

PORTS ACT 1998

Act No. 3 of 1998 – June 16, 1998

[Commencement] [Amendments]

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

1. Short title
2. Interpretation

PART II - CONSTITUTION AND FUNCTIONS OF AUTHORITY

3. Establishment of Authority
4. Functions and duties of Authority
5. Port master plan
6. The Board
7. Meetings of the Board
8. Director-General
9. Delegation of powers
10. Port users' council
11. Powers of the Minister
12. Annual reports
13. Appointment of Deputy Directors-General, Port Masters and other employees
14. Conditions of service of staff
15. Protection of members and employees

PART III - FINANCIAL PROVISIONS

16. Principles of financial management
17. Capital and borrowing
18. Investments
19. Exemption of Authority from taxation
20. Rates, charges, dues and fees
21. Power of entry into vessels
22. Power to distrain for non-payment of sums due

PART IV - GENERAL POWERS AND DUTIES

23. General powers
24. Licensing
25. Limits of ports
26. Land and buildings
27. Power to construct works
28. Control of development
29. Power to allocate facilities for exclusive or preferential use
30. Protection of the environment

PART V - NAVIGATION AND OTHER BUSINESS IN PORTS

31. Powers of officers
32. Directions of Port Master in relation to vessels
33. Clearance of vessels
34. General duties as to provision of pilotage services
35. Licensing of pilots

PART VI - HANDLING, STORAGE AND DISTRIBUTION OF GOODS IN PORTS

36. Provision of cargo handling and port services
37. Suspension and revocation of contract or licence
38. Submission of information
39. Power to remove goods
40. Power to dispose of goods
41. Bonded warehouses

PART VII - LIABILITY OF THE AUTHORITY AND LICENSED OPERATORS

42. Liability for transshipment goods
43. Liability for goods other than transshipment goods
44. Exemption from liability
45. Liability for vessel under pilotage
46. Liability in respect of dredging
47. Limitation of liability for damage to vessels
48. Limitations of liability in respect of one occasion
49. Saving

PART VIII - CONSERVANCY

50. Dredging
51. Power to raise and remove wrecks
52. Power to deal with idle vessels
53. Removal of obstructions other than vessels
54. Removal of vehicles and obstructions
55. Pollution of a port
56. Protection of acts of the Authority
57. Power to investigate discharges of pollutants
58. Power to detain vessels
59. Power to inspect International Oil Pollution Prevention Certificates
60. Power to deny entry to vessels
61. Provision of reception facilities
62. Provision of fire and emergency service
63. Fire on board
64. Powers of entry during an emergency

PART IX - REGULATORY POWERS

65. Power to make regulations

PART X - MISCELLANEOUS PROVISIONS

66. Damage to Authority's property
67. Powers of arrest
68. Jurisdiction
69. Repeal
70. Consequential amendments
71. Transitional provisions
72. Commencement
- Schedule

To provide for the establishment and management of the Mauritius Ports Authority

ENACTED by the Parliament of Mauritius, as follows :-

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Ports Act 1998

2. Interpretation

(1) In this Act, unless the context otherwise requires -

“Authority” means the Mauritius Ports Authority established under section 3;

“Board” means the Board established under section 6;

“Chairman” means the Chairman of the Board;

“Comptroller” means the Comptroller of Customs and Excise appointed under section 3 of the Customs Act 1988;

“Director of Shipping” means the Director of Shipping appointed under section 4 of the Merchant Shipping Act 1986;

“Director-General” means the person appointed as such under section 8;

“employee” means an employee of the Authority;

“goods” means all articles and merchandise of every description and includes fish, livestock and animals;

“idle ship” means a ship which has been lying in port premises without cargo being loaded or unloaded or repairs being conducted, or has been abandoned, or for the sailing or operation of which there are no plans nor prospects, or which has no crew assigned to it for its manning, or has been declared to be unfit for sailing unless major repairs are conducted on it, by an inspector pursuant to the Merchant Shipping Act 1986, Part V, or any other legislation applicable;

