

THE PORT AUTHORITIES
ORDINANCE, 1961

THE PORT AUTHORITIES ORDINANCE, 1961

(No. 1 of 1961)

ARRANGEMENT OF SECTIONS

PART I

INTRODUCTION

Section

1. Short title and commencement.
2. Interpretation.

PART II

**ESTABLISHMENT AND FUNCTIONS OF PORT
AUTHORITIES**

3. Establishment of Port Authorities.
- 3A. Declaration of Ports.
4. Constitution of Port Authorities.
5. Incorporation of Port Authorities.
6. Meetings and procedure of Port Authorities.
7. Powers conferred on Port Authorities may be exercisable by their servants and agents.
8. Disclosure of interest in contracts by members of Port Authorities.
9. Functions of Port Authorities.
10. Functions of General Manager of a Port Authority.
11. Powers of Minister in relation to Port Authorities.

PART III
APPROVED PORT OPERATOR

Section

- 12. Port Operator.
- 12A. Indemnity.
- 12B. Duties and functions of an approved port operator.
- 12C. Submission of reports, accounts, statistical information, etc.
- 12D. Approved port operator to keep Minister and Port Authority informed of certain matters.
- 12E. Penalty.
- 12F. Port dues and rates for approved port operator.

PART IV
FINANCIAL PROVISIONS

- 13. Transfer of property to Port Authorities.
- 14. Account for working capital.
- 14A. Port development cess.
- 15. Application of revenue.
- 16. Investment of moneys.
- 17. Power to issue debenture stock for certain purposes.
- 18. Power to borrow money otherwise than by debentures.
- 19. Accounts.
- 20. The Minister to approve estimates.
- 21. Annual report and periodical reports.
- 22. Financial Year.

PART V
LEVYING OF DUES, RATES AND TARIFFS, ETC.
PORT DUES

Section

23. Levying of port dues.
24. Master to supply information on arrival of vessel.
25. Master to supply information on proceeding outwards.
26. Time when port dues payable.
27. Liability for payment of port dues.
28. Consignor, consignee and/or agent may retain port dues out of owner's moneys.

VESSEL'S DUES

29. Levying of vessel's dues.
30. Liability for payment of vessel's dues.
31. Consignor, consignee or agent may retain vessel's dues out of owner's moneys.

GENERAL

32. Levy of rates.
33. Liability for payment of rates.
34. Port Authority's lien for rates.
35. Power of entry to ascertain dues and rates.
36. Weighing and measuring of goods in event of dispute.
37. Payment of expenses of weighing and measuring.
38. Power to distrain for non-payment of dues and rates.
39. Customs clearance to be withheld until dues or rates are paid.
40. Port Authority may recover dues, rates, etc. by suit.

Section

- 41. Port Authorities to keep records of dues and rates and to allow inspection thereof.
- 42. Application of Part.

PART VI

LIABILITY OF PORT AUTHORITIES

- 43. Port Authorities common carriers by land and water.
- 44. Limitation of liability of Port Authorities in their capacity as carriers of passenger, wharfingers and warehousemen.
- 45. Limitation of liability of Port Authorities in other cases.
- 46. Power of Court to consolidate claims against owners, etc.
- 47. Savings.

PART VII

TRAFFIC MANAGERS

- 48. Power to appoint traffic managers.
- 49. Power of traffic manager in relation to vessels.

PART VIII

LEGAL PROCEDURE

- 50. Service of documents.
- 51. Restriction on execution against property of Port Authority.
- 52. Stay of arrest in certain cases.
- 53. Legal Representation.
- 53A. Power to compound offences.
- 53B. General Penalty

PART IX
PROVISIONS RELATING TO STAFF

Section

- 54. Employment of officers, agents and servants.
- 55. Power to make Standing Orders relating to staff.
- 55A. Members and officers of Port Authority deemed to be Public Servants Act 574.
- 55B. Public Authorities Protection Act 1948, Act 198.

PART X
PORT SECURITY

- 56. Establishment of security forces.
- 57. Powers of arrest and search.
- 58. Conditions of service of security force.
- 58A. Power of Investigation.
- 58B. Power to seize, remove and detain goods, etc.
- 58C. Disposal of perishable goods or things.
- 58D. Disposal of goods or other things seized by court.
- 58E. Return of goods or other thing seized or detained.
- 58F. Identification of officer.

PART XI
OFFENCES

- 59. Miscellaneous offences.
- 60. Obstruction and failure to comply with directions of Port Authority officer.
- 61. Intoxication, etc. of officers and servants of Port Authorities.
- 61A. Offences by body corporate, etc.

PART XII
MISCELLANEOUS

Section

- 62. Special powers of Minister in connection with trade in ports.
- 63. Resolving of conflicts between Ordinance, etc. and Merchant Shipping
Legislation in matters relating to marine safety and conservancy.
- 64. Subsidiary legislation.

PART XIII
CONSULTATION AND CO-ORDINATION

- 65. State Ports Consultative Council
 - FIRST SCHEDULE - Scheduled Ports.
 - SECOND SCHEDULE - Powers of Port Authorities.

THE PORT AUTHORITIES ORDINANCE, 1961

(No. 1 of 1961)

An Ordinance to provide for the establishment of Port Authorities for certain Ports, for the functions of such authorities and for matters connected therewith and incidental thereto.

[1st May, 1961]

Enacted by the Legislature of Sarawak –

[Swk. L.N.
115/2002.]

In exercise of the powers conferred by section 1 of the Port Authorities (Amendment) Ordinance, 2000 [*Cap. A77*], the Minister of Infrastructure Development and Communications has appointed the 1st day of December, 2002, as the date on which that Ordinance shall come into force.

PART I

INTRODUCTION

[Ord. Cap
A77/2000.]

1. This Ordinance may be cited as the Port Authorities (Amendment) Ordinance, 2000, and shall come into force on such date as the minister may, by notification in the *Gazette*, appoint.

Short title
and
commencement.

2. In this Ordinance –

“animals” means animate things of every kind except human beings; Interpretation.

[Ord. Cap
A70/99.]

“approved port operator” means a person or body corporate or company appointed under Part III to establish, or operate or manage a port, or to carry out or perform any port undertakings;

“ballast” includes every kind of gravel, sand and soil and every commodity commonly used for the ballasting of vessels;

[Ord. Cap
A70/99.]

“chairman” means the Chairman of a Port Authority appointed under section 4 (1), and includes a deputy chairman and any person appointed by the Minister to temporarily discharge the duties of a chairman;

[Definition of "Central Port Board" deleted by Cap. A70/99]

"container" means a receptacle 6.1 metres x 2.44 metres x 2.44 metres or 12.2 metres x 2.44 metres x 2.44 metres or more in size equipped with corner castings to facilitate the handling or conveyance of goods, by mechanical means; [Ord. Cap A70/99.]

"dues" means port dues, vessel's dues or tariff rates established and levied in, under or by virtue of this Ordinance;

"gas" means liquefied natural gases, methane, ethane, propane, butane or hydrocarbons which may consist of one or more of the aforesaid gas either in the form of gas or liquid; [Ord. Cap A6/93.]

"general manager" means the General Manager of a Port Authority appointed under section 54; [Ord. 3/72.]

"goods" includes baggage, containers, animals, livestock, carcasses, minerals, gas, petroleum, timber logs and products, vehicles, machineries, equipment, and movable properties of whatever kind or description; [Ord. Cap A70/99.]

"Government" means the Government of the State of Sarawak; [Ord. Cap A70/99.]

"land" has the same meaning as in the Land Code; Cap. 81.

"master" when used in relation to a vessel, means the person, other than a pilot, for the time being in command or in charge of the vessel;

"member" means a member of a Port Authority, and includes its chairman and deputy chairman, or any person appointed by the Minister to temporarily discharge the duties of a chairman; [Ord. Cap A70/99.]

"Minister" means the Minister in the Government for the time being charged with the responsibility for State Ports; [Ord. Cap A70/99.]

"non-seizable offence" has the same meaning as in the Criminal Procedure Code; Cap. 58.

"owner", when used in relation to goods, includes any consignor, consignee, shipper or agent of the owner for the sale, custody, loading, unloading, discharge or delivery of such goods; and, when used in relation to any vessel, includes any charterer, part owner, operator, consignee or mortgage in possession thereof or any duly authorized agent of any such person;; [Ord. Cap A70/99.]

