

A BILL

i n t i t u l e d

An Act to amend the Merchant Shipping Ordinance 1952.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Merchant Shipping Ordinance (Amendment) Act 2016.

(2) 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.

General amendment

2. The Merchant Shipping Ordinance 1952 [*Ord. 70/1952*], which is referred to as the “Ordinance” in this Act, is amended—

(a) by substituting for the words “passenger steamer” wherever appearing the words “passenger ship”; and

- (b) by substituting for the word “seaman” wherever appearing the word “seafarer”.

Amendment of section 2

3. Section 2 of the Ordinance is amended—

- (a) by deleting the definitions of “foreign going ship” and “foreign going passenger steamer”;

- (b) by inserting after the definition of “Malaysian ship” the following definition:

‘ “Malaysian waters” means the territorial waters of Malaysia as determined in accordance with the Territorial Sea Act 2012 [Act 750];’;

- (c) by substituting for the definition of “passenger steamer” the following definition:

‘ “passenger ship” means any ship carrying more than twelve passengers;’;

- (d) by substituting for the definition of “seaman” the following definition:

‘ “seafarer” means any person who is employed or engaged in any capacity on board a ship to which this Ordinance applies, but does not include—

- (a) a person not directly employed for the normal manning of the ship within the deck, engine or catering department;

- (b) pilot;

- (c) superintendent, surveyor, auditor, inspector;

- (d) supernumerary;

- (e) scientist, researcher, diver, specialist offshore technician or any person whose work is not part of the routine business of the ship;

- (f) a person who works on board the ship solely within a port or at a port facility;

- (g) repair and maintaining technician;

- (h) non-marine personnel, employed under outsourced service agreement;
 - (i) military and armed personnel; and
 - (j) temporary riding crew;’;
- (e) by inserting after the definition of “ship” the following definition:

‘ “shore leave” means the period during which a seafarer is allowed to take leave from the ship to go ashore while the ship he is working on is in the port;’; and

- (f) by inserting after the definition of “tidal water” the following definition:

‘ “unlimited voyage” means a voyage between a place in Malaysia and a place situated beyond the limit prescribed for near-coastal trade ship;’.

Substitution of Part III

4. The Ordinance is amended by substituting for Part III the following Part:

“PART III

SHIP PERSONNEL

Preliminary

Application. **69.** This Part shall, unless otherwise provided, apply to all ships except—

- (a) warships or naval auxiliaries;
- (b) ships belonging to or in the employment of the Government of Malaysia or any State in Malaysia;
- (c) fishing vessels;
- (d) native sailing crafts;
- (e) pleasure yachts;
- (f) Malaysian ships that are trading or operating exclusively within the ports in Malaysia;

- (g) offshore units whose primary service is drilling operation for the exploration, exploitation or production of resources beneath the sea bed and are not ordinarily engaged in navigation or international voyages;
- (h) Floating Storage and Offloading (FSO), or Floating, Production, Storage and Offloading (FPSO), or any other vessel of similar operations; and
- (i) ships of traditional build such as dhows and junks.

Interpretation. **70.** In this Part, unless the context otherwise requires—

“Article of Agreement” means an agreement referred to in section 109;

“authorized officer” includes any Surveyor of Ships, Port Officer, Deputy Port Officers and any person appointed by the Director of Marine as an authorized officer, either generally or particularly, for the purposes of implementing this Part or any rules made under this Part;

“certificate” means a valid document issued or recognized under section 74;

“safe-manning document” means a document referred to in section 71;

“owner”, in relation to a ship, means—

- (a) any person, including any company or organization or association or body of persons, whether incorporated or not, who owns the ship or has any interest in the ownership of the ship;
- (b) in the case where the ship has been chartered, the charterer; or

- (c) in the case where the owner or charterer is not responsible for the navigation and the management of the ship, any person who is responsible for the navigation and management of the ship.

Manning and qualification

Safe-manning document.

71. (1) A safe-manning document that provides for the minimum number of ship personnel required to safely and securely man a ship shall be issued—

(a) in the case of a Malaysian ship, by the Director of Marine; or

(b) in the case of a foreign ship, by or on behalf of the government of the flag State.

Manning and prohibition of going on a voyage or an excursion undermanned.

72. (1) Every owner or master shall ensure that their ship has a sufficient number of ship personnel on board in accordance with the safe-manning document before the ship can go on a voyage or an excursion.

(2) When a ship is not on a voyage or an excursion the owner or master shall ensure that sufficient number of ship personnel are on board the ship at all times to adequately respond to any situation which may affect the safety of the ship, ship personnel or environment.

(3) If a ship goes on a voyage or an excursion or attempts to go on a voyage or an excursion in contravention of subsection (1), the owner or master of the ship commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit, and the ship, if in Malaysia, may be detained until the manning requirements are met.

Minimum age.

73. (1) Subject to the Children and Young Persons (Employment) Act 1966 [*Act 350*], the minimum age for employment of seafarer on board any Malaysian ship is sixteen years.

(2) Any seafarer of the age of sixteen years and below the age of eighteen years shall not be allowed to—

- (a) engage in night work between 9 o'clock in the evening and 6 o'clock in the morning;
- (b) engage in any work that is likely to jeopardize their health or safety; or
- (c) work as a ship's cook.

(3) Notwithstanding subsection (2), the Director of Marine may give an exemption to any person undergoing an approved training programme on board a ship subject to any condition that may be determined by the Director of Marine.

Certification
of seafarer.

74. (1) Every seafarer shall hold a certificate that verifies the competency and qualification of the seafarer to work on a ship—

- (a) issued by the Director of Marine in accordance with the rules made under this Part; or
- (b) issued by other countries or training institutions and recognized by the Director of Marine.

(2) The owner shall ensure that the seafarers have undergone training and hold appropriate certificates in the particular field to perform their duties on board a ship in accordance with the requirements of this Part or the rules made under this Part.

(3) The Port Officer may detain the ship until the owner replaces the seafarer who is not properly certified with a seafarer who is certified in that capacity before the ship is allowed to continue its voyage.

(4) Any person who fails to comply with subsection (1) or (2), respectively, commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(5) This section shall not apply where a dispensation has been issued under section 77.

Suspension or
cancellation of
certificate.

75. (1) The Director of Marine shall give a seafarer notice in writing that he intends to suspend or cancel the seafarer's certificate issued under this Part if it appears to the Director of Marine that the seafarer—

- (a) is unfit to be the holder of the certificate, whether by reason of incompetence or misconduct;
- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to comply with the obligation to assist vessels in distress as required by section 280.

(2) Notwithstanding subsection (1), the Director of Marine may suspend or cancel a seafarer's certificate without giving notice in writing of his intention if, in his opinion, the suspension or cancellation is necessary for the safety of the ship, life, environment or property at sea.

(3) The notice shall state—

- (a) the reasons why the Director of Marine intends to suspend or cancel the seafarer's certificate; and
- (b) that the seafarer may make a written representation to the Director of Marine within a period as specified in the notice, or such longer period as the Director of Marine may allow.

(4) After considering any representation made under subsection (3), the Director of Marine shall decide whether or not to suspend or cancel the certificate and shall give the holder of the certificate a written notice of his decision within fourteen days from the date he receives the written representation.

(5) The written notice of the decision shall state the date from which the period of suspension is to take effect or the date from which the cancellation is to take effect, and shall require the holder of the certificate to deliver the certificate to the Director of Marine not later than the date specified in the notice.