“land” includes land covered by water;

“landlord port” means a port authority which acts as developer of port facilities and regulator and controller of port activities of private and public port operators and of land use, and as provider of marine services;

“licence” means a licence issued under this Act or any subsidiary enactment made under this Act;

“licensed operator” means any person or body of persons licensed under section 24;

“licensed pilot” in relations to any area, means a person licensed under section 35 for that area and, in relation to any vessel, a person so licensed in respect of vessels of that description;

“master” when used in relation to a vessel means any person, other than a pilot, having the command, charge or management of the vessel for the time being;

“member” means a member of the Board and includes the Chairman;

“Mauritius Marine Authority” means the Mauritius Marine Authority established under section 3 of the Ports Act 1975;

“Minister” means the Minister who is responsible for ports;

“officer” means an employee of the Authority specially designated by the Authority to act as such;

“owner”, when used in relation to goods, includes any consignor, consignee, shipper or agent for the sale, receipt, custody, loading or unloading and clearance of those goods and includes any other person in charge of the goods and his agent in relation thereto; and when used in relation to a vessel includes any part owner, broker, charterer, agent or mortgagee in possession of the vessel or other person or persons entitled for the time being to possession of the vessel;

“pilot” means any person not belonging to a vessel who has the conduct thereof;

“port” means a port specified in the Schedule;

“Port Master” in relation to a port, means the officer appointed as such under section 13;

“port master plan” means a plan prepared under section 5;

“port premises” means any land, landing place, building, sheds, quays, wharves, waters and places vested in the Authority or under its control;

“registered tonnage” means -

(a) the registered net tonnage denoted in a vessel's certificate of registration or other appropriate document acceptable to the Authority; or

(b) where the document shows dual tonnage, the higher registered net tonnage;

“transshipment goods” means goods which are -

- (a) landed from a vessel and placed in the custody of the Authority for the purposes of shipment on another vessel on a through bill of lading dated at the port of loading of the goods and showing that the final destination is via Mauritius; and
- (b) declared on a transshipment manifest lodged with the Authority before or at the time the goods are placed in its custody;

“vehicle” includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, caravans and mobile homes and includes a hovercraft or other amphibious vehicle;

“vessel” includes every description of vessel however propelled or moved, and includes a dredger, a hovercraft, a hydrofoil vessel, anything constructed or adapted to carry persons or goods by water and a flying boat or seaplane on or in the water;

“wharf” means any wharf, quay, pier, jetty or other place at which sea-going vessels can ship or unship goods or embark or disembark passengers;

(2) In this Act, references to a vessel navigating or being navigated include references to its moving or being moved within a port for the purpose of changing from any mooring to another or of being taken into or out of any dock.

PART II - CONSTITUTION AND FUNCTIONS OF AUTHORITY

3. Establishment of Authority

(1) The Mauritius Marine Authority established under the Ports Act 1975 shall be deemed to have been established under this Act.

(2) The name of the Mauritius Marine Authority is changed to the Mauritius Ports Authority.

(3) The Authority, which shall be a body corporate, shall be the sole national port authority to regulate and control the port sector and provide marine services.

4. Functions and duties of Authority

(1) Subject to the provisions of this Act, it shall be the function and duty of the Authority as a landlord port, to -