[Ord. Cap A6/93.] “petroleum” means any mineral oil and includes crude petroleum and oil made from crude petroleum or other bituminous substances, petrochemical products, gasoline, kerosene, diesel fuel, fuel oil and lubrication oil;

“pier” includes any stage pier, stairs, landing place, jetty, barge or pontoon or other works connected therewith;

[Ord. Cap A70/99.] “pilot” means any person not belonging to or employed by a vessel who has the control or charge thereof whilst she is within the port limit;

[Ord. Cap A6/93.] “pipelines” means all parts of those physical facilities through which petroleum or gas is conveyed from one place or vessel to any other place or vessel by pipelines including any machine, equipment, apparatus, pipes, valves and other appurtenances attached to pipelines, pumps, compressor units, meters, regulators and any other fabricated assemblies;

[Ord. 5/71.] “Port” means any area declared to be a port under section 3A;

“Port Authority” means a Port Authority established pursuant to Part II;

[Definition of “Port Consultative Committee” deleted by Cap. A70/99]

[Ord. Cap A70/99.] “port dues” means dues levied in respect of a vessel entering, using, leaving or plying in a port or in respect of goods conveyed by whatever means, including pipelines, through the limit of such port;

[Ord. Cap A70/99.] “port limit” means the limit of a port as declared pursuant to section 3A (2);

[Ord. Cap A70/99.] “port undertakings” means the undertakings of a Port Authority that relate to the provision of any facility or service of any description in connection with the exercise of or the performance of its powers or its duties under this Ordinance or any other written law, and includes any movable or immovable property and the rights of a Port Authority that relate to such facility or service;

[Definition of “Port Manager” deleted by Ordinance 3 of 1972]

[Ord. Cap A70/99.] “rates” means the rates or charges which a Port Authority may impose, under this Ordinance or any regulations made under section 64, for any service rendered or for the use or hire of any of its facilities or equipment or premises;

“Security Force” means a security force established pursuant to Part X;

“State Ports Consultative Council” means the Council established pursuant to section 65; [Ord. Cap A70/99.]

[Definition of “Ship Owner” deleted by Cap. A70/99]

“traffic manager” means a traffic manager appointed in accordance with section 48;

“transit shed” means a shed or godown used to receive goods off-loaded from, or for direct loading to, any ship or vessel;

“vessel” has the same meaning as in the Merchant Shipping Ordinance, 1960; [Ord. No. 2/60.]

“warehouse” includes all warehouses, buildings and premises in which goods, when landed from or for loading upon vessels may be lawfully placed;

“warehouseman” means the occupier of a warehouse;

“wharf” includes all wharves, quays, docks and premises in or upon which any goods when landed from or for loading upon vessels, may be lawfully placed;

“wharfinger” means the occupier of a wharf.

PART II

ESTABLISHMENT AND FUNCTIONS OF PORT AUTHORITIES

Establishment of Port Authorities. **3.**—(1) There shall be a Port Authority for every port specified in the First Schedule. [Ord. No. 1/68.]

(2) The Majlis Mesyuarat Kerajaan Negeri may, by Order, amend the First Schedule.

Declaration of Ports. **3A.**—(1) The Majlis Mesyuarat Kerajaan Negeri may by notification in the *Gazette* declare any area in Sarawak to be a port for the purposes of this Ordinance. [Ord. 5/71.]

(2) Every declaration under this section shall define the limits of the port.

(3) The Majlis Mesyuarat Kerajaan Negeri may, after consultation with the Port Authority concerned, amend any notification made under subsection (1) relating to a port specified in the First Schedule.

[Ord. Cap.
A70/99.]

4.-(1) A Port Authority shall consist of a chairman and a deputy chairman and not more than eight other members appointed by the Majlis Mesyuarat Kerajaan Negeri.

Constitution
of Port
Authorities.

[Subsection (2) deleted by Cap. A70/99]

(3) The members of a Port Authority shall hold office for two years but shall be eligible for reappointment.

[Ord. Cap.
A70/99.]

(4) Any member of a Port Authority may resign his office at any time by notice in writing addressed to the Minister, and from the date of receipt of such notice by the Minister such member shall be deemed to have resigned and shall cease to be a member of that Port Authority.

(5) The office of a member of a Port Authority shall become vacant—

(a) if he dies or become bankrupt;

[Ord. No.
1/68.]

(b) if he is absent from Sarawak without the approval of the Minister for more than three months, or is absent without such approval for three consecutive meetings of the Authority;

(c) if he resigns;

(d) if he becomes physically or mentally incapable of performing his duties as a member; or

(e) if he is concerned in, or participates in, the profits of any contract with or work done for, the Port Authority otherwise than as a member thereof:

Provided that the provisions of this paragraph shall not apply to any contract with, or work done by, a Port Authority which is entered into or done in the ordinary course of the business of the Port Authority and in which the member receives no preferential treatment over, or more advantageous terms than, other members of the public.

[Ord. No.
1/68.]

(6) If any member of a Port Authority is temporarily absent or for any other cause temporarily unable to act, the Minister may appoint some person to act temporarily in the place of such member.

[Subsection 7 deleted by Ordinance 3 of 1972]

(8) Every member of a Port Authority may be paid out of the funds of the Port Authority such remuneration for his services as may from time to time be authorized by the Majlis Mesyuarat Kerajaan Negeri; and every member of a Port Authority may be paid out of such funds his reasonable expenses for travelling and subsistence while engaged upon the business of the Authority. [Ord. 3/72.]

(9) All appointments and resignations in pursuance of this section shall be notified in the *Gazette*.

Incorporation
of Port
Authorities.

5.—(1) Each Port Authority shall be a body corporate having perpetual succession and a common seal, and shall have power to purchase, acquire, hold, manage and dispose of immovable and movable property, and to sue and be sued in its corporate name.

(2) Each Port Authority shall have the powers and duties conferred and imposed on it by this Ordinance.

(3) The seal of a Port Authority shall be authenticated by the signature of its chairman or deputy chairman or any other member, the General Manager and, when so authenticated, such seal shall be officially and judicially noticed. [Ord. Cap. A70/99.]

(4) All documents, other than those required by law to be under seal, made by, and all decisions of, a Port Authority may be signified under the hand of the Chairman, General Manager or any member or officer of the Port Authority authorized to act in that behalf.

Meetings
and procedure
of Port
Authorities.

6.—(1) A Port Authority shall meet at such times as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Port Authority may determine.

(2) The Chairman of a Port Authority may at any such time call a special meeting of a Port Authority and shall call a special meeting within fourteen days of a requisition for that purpose addressed to him by any two members of the Port Authority.

(3) The Chairman of a Port Authority shall preside at all meetings of the Port Authority at which he is present; and, in case of his temporary absence, the members present and constituting a quorum shall elect a temporary chairman from among their number.

(4) A quorum of a Port Authority shall be a majority of the members thereof.

(5) The decisions of a Port Authority shall be by a majority of votes.

[Ord. No. 1/68.]

(6) The Chairman of a Port Authority shall cause to be kept, in proper form, minutes of every meeting of a Port Authority and shall transmit a copy of such minutes to the Minister. The minutes of each meeting of a Port Authority shall be confirmed by its chairman at the next succeeding meeting.

(7) Subject to the provisions of this section, a Port Authority shall have power to regulate its own proceedings.

[Ord. No. 1/68.]

7. Subject to this Ordinance and to any directions which may be given in that behalf by the Minister, any powers conferred or duties imposed on a Port Authority may be exercised or discharged by or through a servant or agent of the Port Authority authorized in that behalf.

Powers conferred on Port Authorities may be exercisable by their servants and agents.

8.—(1) Any member of a Port Authority who has any interest in any company or undertaking with which that Port Authority proposes to make any contract shall disclose that interest to the Port Authority and the value thereof, and such disclosure shall be recorded in the minutes of the Port Authority.

Disclosure of interest in contracts by members of Port Authorities.

(2) No such member shall take part in any discussion or decision of the Port Authority relating to such contract unless expressly authorized to do so by the chairman thereof, which authorization shall be recorded in the minutes of the Port Authority.

[Ord. No. 1/68.]

