



LAWS OF MALAYSIA

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Act 140

PENANG PORT COMMISSION ACT 1955

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PENANG PORT COMMISSION ACT 1955

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LAWS OF MALAYSIA

Act 140

PENANG PORT COMMISSION ACT 1955

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LAWS OF MALAYSIA**Act 140****PENANG PORT COMMISSION ACT 1955**

An Act relating to the Port Commission for the Port of Penang, and for purposes connected therewith.

[1 January 1956]

PART I**PRELIMINARY****Short title**

1. This Act may be cited as the Penang Port Commission Act 1955.

Interpretation

2. In this Act, unless the context otherwise requires—

“appointed day” means the day appointed for the coming into force of this Act;

“Chairman” means the Chairman of the Commission appointed under paragraph 5(1)(a);

“Commission” means the Penang Port Commission established and incorporated under this Act;

“Commission pilot” means a pilot employed by the Commission pursuant to section 70c;

“Consultative Committee” means the Port Consultative Committee established under section 13A;

“dock” includes basins, locks, cuts, entrances, graving-docks, keel-blocks, inclined-planes, slipways, gridirons, quays, warehouses and other works and things appertaining to any dock;

“General Manager” means the General Manager of the undertaking of the Commission appointed under section 17;

“goods” includes livestock, minerals and wares and merchandise of every description;

“Groups A and B officers” include the category of officers as recommended in the Report of the Royal Commission on the Remunerations and Conditions of Service in Local Authorities and Statutory Authorities;

“land” includes the bed of the sea below high-water mark;

“licensed operator” means a licensed operator licensed under Part III of the Ports (Privatisation) Act 1990 [*Act 422*];

“licensed warehouse” has the meaning assigned by subsection 2(1) of the Customs Act 1967 [*Act 235*];

“master” includes every person, except a pilot, having for the time being the command or charge of any vessel;

“owner” when used in relation to goods includes any consignor, consignee, shipper or agent for the sale, custody, shipping or landing of such goods; and when used in relation to any vessel includes any part-owner, charterer, consignee or mortgagee in possession thereof;

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

“Pilotage Committee” means the Pilotage Committee appointed under section 70D;

“pilotage district” means any area in the port or the approaches to the port declared under section 70A to be a pilotage district;

“port” means the Port of Penang within the limits declared under section 6 of the Merchant Shipping Ordinance 1952 [*Ord. 70 of 1952*];

“Ports Ordinance” means the Ports Ordinance (Cap. 149) of the Straits Settlements;

“Prai Wharf undertaking” means that part of the undertaking of the Malayan Railway Administration carried on immediately before the appointed day by the Ports Department of the said Administration at Prai Wharf and more particularly within the area shown edged in grey on Miscellaneous Plan No. 85 deposited in the office of the Director of Survey, Penang;

“rates” includes any toll, due, rent, rate or charge leviable under this Act;

“State” means the State of Penang;

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

“vehicle” includes any carriage travelling on its own wheels or runners and used or intended to be used for the conveyance or carriage of persons, animals or goods;

“vessel” includes any ship or boat or by other description of vessel used in navigation;

“wharf” includes any wall and building adjoining the foreshore, sea-bed or a river-bed;

“wharf superintendent” means the officer in charge of the management of the wharves and docks of the Commission.

PART II

PENANG PORT COMMISSION

Establishment, Incorporation and Constitution of the Commission

Establishment and incorporation of Penang Port Commission

3. There shall be established for the purposes of this Act a body, to be known as the Penang Port Commission, which shall be a body corporate with perpetual succession, and may sue and be sued in its said name.

Common seal

4. The Commission shall have a common seal, and the seal may from time to time be broken, changed, and made anew as to the Commission seems fit; and all deeds, documents and other instruments requiring the seal of the Commission shall be sealed with the seal of the Commission in the presence of the Chairman, and of the Secretary to the Commission or some other person authorized by the Commission to act in that behalf who shall sign every such deed, document or other instrument to which the seal is affixed, and such signing shall be sufficient evidence that the seal was duly and properly affixed and that the same is the lawful seal of the Commission.

Constitution of the Commission

5. (1) The Commission shall consist of—

- (a) a Chairman, who shall be appointed by and shall hold office during the pleasure of the Yang di-Pertuan Agong;
- (b) the General Manager; and
- (c) not less than five or more than nine members, who shall be appointed by the Minister:

Provided that if the Chairman be also the General Manager—

- (i) the maximum number of members under paragraph (c) shall be ten; and
- (ii) the Chairman shall have no vote in his capacity as General Manager.

(2) Subject to this Act the member of the Commission other than the Chairman and the General Manager shall hold office for such term and subject to such conditions as the Minister shall determine.

(3) The Minister may appoint any person to be a temporary member of the Commission during the temporary incapacity through illness or during the temporary absence from Malaysia of any member.

(4) The Yang di-Pertuan Agong may appoint a person whether a member of the Commission or not to be temporary Chairman of the Commission, during the temporary incapacity through illness or during the temporary absence from Malaysia of the Chairman, and the person so appointed may perform all the duties and exercise all the powers of the Chairman.

(5) If at any time it appears to the Yang di-Pertuan Agong that removal from office of all or any of the members of the Commission is necessary in the interests of the effective and economical performance of the functions of the Commission under this Act, the Yang di-Pertuan Agong may remove from office, without assigning any reason therefor, all or so many of the members of the Commission as the Yang di-Pertuan Agong considers necessary in the interests aforesaid.

(6) The Minister may, at any time, accept the resignation of any member of the Commission.

(7) The Chairman may, by instrument in writing, authorize any person to exercise any power or perform any function conferred upon the Chairman by or under this Act.

Disqualification of members

6. Any member of the Commission, other than the Chairman or the General Manager, who at any time after his appointment as a member shall—

(a) be adjudged bankrupt; or

(b) be absent from Malaysia for a longer period than three months without leave of absence granted by the Minister,

shall thereupon cease to a member of the Commission.

Members eligible for reappointment

7. Any person ceasing to be a member of the Commission shall, unless disqualified by being adjudged bankrupt, be eligible for reappointment.

Salaries and fees payable to members of Commission

8. There shall be paid to members of the Commission, out of the funds of the Commission, such salaries, fees and allowances for expenses as the Minister may from time to time determine.

Committees

9. (1) The Commission may delegate any of its powers to the General Manager or to committees consisting of such members as it shall think fit.

(2) Any committee so formed shall conform to any instructions that are from time to time given to it by the Commission, and the Commission may at any time discontinue or alter the constitution of any committee so formed.

Vacancies and irregularities in appointments

10. (1) The Commission may act notwithstanding any vacancy in its membership.

(2) No act of the Commission, or of any committee shall be invalid by reason only of some defect in the appointment of any member of the Commission or of the committee, or on the ground that any person acting as a member thereof has ceased to be a member of the Commission or of the committee.

Members not to vote on matters in which they are interested

11. (1) A member shall not at any meeting of the Commission, or of a committee thereof, take part in any discussion of, or vote in respect of any contract or arrangement proposed to be entered into by the Commission in which he or any company of which he is a director or manager or any firm in which he is a partner has directly or indirectly any interest.

(2) A member shall not be deemed to have a share or interest in any such contract or arrangement by reason only of his being a shareholder in a company with which it is proposed that the Commission should enter into a contract or arrangement unless he has a controlling interest in the company.

Quorum and proceedings of Commission

12. The quorum at all meetings of the Commission shall be five, and subject as aforesaid the Commission may make standing orders regulating its own procedure generally, and the procedure of any committee formed in accordance with section 9 and, in particular, regarding the holding of meetings, the notice to be given of meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of minutes, and the opening, keeping, closing and audit of accounts.

Powers of Minister in relation to Commission

13. (1) The Minister may, after consultation with the Commission, give to the Commission directions of a general character and not inconsistent with this Act as to the exercise and performance of its functions in relation to matters which appear to him to affect the interests of Malaysia and the Commission shall give effect to all such directions.

(2) In framing programmes of reorganization or development involving substantial capital outlay the Commission shall act on lines settled from time to time with the approval of the Minister.

(3) The Commission shall furnish the Minister with such returns, accounts and other information with respect to its property and activities as he may from time to time require.

(4) Without prejudice to subsection (3), the Commission shall, as soon as possible after the end of each financial year of the Commission, make to the Minister a report on the exercise and performance of its functions during that year and on its policy and programme, and the Minister shall lay a copy of the report before the Dewan Rakyat.

Port Consultative Committee

13A. (1) The Minister shall appoint a Port Consultative Committee which shall consist of—

(a) the Chairman; and

(b) such members as may from time to time be appointed by the Minister.

(2) Subject to this Act the members of the Consultative Committee other than the Chairman shall hold office for such term and subject to such conditions as the Minister may determine.

(3) In appointing the members of the Consultative Committee, the Minister shall have regard to the due representation thereon of the users of the port and of persons providing port services.

(4) The Commission may consult the Consultative Committee upon any matter concerning the port and shall consult the Consultative Committee upon the following matters:

- (a) any substantial alteration in the scales of rates framed by the Commission;
- (b) any substantial change in the organization of the Commission; and
- (c) any major scheme relating to the expansion or development of the port.

(5) The Minister may require the Commission to consult the Consultative Committee upon any matter.

(6) The Chairman shall cause a copy of the minutes of meetings of the Consultative Committee to be transmitted to the Minister.

(7) The Minister may appoint any person to be a temporary member of the Consultative Committee during the temporary incapacity through illness or during the temporary absence from Malaysia of any member.

(8) If at any time it appears to the Minister that removal from office of all or any of the members of the Consultative Committee is necessary he may remove from office, without assigning any reason therefor, all or so many of the members of the Consultative Committee as the Minister considers necessary.

(9) The Minister may at any time accept the resignation of any member of the Consultative Committee.

Officers and Servants

Appointment of officers and servants

14. The Commission may from time to time appoint and employ, at such remuneration and on such terms and conditions as it may think fit, such officers and servants as may be necessary, in the opinion of the Commission, for the purposes of this Act:

Provided that the appointment of a person to be the General Manager or Assistant General Manager shall not be made without the approval of the Minister.

Establishment of a port security force

14A. (1) The Commission may, with the approval of the Minister, establish a security force for keeping order and security within the area vested or deemed to be vested in, or in the possession or under the control of, the Commission.

(2) The security force shall consist of such persons as may be appointed under section 14 of this Act.

(3) Notwithstanding any written law to the contrary, a member of the security force shall have the power to arrest without warrant any person found without lawful excuse within the area vested in, or in possession or under the control of, the Commission.

(4) Every person arrested pursuant to subsection (3) shall be taken to the nearest police station and produced before the Magistrate within twenty-four hours and shall thereafter be dealt with as provided by the Criminal Procedure Code [*Act 593*].

(5) Any regulations made under section 15 shall unless expressly excluded therein apply to members of the security force established under this section.

Commission to frame regulations governing conditions of service

15. (1) The Commission shall frame regulations governing the conditions of service of its officers and servants.

(2) Without prejudice to the generality of subsection (1) the regulations may provide for—

- (a) (*Deleted by Ord. 17 of 1957*);
- (b) regulating the grant of leave to the Commission's officers and servants;
- (c) authorizing the payment of allowances to the officers and servants while absent on leave;
- (d) determining the remuneration to be paid to the persons appointed to act for any such officers or servants during their absence on leave;
- (e) regulating the period of service of all such officers and servants; and
- (f) determining the conditions under which gratuities or compassionate allowances may be paid to the officers and servants injured or to the surviving relatives of any of such officers or servants, killed in the execution of their duty.

(3) The regulations made under this section shall not come into operation until they have been submitted to and approved by the Minister and been published in the *Gazette*.

Provident fund, pensions and superannuation schemes

16. (1) With the approval of the Minister the Commission may—

- (a) establish, maintain, administer or continue to maintain and administer and subsequently wind up a provident fund for the benefit of its officers and servants or any section of its officers and servants and make regulations in respect thereof;
- (b) enter into arrangements or agreements with any port authority established and incorporated in Singapore in respect of the Port of Singapore for the establishment, maintenance and administration and subsequent winding up of a joint provident fund for the benefit of the said officers and servants and of the officers and servants or a section of the officers and servants of the Singapore port authority and may subject to any such arrangement or agreement, make regulations in respect thereof;

- (c) establish, maintain and administer a pension scheme for the provision of payments of pensions, gratuities or other allowances on superannuation, resignation, retirement or discharge of officers and servants of the Commission or any section of those officers and servants and for the establishment and maintenance of a pension fund and may make regulations in respect thereof;
- (d) establish and administer a superannuation scheme for the granting of such gratuities and allowances on death, superannuation, resignation, retirement or discharge of subordinate officers and servants of the Commission as may be deemed expedient and for the granting of such gratuities and allowances as may be deemed expedient to any one or more of the surviving dependants of any person who having been employed as a subordinate officer or servant of the Commission dies after having been superannuated or discharged or after having resigned or retired; and may make regulations in respect thereof; and
- (e) establish, maintain and administer a scheme to provide for retirement of and the payment of compensation for loss of career, pensions, gratuities and other like allowances to officers and servants of the Commission whose services are terminated before the attainment by the officers and servants of the age at which they would normally have retired from the service of the Commission; and may make regulations in respect thereof, which regulations may be in addition to or have reference to any other fund or scheme established under this section or continued by virtue of section 107.