(6) In a situation where the seafarer's certificate is suspended or cancelled—

(a) pursuant to subsection (2), the holder of the certificate may appeal to the Minister against the decision of the Director of Marine—

(i) within fourteen days from the date of the suspension or cancellation; or

(ii) if he is on board the ship, fourteen days from the date the seafarer arrives at the next port of call; or

(b) pursuant to subsection (5), the holder of the certificate may appeal to the Minister against the decision of the Director of Marine before the effective date of cancellation specified in the notice.

Appeal
Committee.

76. (1) The Minister may establish an appeal committee to advise him on the decision by the Director of Marine in section 75.

(2) The Minister may appoint the following persons to be the Committee members:

(a) a chairman who has wide experience or special knowledge in matters relating to shipping; and

(b) not less than two but not more than seven other persons who have wide experience or special knowledge in matters relating to shipping.

(3) In advising the Minister, the Committee shall conduct an inquiry in accordance with the rules made under this Part.

(4) After the inquiry, the Committee shall make a report of its finding to the Minister and the Minister shall decide accordingly as he considers appropriate.

Dispensation. **77.** (1) Subject to subsection (3), the Director of Marine may, in circumstances of exceptional necessity and if in his opinion it does not cause danger to person, property or the environment, issue a dispensation permitting a specified seafarer to serve in a specified ship in a capacity for which he does not hold the appropriate certificate, for a period not exceeding six months.

(2) The person to whom the dispensation is issued shall be adequately qualified to fill the vacant post.

(3) Dispensation shall not be issued for a master or chief engineer officer post, except in circumstances of *force majeure* and if issued, only for the shortest possible period.

(4) Any dispensation shall be issued only to a person properly certified to fill the immediate post below the vacant post.

(5) Notwithstanding subsection (4), a dispensation may be issued to a seafarer—

(a) whose qualification and experience are, in the opinion of the Director of Marine, of clear equivalence to the requirements for the vacant post; or

(b) who does not hold an appropriate certificate, provided that he pass an assesment determined by the Director of Marine.

(6) Records of all dispensations issued under this section shall be kept by the owner and readily available for inspection, and an annual report on the dispensation shall be submitted to the Director of Marine and such other parties as may be required by the Director of Marine.

Forgery of certificate, etc.

78. (1) Any person shall not—

(a) forge or assist in forging or procure to be forged any certificate, dispensation, or other document required under this Part;

- (b) use a certificate, dispensation or other document or a copy of such certificate, dispensation or document which has been forged, falsified, altered, cancelled, suspended, or which is invalid, or to which he is not entitled to;
- (c) make, assist in making, or procure to be made any false representation for the purpose of procuring either for himself or for any other person a certificate, dispensation, or other document; or
- (d) lend his certificate, dispensation or other document or allows it to be used by any other person.

(2) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Training and familiarization of seafarer.

79. (1) Every owner shall provide adequate training and familiarization to seafarers to ensure that the seafarers—

- (a) are adequately trained and familiarized with their specific duties and with all the ship arrangements, installations, equipments, procedures and ship characteristics that are relevant to their routine or emergency duties; and
- (b) may effectively coordinate their activities in an emergency situation and in performing functions vital to the safety or to the prevention or mitigation of pollution.

(2) Any owner who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Accessibility to seafarers' documentations.

80. (1) The owner shall ensure that all documentations and data relevant to all seafarers employed on the owner's ship including documentation and data on their experience, training, medical fitness and competency in assigned duties are maintained and readily accessible.

(2) Any seafarer employed to serve on board any ship and hold a certificate issued or recognized under this Part shall, on demand, produce the seafarer's certificate to the Port Officer or any authorized officer.

(3) Any person who fails to comply with subsections (1) and (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Accessibility to legislations and publications.

81. (1) Every owner shall ensure that the latest Malaysian legislations, notices, international rules and publications, and other documents relating to maritime transport safety, security and marine environment are readily accessible on board the owner's ship.

(2) For the purposes of subsection (1), the Director of Marine may determine the list of legislations and publications through Malaysia Shipping Notices.

(3) The owner who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit for each ship in respect of which an offence is committed.

Order or instruction in national language or English language.

82. (1) Every owner shall ensure that the order or instruction given to seafarers who are on board a ship is either in the national language or English language.

(2) The owner who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Conditions of Service

Seafarer
employment
contract.

83. (1) A contract between a seafarer employed on board a Malaysian ship and the owner shall be made in writing and shall be signed by the seafarer and the owner or any other person authorized by the owner.

(2) A seafarer shall be given the opportunity to examine the seafarer employment contract to have a clear understanding of his rights and responsibilities before signing the contract.

(3) The seafarer employment contract shall contain the minimum requirements as prescribed in the rules made under this Part.

(4) The owner or any other person who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Breach of
seafarer
employment
contract.

84. A seafarer employment contract shall be deemed to be breached by an owner if he fails to provide work.

Termination
of seafarer
employment
contract.

85. (1) Either party to a seafarer employment contract may at any time give to the other party a written notice of his intention to terminate the contract.

(2) If the seafarer employment contract has been made for a specified period of time, the contract is terminated when the time has expired unless otherwise terminated in accordance with this Part.

(3) If the seafarer employment contract has been made for an indefinite period, the notice for early termination of a seafarer employment contract shall be given by the seafarer or the owner not less than fourteen days from the date on which such termination will take effect.

(4) Notwithstanding subsection (3), a notice of less than fourteen days may be given, without penalty, for compassionate or urgent reasons or in other circumstances as may be determined by the Director of Marine.

(5) If the seafarer employment contract has been made for a voyage, the contract shall include—

(a) the port of destination; and

(b) the time of expiry after arrival before the seafarer should be discharged.

Termination
of contract
without notice.

86. (1) Either party to a seafarer employment contract may terminate the contract without notice or, if notice has already been given in accordance with section 85, without waiting for the expiry of that notice, by paying to the other party an indemnity of a sum equal to the amount of wages which would have been accrued to the seafarer during the term of such notice or during the unexpired term of such notice.

(2) Either party to a seafarer employment contract may terminate the contract without notice in the event of any wilful breach by the other party of a condition of the contract.

Termination
of contract
for special
reasons.

87. (1) An owner may, on the grounds of misconduct or breach of the express or implied conditions of the seafarer employment contract, after due inquiry—

(a) dismiss the seafarer without notice; or

(b) impose any other lesser punishment as he deems just and fit, and if a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

(2) For the purposes of an inquiry under subsection (1), the owner may suspend the seafarer from work for a period not exceeding two weeks but shall pay him not less than half of his wages for such period and if the inquiry does not disclose any misconduct on the part of the seafarer, the owner shall forthwith restore to the seafarer the full amount of wages so withheld.

Discharge of seafarers.

88. (1) If a seafarer employed on board a Malaysian ship is to be discharged from the Article of Agreement, the master shall notify the Port Officer of the discharge.

(2) The master shall record every discharge in the Article of Agreement, seafarer's record book and official log-book.

(3) If a Malaysian ship ceases to be registered under this Ordinance, the seafarers employed on board the ship shall be discharged from the ship unless the seafarers consent in writing to continue with their employment on board the ship.