9.—(1) Subject to the provisions of this Ordinance and to any directions issued by the Minister, it shall be the duty of a Port Authority—

Functions of Port Authority.

(a) to maintain, or provide for the maintenance adequate and efficient port services and facilities for all users of the port;

(b) to co-ordinate the activities of the port;

(c) to promote the improvement and development of the port;

[Ord. Cap. A6/93.]

(d) to regulate and control the transportation through, into or out of a port of any cargo or goods from any place or vessel to any other place or vessel by any means or mode, including the conveyance of petroleum or gas by pipelines, both onshore or offshore, on land or underground, in water or under water; and

(e) to execute such works as may be necessary to the performance of the duties specified in paragraphs (a), (b), (c) and (d). [Ord. No. A6/93.]

(2) For the purpose of carrying out the duties imposed upon it by subsection (1), a Port Authority may, subject to subsection (3) and to any directions issued by the Minister but without prejudice to any other powers conferred upon it by this or any other written law, exercise any of the powers specified in the Second Schedule. [Ord. No. 1/68.]

(3) A Port Authority shall ensure that—

(a) its annual revenues are, taking one financial year with another, sufficient to meet the payment of all charges specified in section 15; and

(b) no person is given any under preference or is subject to any undue disadvantage as compared with any other person.

(4) Land required for the purpose of a Port Authority or the development of any port or port facilities by an approved port operator shall, for the purpose of section 46 of the Land Code, be deemed to be land required for a public purpose, so that if any land is resumed by the Government for a Port Authority or an approved port operator, that Port Authority or the approved port operator shall, upon demand by the Government, reimburse the Government in respect of compensation paid for the land so resumed and all expenses incurred by the Government in connection with such resumption; and [Cap. 81. [1958 Ed.] [Ord. Cap. A70/99.]

(5) The Majlis Mesyuarat Kerajaan Negeri may, by Order, exempt any Port Authority from, or modify in its application to a Port Authority or its property, the provisions of any written law— [Ord. No. 1/68.]

(a) relating to local councils, or made by any such council;

(b) relating to revenue; or

(c) relating to town and country planning, land or the subdivision of land.

(6) No Port Authority shall, without the prior approval of the Majlis Mesyuarat Kerajaan Negeri, transfer or charge any immovable property:

[Ord. Cap.
A70/99.]

Provided that this subsection shall not apply to any sublease by a Port Authority for a term not exceeding fifteen years for any purpose connected with or incidental to the normal operation of a port, or the transfer or sublease of any immovable property to an approved port operator.

10.-(1) A General Manager shall –

(a) in matters of executive administration and in matters concerning the accounts and records of a Port Authority, exercise supervision and control over the acts and proceedings of all officers and servants of the Port Authority;

Functions of
General Manager
of a Port
Authority.

(b) subject to Part IX, deal with all questions relating to the service of those officers and servants and their pay, privileges and allowances; and

(c) carry on the day to day business of the Port Authority.

(2) The General Manager shall have power, subject to any directions issued by the Port Authority, to exercise such of the functions of the Port Authority as are necessary to enable him to transact efficiently the matters mentioned in subsection (1)

(3) A Port Authority may delegate to its Genral Manager such other functions as it may deem fit; and, for that purpose, may, from time to time, issue directions to him.

[Ord. Cap.
A70/99.]

11. The Minister may, after consultation with the Majlis Mesyuarat Kerajaan Negeri, give to the Port Authority or an approved port operator directions of a general character and not inconsistent with the provisions of this Ordinance as to the exercise and performance of its functions in relation to matters which appear to him to affect the interests of Sarawak, and that Port Authority or the approved port operator shall give effect to all such directions.

Powers of
Minister in
realtion to
Port
Authorities.

PART III

APPROVED PORT OPERATOR

Port Operator. **12.**–(1) (a) The Majlis Mesyuarat Kerajaan Negeri may, by notification in the *Gazette*, appoint any person or body corporate or company incorporated pursuant to any written law, to build, own, operate, manage or administer any new port. [Ord. Cap. A70/99.]

(b) The duration, terms and conditions of appointment shall be stipulated in the notification referred to in paragraph (a).

(2) (a) A Port Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, appoint, by notification in the *Gazette*, any person or body corporate or company incorporated pursuant to any written law, to perform, carry out or provide all or any of its port undertakings.

(b) The notification referred to in paragraph (a) shall stipulate the duration, terms and conditions of the appointment, and the port undertakings to be performed, carried out or provided by the approved port operator.

(3) Any person, body corporate or company appointed under this section shall be known as an “approved port operator”.

Indemnity. **12A.** The appointment of an approved port operator shall not impose any liability on the Government or the Port Authority concerned for any loss or damage occasioned by any act, omission, neglect or default of such operator or its agent or servants. [Ord. Cap. A70/99.]

Duties and functions of an approved port operator **12B.**–(1) It shall be the duty of an approved port operator to provide port facilities and services specified in an agreement which is to be executed prior to the appointment of the approved port operator. Such an agreement shall be signed between the Government and the approved port operator (in the case of an appointment under section 12 (1) (a)) or between the Port Authority and the approved port operator where the appointment is made under section 12 (2) (a). [Ord. Cap. A70/99.]

(2) An approved port operator shall have due regard to the efficiency, economy, condition and safety of operation in respect of the facilities and services provided by it.

(3) Without prejudice to subsections (1) and (2), an approved port operator shall have and perform any or all of the functions of a Port Authority which are stipulated in the agreement referred to in subsection (1).

[Ord. Cap.
A70/99.]

12c.-(1) The financial year of every approved port operator shall, unless the Minister otherwise directs, end on the 31st December, of each calendar year.

Submission of
reports, accounts,
statistical
information, etc.

(2) Every approved port operator shall –

(a) on or before the 31st day of March immediately after each financial year, or within such longer period as the Minister may allow, submit to the Minister and to the Port Authority appointing that approved port operator –

(i) a report of its operation during that financial year containing such information as is necessary to enable the Port Authority to make an informed assessment of such operation; and

(ii) its audited annual balance sheet, profit and loss account, together with any note thereon, and the reports of the auditor and the directors; and

(b) submit to the Port Authority concerned –

(i) such statistical information relating to its operation as may be required by the Port Authority from time to time;

(ii) its cargo forecast over such period and in such form as may be determined by the Port Authority from time to time; and

(iii) future development plans relating to any service or facility which it is bound to provide under the conditions of the agreement referred to in section 12B (1).

(3) The Minister or a Port Authority may require an approved port operator to submit such further or additional information as it may deem necessary either by way of an explanation, amplification or otherwise with reference to any report or information forwarded by the approved port operator under subsection (1) and such information shall be submitted within the period and in such manner as the Port Authority may require.

Approved operator to keep Minister and Port Authority informed of certain matters. **12D.**-(1) It shall be the duty of every approved port operator at all times to immediately inform the Minister and the Port Authority appointing that port operator of the following matters: [Ord. Cap. A77/2000.]

(a) any change in the control of the approved port operator; [Ord. Cap. A70/99.]

(b) any industrial dispute between the approved port operator and its employees;

(c) any industrial accident or mishap involving any servant, employee or agent of the approved port operator;

(d) any fire occurrence within its premises or that of any Port Authority or any accident or incident (whether arising from natural or other causes) which results in substantial damage to such premises; and

(e) any proceeding or claim instituted or made against the approved port operator which may affect its ability to perform any of its duties or port undertakings.

(2) For the purposes of subsection (1) (a), the expression “control” in relation to an approved port operator means the power to direct the management and policy of the approved port operator.

Penalty. **12E.** Any person who, not being an approved port operator, carries out or provides or performs any port undertakings shall be guilty of an offence: Penalty, a fine of thirty thousand ringgit and imprisonment for three years. [Ord. Cap. A70/99.]

Port dues and rates for approved port operator. **12F.** An approved port operator may charge such port dues and rates as may be authorized by regulations made by the Majlis Mesyuarat Kerajaan Negeri under section 64, and Part V shall be deemed to apply to an approved port operator as if it were a Port Authority. [Ord. Cap. A70/99.]

PART IV

FINANCIAL PROVISIONS

Transfer of property to Port Authorities. **13.**-(1) The Majlis Mesyuarat Kerajaan Negeri may, at any time and from time to time, by Order – [Ord. No. 1/68.]

