person authorised in writing by the Designated Authority, may inspect any ship, maritime transport security area and designated marine facility to which this subheading applies for the purpose of ensuring that the provisions of this subheading and the rules made hereunder have been complied with.

Power to
investigate.

249AA. (1) Investigations in respect of offences under this subheading may, without prejudice to the provisions of any other written law relating to investigations, be conducted by the Designated Authority or any person authorised in writing by him.

(2) The Designated Authority or any person authorised in writing by him making investigations under this subheading shall have the power to—

- (a) go on board any ship or enter into any maritime transport security area or marine facility as he considers necessary;
- (b) require the company, master of any ship, Maritime Transport Security Officer or operator of a designated marine facility to facilitate the boarding of the ship or entry into the maritime transport security area or marine facility, as the case may be;
- (c) require information, whether orally or in writing, from any person supposed to be acquainted with the facts and circumstances of the case under investigation; or
- (d) require the production of any certificate, interim certificate, official log-book or other documents relating to the operation of the ship, maritime transport security area or designated marine facility from the company, master of the ship, Maritime Transport Security Officer or operator of the designated marine facility, as the case may be.

(3) Any person who—

- (a) without reasonable excuse refuses or fails to comply with a requirement made of him by the Designated Authority or any person authorised in writing by the Designated Authority in the exercise of his powers under subsection (2); or
- (b) in respect of a matter that he is required to respond to under subsection (2), makes a statement that is false or misleading in a material particular,

shall be liable for each offence to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Maritime
transport
security
rules.

249AB. The Minister may make such rules as may be necessary or expedient with respect to any matters relating to maritime transport security, and such rules may—

- (a) regulate the issuance and revocation of certificates and interim certificates, including procedures for the application of certificates and interim certificates, and the duration and replacement of such certificates;
- (b) provide for security measures in respect of access control, security monitoring, passengers, personnel, baggage, delivery of ship's stores and cargo security, including the development, implementation and review of security assessments and security plans for maritime transport security areas, ships and designated marine facilities and the procedure to be adopted and complied with when the security level has been declared;
- (c) prescribe the fees payable in connection with the provision of any service or any other matter under this subheading, including the manner of collecting and disbursing such fees and for matters relating to the failure to pay such fees;

- (d) prescribe the forms that are required for the purposes of this subheading;
- (e) prescribe the standards of security to be maintained on board ships and in the maritime transport security areas and designated marine facilities;
- (f) provide for the procedure in respect of pre-arrival notification of any ship;
- (g) regulate matters concerning the declaration of security, including the form of request for a declaration of security;
- (h) provide for the duties, responsibilities and training requirements of a Maritime Transport Security Officer, Marine Facility Security Officer, Company Security Officer and Ship Security Officer;
- (i) provide for penalties for the contravention of the provisions of the rules made hereunder of a fine not exceeding twenty-five thousand ringgit or imprisonment for a term not exceeding two years or to both.”.

New sections 249AC, 249AD, 249AE, 249AF, 249AG, 249AH, 249AI, 249AJ, 249AK, 249AL, 249AM, 249AN and 249AO

5. The Ordinance is amended in Part V by inserting after the new section 249AB but before the subheading “*Prevention of Collisions.*” the following subheading and sections:

“Safe Operation of Ships.

Interpretation. **249AC.** In this subheading, unless the context otherwise requires—

“certificate” means the Document of Compliance or the Safety Management Certificate issued in accordance with section 249AJ;

“company” has the same meaning as assigned to it in section 249A;

“interim certificate” means the Interim Document of Compliance or the Interim Safety Management Certificate issued in accordance with subsection 249AJ(4);

“Safety Management System” means a structured and documented system enabling the company to implement effectively the company’s safety and environmental-protection policy within the company and on its ships.

Application. **249AD.** This subheading shall apply to—

- (a) passenger ships;
- (b) cargo ships of 500 gross tonnage and more; and
- (c) off-shore industry mobile units of 500 gross tonnage and more,

registered under the Ordinance.

Exemption. **249AE.** (1) The Minister may, by notification published in the *Gazette* exempt any ship or class of ships from any of the provisions of this subheading or any rules made hereunder, upon such terms and conditions as he may deem fit.

(2) Subject to subsection (1), the Surveyor-General of Ships may exempt any ship from any of the provisions of this subheading for a particular voyage, upon such terms and conditions as he may deem fit.