(4) The signing-off of the Article of Agreement by the seafarer at the time of his discharge from employment on board the ship shall not constitute a waiver on his part of any claims he may have against the owner and the ship during his employment.

(5) The Director of Marine may determine the manner for the seafarers to be discharged under this Part in the Malaysia Shipping Notice.

(6) The master or owner who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Obligation of owner with respect to seaworthiness of ship.

89. (1) Notwithstanding any agreement to the contrary, there shall be an implied obligation on the owner in every seafarer employment contract that the owner and every agent charged with the loading, preparing or sending of the ship on a voyage or an excursion shall use all reasonable means—

(a) to ensure the seaworthiness of the ship for a voyage or an excursion at the time when the voyage or excursion commences; and

(b) to keep the ship in a seaworthy condition during the voyage or excursion.

(2) Any seafarer who may be affected or exposed to a risk to their safety or health due to the non-compliance of subsection (1) shall have the right to refuse a voyage or an excursion until the non-compliance has been rectified.

(3) Nothing in subsection (1) shall subject the owner to any liability by reason of the ship being sent on a voyage or an excursion in an unseaworthy state if, owing to special circumstances, the sending of the ship on a voyage or an excursion in such a state was reasonable and justifiable.

(4) In the event of dispute on the seaworthiness of the ship, the Director of Marine shall have the right to determine the seaworthiness of the ship.

Hours of rest. **90.** (1) Every seafarer on board a Malaysian ship shall be entitled to a minimum ten hours of rest in any twenty-four hour period and seventy-seven hours in any seven-day period.

(2) The Director of Marine may, after consulting the owners' and seafarer's organizations, increase the minimum hours of rest taking into account the dangers posed by the fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship.

(3) Hours of rest may be divided into not more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed fourteen hours.

(4) Musters, fire fighting and lifeboat drills, and mandatory drills, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

(5) When a seafarer is on a call duty, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by a call out to work.

(6) The owner shall ensure that a table with the working arrangements be placed in an easily accessible area on board the ship and the table shall be in the form determined by the Director of Marine and shall contain for every position at least—

- (a) the schedule of service at sea and in port; and
- (b) the minimum hours of rest required under subsection (1).

(7) The master shall maintain the records of seafarer's daily hours of work and rest in the form determined by the Director of Marine and each seafarer shall receive a copy of their record which shall be signed by the seafarer and by the master or a person authorized by the master.

(8) The following conditions apply to seafarers under the age of eighteen years while at sea and in port:

- (a) working hours shall not exceed eight hours per day and forty hours per week and overtime shall be allowed only when there is unavoidable situation or for safety reasons;
- (b) sufficient time shall be allowed for all meals, and a break of at least one hour for the main meal of the day shall be assured; and
- (c) a fifteen minute rest period as soon as possible following each two hours of continuous work shall be allowed.

(9) Subsection (8) does not apply in the following situations:

- (a) the conditions under subsection (8) are impracticable for seafarers under the age of eighteen years assigned to watch-keeping duties or working on a scheduled shift-work system in the deck, engine room or catering departments; or

- (b) the effective training of young seafarers in accordance with established programmes and schedules would be impaired.

(10) Nothing in this section shall be deemed to impair the right of the master to require a seafarer, including a seafarer under the age of eighteen years, to perform any hours of work necessary for the immediate safety of the ship, person on board or cargo or for the purposes of giving assistance to other ship or person in distress at sea provided that the seafarer is compensated with an equivalent period of rest as soon as practicable after the normal situation has been restored.

(11) The master shall keep a duly signed record, stating the reasons for the situations where—

- (a) the seafarer under the age of eighteen years is required to work under subsection (9); or
- (b) the seafarer is required to perform any hours of work under subsection (10).

(12) For the purposes of this section, the term “hours of rest” means time outside hours of work and does not include short breaks of one hour or less or a break for a meal.

(13) Any master or owner who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Entitlement to leave.

91. (1) The owner shall ensure that every seafarer employed on board a Malaysian ship is given paid annual leave as calculated on the basis of a minimum of 2.5 calendar days per month of employment.

(2) Seafarers shall be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions.

(3) Any agreement to forgo the minimum annual leave with pay as provided in subsection (1) is prohibited except in cases as determined by the Director of Marine.

(4) The owner who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Repatriation. **92.** (1) A seafarer on board a Malaysian ship shall be entitled to repatriation at no cost.

(2) The owner of a Malaysian ship is prohibited from requiring the seafarers to make an advance payment at the beginning of their employment for the cost of repatriation, and also for recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarers has been found to be in serious default of the seafarer's employment obligations in accordance with the seafarer employment contract, national laws or regulations, or applicable collective agreements.

(3) All Malaysian ships shall have in force a contract of insurance or other financial security to ensure that seafarers are duly repatriated.

(4) If the owner of a Malaysian ship fails to make arrangements for or to meet the cost of repatriation of seafarers —

(a) the Director of Marine may make arrangements for the repatriation of the seafarers concerned and the cost incurred in repatriating those seafarers shall be recoverable from the owner concerned;

(b) the expenses of repatriation shall not be charged on the seafarers, except as provided in subsection (2); and

(c) the ship or other ships of the owner concerned may be detained by the Director of Marine until the reimbursement has been made.

(5) The Director of Marine shall, upon receiving a notification of any stranded foreign seafarer in any port in Malaysia, ensure that the consular or local representative of the ship's flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately.

Relief and return of seafarer left behind and shipwrecked.

93. (1) If a seafarer on board a Malaysian ship is left behind in any country outside Malaysia or is taken to any country outside Malaysia in the event of a shipwreck, the owner who last employed him as a seafarer shall make such provisions for his return and for his relief and maintenance for a period of not more than two months or until his return, whichever is earlier.

(2) For the purposes of subsection (1), the Port Officer or any authorized officer may issue a conveyance order to the master of any Malaysian ship to convey the person to a place agreed in the seafarer employment contract.

(3) This section applies to a person left behind after being discharged under section 88.

(4) If any expense is incurred by any person in respect of any matter for which the owner of a seafarer is required to provide or perform under subsection (1) or (2), such person shall be entitled to recover the expenses incurred from the owner.

Duty of owner in case of death of seafarer.

94. (1) The owner of a Malaysian ship, at his cost, shall ensure that the body and property of a seafarer who dies on board the owner's ship are properly maintained and delivered to the next of kin named in the Article of Agreement.

(2) Any claim on board the ship against the deceased property is prohibited.

(3) If the next of kin as named in the Article of Agreement cannot be contacted, it is the duty of the owner to handle the burial or cremation of the deceased seafarer.

Wages

Wages.

95. (1) The owner of a Malaysian ship shall pay seafarers' wages not later than the end of the month and in accordance with the seafarer employment contract or any applicable collective agreement.

(2) A seafarer's right to wages and provisions shall be taken to begin either at the time specified in the seafarer employment contract for his commencement of work or presence on board the ship, whichever occurs first.

(3) Wages for work done on a gazetted public holiday prescribed under the Holidays Act 1951 [*Act 369*] and overtime as stipulated in the employment contract shall be paid not later than the last day of the next wage period.

(4) Every seafarer shall be given a monthly account of payments due, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to as specified in the employment contract, and the amounts paid.

(5) The wages shall be paid until the seafarer has been effectively repatriated to a place identified in the seafarer employment contract.