(a) authorize the transfer to a Port Authority under the Land Code any immovable property which he considers should be vested in that Port Authority;

(b) transfer to a Port Authority any movable property which he considers should be vested in that Port Authority.

(2) Where any property of the Government is transferred to a Port Authority in pursuance of subsection (1), that Port Authority shall cause such property to be valued as at the date of transfer, and shall forthwith cause details of such valuation to be shown on its accounts.

14.—(1) Subject to such condition as to interest and repayments as he may determine, the Majlis Mesyuarat Kerajaan Negeri may direct the advance to a Port Authority of moneys for working capital. Account for working capital.

(2) A Port Authority may receive any moneys advanced to it in accordance with subsection (1), and shall thereupon create, in favour of the Government, an account equivalent to the total amount of any moneys so advanced.

[Ord. 6/88.] **14A.**—(1) There shall be payable annually to the Government a cess (to be known as the port development cess) in respect of any area used exclusively for the purposes of a Port Authority at such rate as may be determined by the Minister. Port development cess.

(2) The Minister may exempt any particular Port Authority from liability to pay any port development cess or part thereof under subsection (1).

15.—(1) Subject to the provisions of this section, the revenue in any year of a Port Authority shall be applied in payment of the following charges — Application of revenue.

(a) the salaries, allowances, fees, remuneration, pensions, superannuation allowances and gratuities of members, officers, servants, agents and technical and other advisers of the Port Authority;

(b) the interest due on any charge, mortgage, debenture or debenture stock issued by, and on any advance or loan made to or raised by the Port Authority;

(c) the sums required to be transferred to a sinking fund, or otherwise set aside for the purpose of making provision for the redemption of any charge, mortgage, debenture or debenture stock, or for the repayment of advances and loans;

(d) the working and establishment expenses and expenditure on the maintenance of property vested, or deemed to be vested, in the Port Authority;

(e) provision for the depreciation or renewal of property vested, or deemed to be vested, in the Port Authority;

(f) the cost of, or a portion of the cost of acquiring land or of new works, plant, ships or appliances not being a renewal of property vested, or deemed to be vested, in the Port Authority which that Authority may determine to charge to revenue;

(g) such payment to contingencies or other reserves as the Port Authority may determine;

(h) port development cess and any other expenses lawfully [Ord. 6/88.] incurred by the Port Authority in the execution of its functions under this Ordinance.

(2) The Port Authority shall, at the end of each financial year, carry forward as working capital such moneys as are reasonably necessary to meet its operational expenses.

(3) The certificate of the auditor or auditors of the accounts of the Port Authority shall be conclusive as to the amounts available for any charge mentioned in subsection (1).

Investment of moneys.

16. Any funds of a Port Authority not immediately required to be expended in the meeting of any of the obligations, or the discharge of any of the functions of the Port Authority may be invested from time to time in and upon such investments and securities as are allowed by law in the Federation or in Sarawak for the investement of trust funds, or in such other investents or securities as may from time to time be approved by the State Financial Secretary or may be placed on deposit in a bank or banks approved by the Port Authority. [G.N.S. 175/63.]

Power to issue debenture stock for certain purposes.

17. A Port Authority may, with the prior approval of the Majlis Mesyuarat Kerajaan Negeri as to the issue and the terms of such issue, borrow money or raise capital by the issue of debenture stock for all or any of the following purposes – [Ord. No. 1/68.]

(a) the provision of working capital;

(b) the fulfillment of the functions of the Port Authority;

(c) the redemption of any stock which the Authority is required or entitled to redeem;

(d) expenditure properly chargeable to capital account.

[Ord. No. 1/68.]

18.-(1) Subject to the provisions of this section and to the approval of the Majlis Mesyuarat Kerajaan Negeri, which approval may be general or special, a Port Authority may borrow, by way of loan, overdraft or otherwise, such sums of money as it may require for meeting its obligations and discharging its functions. Power to borrow money otherwise than by debentures.

(2) Any moneys borrowed in pursuance of subsection (1) shall be borrowed upon such terms and conditions as may be approved by the Majlis Mesyuarat Kerajaan Negeri.

19.-(1) Subject to the provisions of this section, a Port Authority shall – Accounts.

(a) cause to be kept proper accounts and other records in relation thereto; and

[Ord. No. 1/68.]

(b) prepare an annual statement of accounts in such form, and containing such particulars and compiled in such manner, as the Minister may, having regard to the provisions of subsection (2), direct.

(2) The annual statement of accounts of a Port Authority shall present a true and fair view of the financial position of the Port Authority and of the results, for the year to which it relates, of its operations.

[Ord. No. 1/68.]

(3) The accounts of a Port Authority shall be audited by an auditor or auditors whom the Port Authority shall appoint annually with the approval of the Minister, and the auditor or auditors so appointed shall make a report on the accounts so audited.

[Ord. Cap. A70/99.]
Cap. 15.

(4) The Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995, shall apply to a Port Authority.

[Ord. No. 1/68.]

20.-(1) Every Port Authority shall, not less than thirty days before the 31st day of December, in each year, submit for the approval of the Majlis Mesyuarat Kerajaan Negeri estimates of revenue and expenditure of the Port Authority for the ensuing year; and, where during any financial year additional provision is required a supplementary estimate thereof shall be submitted for the approval of the Majlis Mesyuarat Kerajaan Negeri. The Minister to approve estimates.

(2) No Port Authority shall incur expenditure which has not been included in estimates approved by the Majlis Mesyuarat Kerajaan Negeri unless—

(a) such expenditure is urgently required to ensure the continued efficient functioning of that Port Authority; and

(b) such expenditure is not more than fifty thousand ringgit and does not increase the approved expenditure within any one financial year. [Ord. Cap. A70/99.]

Annual report and periodical reports.

21.—(1) (a) After the end of each financial year, a Port Authority shall submit, to the Minister within such time as stipulated in the Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995— [Ord. Cap. A70/99.]

(i) the annual statement of accounts of the Port authority prepared and audited pursuant to section 19 (2) and (3); and

(ii) a report dealing with and touching upon the activities, during that financial year, of the Port Authority.

(b) The Minister shall, upon receipt of the said account and report, forward the same to the Majlis Mesyuarat Kerajaan Negeri for its consideration and thereafter, the aforesaid account and report shall be laid on the table of the Dewan Undangan Negeri.

(2) Every Port authority shall supply the Minister with such financial and statistical returns as he may from time to time require. [Ord. No. 1/68.]

Financial Year.

22. The financial year of every Port Authority shall be the period commencing on the 1st day of January and ending on the 31st day of December, in each year.

PART V

LEVYING OF DUES, RATES AND TARIFFS, ETC. PORT DUES

Levying of port dues.

23.—(1) Subject to the provisions of this Part, a Port Authority may levy port dues as may be prescribed by regulations made under section 64 in respect of —

(a) passengers, cargo and other goods carried in the vessel entering or leaving its port; or [Ord. Cap. A6/93.]

(b) any cargo or goods transported through, into or out of its port from any place or vessel to any other place or vessel by any means or mode including the conveyance of petroleum or gas by pipelines, both onshore or offshore, on land or underground, in water or underwater.

[Ord. No. 6/88.]

(2) All dues so received by the Port Authority under subsection (1) shall be accounted for the Government and form part of the State Consolidated Fund.

24.-(1) The master of a ship arriving in a port shall, if so required by the Port Authority, produce to it— Master to supply information on arrival of vessel.

(a) the ship register and papers;

(b) particulars of all inward passengers and a list of the names of consignees of cargo intended to be discharged;

(c) a copy of the manifest giving full details (including the weight, measurement, quantity and packing) of all cargo to be landed at the the port; and

(d) such other information in relation to the vessel and her passengers, cargo and other goods as may be prescribed by by-laws made hereunder.

(2) The particulars specified in subsection (1) shall, if required, be produced or supplied in such form and within such time as may be prescribed by by-laws made hereunder:

25.-(1) On loading cargo and embarking passengers and goods outwards from a port, the master of a vessel shall, if so required by the Port Authority, produce to it— Master to supply information on proceeding on outwards.

(a) a list of all outward passengers including transit passengers;

(b) the best account in writing, in his power, of the description, quantities and weighs of all cargo shipped on board in that port; and

(c) such other information in relation to the vessel and her passengers, cargo and other goods as may be prescribed by by-laws made hereunder.