General supervision by the Surveyor-General of Ships on matters relating to the safe operation of ships, etc. **249AF.** For the purposes of this subheading, the Surveyor-General of Ships shall exercise general direction and supervision over all matters relating to the safe operation of ships and protection of the environment, and shall ensure compliance with the provisions of this subheading and the rules made hereunder.

Appointment of designated person. **249AG.** (1) Every company shall appoint one or more designated persons ashore who shall provide a link between the company and those persons on board the ship, and shall have direct access to the highest level of management of the company.

(2) The designated person shall monitor the safety and pollution prevention aspects of the operation of each ship and shall ensure that adequate resources and shorebased support are applied.

Safety
Management
System.

249AH. (1) Every company shall develop, implement and maintain a Safety Management System that shall include the following functional requirements:

- (a) a safety and environmental-protection policy;
- (b) instructions and procedures to ensure the safe operation of ships and protection of the environment in compliance with relevant laws and international conventions;
- (c) defined levels of authority and lines of communication between and amongst shore and shipboard personnel;
- (d) procedures for reporting accidents and non-conformities with the provisions of this subheading;
- (e) procedures to prepare for and respond to emergency situations; and
- (f) procedures for internal audits and management reviews.

(2) The Surveyor-General of Ships shall carry out audits of the Safety Management System of every company and its ships to verify compliance with the provisions of this subheading and the rules made hereunder.

(3) The company shall notify the Surveyor-General of Ships of any amendments made to the Safety Management System within thirty days after the amendments have been made.

(4) Any company who fails to comply with subsection (1) or (3) shall be liable for each offence to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Master's
responsi-
bilities.

249AI. (1) The company shall ensure that the Safety Management System on board the ship contains a clear statement emphasizing the master's authority.

(2) The company shall establish in the Safety Management System that the master has the overriding authority and responsibility to make decisions with respect to safety and pollution prevention and to request the company's assistance as when necessary.

Issuance of
certificate
or interim
certificate.

249AJ. (1) The Surveyor-General of Ships may, upon receipt of an application from the company and upon verification that he is satisfied that the company has complied with all the requirements of this subheading and the rules made hereunder, issue a Document of Compliance in the prescribed form in respect of the type of ships indicated in that document upon payment of the prescribed fees.

(2) Upon obtaining the Document of Compliance, the company shall apply for a Safety Management Certificate in respect of each of its ships within the types of ships as indicated in the Document of Compliance, and the Surveyor-General of Ships may upon being satisfied that the company and its shipboard management operate in accordance with the Safety Management System, issue the Safety Management Certificate upon payment of the prescribed fees.

(3) The Surveyor-General of Ships may issue the certificate in pursuance of subsection (1) or (2) subject to any conditions that he may deem fit to impose.

(4) The Surveyor-General of Ships may, pending the issuance of the certificate, issue an interim certificate subject to such conditions as he may deem fit to impose.

(5) Where a company to whom a Document of Compliance has been issued, applies for the addition of new types of ships to the existing types of ships as indicated in the Document of Compliance, the Surveyor-General of Ships may issue to that company an Interim Document of Compliance in respect of the new types of ships.

(6) A Safety Management Certificate shall not be issued based on an Interim Document of Compliance.

Revocation of certificate or interim certificate. **249AK.** (1) The Surveyor-General of Ships may at any time revoke the certificate or interim certificate issued to the company under section 249AJ if he is satisfied that—

- (a) there has been a contravention of any provision of this subheading or any rules made hereunder; or
- (b) there has been a breach of any condition of the certificate or interim certificate,

provided that no certificate or interim certificate shall be revoked unless the holder of the certificate or interim certificate has been given a reasonable opportunity of making a representation against the intended revocation.

(2) The Safety Management Certificate or Interim Safety Management Certificate, which has been issued and is associated with the Document of Compliance or Interim Document of Compliance which has been revoked in pursuance of subsection (1), shall be revoked.

Surrender of certificate or interim certificate. **249AL.** (1) Upon the revocation or expiry of the certificate or interim certificate, the company or master of the ship shall surrender—

- (a) the Document of Compliance or Interim Document of Compliance to the Surveyor-General of Ships, within fourteen days from the date of its revocation or expiry;
- (b) the Safety Management Certificate or Interim Safety Management Certificate to the Surveyor-General of Ships within fourteen days of the ship's arrival at a Malaysian port, or if the ship is at a port outside Malaysia, to the nearest Malaysian diplomatic or consular officer who shall immediately forward the certificate or interim certificate to the Surveyor-General of Ships.