(2) No gratuity, allowance or other payment payable out of any such provident fund or joint provident fund or under any such pension or superannuation scheme nor any right or interest acquired by any person thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever other than a debt due to the Commission.

(3) Any moneys paid out of any such provident fund or joint provident fund on the death of any person shall be deemed to be impressed with a trust in favour of the persons entitled thereto under the will or intestacy of the deceased person, but shall not be deemed to form part of his estate or be subject to his debts.

(4) Any person may by will or by a memorandum under his hand appoint a trustee or trustees of the moneys payable on his death out of any such provident fund or joint provident fund and may make provision for the appointment of a new trustee or new trustees of those moneys and for the investment thereof.

(5) If at the time of the death of any person or at any time afterwards there is not trustee of those moneys or it is expedient to appoint a new trustee or new trustees, then and in any such case a trustee or trustees, or a new trustee or new trustees may be appointed by the High Court or a Judge thereof.

(6) The receipt of a trustee or trustees duly appointed or in default of any such appointment and of written notice thereof to the Commission the receipt of the legal personal representative of a deceased person shall be a discharge to the Commission for any moneys payable on his or her death out of any such provident fund or joint provident fund.

(7) Any officer or servant of the Commission who is a contributor to any such provident fund or joint provident fund shall, if he is dismissed the service of the Commission for fraud or dishonesty or misconduct, which involves pecuniary loss to the Commission, or retires from or resigns his office with intent to escape discharge or dismissal in consequence of the fraud, dishonesty or misconduct, forfeit, at the absolute discretion of the Commission, all or any part of his contribution to the fund and the interest accrued thereon and the accumulations thereof as the Commission in its discretion thinks fit.

(8) Any employee of the Commission who would otherwise be entitled to any benefit under any such pension scheme shall, if he is dismissed the service of the Commission for fraud or dishonesty or misconduct, which involves pecuniary loss to the Commission, or retires from or resigns his office with intent to escape discharge or dismissal in consequence of the fraud, dishonesty or misconduct forfeit and lose the whole or such part of the benefit as the Commission may in its absolute discretion direct.

(9) With the approval of the Minister the Commission may, in its discretion, in consideration of long or special services of any officer or servant of the Commission whose case does not come within the scope and effect of the Commission's provident fund pension scheme or superannuation scheme regulations, pay to the

officer or servant, on his retirement or discharge, or to any surviving dependants of the officer or servant, upon his death, a gratuity or compassionate allowance on such terms and conditions as the Commission may determine.

(10) Any regulations made under subsection (1)(b) may notwithstanding section 20 of the Interpretation Acts 1948 and 1967 [Act 388], be made to operate retrospectively to any date whether before or after the commencement of this Act.

General Manager

17. The Commission shall appoint a General Manager of the undertaking of the Commission who shall be the principal executive officer of the Commission and who shall, subject to the directions of the Commission, exercise supervision and control over the acts and proceedings of all officers and servants of the Commission in matters of executive administration, and in matters concerning the accounts and records of the Commission and subject to any regulations made under section 15, dispose of all questions relating to the service of those officers and servants and their pay, privileges and allowances.

Appointments, etc., of officers and servants

18. (1) Subject to any regulations made under section 15, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the Commission shall be exercised by the Chairman:

Provided that in the case of Groups A and B officers the powers, with the exception of the power of suspension, shall not be exercised without the previous approval of the Commission.

(2) The power of dispensing with the services of any officer or servant of the Commission for any reason other than the misconduct of the officer or servant, or of permitting any such officer or servant to retire on a gratuity or compassionate allowance shall, subject to the aforesaid provisions, be exercised by the Commission alone.

(3) Any officer or servant aggrieved by any decision of the Chairman in the exercise of his powers under subsection (1) may appeal to the Commission.

Officers to be deemed public servants

19. All members, officers and servants of the Commission shall be deemed to be public servants within the meaning of the Penal Code.

Public authorities protection

20. The Public Authorities Protection Act 1948 [*Act 198*], shall apply to any action, suit, prosecution or proceeding against the Commission, or against any member, officer, servant or agent of the Commission in respect of any act, neglect or default done or committed by him in that capacity.

*Contracts***Power of Commission to enter into contracts for carrying on current business**

21. (1) The Commission may enter into contracts for the execution of any work , or the supply, sale or purchase of material, stores or goods, or the providing or obtaining of labourers, or into any other contracts necessary or proper for carrying on the current business of the Commission.

(2) Any such contract may be entered into by the General Manager on behalf of the Commission; but if it involves an expenditure by the Commission of a sum exceeding two hundred and fifty thousand ringgit the General Manager shall forthwith report to the Commission in writing, that he has entered into it.

(3) If any such contract requires for any reason to be reduced into writing it shall, in order to become binding on the Commission—

- (a) if it does not involve an expenditure by the Commission of a sum exceeding two hundred and fifty thousand ringgit, be signed by the General Manager on behalf of the Commission; and
- (b) if it involves an expenditure by the Commission of a sum exceeding two hundred and fifty thousand ringgit, be sealed with the common seal of the Commission.

Power of Commission to enter into contracts involving capital expenditure

22. (1) The Commission may sanction permanent new works and enter into other contracts involving capital expenditure.

(2) No such work shall be commenced or contract entered into—

(a) if the sum estimated to be required on the new work, or in respect of the contract, exceeds two hundred and fifty thousand ringgit, until a plan and estimate thereof have been submitted to, and approved by, the Commission; and

(b) if the sum estimated to be required on the new work or in respect of the contract, exceeds five million ringgit, until a plan and estimate thereof have been submitted to, and approved by, the Minister.

(3) All contracts involving capital expenditure estimated to exceed two hundred and fifty thousand ringgit, shall be reduced into writing, and shall not be binding on the Commission unless sealed with the common seal of the Commission.

Power to compromise

23. The Commission may compound or compromise for or in respect of any claim or demand made against it, for such sum of money or other compensation as it deems sufficient.

Power to make loans to officers and servants

24. (1) The Commission may make loans to officers or servants of the Commission for the purpose of buying freehold land or land held under statutory grant or leasehold land held for a term whereof not less than sixty years shall be unexpired at the date of the purchase together with any dwelling-house erected thereon, or for the purpose of buying any such land and erecting a dwelling-house thereon.

(2) Any loan made under subsection (1) shall not exceed the full value of the land and dwelling-house erected or to be erected thereon and shall be repayable on such terms as the Commission may determine:

Provided that the full amount of every such loan shall be repayable within a period to be prescribed by the Commission from the date on which the loan is made and every such loan shall, except as hereinafter provided, be secured by a first legal mortgage of the land and dwelling-house erected or to be erected thereon.

(3) The Commission may guarantee loans made, with the prior approval of the Commission, to officers or servants of the Commission by a corporation carrying on the business of a building society.

(4) Where a loan or guarantee is made or given under subsections (1) to (3) and there is a first legal mortgage of the land and dwelling-house erected or to be erected thereon in favour of a corporation carrying on the business of a building society, the Commission may accept a second mortgage of the land and dwelling-house to the full estimated value of the land and dwelling-house after deducting the amount secured by the first legal mortgage as security for the loan or guarantee.

(5) The Commission may give loans to its officers and servants for such purpose as may be approved by the Commission and on such terms and conditions as the Commission thinks fit.

(6) Any moneys payable to the Commission by an officer or servant of the Commission by virtue of a loan or guarantee made or given under this section shall be a first charge on any moneys payable to the officer or servant under any fund, or pension or superannuation scheme for the time being in force established under section 16.

PART III

PROPERTY OF THE COMMISSION

Powers of Commission as to property

25. (1) For the purposes of this Act the Commission may, subject to subsection (2), acquire and hold movable and immovable property; and may, subject to subsection (3) lease, sell, mortgage, exchange,

or otherwise convey any movable or immovable property hereinafter directed to be vested in it, or which otherwise becomes vested in or acquired by it.

(2) No immovable property shall be acquired by the Commission without the written sanction of the Minister.

(3) No sale, mortgage or exchange of immovable property, and no lease of any such property for a term exceeding three years shall be valid unless the sale, mortgage, exchange or lease has been made with the written sanction of the Minister.

(3A) The Commission may dispose of any capital asset or any asset kept in the store which is no longer required by the Commission.

(4) The Commission may, for such rents or other payments, and periods, and subject to such covenants, conditions and restrictions as it thinks proper lease, or grant licences, under the hand of the Chairman, to occupy or use any part of the foreshore which is vested in it under the powers contained in this Act.

(5) No lease or licence granted under the last preceding subsection for a period exceeding twelve months shall be valid unless the same has been made with the written sanction of the Minister.

(6) The powers granted by subsections (4) and (5) shall not be so exercised as to cause any obstruction to navigation without the written sanction of the Minister being first obtained.

Disposal of land

25A. For the avoidance of doubt, where any interest in land is vested in the Federation for purposes of the port, it shall be lawful for the Federation pursuant to Article 86 of the Constitution, to dispose of such interest in land to any person or body of persons for use by such person or body of persons for any federal purposes.

Charge of State on immovable property of Commission

26. (1) The State shall be deemed to have a first charge on all immovable property at any time vested in or acquired by the Commission to secure all moneys from time to time owing by the Commission to the State, or lent by the State to the Commission.

(2) Any such charge shall have priority over all other charges and mortgages, excepting only those as were created or made by the Commission or its predecessors with the sanction in writing of the Minister before the moneys became owing to or were advanced by the State.

(3) The Minister by virtue of any such charge may, on behalf of the State at any time, so long as there are moneys owing by the Commission to the State—

- (a) sell the whole or any part of the immovable property of the Commission, either by public auction or private contract, and on such sale execute a conveyance of the immovable property sold, which conveyance shall, without the concurrence of the Commission, vest the property in the purchaser;
- (b) by notice published in the *Gazette* declare that the whole or any part of the immovable property of the Commission shall, on a date to be mentioned in the notice, vest in the State, and thereafter the immovable property of the Commission described in the notice shall, on the date mentioned in the notice, vest in the State for all the estate, right and title of the Commission, freed and discharged from all charges and mortgages created or made by the Commission, saving only such mortgages and charges as are excepted in subsection (1) and are subsisting securities; and
- (c) appoint some person to receive the rates and other income which the Commission is entitled to receive, or any portion thereof, and apply the same in discharge of the amount due and of all expenses incurred by the Government in respect of the appointment of that person, and of the recovery by him of the said rates and income; and the person so appointed shall have, for the recovery of the said rates or other income, all the powers conferred by this Act on the Commission for the said purpose.

(4) Whenever any declaration has been made under this section notice thereof shall be given to the appropriate land authority who shall thereupon make an entry upon the register document of title that the land, described in the notice containing the declaration, has vested in the State.

Procedure to enable the Commission to acquire land under the Land Acquisition Act

27. When the Commission is unable to acquire by agreement any immovable property required for the purposes of this Act, proceedings may be taken for acquiring the same on behalf of the Commission as if the property were land needed for a public purpose within the meaning of the Land Acquisition Act 1960 [Act 486].

Power to vest reclamations, etc., in Commission

28. (1) Any quay, wharf, jetty, pier or other public work constructed by the Government along or out from the foreshore which is situated within the limits of the port of Penang, and the land on which the same is constructed, and any land reclaimed from the sea, and any landing place or part of the foreshore situated within the limits aforesaid, may be vested in the Commission upon such terms and conditions and subject to such restrictions as the Yang di-Pertua Negeri may determine.

(2) Nothing in this section shall be taken to authorize the vesting in the Commission of any foreshore otherwise than in accordance with the National Land Code [Act 56 of 1965], unless the same is not subject to public rights, or unless it is intended to vest the same in the Commission subject to public rights.

29. (*Deleted by Ord. 45 of 1959*).

Exemption from payment of licence fees

30. The Commission shall not be liable to pay fees for any licences required to be issued under the Municipal Ordinance [S.S. Cap. 133].

Water supply

31. (1) If any water authority when requested by the Commission to supply water for domestic or other purposes, is unable to agree with the Commission as to the price at, or to the terms and conditions under, which water shall be supplied to the Commission, the difference may be referred by either party to the Yang di-Pertua Negeri, who may determine the price and the terms and conditions under which water shall be supplied by the authority to the Commission.

(2) In this section “water authority” means the Penang Water Authority established under section 3 of the Penang Water Authority Enactment 1972 [*En. 7 of 1972*].

PART IV

FINANCIAL PROVISIONS

Scale of rates to be framed by Commission

32. (1) The Commission may levy, in accordance with a scale which it shall frame, and may alter, rates for each or any of the following matters:

- (a) the landing, shipping, wharfage, crannage, storage or demurrage of goods at;
- (b) vessels and boats lying alongside;
- (c) animals or vehicles carrying goods to or from , or entering upon, or plying for hire at or on;
- (d) the carriage of goods to or from;
- (e) the embarking and landing of, and use by any person, on or of,
- (f) (*Deleted by Act A855*)

any wharf, dock, pier, building or other place in its possession or control.

(2) The scale of rates framed under paragraph (1)(a) in respect of the storage of goods may provide for a higher rate or rates to be levied if the goods remain in storage beyond such period or periods as may be specified:

Provided that the Commission may in its discretion remit the whole or any part of rates for storage or demurrage.

(3) The Commission may levy, in accordance with a scale which it shall frame, and may alter, rates for the carriage of passengers, vehicles, animals and goods upon any ferry service which it may maintain.