- (a) provide and improve port infrastructure, superstructure, heavy equipment and related facilities;
- (b) provide marine services and navigational aids, and assist in sea rescue ;
- (c) regulate and control -
 - (i) shipping, navigation, dredging and other related matters in ports;
 - (ii) the entry of vessels in ports, their stay, movements or operations in, and departure from, ports, the loading, unloading and storage of cargo and containers and the landing and embarkation of passengers; and
 - (iii) pollution and protection of the environment within ports, and the enhancement of safety and security;
- (d) provide for the welfare of employees, and of persons working or living on a vessel in a port;
- (e) enter into concession contracts for the provision of port and cargo handling services by qualified and licensed operators under such general terms and conditions as the Authority may determine;
- (f) promote the use, improvement and development of ports;
- (g) exercise licensing, regulating and controlling functions in respect of port and marine services not provided by the Authority;
- (h) implement Government port policies and keep them under review, and advise Government on all matters concerning the port sector, its facilities, services and related issues;
- (i) regulate and control the development within ports in accordance with approved port master plans, and to be the responsible authority for land use control in the port area with the power to lease land under such terms and conditions as the Authority may determine.

(2) Nothing in subsection (1) shall dispense the Authority from doing, or deny the Authority the power to do, any and all things reasonably necessary for or incidental to the discharge of its functions of effective and economical management, planning and control of the ports of the country.

(3) The Authority may, as it thinks fit, engage in operations for the salvage of ships and cargo whether inside or outside ports.

5. Port master plan

(1) The Authority shall prepare and periodically update a port master plan for each of the ports specified in the Schedule which shall formulate its policy for port development and land use.

(2) The Authority shall be responsible for the proper implementation of such port master plans.

6. The Board

- (1) (a) The administration and control of the affairs of the Authority shall vest in a Board.
- (b) The Board shall perform, exercise and discharge the functions, powers and duties of the Authority.
- (2) The Board shall consist of -
 - (a) a Chairman appointed by the Minister;
 - (b) a representative of the Minister;
 - (c) the Director-General;
 - (d) 3 members appointed by the Minister from representatives of commercial, ship owning or other users' interests; and
 - (e) not more than 3 other members as the Minister may from time to time determine.
- (3) Every appointed member shall -

- (a) be a person who, in the Minister's opinion, has had experience and shown capacity in the field of port management, industry, commerce, finance or administration or has some special knowledge or experience that renders him a fit and proper person to be a member; and
- (b) hold office for a period not exceeding 2 years and shall be eligible for reappointment.

- (4) (a) A member of the National Assembly shall not be qualified to be an appointed member.
- (b) Every appointed member shall vacate his office if he becomes a member of the National Assembly.

(5) Where it appears to the Minister that the Chairman or any member of the Board is incapacitated by absence from Mauritius or illness or any other sufficient cause from performing the duties of his office the Minister may, in accordance with this section, appoint another person to hold office in his place until such time as the Minister is satisfied that the incapacity of that person has terminated or until the term of such member expires, whichever first occurs.

- (6) Every member shall be paid by the Authority such remuneration or allowance as the Board may determine.

(7) Any member of the Board appointed under this section may resign his office by notice in writing addressed to the Minister.

7. Meetings of the Board

(1) The Board shall meet for the despatch of business in the main office of the Authority unless circumstances, in the judgment of the Chairman, call for a meeting elsewhere.

(2) In the absence of the Chairman at a meeting, a member of the Board appointed by a vote of the members present shall chair the meeting.

- (3) The Board shall meet -

- (a) not less than once every 3 months; and
- (b) at such other time as may be requested by not less than 3 members.

- (4) Five members of the Board shall constitute a quorum.

(5) Questions arising at any meeting of the Board shall be decided by a majority vote of the members present and voting thereon and, in the case of an equality of votes, the Chairman of the meeting shall have a casting vote.

(6) If any member identifies a matter to be considered at a meeting of the Board in which he has directly or indirectly any financial or other interest, he shall, as soon as practicable after he has knowledge of such matter and of such interest, disclose in writing the fact to the Board and he shall not take part or further part in the consideration of the matter, or vote on any question with respect to that matter and he shall, subject to subsection (7), withdraw from the meeting during such consideration.

(7) The withdrawal of a member under subsection (1) shall not disqualify the member for the purpose of constituting a quorum.