(2) Any company or master of a ship who fails to surrender the certificate or interim certificate in accordance with subsection (1) shall be liable for each offence to a fine not exceeding twenty-five thousand ringgit.

Replacement
of certificate
or interim
certificate.

249AM. (1) Where any certificate or interim certificate issued under this subheading is lost, defaced or destroyed, the Surveyor-General of Ships may, upon receipt of an application from the company and upon payment of the prescribed fee, issue a certificate or interim certificate in lieu of the original certificate or interim certificate, provided that the company proves to the satisfaction of the Surveyor-General of Ships that he or it has not caused or contributed to the loss, defacement or destruction of the original certificate or interim certificate.

(2) Where the original certificate or interim certificate is found after the certificate or interim certificate has been issued in pursuance of subsection (1), the original certificate or interim certificate shall be deemed to have been revoked and of no effect.

Powers to
investigate.

249AN. (1) Investigations in respect of offences under this subheading may, without prejudice to the provisions of any other written law relating to investigations, be conducted by the Surveyor-General of Ships.

(2) The Surveyor-General of Ships shall have the power to—

- (a) go on board any ship or enter into any premises as he considers necessary;
- (b) require the master of any ship or company to facilitate the boarding of the ship or entry into the premises;
- (c) require information, whether orally or in writing, from any person supposed to be acquainted with the facts and circumstances of the case under investigation; or
- (d) require the production of any certificate, interim certificate, official log-book or other documents relating to the operation of the ship and safe management of the company from the master of the ship or company.

(3) The Surveyor-General of Ships may direct any ship to be detained solely for the purpose of conducting an investigation.

(4) Any person who—

(a) without reasonable excuse refuses or fails to comply with a requirement made of him by the Surveyor-General of Ships in the exercise of his powers under subsection (2); or

(b) in respect of a matter that he is required to respond to under subsection (2), makes a statement that is false or misleading in a material particular,

shall be liable for each offence to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Safety
rules.

249AO. (1) The Minister may make rules providing for the safe management and operation of ships including the safe practices in ship operation, safe working environment on board ships, the management of persons ashore and avoidance of damage to the environment, in particular the marine environment and to property.

(2) Without prejudice to the generality of subsection (1), the rules may—

(a) regulate the issuance and revocation of certificates and interim certificates, including procedures for the application of certificates and interim certificates, the duration and replacement of such certificates, and the annual verification of the Document of Compliance and intermediate verification of the Safety Management Certificate;

(b) provide for standards for the safe management and operation of ships including the preparation of operational plans on board ships, emergency response, manning, documentation of the Safety Management System, master's responsibilities and any matters connected therewith;

- (c) provide for the establishment and maintenance of procedures to control all documents and data relevant to the Safety Management System;
- (d) provide for the verification of compliance of the Safety Management System through auditing procedures;
- (e) prescribe the fees payable in connection with the provision of any service or any other matter under this subheading, including the manner of collecting and disbursing such fees and for matters relating to the failure to pay such fees;
- (f) prescribe the forms that are required for the purposes of this subheading;
- (g) prescribe the competency requirement of persons who are carrying out the verification procedures and practices;
- (h) provide for penalties for the contravention of the provisions of the rules made hereunder of a fine not exceeding twenty-five thousand ringgit or imprisonment for a term not exceeding two years or to both.”.

Amendment of section 306c

6. Section 306c of the Ordinance is amended—

- (a) by inserting after the definition of “authorised officer” the following definition:

‘ “certificate” means a valid document, by whatever name it may be known, issued under this Part or recognised by the Director of Marine;’;

- (b) in the definition of “discharge”—

- (i) in paragraph (i), by deleting the word “or” appearing at the end of the paragraph;
- (ii) in paragraph (ii), by inserting after the semicolon the word “or”; and

(iii) by inserting after paragraph (ii) the following paragraph:

“(iii) release of harmful substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources;” and

(c) by substituting for the definition of “Malaysian waters” the following definition:

‘ “Malaysian waters” means the territorial waters of Malaysia as determined in accordance with the Emergency (Essential Powers) Ordinance No. 7 1969 [P.U. (A) 307A/1969];’.