(2) The particulars required by subsection (1) shall be delivered to such officers of the Port Authority, and in such form, as may be prescribed by by-laws made hereunder.

Time when port dues, payable.

26.—(1) Port dues payable in respect of passengers, cargo and other goods inwards shall be paid at the time of the report of a vessel inwards, or at such other time as the Port Authority shall determine.

(2) Port dues payable in respect of passengers, cargo and other goods outwards shall be paid at the time of the report of a vessel outwards, or at such other time as the Port Authority shall determine.

(3) Port dues payable in respect of cargo or goods transported through, into or out of a port under section 23 (1) (b) shall be paid at such time as the Port Authority shall determine. [Ord. Cap. A6/93.]

Liability for payment of port dues.

27. The following person shall be liable for the payment of port dues levied in accordance with section 23— [Ord. Cap. A6/93.]

(a) owner of any vessel; [Ord. Cap. A70/99.]

(b) as to port dues payable in respect of inward passengers, cargo and other goods, all consignors, consignees and agents of the vessel who shall have paid, or made themselves liable to pay, a charge on account of the vessel in the port of its arrival or discharge;

(c) as to port dues payable in respect of outward passengers, cargo and other goods, all consignors, consignees and agents of the vessel who shall have paid, or made themselves liable to pay, a charge on account of the vessel in the port of its departure;

(d) as to port dues payable in respect of cargo or goods transported through, into or out of a port under section 23 (1) (b), the owner of the cargo or goods. [Ord. Cap. A6/93.]

Consignor, consignee and/or agent may retain port dues out of owner's moneys.

28. Where port dues are paid by a person, who is made liable therefor by paragraph (b) or (c) of section 27, that person may retain, out of all moneys in his hands received on account of the vessel or her owner, the amount of the port dues paid by him, together with all reasonable expenses he may have incurred by reason of the payment or the liability to pay.

VESSELS DUES

Levy of vessel's dues.

29. Subject to the provisions of this Part, a Port Authority may levy on a vessel such vessel's due in respect of berthing or mooring at any berth or mooring the property of the Port Authority as may be prescribed by regulations made hereunder and those regulations may prescribe when the dues shall be paid.

30. The following persons shall be liable for the payment of vessel's dues levied on a vessel in accordance with section 29— Liability for payment of vessel's dues.

(a) the ship owner;

(b) all consignors, consignees and agents who shall have paid, or made themselves liable to pay, any dues on account of the vessel in the port of her arrival or discharge.

31. Where a vessel's dues are paid by a person who is made liable therefore by paragraph (b) of section 30, that person may retain, out of all moneys in his hands received on account of the vessel or her owner, the amount of the vessel's dues paid by him together with all reasonable expenses he may have incurred by reason of the payment or the liability to pay. Consignor, consignee or agent may retain vessel's dues out of owner's moneys.

GENERAL

32. Subject to the provisions of this Part, a Port Authority may levy such rates as may be prescribed by regulations made hereunder for the use of works or appliances provided, or services to be performed, by the Port Authority, in respect of vessels or goods, in pursuance of its powers under this Ordinance; and, without prejudice to the generality of the foregoing, a Port Authority may levy rates for the following purposes— Levy of Rates.

(a) the loading, shipping, wharfage, cranage, storage, carriage or demurrage of goods;

(b) the carriage of passengers;

(c) the use, by a person or vessel, of a pier or wharf under the control of the Port Authority;

(d) the use of gear, tackle, instruments, tools or staging supplied by the Port Authority for the purposes of a vessel using a pier or wharf under the control of the Port Authority;

(e) the use of a vessel or engine belonging to, or maintained by, the Port Authority for the extinction of fires;

(f) the towing of, and rendering assistance to, a vessel being within or without a port and whether entering or leaving a pier or wharf under the control of the Port Authority;

(g) the supply, by the Port Authority, of water;

(h) the supply, by the Port Authority, of fuel; and

(i) the use or hire of any facilities, including warehouses, godowns, transit sheds, container yards and parking spaces or bays for vehicles. [Ord. Cap. A70/99.]

Liability for payment of rates.

33. Save as otherwise provided by regulations made hereunder, the persons liable for the payment of port dues shall be liable for the payment of rates.

Port Authority's lien for rates.

34.—(1) For the amount for all rates levied under this Ordinance in respect of goods, a Port Authority shall have a lien on the goods and may, until the rates are fully paid, seize and detain the goods.

(2) Rates in respect of goods to be landed shall become payable immediately on the landing of the goods.

(3) Rates in respect of goods to be removed from the premises of a Port Authority, or to be shipped, shall become payable immediately before the goods are removed or shipped.

(4) Except as to claims for money due to the Government, the lien for rates provided for in this section shall have priority over all other liens and claims. [Ord. Cap. A70/99.]

(5) Any goods seized under subsection (1) may be sold by public auction or tender or in such other manner as the Port Authority shall direct in writing. The proceeds of sale shall, subject to subsection (4), be applied towards payment of rates owing to the Port Authority and the balance, if any, be retained by the Port Authority pending claim therefore by the lawful owner of the goods or such other persons having rights to the goods sold, or shall be dealt with in such manner as the General Manager shall direct in writing. [Ord. Cap. A70/99.]

Power of entry to ascertain dues and rates.

35. In order to ascertain the dues and rates payable in respect of a vessel, any duly authorized representative of Port Authority may, either alone or with other person, enter into that vessel within the port.

36. Where a difference arises, between a Port Authority and the master of a vessel or the owner of the goods, concerning the weight or quantities of the goods in respect of which port dues or rates are payable, the port Authority—

Weighing and measuring of goods in event of dispute.

(a) shall cause those goods to be weighed and measured; and

(b) may, if necessary, detain the vessel containing the goods until they are weighed or measured.

37.—(1) If the weight or quantity of the goods is, after weighing and measuring in accordance with section 36, found to be more than that shown by the particulars provided in accordance with section 24 or 25, or with the Merchant Shipping (Ports & Rivers) Regulations, 1961, the expenses of the weighing or measuring shall be paid to the Port Authority by the master of the vessel and shall be recoverable in the same manner as dues leviable under this Part.

Payment of expenses of weighing and measuring.

(2) If the weight or quantity of the goods is found to be the same as, or less than, that shown by the particulars so provided, the Port Authority shall pay the expenses of weighing or measuring and of any unreasonable delay of the vessel.

38.—(1) Where the master of a vessel, in respect of which dues or rates are payable to a Port Authority, refuses or neglects to pay, on demand, any dues or rates, the Port Authority may arrest or detain the vessel and the tackle, apparel or furniture thereof, and may detain it until the amount so payable is paid.

Power to detain for non-payment of dues and rates.

(2) If, for a period of fourteen days following the arrest or detrainment, any of—

(a) those dues or rates; or

(b) the expenses or arrest or detrainment of the detention of the vessel, tackle, apparel or furniture,

remain unpaid the Port Authority may cause the vessel or other things detained or arrested to be sold.

(3) The Port Authority may retain the amount of the dues, rates and expenses (including expenses of sale) which is owing, and shall deliver, on demand, the balance to the master of the vessel.

Customs clearance to be withheld until dues or rates are paid.

39.—(1) If a Port Authority gives to the proper officer of customs a notice stating that an amount therein specified, is due in respect of dues or rates, leviable under this Ordinance, against a vessel, or the master or owner of a vessel the proper officer of customs shall not give clearance for departure from the port of that vessel (not being a vessel exempted under Customs Act, 1967 from requiring a clearance) until—

F. Act 62/67
[Amd. Reprint
Commissioner.]

(a) the amount of dues or rates has been paid; or

(b) security for the payment of the dues or rates has been given to the satisfaction of the Authority.

(2) In this section, “proper officer of customs” means the officer of customs acting in the performance of duties under the Customs Act, 1967 as to the grant of a clearance in respect of the departure of a vessel from a port.

Port Authority may recover dues, rates, etc. by suit.

40. Notwithstanding the provisions of this Part or of Part VIII of the Merchant Shipping (Port and Rivers) Regulation, 1961, a Port authority may recover, by civil suit, any dues, rates, expenses, costs or, in the case of sale, where the proceeds of sale are insufficient, the balance thereof.