(6) The wages, less lawful deductions, earned by but not yet paid to a seafarer whose contract of employment terminates in accordance with section 85 shall be paid to the seafarer not later than the day on which the contract of employment is terminated.

(7) A seafarer employment contract shall be deemed to be broken by an owner if he fails to pay wages in accordance with this section.

(8) Any owner who—

- (a) fails to pay the wages or indemnity due to any seafarer within the time prescribed under this Part; or

(b) makes deduction from the wages of seafarers other than the deduction authorized under this Part,

commits an offence and shall, on conviction, be liable to a fine of not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit.

Mode of payment of wages.

96. Wages shall be paid in legal tender by way of a bank transfer, bank cheque, postal cheque or money order.

Payment on termination of contract in special circumstances.

97. (1) If an owner terminates the seafarer employment contract without notice in accordance with subsection 86(1) or (2), or paragraph 87(1)(a), the owner shall pay the followings to the seafarer not later than the day on which the seafarer employment contract is terminated:

(a) the wages, less any deductions which the owner is entitled to make under section 98, earned by the seafarer up to and including the day immediately preceding the day on which the termination of the seafarer employment contract takes effect; and

(b) if the owner terminates the seafarer employment contract under subsection 86(1), the indemnity payable to the seafarer under that subsection.

(2) If a seafarer terminates his employment contract with an owner without notice in accordance with section 86, the wages, less any deduction which the owner is entitled to make under section 98, earned by the seafarer up to and including the day immediately preceding the day on which the termination of the seafarer employment contract takes effect shall be paid by the owner to the seafarer not later than the third day after the day on which the seafarer employment contract is terminated.

Lawful deductions.

98. (1) The owner of a Malaysian ship shall not make any deduction from the wages of a seafarer otherwise than in accordance with this Part.

(2) It shall be lawful for an owner to make the following deductions:

- (a) deduction for any overpayment of wages due to the owner's mistake, provided that the deduction shall be made within three months from the month of such overpayment;
- (b) deduction for the indemnity due to the owner by the seafarer under subsection 86(1); or
- (c) deduction authorized by any other written law.

(3) The owner shall, upon written request by the seafarer, make deductions for payment of any sum of money due to a registered trade union, co-operative thrift or loan society on account of entrance fees, subscriptions, instalments and interest on loans, or other dues.

(4) The owner shall, upon written request by the seafarer and with the prior permission in writing of the Director of Marine, make deductions for payments of any sum of money to any superannuation scheme, provident fund, owner's welfare scheme or insurance scheme established for the benefit of the seafarer.

(5) Notwithstanding subsections (2), (3) and (4), the Director of Marine may, on an application by an owner or a specified class or classes of owners, permit any deduction for a specified purpose from the wages of a seafarer or a specified class or classes of seafarers subject to such conditions as he considers fit to impose.

Allotment
of wages.

99. (1) The owner of a Malaysian ship shall provide a mechanism for every seafarer, at the time when the seafarer enter into employment or during the employment, to allot, if the seafarer so desire, a proportion of the seafarer wages for remittance at regular intervals to his families or dependants.

(2) Any allotment agreed to be made by the seafarer shall be included in the seafarer employment contract.

(3) The owner shall ensure that allotments are remitted in due time and directly to the person or persons nominated by the seafarers.

(4) Any charge for the service under this section shall be reasonable in amount, and the rate of currency exchange shall be at the prevailing market rate and not unfavourable to the seafarer.

(5) The Director of Marine may determine the requirements for allotment of wages in the Malaysia Shipping Notice.

(6) The owner who fails to comply with any of the requirements of this section, or the requirements determined by the Director of Marine as provided in subsection (5), commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Protection of certain rights and remedies.

100. (1) A seafarer's lien, his remedies for the recovery of his wages, his right to wages in the case of wreck or loss of the ship, and any right he may have or may obtain in the nature of salvage shall not be renounced by any agreement.

(2) Subsection (1) does not affect any terms of the seafarer employment contract entered by the seafarer employed on a ship that provides salvage services, where the terms of that contract provide for remuneration to be paid to the seafarers for salvage services rendered by that ship.

Health, accommodation and provisions

Standards of health and medical care, occupational safety, etc.

101. (1) Every owner shall comply with the minimum standard for health and medical care, occupational safety, accommodation, recreational facilities and provisions to be provided on board the Malaysian ship as prescribed by the Minister.

(2) Any owner who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Fitness of
seafarer.

102. (1) Every seafarer shall not be permitted to work on board a Malaysian ship unless he is medically fit.

(2) The owner shall ensure that the seafarer employed on board is medically fit in accordance with the rules made under this Part.

(3) The Port Officer may detain the ship until every seafarer employed on board the ship is medically fit.

(4) Any person who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Health
protection,
medical care,
etc.

103. (1) The owner of every Malaysian ship and any foreign ship within Malaysian waters shall provide—

- (a) adequate health protection and medical care for seafarers employed on board the ship; and
- (b) the seafarer the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

(2) The owner of a Malaysian ship engaged on international voyages and any foreign ship within Malaysian waters shall ensure that the ship has on board—

- (a) at least one seafarer who is qualified to provide medical care and administering medicine; or
- (b) a qualified medical doctor who shall be responsible for providing medical care if the ship carries one hundred or more persons and the voyage is more than three days duration.

(3) Every owner shall ensure that the medicine chest, equipment and medical guide carried on board is properly maintained and inspected by a responsible officer as determined by the Director of Marine at regular intervals of not exceeding twelve months.

(4) The responsible officer mentioned in subsection (2) shall ensure that the labelling, expiry dates and conditions of storage of all medicines and the directions for their use are inspected and all equipment functioning as required.

(5) Any owner who fails to comply with—

(a) subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit; or

(b) subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Inspection of health protection, medical care, etc.

104. (1) A Port Officer or Port Health Officer may enter on board any ship within Malaysian waters to inspect the health protection, medical care and medical supplies provided to seafarers employed on board the ship.

(2) The Port Officer or Port Health Officer may, if he is satisfied after the inspection that the ship has failed to comply with section 103, cause the ship to be detained until the deficiency has been rectified.

Occupational safety and health

105. The owner of a Malaysian ship and foreign ship within Malaysian waters shall ensure that seafarers are provided with occupational health protection and live, work and train on board the ship in a safe and hygienic environment as prescribed in the rules.

Accommodation and recreational facilities.

106. The owner of a Malaysian ship shall provide and maintain accommodation and recreational facilities for every seafarer on board taking into consideration the seafarer's health and well-being.

Provisions of drinking water and food.

107. (1) The owner of a Malaysian ship shall ensure that sufficient drinking water and food that are of reasonable nutritional value, quality and variety are provided to every seafarer during the period of the seafarer's employment on board the ship.

(2) Any owner who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Social Security

Social security
for seafarers.

108. (1) Every owner shall ensure that all seafarers who are either Malaysians or permanent residents of Malaysia employed on board a Malaysian ship are covered by the scheme set out in the following Acts:

- (a) the Employees Social Security Act 1969 [Act 4]; and
- (b) the Employees Provident Fund Act 1991 [Act 452].

(2) The scheme set out in the Employees Provident Fund Act 1991 shall apply to seafarers who are not Malaysians or permanent residents of Malaysia if they elect to contribute.