New section 306CA

7. The Ordinance is amended by inserting after section 306c the following section:

“Prohibition of discharge of oil or harmful substance. **306CA.** (1) Subject to subsection (2) and any circumstances as may be specified in the rules or Malaysia Shipping Notice, the discharge of oil or harmful substances into any part of Malaysian waters, any Malaysian coast or Malaysian reef is prohibited.

(2) Subsection (1) shall not apply to any discharge of oil or harmful substances—

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea;

(b) resulting from damage, other than intentional damage, to a ship or its equipment and, all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or, if it could not be prevented, stopping or minimizing the discharge; or

(c) which is for the purpose of combating specific pollution incidents in order to minimise damage from pollution and is approved by the Director of Marine and, where the discharge occurred within the jurisdiction of the government of a country other than Malaysia, by that government.

(3) For the purposes of subsection (2), damage to a ship or its equipment shall be deemed to be intentional damage if the damage arose in circumstances in which the owner or master of the ship—

(a) acted with intent to cause the damage; or

(b) acted in a reckless manner and with knowledge that the damage would probably result.

(4) Any person who contravenes subsection (1) shall be liable for each offence to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

New sections 306JA and 306JB

8. The Ordinance is amended by inserting after section 306j the following sections:

“Investigation of a maritime casualty.

306JA. (1) Where a maritime casualty has occurred, the Director of Marine may cause an investigation to be conducted by a port officer or an authorised officer to determine the nature and causes of the maritime casualty or damage which the ship has sustained or the extent of damage caused to Malaysian waters, any Malaysian coast or Malaysian reef.

(2) The person conducting the investigation under subsection (1) shall have the powers of an Inspector under the Ordinance and shall submit the findings of such investigation to the Director of Marine.

Protection of acts done in exercise of certain powers of the Government.

306JB. The Government shall not be held liable in any circumstances where any discharge of oil or harmful substances is in consequence of the exercise of any of its powers in relation to the removal of wrecks, preventing an obstruction or danger to navigation, or the disposal of sunk, stranded or abandoned vessels.”.

New sections 306L, 306M, 306N, 306O, 306P, 306Q and 306R

9. The Ordinance is amended by inserting after section 306k the following sections:

306L. (1) The Director of Marine may, upon receipt of a written application from an owner of a ship and upon being satisfied that the ship has complied with all the requirements of this Part, the rules made hereunder or the technical requirements relating to marine pollution as issued by the Director of Marine in Malaysia Shipping Notices, issue a certificate in the prescribed form in respect of such ship upon payment of the prescribed fee.

(2) The Director of Marine may issue the certificate in pursuance of subsection (1) subject to any conditions or restrictions that he may deem fit to impose.

(3) The Director of Marine may, pending the issuance of the certificate, issue an interim certificate subject to such conditions or restrictions as he may deem fit to impose.

306M. (1) The Director of Marine may at any time revoke the certificate or interim certificate issued under section 306L to the ship if he is satisfied that—

- (a) there has been a contravention of any provision of this Part, any rules made hereunder or any technical requirements relating to marine pollution as issued by the Director of Marine in Malaysia Shipping Notices; or
- (b) there has been a breach of any condition or restriction of the certificate or interim certificate,

provided that no certificate or interim certificate shall be revoked unless the holder of the certificate or interim certificate has been given a reasonable opportunity of making a representation against the intended revocation.

Replacement of certificate or interim certificate. **306N.** (1) Where the certificate or interim certificate issued under section 306L is lost, defaced or destroyed, the Director of Marine may, upon receipt of an application from the owner of the ship and upon payment of the prescribed fee, issue a certificate or interim certificate in lieu of the original certificate or interim certificate, provided that the owner of the ship proves to the satisfaction of the Director of Marine that he has not caused or contributed to the loss, defacement or destruction of the original certificate or interim certificate.

(2) Where the original certificate or interim certificate is found after the certificate or interim certificate has been issued in pursuance of subsection (1), the original certificate or interim certificate shall be deemed to have been revoked and of no effect.

Authorisation to issue, replace or revoke certificates, etc. **306O.** (1) Notwithstanding section 306L, the Director of Marine may authorise in writing any person or organisation to issue, replace or revoke certificates or interim certificates in accordance with the provisions of this Part.