*NOTE—The Penang Water Authority Enactment 1972 [*En. 7 of 1972*] has been repealed by the Water Supply Enactment 1998 [*En. 3 of 1998*] with effect from 01-03-1999.

(4) The Commission may enter into a special agreement for any of the matters for which a scale of rates has been framed under subsection (1) instead of charging for the same in accordance with that scale.

(5) The Commission may levy, in accordance with a scale which it shall frame, and may alter, dues and charges in respect of the matters specified in section 59(b).

Scale of rates for use of dock, etc.

33. (1) The Commission may levy, in accordance with a scale which it shall frame, and may alter, rates for each or any of the following matters:

- (a) the use of any dock in its possession or control;
- (b) services rendered to any vessel using, or any person working in any such dock;
- (c) the use of any gear, tackle, tools, instruments, utensils, staging or materials supplied by the Commission for the purpose of any vessel using, or any person working in any such dock;
- (d) the use of tugs, firefloats and launches belonging to or maintained by the Commission;
- (e) water supplied by the Commission;
- (f) the towing of, and rendering assistance to, any vessel whether entering or leaving the wharves, docks or piers in the possession of the Commission, or being within or without the port;
- (g) the mooring of vessels and hulks for the storage or working of coal, or other goods within the limits of the port;
- (h) any other services to be performed by the Commission;
and
- (i) the use of any other works or appliances provided by the Commission.

(2) The Commission may enter into a special agreement for any of the said matters instead of charging for the same in accordance with the scale of rates framed under this section.

Submission of memorandum for any change in existing scale of rates

33A. (1) Any person or body of persons licensed under this Act or the Ports (Privatisation) Act 1990 shall prepare and submit to the Commission a memorandum for any change in the existing scale of rates prescribed under sections 32 and 33 for the approval of the Minister.

(2) Where no reply is received from the Commission as regards the memorandum submitted under subsection (1) within six months of its submission, the change in the existing scale of rates as contained in the memorandum shall take effect on the expiration of such period.

(2A) Where a reply is received from the Commission as regards the memorandum submitted under subsection (1) indicating the decision of the Commission to disallow the change in the existing scale of rates as contained in the memorandum, any person or body of persons who is aggrieved by the decision of the Commission may, within fourteen days from the date of such decision, appeal to the Minister whose decision shall be final.

(3) The person or body of persons licensed under this Act or the Ports (Privatisation) Act 1990 shall as soon as practicable publish the change in the existing scale of rates in the local newspapers, at least one in the Malay language and one in the English or Chinese language.

(4) The Commission shall as soon as practicable make the necessary amendment to the *Gazette* in respect of the change in the existing scale of rates.

Scales to be approved by Minister

34. (1) The scales, or altered scales of rates, shall be submitted for the approval of the Minister, and after approval shall be published in the *Gazette* and shall thereupon have the force of law.

(2) The Commission may, on special occasions, with the sanction of the Minister, remit the whole or any portion of the rates leviable according to any scale in force under section 32 or 33.

Recovery of pilotage dues

34A. (1) The Commission may with the approval of the Minister from time to time by notification in the *Gazette*—

- (a) prescribe the pilotage dues which shall be paid to the Commission by the master or owners of every vessel; and
- (b) define the circumstances and conditions under which pilotage dues are to be recoverable, in respect of the services of a Commission pilot.

(2) If a vessel having on board a Commission pilot leads another vessel having no Commission pilot on board, the Commission shall be entitled to the full pilotage dues as if the Commission pilot had actually been on board and had piloted that other vessel.

Remission of dues

34B. (1) The Commission may, if it thinks fit, remit the whole or any part of any pilotage dues paid under this Act.

(2) The Commission may with the approval of the Minister exempt, upon such conditions as it may impose, any vessel or classes of vessels from any pilotage dues payable under this Act.

Charges for landing, shipping and transhipping goods or persons

35. The Commission may land, ship or tranship goods or persons from one vessel to another in the port, and from or to vessels in the port, and the wharves, piers and docks in its possession or control, or any other part of the port, and may make such charges for so doing as it thinks fit.

Commission may make charges for matters not covered by scale

36. The Commission may, for any services rendered or goods supplied by it in pursuance of the powers conferred by this Act, and in respect of which no scale of rates has been framed, make such charges as it thinks fit.

Commission may levy interest charges

36A. The Commission may levy interest charges on an outstanding account of any debtor.

*Accounts***Keeping of accounts**

37. (1) The Commission shall cause books to be provided and kept, and true and regular accounts to be entered therein of all moneys received and paid by the Commission, and of the several purposes for which the moneys have been received or paid, as well as of the assets, credits and liabilities of the Commission, which books shall, at all reasonable times, be open to the inspection of any member of the Commission or of any other person specially authorized by the Minister to inspect the same.

(2) The said account shall be kept in such form as the Minister directs.

(3) The books of account shall be kept at the head office of the Commission.

(4) Annual accounts shall be made up by the Commission showing the assets and liabilities of the Commission and its income and expenditure for the financial year.

General account of Commission

38. The rates levied, or charges made, under section 32 to 36 together with all rents of lands and buildings, and all fines levied under this Act, and all other moneys recovered by the Commission, other than the proceeds arising from a sale of land, shall be credited to the general account of the Commission.

Power to write off bad debt

38A. The Commission may, with the approval of the Minister, authorize the writing off of any debt due to the Commission which the Commission considers bad or irrecoverable.

Application of Moneys and Disposal of Balances

Moneys credited to general account, how expended

39. The moneys credited to the general account of the Commission shall be held by the Commission in trust, and shall be applied by it in payment of the following charges, in the order following:

- (a) the salaries, wages, fees, allowances, gratuities, pensions, compensation and compassionate allowances due to the members of the Commission, and to the officers and servants of the Commission, and the contributions, if any, to any provident fund to which the Commission is liable to contribute on behalf of its officers and servants under any written law; and, if any such provident fund is established by the Commission, the costs and expenses, if any, which are incurred by the Commission in the conduct and administration thereof;
- (b) the interest due on any mortgages, debentures or debenture stock issued, and on any loan raised, by the Commission;
- (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 mortgages, debentures or debenture stock or the repayment of other borrowed moneys;
- (d) the cost of repair and maintenance of the property vested in or under the control of the Commission, and all working expenses of the same;
- (e) the cost, or any portion of the cost, of any new work, plant, vessel or appliance which the Commission determines to charge to revenue;
- (f) the gratuities and compassionate allowances granted by the Commission to officers and servants injured or to the surviving relatives of officers and servants killed in the execution of their duty;
- (g) such sums by way of contribution to public or charitable objects or staff welfare as the Commission with the approval of the Minister may determine; and
- (h) such sums by way of contribution to the Government in respect of the capital investment of the undertaking as the Minister may direct.

Disposal of balances

40. (1) The Commission may apply the whole or any portion of any balance of revenue remaining after the close of each financial year to the credit of the general account, after meeting all the charges properly debitable to that account, to the creation of such reserves as the Commission may think fit.

(2) Moneys which are not immediately required to be expended in the discharge of any of the functions of the Commission shall, if invested, be invested by the Commission in investments for the time being authorized by law for the investment of trust funds or in such other investment or security as may from time to time be approved by the Minister of Finance, or may be deposited in any financial institutions approved by the Minister.

*Annual Estimates***Chairman to submit annual estimate of revenue and expenditure**

41. (1) The Chairman shall, not later than one month before the commencement of each financial year, lay before the Commission an estimate of the Commission's revenue and expenditure including capital expenditure for the ensuing year in such detail and form as the Commission may require:

Provided that it shall not be necessary to include in the estimate any specific item of capital expenditure which has previously been sanctioned under section 42 and not disallowed under subsection 43(1) or which has been submitted in accordance with section 44, and which has remained or is likely to remain unexpended at the end of the current financial year.

(2) A copy of the estimate shall be sent to each member of the Commission not less than fourteen days prior to the meeting before which the estimate is to be laid.

Commission may sanction or revise estimate

42. The Commission shall consider the estimate so submitted and shall sanction the same either unaltered or subject to such alterations as it thinks fit.

Estimate to be submitted to Minister

43. (1) The estimate as sanctioned by the Commission shall be submitted to the Minister, who may at any time, within one month after receipt of the same, disallow any item of capital expenditure or expenditure in payment of general establishment charges appearing in the estimate or any portion thereof, and return the same for amendment.

(2) The Commission shall, if the estimate is so returned by the Minister, forthwith proceed to amend the same, and shall resubmit the estimate so amended to the Minister.

Supplementary estimate may be made when necessary

44. (1) The Commission may, at any time during the year for which the estimate has been sanctioned, cause a supplementary estimate to be prepared and submitted to it.

(2) Every such supplementary estimate shall be considered and sanctioned by the Commission, and submitted to the Minister, and, if necessary, amended and resubmitted as if it were an original estimate.

Power to Borrow and Raise Capital

Power to issue stock, etc.

45. (1) The Commission may, from time to time, with the approval of the Minister, borrow money by the issue of debentures or debenture stock upon such terms as it may deem expedient, for all or any of the following purposes:

- (a) the provision of working capital;
- (b) the fulfilling of the functions of the Commission under this Act;
- (c) the repayment of existing loans;
- (d) the redemption of existing debentures or debenture stock which it is required or entitled to redeem; and
- (e) any other expenditure properly chargeable to capital account.

(2) The Commission may make rules not inconsistent with this Act to provide for such matters in connection with debentures or debenture stock issued under this Act as may appear necessary or expedient to the Commission, and, in particular, for regulating the method of issue, transfer, or other dealing with the debentures or debenture stock.

Power to borrow money, and secure loans by mortgage

46. The Commission may, from time to time, subject to the approval of the Minister, borrow, by way of overdraft or otherwise, such sums as it may require for meeting its obligations and discharging its functions under this Act and may secure the repayment of any sum borrowed by the mortgage or charge, legal or equitable, of any property vested in the Commission, or of any revenue receivable by the Commission under this Act.

Government may lend money to Commission

47. (1) The Government may lend money to the Commission for the general purposes of this Act.

(2) The Commission shall pay to the Government interest at such rate and at such times, and shall also make such provisions for the mode and time or times of repayment of the loan as may be agreed upon between the Government and the Commission in respect of the loan.

Consequences of default in payment of interest

48. (1) If any sum due by the Commission under section 47 is not paid by the Commission on the date on which the same is payable the Commission shall continue liable for the payment thereof.

(2) Interest shall be paid by it upon the balance from time to time overdue at a rate to be determined by the Minister of Finance until the whole amount is paid.

49. (*Deleted by Act A855*).

Fulfilment of Commission's Liabilities

Commission to provide for fulfilment of liabilities

50. (1) The Commission shall make, so far as in its power lies and taking one year with another, ample provision either by retrenchment of expenditure or by increase of rates, for the due fulfilment of all its liabilities and for the efficient administration of the undertaking vested in it under this Act.

(2) In the event of any deficiency being at any time anticipated in the income of the Commission, it shall forthwith take such steps as seem most expedient for preventing the deficiency.

In default the Minister may require Commission to increase rates

51. (1) If at any time it appears to the Minister that sufficient provision is not being made by the Commission to meet its liabilities, or if at any time default is made by the Commission in any payment of interest on its capital debt, the Minister may by order require the Commission to increase, to such extent and for such period as appears necessary, the rates or any of the rates for the time being in force.

(2) If the Commission considers that such an increase of rates is for any reason inexpedient, it may, within thirty days of the receipt of the order, refer the question again to the Minister for further consideration, with an explanation of the reasons for which it considers the order inexpedient.

(3) If within three months after an order has become binding on the Commission, the Commission does not comply with the same, the Minister may, by notification in the *Gazette*, increase the said rates or any of them.

(4) Such a notification shall have the same force as if a new scale of rates to the same effect had been duly framed, confirmed and published under sections 32, 33 and 34.

*Recovery of Rates and Sale of Undelivered Goods***Recovery of rates in arrears**

52. (1) For the amount of all rates leviable under this Act in respect of any goods, the Commission shall have a lien on the goods and shall be entitled to seize and detain the same until the rates are fully paid. Such a lien shall have priority over all other liens and claims except claims for money payable to the State.

(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 shipped shall be payable before the goods are shipped.

(4) Rates in respect of goods to be removed from the premises of the Commission shall be payable on demand.

Power to sell goods remaining in custody

53. (1) Subject to this section and without prejudice to section 52, if any goods which have been placed in the custody of the Commission are not removed from the premises of the Commission within a period of twenty-one days from the time when the goods were placed in custody, the Commission may at the expiration of the said period of twenty-one days sell by public auction any or all of the goods which are still in its custody:

Provided that—

- (a) in the case of goods for which a through bill of lading has been issued there shall be substituted a period of forty-two days for the period of twenty-one days referred to in this subsection; and
- (b) if the goods are of a perishable nature the Commission may direct their removal within such shorter period, not being less than twenty-four hours after the landing thereof, as the Commission may think fit, and the said power of sale may be exercised at the expiration of such period.

(2) For the purposes of subsection (1) a sale shall not be rendered invalid by reason only that it takes place on premises or in an area to which the public is not admitted except on presentation of a pass.

(3) Before making the sale the Commission shall give three days' notice thereof by advertisement in two local newspapers circulating in the State unless the goods are of so perishable a nature as in the opinion of the Commission to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case permits.