(3) Notwithstanding subsection (1), the owner shall provide the following benefit to all seafarers engaged on a Malaysian ship:

- (a) medical care;
- (b) sickness benefit; and
- (c) employment injury benefit.

(4) The owner may provide the benefits under paragraphs (3)(a) and (b) to the dependants of the seafarers employed on board the Malaysian ship.

(5) Any owner who fails to comply with subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Documents and Returns

Article of Agreement.

109. (1) The master of every ship shall enter into an agreement called Article of Agreement on behalf of the owner with every seafarer whom the master carries to sea from any port in Malaysia.

(2) The Article of Agreement mentioned in subsection (1) shall be signed by the master and every seafarer in front of the Port Officer or any other officer authorized by the Director of Marine.

(3) The owner or master shall ensure—

(a) that the particulars of seafarers in the Article of Agreement are updated whenever changes are made relating to the engagement or discharge of seafarers; and

(b) that the Article of Agreement is available for inspection at all times and the owner or master shall submit the Article of Agreement to the Director of Marine at intervals as determined in the Malaysia Shipping Notice.

(4) Every owner shall pay the fees prescribed in the Third Schedule upon all engagements and discharges of the seafarers effected under this Part.

(5) Any owner or master who fails to comply with subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Official log-book.

110. (1) The master of a Malaysian ship shall maintain an official log-book of the ship in which shall be recorded all the required information as determined by the Director of Marine.

(2) The master who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

(3) Any person who wilfully destroys, mutilate or renders illegible any entry in an official log-book, commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years.

Seafarer
identity
document.

111. (1) Every Malaysian seafarer shall hold a valid seafarer identity document issued in accordance with the rules made under this Part.

(2) Every foreign seafarer employed on board a Malaysian ship shall—

(a) hold a valid seafarer identity document that is recognized in the manner determined by the Director of Marine in the Malaysia Shipping Notice; and

(b) be registered at Port Office in the manner determined by the Director of Marine in the Malaysia Shipping Notice.

(3) Any seafarer employed on board a Malaysian ship who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

(4) Any person who makes a false statement for the purpose of obtaining a Malaysian seafarer identity document for himself or another person commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Seafarer record
book.

112. (1) Every seafarer employed on board a Malaysian ship shall hold a seafarer record book issued or recognized by the Director of Marine.

(2) Any seafarer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Handing over of documents on change of master.

113. (1) If a person ceases to be the master of a Malaysian ship, he shall immediately deliver or cause to be delivered to his successor all documents relating to the ship and its crew which are in his custody.

(2) The successor shall, immediately on assuming the command of the ship, enter in the official log-book a list of the documents delivered to him.

(3) The master who fails to comply with subsection (1) without reasonable excuse commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Conduct, Discipline and Inquiries

Conduct endangering ships, structures or individuals.

114. (1) Any seafarer or any other person on board a Malaysian ship or on board any foreign ship in any port in Malaysia or within Malaysian waters, who by wilful breach or neglect of duty, or under the influence of alcohol, drugs or otherwise, does, omits or fails to do the following, commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both:

(a) does any act which causes or is likely to cause—

- (i) the loss or destruction of or serious damage to the ship or its machinery, navigational equipment or safety equipment;
- (ii) the loss or destruction of or serious damage to any other ship or any structure;
- (iii) the death of or serious injury to any person; or
- (iv) environmental damage; or

(b) omits or fails to do anything—

- (i) to preserve the ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged;
- (ii) to prevent the ship from causing the loss or destruction of or serious damage to any other ship or any structure;
- (iii) to protect any person on board the ship from death or serious injury; or
- (iv) to prevent the environment damage.

(2) In proceedings for an offence under this section, it shall be for the defence to prove—

- (a) where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty;
- (b) that at the time of the act or omission alleged against the accused, the accused was under the influence of a drug taken by him for medical purposes and either he took it on the medical advice of a competent medical practitioner and complied with any directions given as part of that advice, or that he had no reason to believe that the drug might have the influence it had;
- (c) that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence;
- (d) that he could have avoided committing the offence only by disobeying a lawful command; or
- (e) that in all circumstances the loss, destruction, damage, death or injury in question either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him.

(3) In this section—

“breach or neglect of duty”, except in relation to a master, includes any disobedience to a lawful command;

“duty”—

(a) in relation to a master or seafarer, means any duty required to be discharged by the master or seafarer in their capacity as a master or seafarer; and

(b) in relation to a master, includes the master’s duty with respect to the good management of his ship and the safety of operation of his ship, its machinery and equipment.

Concerted
disobedience
and neglect of
duty.

115. (1) A seafarer employed on board a Malaysian ship shall not—

(a) disobey lawful commands which are required to be obeyed while the ship is at sea;

(b) neglect any duty which is required to be discharged; or

(c) impede the progress of a voyage or the navigation of a ship.

(2) The seafarer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(3) In proceedings for an offence under this section, it shall be for the defence to prove that at the time of the act of the accused the provision of subsection 114(2) applies.

*Maritime Labour Certificate or Interim
Maritime Labour Certificate*

- Application. **116.** (1) This Chapter applies to—
- (a) all ships of five hundred gross tonnage or more, engaged in Malaysian waters;
 - (b) all Malaysian ships of five hundred gross tonnage or more, engaged in international voyages; and
 - (c) all Malaysian ships of five hundred gross tonnage or more, operating from a port or between ports, in a country other than Malaysia.

(2) At the request of the owner to the Director of Marine, this Chapter may also apply to Malaysian ships not mentioned in subsection (1).

(3) This Chapter does not apply to any ship which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.

Maritime
Labour
Certificate
and Interim
Maritime
Labour
Certificate.

117. (1) The owner shall ensure that his ship holds a valid Maritime Labour Certificate or Interim Maritime Labour Certificate, as the case may be, before the ship can go on a voyage or an excursion.

(2) The owner of the ship shall make an application for the Maritime Labour Certificate to the Director of Marine.

(3) The Director of Marine may, upon payment of the prescribed fee, issue the Maritime Labour Certificate, subject to any conditions that he considers fit to impose, if—

- (a) he is satisfied that the ship has complied with all the requirements of this Part and the rules made under this Part; and
- (b) there is a Declaration of Maritime Labour Compliance issued in respect of the ship.

(4) The Director of Marine may, pending the issuance of the Maritime Labour Certificate, issue an Interim Maritime Labour Certificate subject to any conditions that he considers fit to impose.

(5) The validity period of—

(a) the Maritime Labour Certificate issued under subsection (3) shall not exceed five years; and

(b) the Interim Maritime Labour Certificate issued under subsection (4) shall not exceed six months and can only be issued to the ship once.

(6) The Maritime Labour Certificate or Interim Maritime Labour Certificate, and the Declaration of Maritime Labour Compliance shall—

(a) be displayed in a conspicuous place on board the ship;

(b) readily available for inspection on board the ship; and

(c) be produced, on request, to a seafarer employed on the ship, the Director of Marine, authorized officer, or the representative of the owner or the seafarer.

(7) For the purposes of this section, a Declaration of Maritime Labour Compliance shall comprise of—

(a) Part I, which shall be issued by the Director of Marine, upon payment of a prescribed fee and which shall identify, the list of matters for inspection, the relevant provisions of this Part and the rules made under this Part, any ship-type specific requirements, any substantially equivalent provisions adopted, and any exemption granted; and

(b) Part II, which shall be drawn up by the owner and shall identify measures undertaken by the owner to ensure ongoing compliance with the provisions of this Part and rules made under this Part during the period between inspections and the measures proposed to ensure continuous improvement.