(2) Every certificate or interim certificate issued by any person or organisation authorised under subsection (1) shall have effect for the purposes of this Part as if it had been issued by the Director of Marine.

Recognition of certificate. **306P.** The Director of Marine may recognise a certificate issued to a ship by or under the authority of another party to an international convention relating to marine pollution, if he is satisfied that the requirements of the convention are fully complied with.

Inspection and detention of ship. **306Q.** (1) The Director of Marine or any authorised officer may go on board and inspect any ship and if satisfied after the inspection that there is a contravention of any provision of this Part or any rules made hereunder, or that the ship has failed to comply with any condition or restriction of the certificate, the Director of Marine may detain the ship.

(2) The Director of Marine may allow the ship detained under subsection (1) to leave any port or place in Malaysia or Malaysian waters for the purpose of continuing its voyage directly to the nearest and appropriate ship repair facility.

(3) The Director of Marine or any authorised officer shall not, in exercising his powers under this section, unreasonably detain any ship.

Prohibition of foreign ships entering Malaysian waters for reason of non-compliance.

306R. Where the Director of Marine has reasonable grounds to believe that a foreign ship does not comply with any provision of this Part or the rules made hereunder that is applicable to such ship, he may prohibit the ship from entering any area of Malaysian waters.”.

Amendment of section 491B

10. Subsection 491B(1) of the Ordinance is amended—

- (a) in paragraph (i), by deleting the word “or” appearing at the end of the paragraph;
- (b) in paragraph (j), by substituting for the comma at the end of the paragraph a semicolon; and
- (c) by inserting after paragraph (j) the following paragraphs:
 - “(k) ship-to-ship activity; or
 - (l) any other activity as determined by the Director of Marine,”.

New section 519A

11. The Ordinance is amended by inserting after section 519 the following subheading and section:

“Malaysia Shipping Notice.

Power of Director of Marine to issue Malaysia Shipping Notices.

519A. (1) Subject to the provisions of the Ordinance, the Director of Marine may issue Malaysia Shipping Notices in respect of administrative matters or technical matters relating to shipping, navigation, maritime transport safety and security and marine pollution, as may be necessary for the purposes of the Ordinance.

(2) The Director of Marine may, in the Malaysia Shipping Notice, prescribe that any provision of that notice shall be applicable to any specified person or ship, or classes of ships.

(3) The rules relating to shipping, navigation, maritime transport safety and security and marine pollution made in pursuance of this Ordinance may provide that non-compliance with Malaysia Shipping Notices shall be an offence.”.

Extension of the Ordinance to the Federal Territory of Labuan

12. Subject to the Constitution (Amendment) (No. 2) Act 1984 [*Act A585*], the Ordinance is extended to the Federal Territory of Labuan.

The Merchant Shipping Ordinance 1960 of Sabah ceases to have effect in the Federal Territory of Labuan

13. (1) The Merchant Shipping Ordinance 1960 of Sabah [*Sabah Ord. 11/1960*] shall, on the date of coming into operation of this Act, cease to have effect in the Federal Territory of Labuan.

(2) Any port or place in the Federal Territory of Labuan declared to be a port under the Merchant Shipping Ordinance 1960 of Sabah shall be deemed to be a port as declared under the Ordinance.

(3) Any exemption, permit or licence issued or granted under the Merchant Shipping Ordinance 1960 of Sabah in the Federal Territory of Labuan before the date of coming into operation of this Act, shall on the date of coming into operation of this Act continue to be in force and have effect until it expires, or for a period of one year after the date of coming into operation of this Act, whichever is the earlier.

(4) Upon the expiry of the exemption, permit or licence or after the period of one year after the date of coming into operation of this Act, whichever is the earlier, the applicant may apply for an exemption, permit or licence in accordance with the provisions of the Ordinance.

(5) All applications, approvals or, decisions on appeal or otherwise, pending under the Merchant Shipping Ordinance 1960 of Sabah in the Federal Territory of Labuan before the date of coming into operation of this Act, shall on the date of coming into operation of this Act continue to be dealt with as if this Act had not been enacted.

(6) All registers, log books and other documents kept and maintained under the Merchant Shipping Ordinance 1960 of Sabah in the Federal Territory of Labuan before the date of coming into operation of this Act, shall on the date of coming into operation of this Act be deemed to be registers, log books and documents kept and maintained under the Ordinance.