(4) If the address of the owner of the goods or of his agent has been stated on the manifest of the cargo, or in any of the documents which have come into the hands of the Commission, or is otherwise known, and the address is within the State, notice shall also be given to the owner of the goods by letter delivered at that address or sent by post and notice shall in like manner be given to the agent of the discharging vessel; but the title of a *bone fide* purchaser shall not be invalidated by reason of the omission to send the said notice, nor shall any such purchaser be bound to inquire whether the notice has been sent.

(5) The proceeds of sale shall be applied by the Commission as follows and in the following order:

- (a) firstly, in payment of any duty payable to the Government;
- (b) secondly, in payment of the expenses of sale;
- (c) thirdly, in payment of the rates, charges and expenses due to the Commission in respect of the goods; and
- (d) fourthly, in payment of freight and other claims or liens of which notice under the Merchant Shipping Ordinance, 1952, has been given,

and by rendering the surplus, if any, to the person entitled thereto on demand, and, in case no such demand is made within one year from the sale of the goods, by paying the surplus to the general account of the Commission, whereupon all rights to the same by that person shall be extinguished.

Power to distrain for non-payment of rates, etc.

54. (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, refuses or neglects to pay the same or any part thereof on demand, the Commission may distrain or arrest of its own authority the vessel and the tackle, apparel or furniture belonging thereto or any part thereof, and detain the same until the amount so due is paid.

(2) In case any part of the said rates or penalties, or of the costs of the distress or arrest, or of the keeping of the said vessel, tackle, apparel or furniture remains unpaid for the space of fourteen days next after any such distress or arrest has been so made, the Commission may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of the sale may satisfy the rates or penalties and costs, including costs of sale remaining unpaid, rendering the surplus, if any, to the master of the vessel on demand.

(3) If the Commission gives to the officer of the Government whose duty it is to grant the port clearance of any vessel a notice stating that an amount, therein specified, is due in respect of rates or penalties chargeable under this Act against the vessel, or the owner or master of the vessel, the officer shall not grant the port clearance until the amount so chargeable has been paid.

Alternative remedy by suit

55. Notwithstanding anything contained in sections 52 to 54 and section 66, the Commission may recover by suit any rates, expenses, costs or, in case of sale, the balance thereof when the proceeds of sale are insufficient, or any penalties or fines payable to or recoverable by the Commission under this Act.

*Licensed Warehouses***Commission may give security for duty on goods in licensed warehouse**

56. (1) If any warehouse of the Commission is approved and appointed as a licensed warehouse under any written law for the time being in force, the Commission may give general security by bond or otherwise for payment of the import duty payable in respect of goods stored in the licensed warehouse, or for the due exportation of the goods.

(2) When security has been given by the Commission as aforesaid, no further security shall be required by the Government from any other person to the same effect.

Power to revenue officers in inspect licensed warehouses

57. Any person being or having the powers of a revenue officer under any written law for the time being in force shall at all times be admitted to all parts of premises approved and appointed as a licensed warehouse, and shall be permitted to inspect the books kept in connection therewith and the stock therein.

PART V

DUTIES AND POWERS OF THE COMMISSION

Duties of Commission

58. Subject as hereinafter provided, it shall be the duty of the Commission—

- (a) to manage and work the former undertaking of the Penang Harbour Board and the Prai Wharf undertaking of the Malayan Railway Administration transferred to the Commission by this Act, and such other property and installations as may be acquired by the Commission;
- (b) to maintain, or provide for the maintenance of, adequate and efficient port services and facilities including ferry services at reasonable charges for all users of the port consistent with the best public interest;
- (bb) to provide pilotage services within the limits of the port and the approaches to the port;
- (c) to co-ordinate the activities of the port;
- (d) to promote the improvement and development of the port; and
- (e) to execute such works as may be necessary to the performance of the duties prescribed in paragraphs (a) to (d).

Additional duties of the Commission

58A. (1) In addition to the duties provided under this Act, the Commission may, with the approval of the Minister, operate any port-related activities.

(2) In the exercise of the duties in subsection (1) the Commission may expend such moneys as are necessary.

(3) For the purposes of this section, “port-related activities” means—

- (a) activities performed outside a port which relate to any duty of the Commission or to operate or maintain a port or the transportation of goods through the port; or
- (b) the development, operation or maintenance outside the port of marinas and other properties necessary for the furtherance of any duty of the Commission.

Powers of Commission

59. For the purposes of carrying out the duties imposed upon it by the last preceding section the Commission may—

- (a) undertake all or any work of every description of or in connection with the loading and discharging and storing of goods or cargo in the port, or authorize, by way of licence, any company, firm person or persons to undertake the said work subject to such by-laws or regulations as the Commission may from time to time make;
- (b) subject to this Act, levy port dues and such general charges upon goods or cargo loaded and discharged in the port as it may deem to be necessary for the maintenance, improvement or development of the port;
- (c) control the berthing and movement of all vessels, whether in the roads or alongside any quay, wharf, pier or landing place vested in or under control of the Commission;
- (d) carry on the business of bunkerers and of suppliers of stores to ships;
- (e) construct, procure, maintain, repair and use engines and other appliances for the purpose of extinguishing fire on its property and in the port;

- (f) construct, procure and maintain vessels, and use the same as well within the port as on the high seas, and whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving life or property, or recovering property lost, sunk or stranded;
- (g) supply water to shipping in the port, and for that purpose construct, procure, maintain and repair vessels or appliances;
- (h) generate electric and other energy;
- (i) construct, procure, maintain and repair ferry vessels to carry passengers, vehicles and goods, and use the same for plying for hire;
- (j) construct, procure, maintain and repair such vessels and vehicles as may be necessary for the business of the Commission, and use the same for this purpose;
- (k) be insurers of goods in the custody of the Commission;
- (l) construct, procure, maintain, repair and use, within the limits of the lands vested in it, railways, warehouses, sheds, engines, cranes, scales and other appliances for conveying, receiving, handling and storing goods to be landed or shipped or otherwise dealt with;
- (m) carry on the business of builders and repairers of ship and machinery;
- (n) construct, maintain, repair and use wharves, docks, piers and bridges within the limits of the lands vested in it, with all necessary and convenient arches, drains, culverts, fences, roads, railways and approaches;
- (o) construct, procure, lay and repair moorings;
- (p) construct, procure, maintain, repair and use all means and appliances for berthing, loading and discharging vessels;
- (q) construct, procure, maintain, repair and moor vessels and hulks for the storage and working of cargo and goods;
- (r) reclaim, excavate, enclose or raise any part of the lands vested in the Commission;

- (s) clean, deepen or improve any portion of the port and for any of these purposes, construct, procure, maintain, repair and use dredgers or other appliances;
- (t) construct, maintain and keep in repair such works without the limits of the land vested in it, as are necessary for the protection of works belonging to it within the limits of the lands vested in it;
- (u) erect, or procure to be erected, houses and buildings on the lands vested in it; and
- (v) undertake all other such works, and make, procure, maintain and repair all such other appliances as, in its opinion, are necessary for carrying out of this Act.

Power of the Commission to grant a licence to any company, etc., to undertake activities in the port

59A. The Commission may with the approval of the Minister grant a licence on such conditions as the Commission may think fit to any company, firm, person or persons to undertake any activities in the port as may appear to the Commission to be necessary.

Powers of the Commission to enter any arrangement for sharing of profit, etc.

59B. The Commission, with the approval of the Minister and the concurrence of the Minister of Finance, may—

- (a) enter into any arrangement for sharing of profits, union of interests, cooperation or joint venture with any person or body of persons; or
- (b) establish or promote the establishment and expansion of companies under the Companies Act 1965 [Act 125].

Powers of the Commission to carry on activities which are commercial in nature

59c. The Commission may with the approval of the Minister, carry on all activities, particularly activities which are commercial in nature, as may appear to the Commission to be requisite, advantageous, convenient or beneficial.

Control of foreshores

60. (1) No construction or alteration of any quay, wharf, pier or similar work shall take place within the port without the written authority of the Commission which, before according the authority, may require the submission of plans of the proposed works; and any person who acts in contravention of this subsection shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit and shall be required to remove the construction at his own expense, if ordered to do so.

(2) The Commission shall have control of the use of the foreshores within the port and no goods or cargo shall be handled across or over those foreshores without the written authority of the Commission, or except in accordance with such conditions as the Commission may from time to time by notification in the *Gazette* prescribe.

(3) In the matter of the granting or refusing of the written authority referred to in subsections (1) and (2), the Commission shall consult the State Government and the Director General of Customs and in the event of disagreement arising in regard thereto, the matter shall be referred to the Minister for his decision.

(4) In respect of any quay, wharf, jetty, pier, reclaimed land, landing-place or foreshore vested in the Commission in pursuance of section 28 or which is vested in the Commission by virtue of section 102 the Commission may, with the approval of the Minister, from time to time by order published in the *Gazette* prescribe wharfage, quay, wayleave and other rates.

(5) With effect from a date to be appointed by the Minister, any owner of goods or cargo who without the written authority of the Commission, as required by subsection (2), or in contravention of any condition prescribed thereunder causes any such goods or cargo to be handled across or over the foreshores within the port shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding *one thousand ringgit, and in addition to the fine be liable to a sum to be assessed by way of damages at the rate of two ringgit per ton gross weight of the goods or cargo, to be recovered as a debt due to the Commission.

*NOTE—Previously “five hundred “ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

Permits for conveyance of goods and cargo within the port

61. (1) No vessel shall be used for the conveyance of goods and cargo from one place to another within the port except under and in accordance with a permit granted by the Commission in accordance with this section.

(2) Subject to this section and any regulations made thereunder the Commission shall have full power in its discretion either to grant or to refuse any such permit as aforesaid, and any such permit may be granted by the Commission for such period and subject to such conditions as it thinks fit, and the Commission may at any time by notice in writing to the holder of the permit revoke, suspend or vary the permit:

Provided that the Commission shall, in exercising its discretion, take into consideration the requirements of the port as a whole.

(3) It shall not be necessary for such permit as aforesaid to be so framed as to apply only in relation to a particular vessel, and more than one permit as aforesaid may be granted to the same person.

(4) Any person aggrieved by the refusal of the Commission to grant such a permit as aforesaid or by the revocation, suspension or variation of a permit, may appeal to the Minister whose decision thereon shall be final.

(5) The Commission, with the approval of the Minister, may make regulations for the purpose of carrying this section into effect and without prejudice to the generality of the preceding provision, the regulation may provide for—

- (a) the manner of application for and the determination of any questions in connection with the issue, variation, suspension and revocation of permits under this section;
- (b) the issue of permits, and the issue of copies of permits in the case of permits lost or destroyed, including the fees to be charged in connection with the issue of permits or copies; and
- (c) the means by which vessels are to be identified as being vessels authorized to be used for the conveyance of goods and cargo under any such permit.

(6) Any person to whom a permit is issued under this section shall from time to time supply to the Commission such information as the Commission may reasonably require as to the nature and amount of the goods and cargo conveyed in accordance with the permit in any specified period and shall keep records for this purpose, and any failure to supply the information or to keep records shall be deemed to be a breach of the conditions of the permit.

(7) Any person who uses any vessel for the conveyance of goods and cargo within the port without a permit issued under this section or contrary to the conditions (if any) of the permit shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit.

(8) The Commission in its discretion may exempt from the requirements of this section any vessel or class of vessels of less than ten ton gross tonnage and may terminate any such exemption.

(9) Nothing in this section shall be deemed to affect or modify the provisions of Part XIII of the Merchant Shipping Ordinance 1952, with regard to the licensing of boats for the conveyance of cargo, and no permit shall be issued under this section in respect of any vessel required to be licensed under those provisions unless the vessel has been duly licensed thereunder.

Regulation of use of Wharves and Premises

Minister may appoint places to be used for the collection of revenue duties

62. (1) The Minister may, notwithstanding anything in this Act, appoint any part of the wharves or premises vested in the Commission as a place for collection of import or other revenue duties payable to the Government.

(2) Whenever any wharf or part of the premises of the Commission has been so appointed as a place for the collection of import or other revenue duties, the Commission shall set apart and maintain the place, in such manner as the Minister requires, for the use of the persons entitled to collect those duties.

(3) All rates payable in respect of any such wharf or part of the premises so set apart, or for the landing, shipping or storage of goods thereon, therefrom or therein, shall be paid to the Commission.

Powers of Commission to order vessels to come alongside

63. The Commission may order any sea-going vessel within the port to come alongside any suitable quay, wharf, jetty, pier or landing stage vested in or under the control of the Commission for the purpose of landing or shipping goods or cargo or passengers, provided that the vessel has not commenced landing goods or cargo or passengers, or, if about to ship goods or cargo or passengers, has not commenced to do so. In making the order the Commission shall have regard, as far as possible, to the convenience of the vessel and of the shippers in respect of any particular quay, wharf, jetty, pier or landing stage.

Vessels belonging to or in service of Government

64. The Minister may at any time require that any vessel belonging to or in the service of the Government shall be permitted to come alongside any quay, wharf, jetty, pier or landing stage vested in or under the control of the Commission in preference to all other vessels at the time in port; and the Commission shall give effect to the requirement.

Commission to provide free landing places

65. The Commission shall provide such number of public landing places as are, in the opinion of the Minister, sufficient, from and at which the public shall be permitted to embark and land, free of charge, and may, with the sanction of the Minister, vary the same.