Suspension or revocation of Maritime Labour Certificate and Interim Maritime Labour Certificate.

118. (1) The Director of Marine may direct the owner to take corrective action and suspend the Maritime Labour Certificate or Interim Maritime Labour Certificate, as the case may be, if he is satisfied that—

- (a) there has been a contravention of any provision of this Part or any rules made under this Part; or
- (b) there has been a breach of any condition of the Maritime Labour Certificate or Interim Maritime Labour Certificate.

(2) Subject to subsection (3), the Director of Marine may revoke the Maritime Labour Certificate or Interim Maritime Labour Certificate, as the case may be, if the corrective action referred to in subsection (1) is not taken to the satisfaction of the Director of Marine or within such period of time as specified by the Director of Marine.

(3) The Maritime Labour Certificate or Interim Maritime Labour Certificate shall not be revoked unless the owner of the ship has been given a reasonable opportunity to make a representation against the intended revocation.

Surrender of Maritime Labour Certificate and Interim Maritime Labour Certificate.

119. (1) Upon the revocation or expiry of the Maritime Labour Certificate or Interim Maritime Labour Certificate, the owner or master shall surrender the certificate to the Director of Marine within fourteen days from the date of its revocation or expiry.

(2) Any owner or master who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Replacement of Maritime Labour Certificate and Interim Maritime Labour Certificate.

120. (1) If the Maritime Labour Certificate or Interim Maritime Labour Certificate issued under section 117 is lost, defaced or destroyed, the Director of Marine may, upon receipt of an application from the owner and upon payment of the prescribed fee, issue a replacement of the Maritime Labour Certificate or Interim Maritime Labour Certificate.

(2) If the original Maritime Labour Certificate or Interim Maritime Labour Certificate is found after the replacement of the Maritime Labour Certificate or Interim Maritime Labour Certificate has been issued under of subsection (1), the original Maritime Labour Certificate or Interim Maritime Labour Certificate shall be deemed to have been revoked and of no effect.

Miscellaneous

Licence
to supply
seafarers.

121. (1) The Director of Marine may issue a licence to a person to carry on the business of a private employment agency to supply seafarers to serve on board ships.

(2) The Director of Marine may cancel the licence issued under subsection (1) if he is satisfied that the licensee —

- (a) has contravened any of the provisions of this Part or any rules made under this Part, or any bond or undertaking entered into by the licensee under this Part;
- (b) has been convicted of an offence under this Part;
- (c) has not complied with any direction issued by the Director of Marine to the licensee under the Malaysia Shipping Notice; or
- (d) has furnished in any application, or in any return, or in any written information or written explanation, sent by the licensee under this Part, any particulars which to the knowledge of the licensee are false or incorrect.

(3) The Director of Marine shall give the licensee a notice of the intended cancellation, stating the grounds for the cancellation, and the licensee may show cause as to why the licence should not be cancelled within two weeks from the date of the notice.

(4) Any person who carries on the business of a private employment agency to supply seafarers without a valid licence commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit.

Powers to investigate.

122. (1) In addition to and not in derogation of any powers conferred on the Director of Marine or any authorized officer by this Ordinance in relation to enforcement, inspection and investigation, the Criminal Procedure Code [Act 593] shall apply to the Director of Marine or any authorized officer appointed by him as it applies to a police officer.

(2) The Director of Marine or any authorized officer 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 owner 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, Declaration of Maritime Labour Compliance, Maritime Labour Certificate, Interim Maritime Labour Certificate, official log-book or other documents relating to the operation of the ship or safe management of the company from the owner or master.

(3) The Director of Marine may direct any ship to be detained for the purpose of conducting an investigation.

(4) Any person who—

- (a) without reasonable excuse refuses or fails to comply with a requirement 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,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Inspection and detention.

123. (1) The Director of Marine or any authorized officer may enter on board and inspect any ship while in any port in Malaysia or within Malaysian waters and if he is satisfied after the inspection that there is a contravention of any provision of this Part or any rules made under this Part, the Director of Marine or the authorized officer may detain the ship.

(2) The Director of Marine or any authorized officer may allow the detained ship under subsection (1) to leave any port in Malaysia or Malaysian waters for the purpose of continuing its voyage upon rectification of the defects or assurance by the owner to rectify the defects at the nearest port, to the satisfaction of the Director of Marine or any authorized officer.

Reports of birth and death on board Malaysian ships, etc.

124. (1) The master of a Malaysian ship or any foreign ship in Malaysian waters shall make a report to the Director of Marine or to the nearest Port Officer of any birth, death, accident or incident of a missing person occurring on board the ship during the voyage within twenty-four hours.

(2) If death, an accident or incident of a missing person occurred on board the ship or in relation to the ship, the master shall conduct an inquiry to determine the cause and nature of the event and shall immediately make a written report to the Director of Marine or to the nearest Port Officer.

(3) The Port Officer or authorized officer shall, depending on the nature of the death, accident or incident of the missing person occurred on board the ship, conduct an investigation into the cause of the death, accident or incident of the missing person concerned.

(4) In the event of death, the owner or master of a Malaysian ship shall notify the death to the deceased next of kin named in the Article of Agreement within twenty-four hours of the death.

(5) Any owner or master who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

(6) For the purpose of this section, “missing person” means a person that could not be found on board the ship and no certificate of death has been issued in respect of that person but his name appears—

(a) in the passenger list; or

(b) in the Article of Agreement and he is not absent without leave.

Penalty for detaining seafarer’s effects.

125. (1) Any person who receives or takes into his possession or under his control any money or effects of a seafarer, and does not return the same or pay the value thereof, when required by the seafarer, subject to any deduction as is justly due to him from the seafarer in respect of board or lodging or otherwise, or absconds therewith commits an offence and shall, on conviction, be liable to a fine of not less than fifty thousand ringgit but not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) For the purposes of this section, “effects” includes personal belongings and documents.

Procedures
for making
complaint.

126. (1) Every owner of a Malaysian ship shall maintain a complaint procedures in accordance with the guidelines issued by the Director of Marine for the fair, effective, well-documented and expeditious handling of seafarer complaints.

(2) The owner shall ensure that each seafarer employed on board the ship is provided with a copy of the complaint procedures.

(3) Any owner who fails to comply with subsections (1) and (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit.

Stowaway.

127. (1) If a stowaway is detected on board a ship, the master shall—

- (a) make every effort to immediately determine the port of embarkation of the stowaway;
- (b) make every effort to establish the identity including the nationality or citizenship of the stowaway;
- (c) prepare a statement containing all information relevant to the stowaway;
- (d) notify the existence of the stowaway and any relevant details to the owner of the ship and appropriate authorities at the port of embarkation, the next port of call and the flag State;
- (e) ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with the authorities' requirements; and
- (f) take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation.

(2) The owner shall comply with any removal directions made by the competent authorities at the port of disembarkation.

(3) If the master or owner fails to comply with subsection (1) or (2) respectively, the master or owner commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

(4) For the purposes of this section, “stowaway” means a person who is—

- (a) secreted on a ship or in the cargo which is subsequently loaded on the ship, without the consent of the owner and master, or any other person authorized to give the consent;
- (b) detected on board after the ship has departed from a port; and
- (c) reported as a stowaway by the owner and master to the appropriate authorities.