Port Authorities to keep records of dues and rates allow inspection thereof.

41. Each Port Authority shall—

(a) keep, at its office, a book specifying the dues and rates for the time being in force; and

(b) allow any person, at any reasonable time to inspect the book free of charge.

Application of Part.

42. The provisions of this Part shall not apply to any vessel (other than a vessel which is habitually used for carrying passengers or goods for hire or reward) belonging to the Government of the Federation or of any State or to the government of any country but shall apply to goods the property of, or imported or exported by or on behalf of, the Government of the Federation of any State.

[Swk. L.N.
68/64.]

PART VI

LIABILITY OF PORT AUTHORITIES

Port Authorities common carriers by land and water.

43. A Port Authority in its capacity as a carrier of goods shall be deemed to be a common carrier of goods by land and water.

[Ord. 10/65.]

44. The liability of a Port Authority in its capacity as a carrier of passengers, as a wharffinger and as a warehouseman shall be subject to such conditions of business as may be prescribed by by-laws made under section 64.

Limitation of liability of Port Authorities in their capacity as carriers of passengers, wharfingers and warehousemen.

45.-(1) A Port Authority shall not where, without actual fault or privity, any loss or damage (not being a loss or damage in its capacity as a ship owner, common carrier, wharfinger or warehouseman) is caused to any vessel or vessels, or to any goods, merchandise or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount of one hundred thousand ringgit.

Limitation of liability of Port Authorities in other cases.

(2) The limits set by this section to the liabilities mentioned therein shall apply to the aggregate of such liabilities which are incurred on any distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(3) The application of this section to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

46.-(1) Where any liability is alleged to have been incurred by a Port Authority in respect of any occurrence in respect of which its liability is limited under Section 45, and several claims are made or apprehended in respect of that liability, then the Port Authority may apply to the High Court, and that Court may determine the amount of the Port Authority's liability, and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such directions as to making persons interested parties to the proceedings, and as to the exclusions of any claimants who do not come in within a certain time, and as to requiring security from the Port Authority, and as to payment of any costs as the Court thinks just.

Power of Court to consolidate claims against owners, etc.

(2) In making any distribution in accordance with this section, the Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court in any country outside Sarawak.

(3) No lien or other right in respect of any ship or property shall affect the proportions in which, under this section, any amount is distributed amongst several claimants.

Savings. **47.** Nothing in this Ordinance or any subsidiary legislation made hereunder shall—

(a) affect any liability that may be imposed on a Port Authority by virtue of the Workmen's Compensation Ordinance; or

(b) impose any liability in respect of any loss or damage on a Port Authority in any case where no such liability would have existed if this Ordinance had not been enacted.

PART VII

TRAFFIC MANAGERS

Power to appoint traffic managers. **48.** A Port Authority may appoint a traffic manager for its port; and, subject to section 49 and to any directions issued by the Port Authority, a traffic manager may exercise such of the powers of the General Manager as may be delegated to him by the General Manager.

Power of traffic manager in relation to vessels. **49.** Subject to any directions issued by the Port Authority, a traffic manager may—

(a) direct, within a port, at what berth or mooring under the control of the Port Authority a vessel shall be berthed or moored;

(b) direct the removal of any vessel from any berth or mooring under the control of the Port authority to any other berth or mooring under the control of the Port Authority, or direct the departure of any vessel from any such berth or mooring; and

(c) the time within which any such berthing, mooring, removal or departure shall be effected.

PART VIII

LEGAL PROCEDURE

Service of documents. **50.** Service of any summons, notice or other document required or authorized to be served upon a Port Authority in connection with any action by or against the Port Authority may be effected by delivering it to, or sending it by registered post addressed to, General Manager.

51. In any action against a Port Authority, no execution or attachment or process in the nature thereof shall be issued against it, but any sum of money which may be awarded by any Court against that Port Authority shall be paid by the Port Authority from its funds. Restriction on execution against property of Port Authority.

52. Where his immediate removal from duty might result in danger to life or goods, a person connected with the direct working of a Port Authority shall not, whether in execution of a warrant or otherwise, be removed under arrest on civil process if he is then actually engaged in the performance of his duties, until— Stay of arrest in certain cases.

(a) the head of the department in which that person is employed;
or

(b) the officer in immediate charge of the work in which that person is engaged,

has been given a opportunity of providing a substitute for the performance of the duties.

[Ord. Cap.
A70/99.]
Act 593.

53.—(1) The prosecution of any offence under this Ordinance shall be conducted by the Public Prosecutor or any person duly authorized by him under section 377 (b) of the Criminal Procedure Code. Legal representation.

(2) In any suit, action or proceedings of a civil nature, before any court, tribunal or arbitrator, a Port Authority may be represented by—

(a) the State Attorney-General or any State Legal Officer authorized by him; or

(b) an advocate appointed by the Port Authority; or

(c) any officer or servant of a Port Authority duly authorized in writing by its General Manager.

[Ord. Cap.
A77/2000.]

53A. The General Manager or any other officer authorized in writing by him may compound any offence under this Ordinance or any subsidiary legislation made thereunder which is prescribed to be a compoundable offence, by accepting from the person reasonably suspected of having committed the offence a sum of money not exceeding fifty per centum of the maximum fine prescribed for the offence. Power to compound offences.

General
Penalty.

53b. Any person who commits an offence under this Ordinance [Ord. Cap. A77/2000.] or any subsidiary legislation made thereunder for which no specific penalty is expressly provided shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

PART IX

PROVISIONS RELATING TO STAFF

Employment
of officers,
agents and
servants.

54.—(1) A Port Authority may appoint and employ a General [Ord. 3/72.] Manager, such officers, servants, agents and technical and other advisers as it may consider necessary for the due discharge of its functions under this Ordinance at such remuneration and upon such terms and conditions as it may think fit:

Provided that a Port Authority shall not appoint any person to be a general manager unless and until the approval of the Minister has first been obtained.

[Proviso deleted by Swk. L.N. 68 of 1964 and inserted by Ordinance 3. Of 1972]

(2) A Port Authority may appoint and employ one person to hold one or more offices.

(3) All officers and servants of a Port Authority shall be under the administrative control of the General Manager.

Power to make
Standing
Orders
relating to
staff.

55.—(1) A Port Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, by Standing Orders provided for the conditions of service of officers and servants of the Port Authority. [Swk. Ord. 1/68.]

(2) In particular, but without prejudice to the generality of subsection (1), such Standing Orders may provide for— [Ord. 10/65.]

(a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by, any such officer or servant;

(b) the pensions, superannuation allowances or gratuities of any such officer or servant; and

(c) any appeals by any such officer or servant against his dismissal or against any other disciplinary measure taken against him.

[Ord. Cap.
A70/99.]

55A. All members, officers and servants of a Port Authority while discharging their duties as such shall be deemed to be public servants within the meaning of the Penal Code.

Members and officers of Port Authority deemed to be Public Servants Act 574.

[Ord. Cap.
A70/99.]

55B. The Public Authorities Protection Act 1948 shall apply to any suit, action, or prosecution or other proceedings against any Port Authority or against any member, officer, servant or agent of a Port Authority in respect of any act, neglect or default done or committed.

Public Authorities Protection Act 1948. Act 198.

PART X

PORT SECURITY

[Ord. No.
1/68.]

56. A Port Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, establish a security force for keeping order and security within any premises vested or deemed to be vested in, or in the possession or under the control of, the Port Authority.

Establishment of security forces.

[Ord. Cap.
A77/2000.]

57.—(1) A member of a security force or any other officer duly authorized by the General Manager (in this Part referred to as “an authorized officer”) may arrest without warrant any person whom he reasonably suspects of having committed an offence under this Ordinance or regulations or by-laws made thereunder if—

Power of arrest and search.

(a) he has reasons to believe that the person is about to abscond;

(b) the person suspected of committing an offence, refuses to give his identity or address; or

(c) that person has given an identity or address which he has reason to believe to be false.

(2) A member of a security force or an authorized officer may search or cause to be searched, any person arrested pursuant to this section:

Provided that no female shall be searched except by a female.

(3) Where a person is arrested pursuant to subsection (1) he shall, as soon as reasonably and conveniently possible, be brought to the nearest police station.