By-Laws

Commission empowered to make by-laws

66. (1) The Commission may make by-laws for—

- (a) regulating, declaring and defining the wharves, docks, piers and places vested in the Commission or under its control, on and from which goods shall be landed from and shipped in vessels;

- (b) regulating the manner in which and the conditions under which the loading and discharging of vessels shall be carried out, and for varying the positions of vessels loading and discharging;
- (c) the safe and convenient use of the docks, wharves, piers, landing places, warehouses, sheds and premises vested in the Commission or under its control and of any ferry service maintained by the Commission;
- (d) regulating the reception, storage and removal of goods within and from the premises of the Commission, and for declaring the procedure to be followed for taking charge of goods which have been damaged before landing or are alleged to have been so damaged;
- (e) settling the mode of payment of rates leviable under this Act, and for facilitating their collection and preventing their evasion;
- (f) keeping clean the basins, works and premises of the Commission and the waters adjacent thereto, and for preventing filth and rubbish being thrown or entering therein or thereon;
- (g) the guidance of persons employed by it under this Act;
- (h) regulating vehicular traffic, preventing obstruction and keeping order at wharves and docks and for ensuring the safety of the wharves and docks and any cargo thereon; and
- (i) otherwise carrying out the purposes of this Act.

(2) The Commission shall make by-laws for regulating the conveyance loading and unloading of dangerous goods within the jurisdiction of the Commission and in particular for declaring or regulating all or any of the following matters within the said jurisdiction:

- (a) determining the notice to be given by ships and boats conveying, loading or unloading dangerous goods within the said jurisdiction;
- (b) regulating the navigation and place of berthing of any such ships and boats;

- (c) regulating the mode of stowing and keeping dangerous goods on board any such ship or boat;
- (d) prohibiting or subjecting to conditions and restrictions the conveyance of any kind of dangerous goods with any other kind of dangerous goods or any articles or substances or in passenger ships, boats, trains or vehicles;
- (e) prohibiting, in cases where the loading or unloading of dangerous goods within the jurisdiction of the Commission appears to be specially dangerous to the public, such loading or unloading, and fixing the places and times at which the dangerous goods are to be loaded or unloaded and the quantity to be loaded or unloaded or conveyed at one time or in one ship, boat or vehicle;
- (f) regulating the mode of and the precautions to be observed in conveying or keeping dangerous goods and in the loading or unloading any ship, boat or vehicle conveying dangerous goods;
- (g) fixing the times at which lights or fires are to be allowed or not allowed on board such ships or boats as before mentioned; and
- (h) generally for protecting whether by means similar to those above-mentioned or not persons and property from danger.

(3) In this section the expression “dangerous goods” has the meaning assigned to it by section 289 of the Merchant Shipping Ordinance 1952.

Approval and publication of by-laws

67. No by-law, and no repeal or alteration of or addition to any by-law, shall have effect until the same has been approved by the Minister, and published in the *Gazette*.

Penalties for infringing by-laws

68. In making any by-law under section 66, the Commission may direct that a breach of it shall be punishable with fine not exceeding one thousand ringgit, and when the breach is a continuing breach with a further fine not exceeding two hundred and fifty ringgit for every day after the first during which the breach continued.

Copy of by-laws to be supplied by Commission

69. The Commission shall furnish every person who applies for the same with a copy of the by-laws on payment of such charge as it may determine.

By-laws and scale of rates to be printed and exhibited

70. The Commission shall cause the by-laws and the scale of rates leviable by the Commission to be printed in the national language and in English, and such of them as the Minister requires in such other languages as he directs, and to be exhibited at such several places on the premises of the Commission as it deems convenient.

PART VA

PILOTAGE

Declaration of pilotage district

70A. (1) The Commission may, from time to time, by notification in the *Gazette* declare any area in the port or the approaches to the port to be pilotage district.

(2) Every such declaration shall define the limits of the pilotage district.

Commission may require vessels to be under pilotage

70B. (1) The Commission may, if it appears to the Commission to be necessary, require any vessel while navigating in any pilotage district or part thereof to be under pilotage, and the master or owner of the vessel shall comply with the requirement.

(2) A vessel while being moved within any area of the port which is or forms part of a pilotage district shall be deemed to be a vessel navigating in a pilotage district.

Commission to employ pilots

70c. (1) Subject to this Act, the Commission may employ such number of pilots as it deems necessary or expedient for the purpose of providing an adequate and efficient pilotage service.

(2) No person shall be employed as a Commission pilot in a pilotage district unless he is in possession of a valid licence to act as a pilot in that district issued under section 70H.

Power of Pilotage Committee to license employees of a licensed operator

70CA. (1) Notwithstanding anything to the contrary in this Act the Commission may, if it considers expedient, authorize the Pilotage Committee to issue a licence to any employee of a licensed operator to pilot vessels in a pilotage district of the Commission subject to such terms and conditions as the Commission thinks fit:

Provided that no such licence shall be issued to any such employee unless the Pilotage Committee has examined the employee and be satisfied as to the employee's general fitness and competency, including his physical fitness to act as a pilot for the licensed operator.

(2) A licence issued under subsection (1) shall cease to be valid if the employee to whom it was issued ceases to be employed by the licensed operator.

Vessel to be piloted by Commission pilot or licensed person

70CB. No vessel shall be piloted in a pilotage district by any person other than the Commission pilot or a person licensed under subsection 70CA(1).

Appointment and functions of Pilotage Committee

70D. The Commission with the approval of the Minister shall appoint a Pilotage Committee for the purpose of—

- (a) holding examinations and issuing, on behalf of the Commission, licences to act as a Commission pilot or as a pilot employed by a licensed operator;

- (b) holding inquiries concerning the conduct of Commission pilots or persons licensed under subsection 70CA (1) in the discharge of their duties;
- (c) making such arrangements as may be necessary for the training of persons selected for or in the pilotage service of the Commission;
- (d) investigating and advising on such matters as may be referred to the Committee by the Commission; and
- (e) carrying out such other functions as are conferred on the Pilotage Committee by this Act.

Constitution of Pilotage Committee

70E. (1) The Pilotage Committee shall consist of a Chairman and four other persons who, by reason of their knowledge of or experience in shipping, nautical or port matters are, in the opinion of the Commission, fit and proper persons to be members of the Committee.

(2) The appointment of a member of the Pilotage Committee may be for any period not exceeding three years but the member shall be eligible for reappointment on completion of every such period.

(3) Three members of the Pilotage Committee shall form a quorum at any meeting of the Committee.

(4) The Chairman of the Pilotage Committee shall preside at all meetings thereof:

Provided that if the Chairman is absent from a meeting or any part thereof, such member as members of the Pilotage Committee present shall choose, shall preside in his place.

(5) The Chairman or member presiding at any meeting of the Pilotage Committee shall have a vote and, in the case of an equality of votes, a second or casting vote.

(6) Members of the Pilotage Committee who are not employees of the Commission may be paid, out of the funds of the Commission, such fees and allowances as the Commission may, from time to time, determine.

Public servants

70F. The members of the Pilotage Committee shall be deemed to be public servants within the meaning of the Penal Code.

Regulations

70G. Subject to this Act, the Commission may from time to time make regulations for the purpose of regulating the meetings and proceedings of the Pilotage Committee.

Examination for licence

70H. (1) The Pilotage Committee shall examine candidates for employment by the Commission as pilots and on being satisfied as to a candidate's general fitness and competency, including physical fitness, to act as a Commission pilot may, on behalf of the Commission, issue to him a licence to act as such, and the licence may contain such conditions as the Pilotage Committee may deem fit.

(2) Subject to this Part, every pilot holding, immediately prior to the coming into operation of the said Part, a licence issued under the Merchant Shipping Ordinance 1952, to act as a pilot in a pilotage district, shall be deemed to be qualified for employment by the Commission as a pilot, and the Pilotage Committee shall, on behalf of the Commission, issue to every such pilot as may be employed by the Commission a licence to act as a Commission pilot in the pilotage district, subject to such conditions as the Pilotage Committee may impose.

(3) Every Commission pilot shall whenever the Pilotage Committee considers that, owing to changed conditions or for any other sufficient reason, the further testing of the knowledge, efficiency or physical fitness of any such pilot is necessary present himself for further examination, and shall in every such case first deposit with the Pilotage Committee his licence issued by the said Committee on behalf of the Commission to be returned or cancelled by the said Committee on behalf of the Commission as the result of the test or examination determines.

(4) The Commission shall not continue to employ as a pilot any pilot whose licence to act as such is cancelled as the result of any test or examination carried out or held under subsection (3).

(5) Any licence issued under this section shall cease to be valid upon the termination of any Commission pilot's employment with the Commission.

Inquiries by Pilotage Committee

70i. (1) The Pilotage Committee may, and when directed by the Commission shall, hold an inquiry into the conduct of a Commission pilot or a person licensed under subsection 70CA (1) where it appears that he has been guilty of misconduct affecting his capability as a pilot or has failed in or neglected his duty as a pilot or has become incompetent to act as a pilot.

(2) For the purposes of the inquiry, the Pilotage Committee may summon any person to attend any meeting of the said Committee to give evidence on oath or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession relative to the matters which are the subject matter of the inquiry.

(3) Any person who—

- (a) being summoned to attend any such inquiry, fails to do so;
- (b) offers any act of disrespect or any insult or threat to the Pilotage Committee or any member thereof during an inquiry; or
- (c) being required by the Pilotage Committee to give evidence on oath or affirmation or to produce a document or other thing, refuses to do so,

shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding* two thousand ringgit.

Submission of Pilotage Committee's findings and recommendations to Commission

70j. (1) Where the Pilotage Committee, after due inquiry in accordance with this Part and after hearing any statement that may be offered in defence, finds that a Commission pilot or a person licensed under subsection 70CA (1) has been guilty of misconduct affecting his capability as a pilot or has failed in or neglected his duty as a pilot or has become incompetent to act as a pilot, it shall submit to the Commission a copy of the record of the inquiry and its findings and recommendations in respect of the inquiry.

*NOTE—Previously “five hundred ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

(2) The Commission may, after considering the findings and recommendations of the Pilotage Committee, suspend or cancel the licence of the Commission pilot or the person licensed under subsection 70CA(1) or impose such other punishment as the Commission may think fit.

(3) Any Commission pilot or any person licensed under subsection 70CA(1) who is aggrieved by any decision of the Commission made under subsection (2) may, within fourteen days from the date of the decision, appeal to the Minister whose decision shall be final.

Liability of the master or owner in the case of a vessel under pilotage

70K. (1) The master or owner of a vessel navigating in circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would if pilotage were not compulsory.

Limitation of pilot's liability when bond is given

70L. (1) A Commission pilot who has given a bond in accordance with subsection (2) shall not be liable for neglect, want of skill or incapacity in office beyond the penalty of the bond and the amount payable to the Commission on account of pilotage in respect of the voyage in which he was engaged when he became so liable.

(2) Every Commission pilot shall undertake to give a bond in favour of the Commission, in such sum as the Commission considers reasonable, for the proper performance of his duties under this Part and any regulations or by-laws under this Act.

(3) Any bond by a Commission pilot in accordance with this section shall not be liable to stamp duty.

(4) Where any proceedings are taken against a Commission pilot for any neglect, want of skill or incapacity in office in respect of which his liability is limited as provided by this section, and

other claims are made in respect of the same neglect, want of skill or incapacity in office, the court in which the proceedings are taken may—

- (a) determine the amount of the pilot's liability and, upon payment by him of the amount to court, distribute the amount rateably among the several claimants;
- (b) stay any proceedings pending in any other court in relation to the same matter; and
- (c) proceed in such manner and subject to such direction as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who have not submitted their claims within a certain time, and as to requiring security from the pilot and as to payment of any costs as the court thinks fit.

Pilotage Committee and Commission not liable for loss or damage occasioned by pilots

70M. (1) The issue of a licence to a pilot by the Pilotage Committee on behalf of the Commission under subsection 70CA (1) or section 70H shall not impose any liability on the Pilotage Committee for any loss or damage occasioned by any act, omission or default of the pilot.

(2) Any Commission pilot whilst engaged in any pilotage act shall, notwithstanding that he may be employed at a salary by the Commission, be deemed to be the servant only of the master or owner of the vessel under pilotage and the Commission shall not be liable for any loss or damage occasioned by any act, omission or default of the pilot.

Summary proceedings

70N. A court may, if it thinks fit, call upon two members of the Pilotage Committee to sit with it as assessors in any proceedings affecting Commission pilots under this Act.

By-laws regulating pilotage and conduct of pilots

70o. (1) The Commission may make by-laws for regulating pilotage in any pilotage district and, for the maintenance of good conduct and discipline of Commission pilots and for matters relating to their duties.

(2) The Commission may, in making any by-laws under this section, provide that any contravention of or failure to comply with any by-law shall be an offence and may prescribe as a penalty in respect of any one offence a fine not exceeding *five thousand ringgit.

PART VB

SPECIAL POWERS

Special powers in emergency

70P. (1) On the occurrence of any public emergency or in the interest of public safety, the Prime Minister or any officer specially authorised by him in that behalf may—

- (a) take temporary possession of any port service or facility established, maintained or worked by any person licensed under this Act; or
- (b) withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public at large.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under subsection (1) was in the interest of public safety, a certificate signed by the Prime Minister and exhibited at such place as the Minister deems fit shall be conclusive proof on the point.