Unauthorized presence on board ship.

128. (1) Any person other than an authorized officer shall not board a vessel without the consent of the master.

(2) Any person other than an authorized officer shall not remain on board a vessel without the consent of the master.

(3) Any person who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Master of ship’s power to restrain.

129. (1) The master of a Malaysian ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him to be necessary or expedient in the interest of safety or security, or for the preservation of good order or discipline on board the ship.

(2) If, in exercising his powers under subsection (1), the master restrains any person on board the ship, he shall notify a Port Officer as soon as possible of such restraint.

(3) The master who fails to comply with subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Power to exempt.

130. (1) The Minister may, after consultation with the owners' and seafarers' organizations, exempt by notification in the *Gazette*—

- (a) any Malaysian ship or particular categories of Malaysian ships; or
- (b) any seafarer or particular categories of seafarer,

from any of the provisions of this Part or any rules made under this Part if the exemption is permitted in the Maritime Labour Convention.

(2) The Minister may, in granting any exemption under subsection (1), impose any terms and conditions on the Malaysian ship or particular categories of Malaysian ships, or any seafarer or particular categories of seafarer as he considers fit.

Rules.

131. (1) The Minister may make such rules as are necessary for the carrying into effect the provisions of this Part.

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

- (a) matters relating to the property and body of the deceased seafarer on board a ship;
- (b) matters relating to the relief, maintenance and repatriation of seafarers employed on board a ship;
- (c) matters relating to the fees to be paid for anything to be done or permitted to be done under this Part;
- (d) matters relating to the Appeal Committee;
- (e) matters relating to the inspection of any ship;
- (f) matters relating to the detention of any ship;
- (g) matters relating to the seafarer's certificate;
- (h) matters relating to the Declaration of Maritime Compliance, Maritime Labour Certificate and Interim Maritime Labour Certificate;

- (i) matters relating to dispensation;
- (j) matters relating to the training of seafarers;
- (k) matters relating to the recognition of certificate issued by other countries or training institution;
- (l) matters relating to the manning of the ships;
- (m) matters relating to the employment of seafarer on board Malaysian ships;
- (n) matters relating to the operational, safety and security of the ship;
- (o) matters relating to the social, welfare and compensation scheme of seafarers including their procedures, contributions and disbursement;
- (p) matters relating to the Malaysian seafarer identity documents and seafarer record books;
- (q) matters relating to the Article of Agreement;
- (r) matters relating to the birth, death, accident and incident of missing person;
- (s) matters relating to the accommodation and recreational facilities on Malaysian ships;
- (t) matters relating to the provision of food and water;
- (u) matters relating to the medical requirements on board a ship or of seafarers, or medical expenses while serving on board a ship;
- (v) matters relating to the safety and welfare of the seafarer;
- (w) matters relating to the occupational safety and health;
- (x) matters relating to the disciplinary offences on board the ship;
- (y) matters relating to the stowaway; or
- (z) matters relating to person who supply seafarers to serve on board ships.

(3) Subject to subsection (4), rules made under this section may provide for the imposition of fines not exceeding twenty thousand ringgit.

(4) The rules made under this section relating to offences concerning the failure to dispose of the property of deceased seafarers in a prescribed manner may provide for the imposition of fines up to amounts not exceeding three times the value of such property.

(5) The rules made under this section may make different provisions for different descriptions of ship or for ships of the same descriptions in different circumstances.

(6) The rules made in respect of disciplinary matters relating to seafarers may include provisions for any proceedings under the rules to take place notwithstanding the absence of the seafarer to whom the proceedings relate, and nothing in the rules or done under such rules shall be construed as affecting any power to institute, prosecute, consider or determine proceedings including criminal proceedings, under any other written law.”.

New section 404A

5. The Ordinance is amended by inserting after section 404 the following section:

“Minister may make rules. **404A.** (1) Without prejudice to any provision

under this Part or any other power to make rules or regulations conferred upon the Minister by this Part, the Minister may make rules for the carrying into effect the provisions of this Part and such rules may provide for—

- (a) the manner for the dealing of wrecks;
- (b) the procedure to make a claim, sell, locate and for the disposal of unclaimed wreck;
- (c) the settlement and determination of dispute with regard to salvage of life, ship, cargo and other property;

- (d) the matters relating to the payment, remuneration or reward with regard to salvage;
- (e) the detention, valuation and sale of property in salvage;
- (f) the determination of financial security and the requirements for ships to maintain insurance or other financial security for covering the costs of locating, marking and removing of wrecks;
- (g) the fees for anything to be done or permitted to be done under this Part;
- (h) the implementation in whole or in part of any international convention, code or resolution relating to wreck and salvage, or any matter incidental to it or connected to it;
- (i) the matters relating to the power of the Receiver under section 381;
- (j) the duties and obligations of owner, master and salvor in relation to salvage operation; or
- (k) such other matters as are necessary or expedient for the carrying out of the purposes of this Part.

(2) Any person who contravenes any rules made under this Part commits an offence and shall, where no other penalty is provided, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.”.

Amendment of Third Schedule

6. The Third Schedule to the Ordinance is amended—

- (a) by substituting for the words “SECTIONS 204-5” appearing under the words “THIRD SCHEDULE” the words “SECTION 109”;
- (b) by deleting the words “(SECTION 204)” appearing under the words “TABLE 1”; and

(c) by deleting the words “(SECTION 205)” appearing under the words “TABLE 2”.

Saving and transitional

7. (1) The provisions under Part III of the Ordinance shall remain in operation and continue to apply to any owner, master, seafarer or ship for all purposes and in all respects in relation to any requirements under those provisions before the coming into operation of this Act as if those provisions had not been substituted by this Act.

(2) Any rules made under Part III of the Ordinance before the coming into operation of this Act shall be deemed to have been made under Part III of this Act and shall continue to be in operation until amended, revoked or replaced by any subsidiary legislation made under Part III of this Act.

(3) Subject to subsection (4), any owner, master or seafarer who is subjected to Part III shall comply with the provisions of Part III within six months from the date of coming into operation of this Act or such other longer period as may be permitted by the Director of Marine.

(4) The requirements under Part III which relate to the construction of a ship shall apply to ships constructed on or after the date of coming into operation of this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Merchant Shipping Ordinance 1952 (“Ordinance”) to provide new provisions which are in line with the ratification of the Maritime Labour Convention 2006 by Malaysia.

1. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
2. *Clause 2* contains the general amendment to substitute for the words “passenger steamer” the words “passenger ship” and to substitute for the word “seaman” the word “seafarer”.
3. *Clause 3* seeks to amend section 2 of the Ordinance to amend existing definitions and to introduce new definitions.

4. *Clause 4* seeks to substitute Part III of the Ordinance. The proposed Part III introduces new provisions which are in line with the requirements under Maritime Labour Convention 2006.

The proposed new section 69 provides for the application of the proposed Part III. The proposed Part III applies to all ships except ships listed in paragraphs (a) to (i).

The proposed new section 70 contains the definition of the words and expressions used in the proposed Part III.

The proposed new section 71 seeks to provide for the safe-manning document that provides for the minimum number of ship personnel required to safely man a ship.

The proposed new section 72 impose a duty on the owner or master to ensure that their ship have a sufficient number of ship personnel on board and to prohibit voyage or excursion with undermanned ship.