Conditions of service of security force.

58. Standing Orders made under section 55 may provide for the recruiting, uniform, discipline, functions and conditions of service (including pay, leave, allowances, pensions and gratuities) of members of a security force. [Ord. 10/65.]

Power of investigation.

58A.-(1) A member of a security force or an authorized officer may investigate any offence committed under this Ordinance or any subsidiary legislation made thereunder and call any person to produce such goods, books, account or other documents or things and to furnish any information as that member of a security force or authorized officer may consider necessary for the purpose. [Ord. Cap. A77/2000.]

(2) A member of a security force or an authorized officer in carrying out in investigation under this section may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(3) The person referred to in subsection (2) shall be bound to answer all questions relating to the case put to him by the member of a security force or the authorized officer:

Provided that the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge, penalty or forfeiture.

(4) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(5) A member of a security force or an authorized officer in examining a person under this section shall first inform the person of the provision of subsections (3) and (4).

(6) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish, and the member of a security force or the authorized officer shall endorse thereon under his hand the fact of the refusal and the reasons for it, if any, as stated by the person examined.

Power to seize, remove and detain goods, etc.

58B.-(1) A member of a security force or an authorized officer exercising the power of investigation under section 58A may seize, remove and detain any goods, document or any other thing which he reasonably believes to be or has been used in the commission of an offence or [Ord. Cap. A77/2000.]

to contain evidence relating to such an offence under this Ordinance or any subsidiary legislation made thereunder:

Provided that a court or the General Manager may release anything so seized under this section upon the furnishing of a bond or other security sufficient to cover the value of the goods, document or any other thing seized, or to produce such goods, document or any other thing in court as and when required.

(2) A member of a security force or an authorized officer seizing, removing or detaining any goods, document or any other thing under this section shall prepare a list thereof and forthwith deliver a copy of the list signed by him to the owner or agent of the goods, document or any other thing, as the case may be.

(3) Any goods, document or any other thing seized or detained under this section may be dealt with or disposed of in accordance with any regulations made under section 64 or in such manner as a court may order.

(4) No claim or action shall lie against the Port Authority or any member of a security force or an authorized officer in respect of the seizure, removal or detention of anything under this section unless it is proved that such seizure, removal or detention was made without reasonable or probable cause.

[Ord. Cap.
A77/2000.]

58c.-(1) Where any goods or any other thing has been seized or detained pursuant to section 58B is of a perishable nature, the General Manager may, by order in writing, direct the goods or such other thing to be sold or to be disposed of in such manner as he deems fit.

Disposal of
perishable
goods or
things.

(2) A proper account of the proceeds of sale shall be kept and held by the General Manager pending the completion of any investigation, prosecution or proceedings in respect of the offence for which the goods or such other thing was seized or detained.

[Ord. Cap.
A77/2000.]

58d. Where it is proved to the satisfaction of a court that any goods or any other thing seized or detained pursuant to section 58B was the subject matter of an offence or used in the commission thereof, the court shall order the goods, document or any other thing or the proceeds of sale thereof to be forfeited to the Port Authority or to be disposed of in such manner as the court may direct.

Disposal of
goods or other
things seized
by court.

Return of goods or other thing seized or detained.

58E. Where any goods, document or any other thing is seized or detained under section 58B and there is no prosecution within a period of ninety days of such seizure or detention, the goods, document or any other thing seized or detained shall be deemed to be forfeited to the Port Authority upon the expiry of that period unless, before the expiry thereof, a written claim is made by the lawful owner thereof or his duly authorized agent to the General Manager for the return of the goods or other thing seized or detained.

[Ord. Cap. A77/2000.]

Identification of officer.

58F. Any member of a security force or any authorized officer when discharging his duties or exercising his powers under this Ordinance or any subsidiary legislation made thereunder shall, on demand, produce to any person against whom he is taking action, such identification or written authority to show that he is a member of a security force or an authorized officer for purposes of this Ordinance or any subsidiary legislation made thereunder.

[Ord. Cap. A77/2000.]

PART XI

OFFENCES

Miscellaneous offences.

59. Person who –

(a) evades or attempts to evade payment of any due, rate or other charge due under this Ordinance or any subsidiary legislation made hereunder; or

(b) in any return, claim or other document whatsoever furnished for the purpose of this Ordinance or of any subsidiary legislation made hereunder, knowingly or recklessly makes any statement which is false in a material particular, or omits to furnish any material particular which he is or may be required to furnish under or by virtue of those provisions;

Shall be guilty of an offence: Penalty, imprisonment for three years and a fine of twenty thousand ringgit.

[Ord. Cap. A70/99.]

Obstruction and failure to comply with directions of Port Authority officer.

60. Any person who obstructs, or fails without reasonable cause to comply with any lawful direction given by, an officer or servant of a Port Authority (including any member of a security force) when acting in the course of his duties as such under this Ordinance or any subsidiary legislation made hereunder shall be guilty of an offence: Penalty, a fine of five hundred ringgit.

61. Any officer or servant of a Port Authority who, while on duty, is unable to perform properly his duties due to the influence of drink or a drug shall be guilty of an offence: Penalty—

Intoxication, etc. of officers and servants of Port Authorities.

(a) in the case of a member of a security force or any officer or servant the improper performance of whose duty would be likely to endanger the safety of any person, imprisonment for one year and a fine of two thousand ringgit; and

(b) in any other case, a fine of one hundred ringgit.

[Ord. Cap. A77/2000.]

61A. Where an offence under this Ordinance or any subsidiary legislation made thereunder has been committed by a company, firm or society or any other body of persons, any person who at the time of the commission of such offence was director, secretary or other similar officer of the company, or a partner or manager of the firm, or an office-bearer of the society or body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves to the satisfaction of a court that the offence was committed without his consent or connivance, and that he has exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances of the case.

Offences by body corporate, etc.

PART XII

MISCELLANEOUS

[Ord. No. 1/68.]

62. Notwithstanding anything contained in this or any other written law, the Minister may, by Order, direct that—

Special powers of Minister in connection with trade in ports.

[Ord. Cap. A6/93.]

(a) all goods or any specified class of goods imported or exported by sea shall only be discharged or loaded at a specified port and at such places within such port as may be specified in the Order;

(b) all passengers or any specified class of passengers travelling by sea to or from any specified place outside Sarawak shall only be embarked or disembarked at a specified port and at such place within such port as may be specified in the Order; and

(c) all cargo or goods or any specified class of cargo or goods transported through, into or out of a port under section 23 (1) (b) and in particular the conveyance of petroleum or gas by pipelines shall only be transported through, into or out of a port or loaded, unloaded or discharged at a specified port or at such places within the port as may be approved by the Minister, subject to such terms and conditions as the Minister may deem fit to impose. [Ord. Cap. A6/93.]

Resolving of conflicts between Ordinance, etc. and Merchant Shipping Legislation in matters relating to marine safety and conservancy.

63. In the case of any conflict between the provisions of this Ordinance or any subsidiary legislation made hereunder and any enactment relating to merchant shipping concerning marine safety or conservancy within any port, the provisions of the enactment relating to merchant shipping shall prevail.

Subsidiary legislation.

64.—(1) A Port Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, make regulations for carrying this Ordinance into effect and, without prejudice to the generality of the foregoing, such regulations may— [Ord. No. 1/68.]

(a) provide for the levying of dues and rates, and the mode and procedure for the enforcement of payment thereof; [Ord. Cap. A70/99.]

(b) provide different dues or rates for different classes of vessels, passengers, cargo or goods;

(c) provide that a Port Authority may enter into a special agreement in respect of any matter coming under the provision of section 32;

(d) provide for the exemption of any vessel, passenger, cargo or goods or any class of vessel, passengers, cargo or goods, from all or any dues or rates, or for the remission of any such dues or rates or of any part thereof; [Ord. 10/65.]

(e) prohibit, control or regulate the laying, placing, erection and maintenance of pipelines, cables or other structures within the limits of the port; [Ord. Cap. A6/93.]

(f) provide for the levying of dues on all petroleum or gas conveyed or transported through, into or out of the port by means of pipelines; [Ord. Cap. A6/93.]

(g) provide for the levying of port dues on cargo or goods transported through, into or out of the port; [Ord. Cap. A6/93.]