(3) Where the Government takes possession of any port service or facility under paragraph (1)(a), adequate compensation shall be paid.

PART VI

LIMITATION OF LIABILITY

Interpretation

71. In this Part, unless the context otherwise requires—

“ship” includes every description of vessel used in navigation, not propelled by oars, and every description of lighter, barge or like vessel used in navigation however propelled, and any floating pontoon not permanently attached to the land.

*NOTE—Previously “five hundred ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

Limitation of Commission's liability in certain cases of loss of or damage to goods

72. The Commission shall not be liable to make good to any extent whatever any loss or damage happening without its actual fault or privity in the following cases:

- (a) where any vehicle, animal, goods or other things whatsoever taken in or put on board any of its ships are lost or damaged by reason of fire on board such a ship; or
- (b) where any gold, silver, diamonds, watches, jewels or precious stones taken in or put on board any of its ships, the true nature and value of which have not been prior to the time of shipment declared in writing to the Commission, are lost or damaged by reason of any robbery, theft, breach of trust, conversion making away with or secreting thereof.

Limitation of Commission's liability in certain cases of loss of life or injury or damage

73. The Commission shall not, where all or any of the following occurrences take place without its actual fault or privity:

- (a) where any loss of life or personal injury is caused to any person being carried in any of its ships;
- (b) where any damage or loss is caused to any vehicles, animals, goods or other things whatsoever on board any of its ships;
- (c) where any loss of life or personal injury is caused to any person carried in any other vessel, by reason of the improper navigation of any of its ships;
- (d) where any loss or damage is caused to any other vessel, or to any vehicles, animals, goods or other things whatsoever on board any other vessel, by reason of the improper navigation of any of its ships; or
- (e) where any loss or damage is caused to property or rights of any kind, whether on land or on water or whether fixed or movable, by reason of the improper navigation or management of any of its ships,

be liable to damage beyond the following amounts:

- (i) in respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, vehicles, animals, goods or other things, an aggregate amount not exceeding in the currency of Malaysia the equivalent of fifteen pounds sterling for each ton of its ship's tonnage; and
- (ii) in respect of loss of or damage to vessels, vehicles, animals, goods or other things, whether there is in addition loss of life or personal injury or not, an aggregate amount not exceeding in the currency of Malaysia the equivalent of eight pounds sterling for each ton of its ship's tonnage.

Limitation of Commission's liability in other cases

74. The Commission shall not where, without its actual fault or privity, any loss or damage, not being a loss or damage provided for by section 72 or by section 73, is caused to any vessel or to any vehicles, animals, goods or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount not exceeding in the currency of Malaysia the equivalent of eight pounds sterling for each ton of the tonnage of the largest registered British ship which during the period of five years next before the happening of such loss or damage has been habitually within the area over which the Commission performs any duty or exercises any power. A ship shall not be deemed to have been habitually within the area over which the Commission performs any duty, or exercises any powers, unless it has been within that area not less than three times annually during the above mentioned period of five years, and a ship shall not be deemed to have been within the area by reason only that it has been built or fitted out within that area, or that it has taken shelter within or passed through the area on a voyage between two places both situate outside that area, or that it has loaded or unloaded mails or passengers within that area.

Tonnage how ascertained

75. For the purposes of this Part the tonnage of ships shall be ascertained as provided by section 360 (2) of the Merchant Shipping

Ordinance 1952, and the register of any ship shall be sufficient evidence that the gross tonnage and the deductions therefrom and the registered tonnage are as therein stated.

Loss or destruction of, or damage to, goods other than transshipment goods deposited with the Commission

75A. (1) The Commission and any person duly authorized by it shall, in respect of any goods other than transshipment goods deposited with or placed in the custody or control of the Commission for the purpose of shipment or delivery, be deemed to be the agent of the owner of the vessel loading or discharging such goods irrespective of whosoever pays or is liable to pay any rates in respect of such goods.

(2) Neither the Commission nor any person duly authorized by it shall, in acting as an agent under the provisions of subsection (1), be liable—

(a) either in damages or in any other respect for any loss caused to any person by reason of short delivery of any goods deposited with or placed in the custody or control of the Commission or any failure by the Commission to deliver or account for them; or

(b) for damage to, or destruction of, such goods in a sum of more than one thousand ringgit per package or unit unless the nature and value of the goods contained therein have, prior to delivery to the Commission, been declared in writing to the Commission by the person delivering or causing the same to be delivered and the Commission shall not in any event be liable therefor where the value of any such goods has been misstated or where there prevails any of the circumstances set out in section 75D.

(3) For the purposes of this section and of section 75c, the expression “transshipment goods” means goods landed from a vessel and placed in the custody of the Commission for the purposes of shipment on another vessel on a through bill of lading dated at the port of loading of such goods and showing that the destination is via Penang, with the ultimate port of destination marked on each package or unit containing such goods and declared on a transshipment manifest lodged with the Commission prior to or at the time such goods are placed in its custody.

Liability for loss under contract

75B. Notwithstanding the provisions of section 75A, the Commission shall, on application made to it by the owner of any vessel, enter into a contract with such owner whereby the Commission shall accept liability for any loss caused by reason of short delivery by the Commission of any goods deposited with or placed in the custody or control of the Commission or any failure by the Commission to deliver or account for them, and for the purposes of this section, the Commission may prescribe the terms and conditions of such contract and may, with the approval of the Minister, from time to time prescribe the rates to be levied:

Provided that the Commission may in its discretion refuse to enter into such contract unless such contract is in respect of all of the goods to be loaded into or discharged from a vessel, as the case may be.

Loss or destruction of, or damage to, transshipment goods deposited with the Commission

75C. In respect of any transshipment goods delivered by any person to, or placed by any person in the custody of, the Commission, the Commission shall, from the time of acknowledgment of the receipt of such goods and until delivery of such goods alongside the on-carrying vessel for loading, be liable, subject to the provisions of section 75D, for the loss or destruction of, or damage to, such goods:

Provided that the Commission shall not be liable for any such loss, destruction or damage in a sum of more than one thousand dollars per package or unit unless the nature and value of the goods contained therein have, prior to delivery to the Commission, been declared in writing to the Commission by the person delivering or causing the same to be delivered, and the Commission shall not in any event be liable therefor where the value of any such goods has been misstated.

Force majeure, etc.

75D. The provisions of paragraph 75A(2)(b) and of section 75C shall not impose on the Commission or any person duly authorized by it any liability for the loss or destruction of, or damage to, any goods arising from—

- (a) fire or flood, unless caused by the actual fault or privity of the Commission;
- (b) an act of God;
- (c) an act of war or of public enemies;
- (d) seizure under any legal process;
- (e) quarantine restrictions;
- (f) any act, omission or default of the owner or carrier of such goods;
- (g) strikes, lockouts or stoppages or restraints of labour from whatever cause, whether partial or general;
- (h) riots and civil commotions;
- (i) saving or attempting to save life or property;
- (j) insufficient or improper packing, defective or insufficient marks or leakage from defective drums, containers or packages;
- (k) any inherent liability to wastage in bulk or weight, latent or inherent defect or natural deterioration;
- (l) any deficiency in the contents of unbroken packages; or
- (m) the dangerous nature of such goods.

Limitation of liability in respect of one occasion

76. The limitation of liability under this Part shall relate to the whole of any losses and damages which may arise upon any one distinct occasion, although the losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law, and notwithstanding anything contained in that written law.

Power of High Court to consolidate claims

77. Where any liability is alleged to have been incurred by the Commission in respect of loss of life, personal injury, or loss of or damage to vessels, vehicles, animals, goods or other things whatsoever, and several claims are made or apprehended in respect of that liability, then the Commission may apply to the High Court, and that Court may determine the amount of the Commission'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 regulations, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the Commission, and as to payment of any costs as the Court thinks just.

Saving for Workmen's Compensation Act 1952

78. Nothing in this Part shall affect any liability that may be imposed on the Commission by the Workmen's Compensation Act 1952 [*Act 273*].

Commission not liable for loss due to unpunctuality of ferry boats

79. The Commission shall be exempt from all liability in respect of any loss or damage whether arising from the variation in the time of departure or arrival of any of its ferry boats or by reason of its failure to run any ferry boat as advertised, or at all.

Saving of liability

80. Nothing in this Part shall impose any liability in respect of any loss or damage on the Commission in any case where no such liability would have existed if this Act had not been enacted.

PART VIA

EXTENSION OF THE FUNCTIONS, ETC., OF THE
COMMISSION TO OTHER PORTS

Power of Minister to extend Commission's functions to other ports

80A. (1) The Minister may, by order published in the *Gazette*, extend the functions, powers, duties and jurisdiction of the Commission to other ports.

(2) An order under subsection (1) may provide that the Commission shall, in carrying out the administration of the port to which its control is extended, include among its members such other person or persons as may be specified in the order either by name or by office.

(3) Where an order is made under subsection (1), the Commission shall be deemed for all purposes to be the port authority in respect of the port specified in the order as if it were the port authority established in respect of that port under this Act and shall in carrying out its functions be styled by such name as may be provided in the order.

Commission in carrying out its extended functions shall be deemed to be an independent port authority

80B. The Commission in carrying out its functions in respect of the port to which they are extended shall carry them out as if it were an independent port authority established in respect of such port.

Power of Minister to make provisions for the Commission to carry out its functions

80C. An order of the Minister under section 80A may contain all such provisions as the Minister may deem necessary to enable the Commission to carry out its functions in relation to the port to which they are extended.

Interpretation

80D. For the purposes of this Part, “port” means a port or place declared to be a port under section 5 of the Merchant Shipping Ordinance 1952.

PART VII**OFFENCES, DAMAGES, PENALTIES AND PROCEEDINGS****Refusing or neglecting to appear before auditor, etc.**

81. Any person who refuses or neglects to appear before any auditor of accounts, or to produce any books, deeds, contracts, accounts, vouchers, documents or papers, or to make or sign any declaration when duly required so to do by any auditor under section 49 or to produce any book of account to any member of the Commission or other person specially authorized by the Minister to inspect the books of account, shall for every such neglect or refusal be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred ringgit.

Penalties on evading rates

82. Any master or owner of any vessel, or any owner, consignor or consignee of any goods imported into or exported out of the port, who by any means whatsoever eludes or evades, or attempts to elude or evade, or neglects or omits to pay any of the rates leviable under this Act shall pay to the Commission, by way of damages in addition to the rates, a sum equal to the rates so eluded or evaded, or attempted to be eluded or evaded, or neglected or omitted to be paid, and shall also be guilty of an offence and shall, on conviction, be liable to a fine not exceeding *two thousand ringgit.

List of all goods imported or exported to be left at office of Commission

83. (1) The master or owner of every importing vessel or his agent shall sign and leave at the office of the Commission, within fourteen days next after the final discharge of all goods imported by the vessel, a full and accurate list thereof, containing all particulars

*NOTE—Previously “five hundred ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

as to gross weight or measurement, marks, numbers and contents of each package, and the names of the consignees according to the bills of lading or the names of the persons actually paying the freight for the same.

(2) Any owner, master or agent who fails to leave such a list shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding *two thousand ringgit.

(3) The owner, charterer, consignor, agent or other person acting in the loading and clearing of every exporting vessel shall prepare a full and accurate list or manifest of all goods so exported by the vessel from the bills of lading and freight list thereof, and shall sign and leave at the office of the Commission within fourteen days after the vessel has cleared from the port, a correct transcript of the list or manifest, distinguishing therein the names of the several shippers of the goods according to the bills of lading.

(4) Any owner, charterer, consignor, agent or other person as aforesaid who fails to prepare such a list or manifest, and to sign and deliver such a transcript, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding *two thousand ringgit.

Penalties to extend as well to principals as servants

84. All penalties imposed by sections 82 and 83 shall extend as well to the principals in any house of business by whom or on whose account, or for whose profit or advantage, the payment has been eluded, evaded, neglected or omitted to be made, or by whom the lists, manifests and transcripts have been omitted to be made, signed, deposited and left as to any clerks and servants of the principals employed or acting therein:

Provided that it shall not be lawful to proceed against both the principal and clerk or servant of the principal for the same offence.

Evasion of rates not waived by subsequent acceptance of payment

85. The tender to or acceptance by the Commission or any of their officers of any rate, the payment of which has been previously evaded or left unpaid, shall not release or discharge any person from any liability for any damages or penalty consequent upon the evasion or non-payment.

*NOTE—Previously “five hundred ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

Penalty for disobeying orders of wharf superintendent as to coming alongside or leaving wharves

86. (1) If the master of any vessel, without the authority of the Commission, brings or causes his vessel to be placed alongside any wharf or dock entrance, or acts contrary to the directions or neglects to obey the orders of the wharf superintendent in relation to the time and manner of coming into or going out of any dock, or of coming alongside any wharf, or as to the berth allotted for his vessel to occupy, or disobeys any order to remove his vessel from the berth or to alter the same, the master or owner of the vessel shall be guilty of an offence and shall, on conviction, be liable for every such offence to a fine not exceeding one thousand ringgit.