The proposed new section 73 seeks to provide the minimum age of seafarers to be employed on board any Malaysian ship.

The proposed new section 74 provides the requirement of seafarers to be trained, certified as competent, or qualified to perform their duties in order to be employed as seafarers.

The proposed new section 75 provides for the power of the Director of Marine to suspend or cancel the seafarer's certificate issued under the proposed Part III.

The proposed new section 76 set out the establishment of the appeal committee by the Minister and its functions.

The proposed new section 77 empowers the Director of Marine to issue dispensation permitting a specified seafarer who does not hold the appropriate certificate to serve in a specified ship.

The proposed new section 78 provides that forgery to any certificate, dispensation or other document or false representation for procuring any certificate, dispensation or other document to be an offence.

The proposed new section 79 provides the requirement of seafarers to be trained and familiarised with their duties on board ship.

The proposed new section 80 imposes a duty on the owner to ensure that all documentation and data relevant to all seafarers employed on its ships are maintained and readily accessible and seafarer shall, on demand, produce the seafarer's certificate to a Port Officer or any authorized officer.

The proposed new section 81 imposes a duty on the owner to ensure that latest legislations and publications are readily accessible to the seafarers.

The proposed new section 82 requires that the order or instruction given to the seafarer on board ship is either in national or English language only.

The proposed new sections 83, 84, 85, 86 and 87 provide for the seafarer employment contract, and breach or termination of seafarer employment contract, respectively.

The proposed new section 88 seeks to provide the obligations of the master regarding discharge of a seafarer.

The proposed new section 89 places a duty on the owner to ensure the seaworthiness of ship for a voyage or an excursion.

The proposed new section 90 provides the minimum hours of rest for the seafarers on board a Malaysian ship.

The proposed new section 91 imposes a duty on the owner to ensure that the seafarers on board a Malaysian ship are given the entitlement to leave.

The proposed new section 92 provides the rights of repatriation to the seafarers on board a Malaysian ship.

The proposed new section 93 provides the rights of the seafarers on board a Malaysian ship to relief and return in the event of being left behind or shipwrecked.

The proposed new section 94 places a duty on the owner of a Malaysian ship to ensure that the body and property of a seafarer who dies on board ship are properly maintained and delivered to the next of kin named in the Article of Agreement.

The proposed new sections 95, 96 and 97 provide the rights of seafarer regarding wages and mode of payment of wages, and imposes an obligation on owner to pay wages in the event of termination of seafarer's contract on special circumstances, respectively.

The proposed new section 98 provides for the lawful deductions that can be made by the owner of a Malaysian ship.

The proposed new section 99 places a duty on the owner of a Malaysian ship to provide a mechanism for the seafarer to allot their wages.

The proposed new section 100 provides protection of certain rights and remedies to the seafarer. The right protected shall not be renounced by any agreement.

The proposed new section 101 seeks to impose an obligation on the owner to comply to the minimum standard of health and medical care, occupational safety, accommodation, recreational facilities, and provisions to be provided on board Malaysian ships.

The proposed new section 102 seeks to require that the seafarer must be medically fit before they can be permitted to work on board a Malaysian ship.

The proposed new section 103 imposes an obligation on the owner of a Malaysian ship to provide adequate health protection and medical care for seafarers and to ensure that medical supplies is properly maintained and inspected.

The proposed new section 104 empowers a Port Officer or Port Health Officer to enter on board ship and inspect any ship within Malaysian waters in respect of the health protection, medical care and medical supplies provided to seafarers employed on board the ship.

The proposed new section 105 requires the owner of a Malaysian ship and foreign ship within Malaysian water to ensure the occupational safety and health of seafarers.

The proposed new section 106 imposes a duty on the owner of a Malaysian ship to provide accommodation and recreational facilities.

The proposed new section 107 provides the duty of the owner of a Malaysian ship to ensure sufficient provision of drinking water and food.

The proposed new section 108 imposes a duty on the owner of a Malaysian ship to ensure that the seafarers are covered by social security scheme or benefit.

The proposed new section 109 seeks to provide for Article of Agreement.

The proposed new section 110 seeks to require master of Malaysian ship to maintain official log-book of ship.

The proposed new sections 111 and 112 require the seafarer to hold a valid seafarer identity document and hold a seafarer record book issued by the Director of Marine for seafarers who work on board a Malaysian ship, respectively.

The proposed new section 113 seeks to require the master of a Malaysian ship to hand over all documents relating to the ship to his successor in the case of change of master.

The proposed new section 114 makes it an offence to commit any conduct endangering ships, structures or individuals.

The proposed new section 115 provides for an offence of concerted disobedience and neglect of duty.

The proposed new section 116 provides for the application of the proposed Chapter 9, Part III.

The proposed new section 117 places a duty on the owner to ensure that their ship hold a valid Maritime Labour Certificate or Interim Maritime Labour Certificate, and empowers the Director of Marine to issue the Maritime Labour Certificate or Interim Maritime Labour Certificate.

The proposed new section 118 set out powers of the Director of Marine to suspend or to revoke the Maritime Labour Certificate or Interim Maritime Labour Certificate in the case of non-compliance of any provisions of the proposed Part III or any condition of the Maritime Labour Certificate or Interim Maritime Labour Certificate.

The proposed new section 119 requires the master to surrender the Maritime Labour Certificate or Interim Maritime Labour Certificate within fourteen days from the date of its revocation or expiry.

The proposed new section 120 deals with power of the Director of Marine to replace the Maritime Labour Certificate or Interim Maritime Labour Certificate in case the Maritime Labour Certificate or Interim Maritime Labour Certificate is lost, defaced, or destroyed.

The proposed new section 121 seeks to empower the Director of Marine to issue licence to supply seafarers and prohibit unlicensed private employment agencies from carrying on the business to supply seafarers.

The proposed new section 122 provides powers to investigate.

The proposed new section 123 seeks to provide for the powers of inspection and detention to the Director of Marine or any authorized officer.

The proposed new section 124 places a duty on the master of a Malaysian ship or any foreign ship in Malaysian waters to report to the nearest Port Officer of any birth, death, accident or incident of a missing person occurred on board the ship.

The proposed new section 125 makes it an offence to detain seafarer's money or effects.

The proposed new section 126 seeks to impose a duty on the owner of a Malaysian ship to maintain complaint procedures in accordance with guidelines issued by the Director of Marine.

The proposed new section 127 set out procedures to be followed by the owner and master in the case of stowaway which is in accordance with the requirements provided under the *International Convention for the Safety of Life at Sea (SOLAS) 1974*.

The proposed new section 128 provides for the offence of unauthorized presence on board ship.

The proposed new section 129 places powers to the master of a Malaysian ship to restrain any person for the interest of safety or security, or for the preservation of good order or discipline on board the ship.

The proposed new section 130 empowers the Minister to exempt any Malaysian ship or particular categories of Malaysian ships, or any seafarer or particular categories of seafarer from any of the provisions under the proposed Part III or any rules made under the proposed Part III if the exemption is permitted in the Maritime Labour Convention 2006.

The proposed new section 131 empowers the Minister to make rules under the proposed Part III.

5. *Clause 5* seeks to introduce a new section 404A. The new section 404A empowers the Minister to make rules under Part X.

6. *Clause 7* contains saving and transitional provisions.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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