[Ord. Cap.
A6/93.]

(h) provide for the levying of dues on pipelines, cables or any floating or other structures laid, placed, erected or maintained on land or underground, in or under the waters;

[Ord. Cap.
A70/99.]

(i) prescribe the offences which may be compounded and the procedures and conditions for compounding of such offences;

[Ord. Cap.
A70/99.]

(j) provide for the use of pilot of pilotage services, to be approved by a Port Authority, by vessels within a port limit;

[Ord. Cap.
A77/2000.]

(k) the procedure for seizure, forfeiture or disposal of goods and other things seized or detained under this Ordinance;

[Ord. Cap.
A77/2000.]

(l) provide for all matters or things which this Ordinance are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Ordinance.

[Ord. Cap.
A70/99.]

(1A) The Majlis Mesyuarat Kerajaan Negeri may make regulations on the matters stipulated in subsection (1) in relation to or for the purposes of an approved port operator and may confer such powers and authority on an approved port operator to enforce compliance with such regulations.

[Ord. Cap.
A70/99.]

(2) All regulations made under subsection (1) and subsection (1A) shall be laid upon the table of the Majlis Mesyuarat Kerajaan Negeri at the next meeting thereof following the publication of such regulations in the *Gazette*, and may be amended by resolution of the Council.

(3) A Port Authority may make by-laws for—

(a) the proper conduct of the business of a Port Authority including the preservation of its property and the safety of operations within its premises;

[Ord. 10/65.]

(b) prescribing the conditions of business to which the liability of a Port Authority shall be subject in its capacity as a carrier of passengers, as a wharfinger and as a warehouseman;

[Ord. 10/65.]

(c) specifying the officer to whom, the place at which and the time within which—

(i) returns of information required by a Authority shall be delivered; and

(ii) dues or rates shall be paid;

(d) prohibiting, controlling and regulating the entry of persons [Ord. 10/65.] and goods to any land or premises under the control of a Port Authority;

(e) such particulars relating to ships entering or leaving a [Ord. 10/65.] port as may be required for the purposes of Part V, and the form of such particulars and time in which they shall be supplied.

PART XIII

CONSULTATION AND CO-ORDINATION

State Ports
Consultative
Council.

65.—(1) The Minister may by notification in the *Gazette* constitute [Ord. Cap. A70/99.] a State Ports Consultative Council consisting of the following members:

(a) the Permanent Secretary to the Ministry having responsibilities for State Ports, as Chairman;

(b) the General Managers of all Port Authorities established under section 3;

(c) the chief executive officers of all approved port operators;

(d) the Controller of Rivers;

(e) the Director of Marine; and

(f) not less than three and not more than five other persons to be appointed by the Minister, to represent port users and organizations or institutions in the State established with the objectives to promote trade, commerce and industry.

(2) Persons appointed by the minister under subsection (1) (f) shall be for a period of not exceeding three years, and may be removed or replaced by the Minister at his discretion, but shall be eligible for re-appointment.

(3) The Council shall have the following functions:

(a) to coordinate the functions and activities of Ports specified in the First Schedule;

(b) to recommend to the Minister measures to improve the efficiency and operations of ports and the services and facilities provided by the Port Authorities or approved port operators;

(c) to make proposals to the Government on the future development of ports, including riverine ports;

(d) to study and make recommendation on dues, rates and other charges that may be levied under this Ordinance, and the possible standardization of such dues, rates and charges;

(e) to study measures to enhance the usage of facilities and services of ports, and to improve the standard and quality of services or facilities provided by Port Authorities or approved port operators;

(f) to enhance cooperation and understanding amongst Port Authorities and between Port Authorities and other related agencies in the State;

(g) to make recommendations to the Minister, for improvement in navigation and marine safety in waters within port limits; and

(h) to undertake such duties or functions as the Minister, in consultation with the Majlis Mesyuarat Kerajaan Negeri, may direct.

(4) All meetings of the Council shall be presided over by the Chairman or in his absence, by any other member of the Council elected by the majority of the members.

(5) Three members of the Council including at least a member referred to in subsection (1) (a), (b), (d) or (e) shall constitute a quorum for any of its meetings.

(6) (a) The Council may appoint a Secretary who shall keep records of all its proceedings.

(b) The Chairman shall transmit a copy of the records of the proceedings of the Council with all recommendations and proposals of the Council, to the Minister, after the conclusion of each meeting.

(c) The Secretary shall not be a member of the Council and shall not be entitled to vote on any matters under its consideration.

(7) (a) All members of the Council and its Secretary shall be paid such allowances and remuneration as may be approved by the Majlis Mesyuarat Kerajaan Negeri.

(b) All sums payable pursuant to paragraph (a) shall be paid out of the State Consolidated Fund.

FIRST SCHEDULE

[(Section 3 (1))]

SCHEDULED PORTS

[Swk. L.N.
133/70.]

1. Kuching
2. Rajang

SECOND SCHEDULE

[(Section 9 (2))]

POWERS OF PORT AUTHORITIES

1. To berth, tow, moor, move or dry dock any vessel within the port.
2. To load or unload any goods and to embark or disembark any passengers in or from any vessel.
3. To provide lighterage and to sort, weigh, warehouse or handle any goods within the port.
4. To acquire, construct, manufacture, maintain or repair any vessel or other thing required for the purposes of the Port Authority.
5. To carry on the business of carrier of passengers or goods by land or water, and of wharfinger, warehouseman or lighterman.
6. To provide and use vessels and appliances for towage or the protection of life or property, or for the prevention of fire.
7. To determine and impose charges for services performed by the Port Authority and for the grant to any person of a permit in connection therewith.
8. To acquire any undertaking affording or intending to afford facilities, in the port, for the loading and unloading or warehousing of goods.
9. To supply water, fuel, electricity or gas to vessels within its port limit.
10. To insure goods in the custody of the Port Authority.

[Ord. Cap.
A70/99.]

11. To control the erection and use of landing stages on any wharf.
12. Subject to subsection (6) of section 9, to sell, let or otherwise dispose of any of the immovable or movable property of the Port Authority.
13. To enter into agreements with any person—
 - (a) for the supply, construction, manufacture, maintenance or repair by that person of property, immovable or movable, necessary or desirable for the purposes of the Port Authority; or
 - (b) for the operation of port services, facilities or activities, or the provision of such port operating equipment, as may be operated or provided by the Port Authority.
14. To appoint and regulate weighers and meters of goods in the port.
15. To reclaim, excavate, enclose or raise any part of any land vested or deemed to be vested in the Port Authority.
16. To do anything for the purpose of—
 - (a) improving the skill of persons employed by the Port Authority;
 - (b) improving the efficiency of the equipment of the Port Authority;
 - (c) improving the manner in which that equipment is operated; or
 - (d) providing for training and research in connection with the operations of the Port Authority.
17. To provide houses, hostels and other like accommodation for persons employed by the Port Authority.
18. To make and guarantee loans to a person employed by the Port Authority for the purpose—
 - (a) of building a house;
 - (b) of purchasing or leasing a plot of land on which to build a house;

(c) of purchasing or leasing for his residential use, or that of his family, any premises; or

(d) for such other purposes as the Port Authority may approve.

- [Ord. Cap. A70/99.] 19. To improve the welfare of, and to build or provide such recreational facilities or amenities for, persons under the employment of the Port Authority;
- [Ord. No. 1/68.] 20. To engage in such other activities, whether similar to those specified in this Schedule or not, as may be sanctioned by the Minister.
- [Ord. Cap. A70/99.] 21. Subject to the approval of the Minister, to incorporate or form companies or to acquire, subscribe and pay for shares in companies to enable the Port Authority to better perform its functions and enhance the standard or quality of its services and facilities.
- [Ord. Cap. A70/99.] 22. To own, operate and maintain any vessel or to hire or enter into contract for the hire of pilots or for the purpose of providing services which the Port Authority is empowered or required to provide or to ensure the navigational and marine safety of vessels or shipping within its port limit.
- [Ord. Cap. A70/99.] 23. Subject to approval of the Majlis Mesyuarat Kerajaan Negeri and the provisions of Part III, to appoint an approved port operator and to levy such fees or charges on any approved port operator for the use, hire or lease of any port facilities or equipment for the business of the approved port operator.