(2) If any vessel has finished loading or discharging, or is waiting for a cargo or ballast, and the master neglects to obey a notice given to him or to the officer in charge of the vessel by the wharf superintendent directing him to leave the wharf, the master or owner shall, in addition to the fine, be liable to a sum, to be assessed by way of damages at the rate of one quarter cent per gross registered ton, for every hour that the vessel remains at the wharf after the time for departure required by the notice has expired.

Penalty for hindrances or obstructions to any member, officer or servant of the Commission

86A. Any person who hinders or obstructs any member, officer or servant of the Commission in the performance or execution of his duty or in carrying out anything which he is empowered or required to do by virtue of or in consequence of this Act shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Penalty for not keeping a vessel so loaded with ballast or otherwise as to be safely removed

87. (1) Every vessel lying alongside a wharf or within any dock shall be kept so equipped, provided and loaded or ballasted as to enable her to be removed with safety whenever it is necessary in the judgment of the wharf superintendent to do so.

(2) In case of neglect to keep the vessel so equipped, provided and loaded or ballasted, the master or owner thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding *two thousand ringgit.

Penalty for giving a false draught of water

88. Any master of a vessel entering or leaving or intending to enter or leave any dock, or come alongside or depart from any wharf, who gives false information of the draught of water of the vessel to any officer of the Commission whose duty it is to ascertain the same, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding **two thousand ringgit.

Penalty for giving false statement

88A. Any person who makes any statement which is false in any material particular in any return, claim, application, declaration or other document which is requested or authorized to be made by or under the provisions of this Act or of any by-laws made thereunder shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Penalty for throwing ballast, etc., into docks

89. Any person who throws or empties into any dock any ballast, rubbish, dust, ashes, stones or other refuse or things or does any act to prejudice any of the works of the Commission, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

Commission to recover expenses incurred for act done pursuant to a lawful direction

89A. (1) When any person without lawful excuse refuses or neglects to obey any direction lawfully given under this Act or any by-laws made thereunder, the Commission may, irrespective of whether any proceedings have been instituted against or any punishment imposed on such person for the refusal or neglect, do or cause to be done all such acts as are in its opinion reasonable or necessary for the purpose of carrying out such direction.

*NOTE—Previously “five hundred ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

**NOTE—Previously “one thousand ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

(2) The powers conferred by subsection (1) include the power to hire and employ such persons as are necessary and proper for making good whatever loss or damage that has been caused by any refusal or neglect of the person to whom the direction has been given.

(3) Any expenses incurred in the exercise of the powers conferred under subsection (1) or (2) shall be recoverable from the person to whom the direction had been given as a civil debt.

Offence committed by a body corporate: officers deemed to be guilty

89B. Where an offence under this Act or under any of the regulations or by-laws made thereunder is committed by a body corporate (whether or not the body corporate has been prosecuted), every director, secretary or manager of the body corporate shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due 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.

Recovery of damages for injury done to property of Commission

90. (1) In every case in which any damage is done to any gate, bridge, pier, jetty, quay, wharf, warehouse, shed, graving dock, graving block, building or other work belonging to the Commission by any vessel or by any of the persons belonging to or employed about any vessel, the amount of the damage may be recovered from the master or the owner of the vessel, where the claim does not exceed one thousand ringgit, in a Magistrate's Court, and, whatever may be the extent of such claim, by action at law in the High Court.

(2) The Commission may detain the vessel until the damage has been paid for or a deposit has been made by the master or owner of the vessel, equal in amount to the claim or demand made by the Commission for the estimated amount of the damage so done by the vessel, or security has been given for the payment of the entire amount of the damage.

(3) If a deposit has been made, the Commission shall receive and retain it until the entire amount of the damage has been ascertained by the Commission and paid to it by the master or owner of the vessel.

(4) Every such deposit shall be considered to have been made in payment and satisfaction of the claim or demand for damage in respect of which the deposit has been made, unless notice that the claim is disputed is given to the Commission within seven days after the deposit has been made.

(5) After the expiration of seven days next after the deposit has been made, unless in the meantime notice has been given to the Commission that the claim is disputed, the Commission may, unless the amount of damage done by the vessel has been sooner paid, apply the deposit or a sufficient part thereof in making good such damage, and shall return the residue, if any, to the said master or owner.

(6) Every notice that a claim is disputed shall be in writing, and shall contain the name and an address of some person, within the State, who is authorized to act on behalf of the master or owner in reference to the claim, otherwise the notice shall be invalid.

(7) Service of any documents or legal process on any such person shall be deemed good service on the master or owner for all purposes.

Power to board vessel and seize

90A. (1) The General Manager or such person as may be authorized by him may board any vessel within the port whenever he suspects that an offence under this Act or any by-laws made thereunder has been or is about to be committed on board such vessel or whenever he considers it necessary to do so in the discharge of his duties under this Act or any by-laws made thereunder.

(2) The General Manager or such person as may be authorized by him may, in exercising his powers and carrying out his duties under subsection (1), seize any article, document or thing which he has reasonable grounds for believing has been used for the commission of, or is the subject matter of, or is required for the purpose of investigation and prosecution of, an offence under this Act or any by-laws made thereunder.

(3) Any master of such vessel who wilfully delays, fails to comply with any order lawfully given, withholds any information or obstructs in any manner whatsoever the General Manager or such person as may be authorized by him pursuant to subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

Power of General Manager or authorized person to order scuttling or removal of vessel in case of fire

90B. (1) In the event of fire breaking out on board any vessel in the port, the General Manager or any person authorized by him may proceed to board the vessel with such persons and assistance as may seem fit to him and may give such orders to the master of the vessel as are necessary for scuttling the vessel or for removing that vessel or any other vessel, and he may take such other measures as are necessary and proper for the protection of life or property.

(2) If the orders given pursuant to subsection (1) are not carried out forthwith by the master of the vessel, the General Manager or the person authorized by him may himself proceed to carry the orders into effect.

(3) Any expenses incurred in the exercise of the powers conferred by subsections (1) and (2) shall be recoverable from the master or the owner of the vessel concerned as a civil debt.

Damage due by one vessel to another

91. If the master of any vessel or the crew under his command or any other person wilfully, negligently or carelessly does or causes to be done any damage to any vessel in any dock or lying alongside any wharf, or being elsewhere within the limits of the port, the amount of the damage may be recovered from the master or owner of the first mentioned vessel, where the claim does not exceed the sum of one thousand ringgit, in a Magistrate's Court, or, whatever may be the extent of the claim, by action at law in the High Court.

Penalties to be recovered before a Magistrate's Court

92. (1) All offences under this Act or under any by-law made thereunder shall be tried by a Magistrate's Court.

(2) Every fine or forfeiture imposed by this Act or any by-law made thereunder, and all damages or other sums of money recoverable and directed to be paid, may be recovered upon complaint made to that Court, which, if it convicts the offender, shall adjudge him to pay the fine imposed, or damages or forfeiture incurred or sum of money made recoverable, as the case may be, as well as such costs as the Court thinks fit.

Penalties as to employment of pilot other than a Commission pilot

92A. (1) Any person who, not being a Commission pilot or a person licensed under subsection 70CA (1), engages in any pilotage act or attempts to obtain employment as a pilot of a vessel entering or being within any pilotage district shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding *two thousand ringgit.

(2) Any master or owner of a ship entering or being within any pilotage district who knowingly employs as pilot any person who is not a Commission pilot or a person licensed under subsection 70CA (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding **two thousand ringgit.

(3) For the purpose of this section a Commission pilot acting beyond the limits for which he is licensed or in contravention of any conditions imposed under section 70H shall be deemed not to be a Commission pilot.

(4) Any person may, without subjecting himself or his employer to any penalty, act as the pilot of a vessel entering or leaving any pilotage district when the vessel is in distress or under circumstances making it necessary for the master to avail himself of the best assistance that can be found at the time.

Receiving or offering improper rates of pilotage

92B. (1) A Commission pilot or a person licensed under subsection 70CA(1) shall not demand or receive, and a master, owner or agent shall not offer or pay to any pilot, any other rate in respect of pilotage services whether greater or less than the rate which is prescribed by law.

*NOTE—Previously “one thousand ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

**NOTE—Previously “one thousand ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

(2) Any Commission pilot or a person licensed under subsection 70CA (1), master, owner, or agent who acts in contravention of this section shall be guilty of an offence and shall, on conviction, be liable of each offence to a fine not exceeding *five hundred ringgit and the licensed of the pilot may be suspended or cancelled.

Offences of a Commission pilot

92c. (1) Any Commission pilot or any person licensed under subsection 70CA(1), who—

- (a) is in any way directly or indirectly concerned in any corrupt practices relating to vessels, their tackle, furniture, cargoes, crews or passengers, or to persons in distress at sea or by shipwreck, or to their moneys, goods or chattels;
- (b) lends his licence;
- (c) acts as a pilot while suspended;
- (d) acts as a pilot when in a state of intoxication;
- (e) refuses or wilfully delays, when not prevented by illness or other reasonable cause, to pilot any vessel within the limits for which he is licensed by the Commission upon being required to do so by any employee of the Commission duly authorized in that behalf; or
- (f) quits the vessel under his pilotage without the consent of the master, before the service for which he was engaged has been performed,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

(2) Any person who procures, aids, abets or connives at the commission of any offence under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

(3) Any Commission pilot who commits an offence under this section, or procures, aids, abets or connives at the commission of any such offence shall, on conviction, be liable to suspension or dismissal by the Commission.

*NOTE—Previously “one hundred ringgit”—see Penang Port Commission (Amendment) Act 1993 [Act A855].

(4) Any person licensed under subsection 70CA (1) who commits an offence under this section, or procures, aids, abets or connives at the commission of any such offence shall, on conviction, be liable to suspension or revocation of the licence.

Penalty on pilot endangering ship, life or limb

92D. (1) Any Commission pilot or any person licensed under subsection 70CA(1) who, when engaged in the pilotage of a vessel, by wilful breach of duty or by neglect or by reason of drunkenness, either—

- (a) does any act tending to the immediate loss, destruction or serious damage of the vessel, or tending immediately to endanger the life or limb or any person on board the vessel; or
- (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from loss, destruction or serious damage, or for preserving any person belonging to or on board the vessel from danger to life or limb,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding two years, and shall also be liable on conviction to suspension or dismissal by the Commission:

Provided that no person licensed under subsection 70CA(1) shall be dismissed by the Commission.

Failure to employ Commission pilot or licensed pilot under certain circumstances

92E. (1) The master, owner or agent of a vessel navigating in circumstances in which the vessel is required by the Commission under section 70B to be under pilotage who does not employ a Commission pilot or a person licensed under subsection 70CA(1) for such purpose shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

(2) Upon being found guilty of any offence under subsection (1), the Court before which the master, owner or agent of the vessel is found guilty shall order such master, owner or agent to pay to the Commission the amount certified by the accountant of the Commission to be the amount of dues and rates which would have been payable to the Commission if the vessel has been under pilotage as required by this Act and such amount shall be recoverable in the same manner as a fine.

Penalties to be levied by distress

93. If upon any such adjudication the amount of the fine, forfeiture or damages, and of such costs as aforesaid is not forthwith paid, the same shall be levied by distress under a warrant of distress issued by the Court.

Imprisonment in default of distress

94. (1) The Court may order any offender so convicted to be detained and kept in safe custody until return can be made to the warrant of distress, unless he gives security by way of recognizance or otherwise for his appearance before the Court on the day appointed for the return.

(2) If it appears to the Court, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of the Court whereon to levy the fine, forfeiture, damages and costs, the Court shall commit the offender to prison for any term not exceeding six months unless the fine, forfeiture, damages and costs are sooner paid and satisfied.

Penalty to be sued for within six months

95. No person shall be liable to any fine or forfeiture under this Act or under any by-law made thereunder for any offence made cognizable before a Magistrate's Court unless the complaint respecting such offence has been made before the Court within six months next after the commission of the offence.

Damage to be made good in addition to penalty

96. If through any act, neglect or default, on account whereof any person has incurred any fine under this Act, any damage to the property of the Commission or any property in its possession, custody or control has been committed by the person, he shall be liable to make good to the Commission the damage, as well as pay the fine.

Person aggrieved may appeal to High Court

97. (1) If any person thinks himself aggrieved by the order or judgment of any Magistrate's Court under this Act, the person may, within fourteen days next after the cause of complaint has arisen, appeal to the High Court therefrom.

(2) Appeals shall be determined in the same manner as appeals from Magistrate's Court are determined, and be subject to the same rules of procedure.

Statement to be made in complaint or summons of offence

98. (1) It shall be sufficient, in any complaint or summons to be made before or issued by any Magistrate's Court against any firm or company, or against any person carrying on any trade or business in co-partnership, or in any conviction to be afterwards made for any fine imposed or damages incurred by this Act or any by-law made thereunder, to state the offence committed by the firm and to direct the summons to the firm or company or any member thereof.

(2) Service of the summons at the usual place of business of the firm shall be taken to be a sufficient service thereof.

(3) Any such conviction may be recovered by the warrant of any Magistrate's Court, to be made out and issued in the name of and against the firm or company, and to be levied and recovered by distress and sale of the goods and chattels of the firm or company or of any individual partner thereof.

Saving of the Merchant Shipping Ordinance

99. Except as otherwise provided, nothing in this Act shall extend to repeal or alter any of the provisions of the Merchant Shipping Ordinance 1952, or to exempt the Commission or the docks, quays or other works belonging to them from the provisions of the said Ordinance.