(7) Any proceedings, whether civil or criminal, or cause of action pending or existing before the date of coming into operation of this Act, shall on the date of coming into operation of this Act continue to be dealt with as if this Act had not been enacted.

Extension of Parts V and VA of the Ordinance to Sabah and Sarawak

14. (1) The provisions of Parts V and VA of the Ordinance are extended to the States of Sabah and Sarawak.

(2) Such of the definitions in section 2 of the Ordinance as are necessary to give effect to the extended provisions of the Ordinance shall apply to those extended provisions.

(3) Where references are made in the extended provisions of the Ordinance to other provisions in the Ordinance, such provisions of the Ordinance shall apply to those extended provisions to such extent as may be necessary to give effect to the extended provisions of the Ordinance.

Repeal of provisions in written laws of Sabah and Sarawak corresponding to the provisions of Part V of the Ordinance

15. The provisions of any written law corresponding to the provisions of Part V of the Ordinance and in force in the State of Sabah or Sarawak immediately before the date or dates appointed in subsection 1(3) shall, upon the date or dates so appointed, be deemed to be repealed.

Provisions of Part V of the Ordinance to prevail over inconsistent or contrary written law

16. The provisions of Part V of the Ordinance shall prevail notwithstanding anything inconsistent with or contrary to those provisions in any other written law.

References to “Ordinance” in the Merchant Shipping Ordinance 1960 of Sabah and the Merchant Shipping Ordinance 1960 of Sarawak include references to extended provisions

17. In the Merchant Shipping Ordinance 1960 of Sabah and the Merchant Shipping Ordinance 1960 of Sarawak [*Sarawak Ord. 2/1960*], any reference to such Ordinances shall be construed as including a reference to the provisions of the Merchant Shipping Ordinance 1952 as extended by this Act.

Amendment of the Merchant Shipping Ordinance 1960 of Sabah

18. The Merchant Shipping Ordinance 1960 of Sabah is amended in the manner as specified in the First Schedule.

Amendment of the Merchant Shipping Ordinance 1960 of Sarawak

19. The Merchant Shipping Ordinance 1960 of Sarawak is amended in the manner as specified in the Second Schedule.

Validation

20. (1) All Malaysia Shipping Notices issued by the Director of Marine before the coming into operation of this Act shall be valid and have effect as if the said Malaysia Shipping Notices have been made under the appropriate provisions of the Ordinance and shall be deemed to have come into operation from the date on which it came into operation or was purported to have come into operation.

(2) Any decision or order given in respect of any person or any other act or thing whatsoever done or omitted to be done under or by virtue of any Malaysia Shipping Notice whensoever made or purported to have been made is declared lawful and hereby validated.

FIRST SCHEDULE

[section 18]

AMENDMENTS OF THE MERCHANT SHIPPING
ORDINANCE 1960 OF SABAH

<i>(1)</i> <i>Provisions</i>	<i>(2)</i> <i>Amendments</i>
Section 2	<p>(1) Substitute for the definition of “collision regulations” the following definition:</p> <p style="padding-left: 40px;">“collision regulations” means regulations made under section 252 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya [<i>Ord. 70/1952</i>];’.</p> <p>(2) Substitute for the definition of “radio rules” the following definition:</p> <p style="padding-left: 40px;">“radio rules” means rules made under section 262 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya;’.</p> <p>(3) Substitute for the definition of “Safety Convention” the following definition:</p> <p style="padding-left: 40px;">“Safety Convention” means the International Convention for the Safety of Life at Sea signed in London on 1 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;’.</p> <p>(4) Delete the definition of “Safety Convention country”.</p>

SECOND SCHEDULE

[section 19]

AMENDMENTS OF THE MERCHANT SHIPPING
ORDINANCE 1960 OF SARAWAK

(1)

Provisions

(2)

Amendments

Section 2

- (1) Substitute for the definition of “collision regulations” the following definition:

“collision regulations” means regulations made under section 252 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya [*Ord. 70/1952*];’.

- (2) Substitute for the definition of “radio rules” the following definition:

“radio rules” means rules made under section 262 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya;’.

- (3) Substitute for the definition of “Safety Convention” the following definition:

“Safety Convention” means the International Convention for the Safety of Life at Sea signed in London on 1 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;’.

- (4) Delete the definition of “Safety Convention country”.