Protection of members of Commission and officers from personal liability

100. (1) No matter or thing done or contract entered into by any member or officer of the Commission, or other person whomsoever, acting under the direction of the Commission, shall, if the matter or thing was done or the contract was entered into *bona fide* for the purpose of executing this Act subject them or any of them personally to any action, claim or demand whatsoever.

(2) Any expense incurred by any member, officer or other person acting as aforesaid shall be borne by and repaid out of the funds of the Commission.

Conduct of prosecutions

101. Prosecutions in respect of any offence against this Act or the regulations or by-laws made thereunder may be conducted by any officer authorized in writing by the Chairman.

Power to compound offence

101A. (1) The Minister may by order to be published in the *Gazette* prescribe any offence against the provisions of this Act or of any regulations or by-laws made thereunder as an offence which may be compounded by the Commission.

(2) The General Manager may in his discretion compound such offence prescribed under subsection (1) by accepting from the person reasonably suspected of having committed any such offence a sum of money not exceeding five hundred ringgit.

(3) The Minister may by the same order made under subsection (1) prescribe the method and procedure for compounding any offence against the provisions of this Act or of any regulations or by-laws made thereunder.

PART VIII

TRANSFER OF UNDERTAKINGS AND REPEAL

Property, Pending Proceedings and Contracts

Transfer to Commission of undertakings of Board and Administration

102. (1) Upon the appointed day there shall be transferred to and vest in the Commission—

- (a) all the undertaking of the Penang Harbour Board (in this Part referred to as “the Board”); and
- (b) the Prai Wharf undertaking of the Malayan Railway Administration (in this Part referred to as “the Administration”).

(2) The transfer shall extend to the whole of those undertakings including all lands, works and other property movable or immovable, assets, powers, rights and privileges held or enjoyed in connection therewith or appertaining thereto, other than such movable property as the Administration and the Commission may agree to exclude, or in default of agreement, as the Minister may determine ought to be excluded, from the transfer effected by this section.

(3) The Commission, on the transfer of the said undertakings—

- (a) may exercise and enforce all the rights, powers and privileges which were immediately before the appointed day vested in the Board or the Administration in respect of each of the undertakings; and
- (b) shall, to the exclusion of the Board and the Administration, be subject to all liabilities and obligations to which the Board and the Administration were respectively subject immediately before the appointed day in respect of each of the undertakings.

Pending proceedings and existing contracts

103. (1) No proceeding or cause of action pending or existing immediately before the appointed day by or against the Board in respect of its undertaking or the Administration in respect of the Prai Wharf undertaking shall abate or be discontinued or be in any way prejudicially affected by reason of anything in this Act, but the proceeding or cause of action may, so far as it relates to either undertaking, be continued and enforced by or against the Commission as it might have been by or against the Board or the Administration, as the case may be, if this Act had not been passed.

(2) Subject to this Act, all contracts, deeds, bonds, agreements and other instruments, and all working arrangements subsisting immediately before the appointed day and affecting the Board or the Administration shall, so far they relate to the undertaking of the Board or the Prai Wharf undertaking of the Administration, be of full force and effect against or in favour of the Commission, as if, instead of the Board or the Administration, as the case may be, the Commission had been a party thereto or had been named therein.

Financial adjustment on transfer of Prai Wharf undertaking

104. There shall be paid by the Commission to the Administration or by the Administration to the Commission such sum by way of financial adjustment upon the transfer to the Commission of the Prai Wharf undertaking as may with the prior approval of the Minister be agreed between the Commission and the Administration or in default of agreement as shall be determined by the Minister.

*Transfer of Officers and Servants***Transfer of former officers and servants of Board and Administration**

105. (1) Subject to this Act any person who was immediately before the appointed day an officer or servant of the Board or an officer or servant of the Administration employed by the Ports Department of the Administration in or about the Prai Wharf undertaking shall, as from the appointed day, be transferred to and become an officer or servant of the Commission.

(2) Any officer or servant transferred by virtue of this section shall be employed by the Commission on terms and conditions of service not less favourable than those which were attached to his service immediately before the transfer.

(3) In determining whether the terms and conditions of service are or are not less favourable, as aforesaid, regard shall be had to salary or wages, conditions relating to termination of service, pension, retiring allowance or gratuity, medical attention, quarters, allowances, leave and overseas passages, if any, for himself and his family and any other benefits whether provided for himself or his widow or dependents.

(4) If any question arises whether subsections (2) and (3) have been complied with, the question shall be referred to the Minister and the decision thereon of the Minister or his duly appointed representative shall be final.

Election by transferred officers and servants of Administration

106. (1) Any officer or servant of the Administration who has been transferred to the service of the Commission by virtue of section 105 may not later than six months after the publication in the *Gazette* of regulations made under section 15 elect whether he will continue in the service of the Commission or revert to the service of the Administration.

(2) Any election made under this section shall be in writing addressed to the Chairman of the Commission and shall be irrevocable.

(3) Any officer or servant who elects to revert to the service of the Administration shall thereupon be reemployed by the Administration on terms and conditions of service no less favourable, regard being had to the matters referred to in subsection 105(3), than those which would have attached to his service if he had continued throughout in the service of the Administration and not been transferred to the service of the Commission.

(4) If any question arises whether subsection (3) has been complied with, the question shall be referred to the Minister and the Minister or his duly appointed representative may give such directions thereon as to him seem just and the directions shall be binding on the Administration and shall be final.

Continuance of provident funds, pension and superannuation schemes

107. (1) With the approval of the Minister the Commission may by regulations provide for the continued maintenance and administration or for the winding up of any provident fund, pension scheme or superannuation scheme established, maintained or administered by virtue of section 22 of the Ports Ordinance, or for the merging of any such fund or scheme in any new fund or scheme established under the powers contained in section 16.

(2) With the approval of the Minister the Commission may enter into arrangements or agreements with any Harbour Board established and incorporated in Singapore in respect of the Port of Singapore for the continued maintenance and administration or for the winding up of any joint provident fund established, maintained or administered by virtue of paragraph 22(1)(b) of the Ports Ordinance and may by regulations make such provision as may be necessary for carrying out and giving effect to any such arrangements or agreements.

(3) Pending the making of any regulations under subsection (1) or (2), any provident fund, joint provident fund, pension scheme or superannuation scheme established, maintained or administered under section 22 of the Ports Ordinance shall continue to be maintained and administered in all respects as if this Act had not been passed:

Provided that any rights, trusts, obligations and duties formerly conferred and imposed on the Board in relation to the fund or scheme shall as from the appointed day be deemed to have been conferred and imposed on the Commission.

Transferred officers and servants of Administration to be deemed for purpose of pensions to continue in service of Administration

108. (1) Any officer or servant of the Administration transferred to the service of the Commission by virtue of section 105 (in this section referred to as “a transferred person”) who immediately before the transfer held an office which was a pensionable office under the *Pensions Ordinance 1951 [*Ord. 1 of 1951*], shall be deemed for the purposes of the said Ordinance to continue to hold

*NOTE—The Pension Ordinance 1951 has been repealed by the Pensions Act 1980 [*Act 227*]—see s. 28 of Act 227 for the provision on repeal and savings.

that office so long as he is in the service of the Commission and shall be eligible for the grant of a pension, gratuity or retiring allowance as if his service under the Commission were service under the Government and the Government may grant a pension, gratuity or allowance in accordance with the said Ordinance.

(2) Any transferred person who immediately before his transfer held a non-pensionable office shall be deemed for the purpose of the Pensions Ordinance 1951, to have continued to hold the office so long as he is in the service of the Commission and shall be eligible for the grant of a gratuity or retiring allowance as if his service under the Commission were service under the Government and the Government may grant a gratuity or allowance in accordance with the said Ordinance.

(3) Where by virtue of this section the Government shall grant a pension, gratuity or retiring allowance to a transferred person, the Commission shall pay to the Government such proportion of the pension, gratuity or allowance as shall be agreed between the Commission and the Administration or in default of agreement as may be determined by the Minister.

Depositor in Malayan Railway Provident Fund transferred to the Commission

109. (1) Any person who, being an officer or servant of the Administration, is transferred to and becomes an officer or servant of the Commission under section 105 and who immediately before the appointed day was a depositor in the Malayan Railway Provident Fund (in this section referred to as “the Fund”) shall, so long as he remains an officer or servant of the Commission continue to be a depositor in the Fund and subject to subsections (2) and (3), while he so continues to be a depositor, the Malayan Railway Provident Fund Ordinance 1952 [*Ord. 21 of 1952*], shall, so far as respects him, continue to have effect and he shall be entitled to the same benefits, rights and privileges and subject to the same obligations to which he would have been entitled or subject if he had remained an officer or servant of the Administration.

(2) Where any person who continues to be a depositor in the Fund ceases to be an officer or servant of the Commission, the provisions of the Malayan Railway Provident Fund Ordinance 1952, which would have been applicable upon his ceasing to be

an officer or servant of the Administration shall apply as if he had remained an officer or servant of the Administration, and had ceased to be such an officer or servant at the time at which and in circumstances similar to those in which he ceased to be an officer or servant of the Commission.

(3) Where an officer or servant of the Administration continues after the appointed day to be a depositor in the Fund—

- (a) the Board of Managers of the Fund may in respect of him grant benefits and make payments into and out of the Fund as if his employment by the Commission were employment by the Administration;
- (b) the Commission shall deduct from his remuneration such amounts as he is liable to deposit in the Fund and shall from time to time pay to the Administration the amounts so deducted to be carried by the Administration to his credit in the Fund; and
- (c) the Commission shall from time to time pay to the Administration such amounts as the Administration would be liable to pay to the Fund by way of bonuses in respect of his remuneration if his employment by the Commission were employment by the Administration and the amounts shall be carried by the Administration to his credit in the Fund.

Widows' and Orphans' Pension

110. Every officer or servant of the Administration transferred to the service of the Commission under this Act who immediately before the appointed day, was a contributor to the widows' and orphans' pension scheme established under the Widows and sOrphans Pension Enactment of the Federated Malay States [*F.M.S. Cap. 26*] shall continue to contribute to the scheme and shall be entitled to benefit thereunder in all respects as if his service with the Commission were service in a pensionable office with the Government.

LAWS OF MALAYSIA**Act 140****PENANG PORT COMMISSION ACT 1955**

LIST OF AMENDMENTS

Amending Law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A338	Penang Port Commission (Amendment) Act 1976	27-02-1976
Act A582	Penang Port Commission (Amendment) Act 1984	20-01-1984
Act A673	Penang Port Commission (Amendment) Act 1987	22-05-1987
Act 422	Ports (Privatisation) Act 1990	02-04-1990
Act A855	Penang Port Commission (Amendment) Act 1993	30-09-1993
Act A936	Penang Port Commission (Amendment) Act 1995	10-11-1995
Act A1238	Penang Port Commission (Amendment) Act 2004	14-01-2005

LAWS OF MALAYSIA

Act 140

PENANG PORT COMMISSION ACT 1967

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A582 Act A855	20-01-1984 30-09-1993
14A	Act A855	30-09-1993
18	Act A582	20-01-1984
21	Act A582	20-01-1984
22	Act A582	20-01-1984
24	Act A582 Act A855	20-01-1984 30-09-1993
25	Act A855	30-09-1993
25A	Act A673	22-05-1987
31	Act A855	30-09-1993
32	Act A582 Act A855	20-01-1984 30-09-1993
33	Act A582	20-01-1984
33A	Act A673 Act 422 Act A936	22-05-1987 02-04-1990 10-11-1995
36A	Act A855	30-09-1993
37	Act A855	30-09-1993
38A	Act A855	30-09-1993
39	Act A582	20-01-1984
40	Act A582	20-01-1984
49	Act A855	30-09-1993

Section	Amending authority	In force from
58A	Act A855	30-09-1993
59A	Act A673	22-05-1987
59B	Act A673	22-05-1987
59C	Act A1236	13-01-2005
60	Act A855	30-09-1993
64	Act A855	30-09-1993
66	Act A582	20-01-1984
70B	Act A338 Act A582	27-02-1976 20-01-1984
70CA	Act A855	30-09-1993
70CB	Act A855	30-09-1993
70D	Act A855	30-09-1993
70E	Act A338	27-02-1976
70I	Act A855	30-09-1993
70J	Act A855	30-09-1993
70M	Act A855	30-09-1993
70O	Act A855	30-09-1993
70P	Act A673	22-05-1987
75A	Act A338	27-02-1976
75B	Act A338	27-02-1976
75C	Act A338	27-02-1976
75D	Act A338	27-02-1976
80A	Act A936	10-11-1995
80B	Act A936	10-11-1995
80C	Act A936	10-11-1995
80D	Act A936	10-11-1995

Section	Amending authority	In force from
82	Act A855	30-09-1993
83	Act A855	30-09-1993
86A	Act A855	30-09-1993
87	Act A855	30-09-1993
88	Act A855	30-09-1993
88A	Act A855	30-09-1993
89A	Act A855	30-09-1993
89B	Act A855	30-09-1993
90A	Act A855	30-09-1993
90B	Act A855	30-09-1993
92A	Act A855	30-09-1993
92B	Act A855	30-09-1993
92C	Act A855	30-09-1993
92D	Act A855	30-09-1993
92E	Act A855	30-09-1993
101	Act A855	30-09-1993
101A	Act A855	30-09-1993