8. Director-General

- (1) There shall be a chief executive officer of the Authority who shall -

- (a) be known as the Director-General; and
- (b) be appointed by the Board subject to the Minister's approval.

- (2) The Director-General shall -

- (a) be responsible for the execution of the policy of the Board and implementation of its regulatory and control functions, and for the control and management of the day to day business of the Authority;
- (b) have power to exercise supervision and control over the acts and proceedings of all employees of the Authority in matters of executive administration; and
- (c) concerning the accounts and records of the Authority and, subject to any instructions and rules given or made by the Board, have the power to dispose of all questions relating to the service of said employees.

(3) In the exercise of his functions the Director-General shall act in accordance with such directions as he may receive from the Board.

- (4) (a) Subject to paragraph (b), the Director-General may, in case of emergency, direct -

- (i) the execution of any work or the doing of any act which the Authority is empowered to execute or do and which he is not by this Act or any standing order or rule or regulation made thereunder expressly empowered to do and the immediate execution or doing of which is, in his opinion, necessary for the operation of the port services or the safety of the public; and
- (ii) that the expenses of executing the work or doing the act shall be paid from the fund of the Authority.

- (b) The Director-General shall -

- (i) not act under this subsection in contravention of any resolution of the Board passed at a meeting; and
- (ii) where he acts under this subsection, report his proceedings to the next following meeting of the Board.

- (5) (a) The Director-General may delegate his functions or any power delegated to him under section 9 to an officer.

- (b) Where the Director-General delegates any function or power under paragraph (a), he shall report any such delegation as soon as possible to the Board for confirmation.

9. Delegation of powers

(1) Subject to such instructions and rules of a general and specific nature as it may give or make, the Board may delegate to the Director-General such of its powers under this Act, other than the power -

- (a) to borrow money;

- (b) to make investments; or
- (c) to enter into any transaction in respect of capital expenditure, as may be necessary to assist in the effective management of the business of the Authority.

- (2) (a) Where the amount involved does not exceed one million rupees, the restrictions under subsection (1) shall not apply.
- (b) The Director-General shall report any such borrowing, investments or transaction as soon as possible to the Board.

10. Port users' council

(1) The Authority may appoint one or more port users' councils consisting of representatives of persons interested in the operation and use of a port.

(2) In appointing the persons under subsection (1), the Authority shall have regard to any representations relating thereto made by users of the port and by persons providing port or marine services or facilities.

(3) The Authority may consult a port users' council on any matter concerning the port, including, without prejudice to the foregoing generality -

- (a) the provision of port and marine services and facilities;
- (b) the rates, charges, dues and fees levied by the Authority; and
- (c) the expansion or development of the port.

(4) The Authority may consider any matter concerning a port which may from time to time be referred to it by the port users' council.

11. Powers of the Minister

(1) The Minister may, in relation to the exercise of the functions of the Authority under this Act, after consultation with the Authority, give such general directions to the Authority, not inconsistent with the provisions of this Act, as he considers necessary in the public interest and the Authority shall comply with those directions.

(2) The Authority shall furnish to the Minister such information with respect to the activities of the Authority, in such manner and at such times, as the Minister may require.

(3) The Authority shall furnish to the Minister such returns or copies of such documents, including the minutes of proceedings and the accounts of the Authority, in such manner and at such times as the Minister shall require.

- (4) (a) The Minister may approve any regulations made by the Authority either without modification or with such modification as he thinks fit for reasons which he shall communicate to the Authority.
- (b) Where the Minister proposes to approve such regulations with modifications, he shall afford the Authority the opportunity of making representations with respect to the proposed modifications and shall consider any representations made in pursuance of this subsection.

12. Annual reports

The Authority shall submit to the Minister an annual report of its activities together with its audited accounts within 6 months of the end of its financial year.

13. Appointment of Deputy Directors-General, Port Masters and other employees

The Board -

- (a) may appoint one or more Deputy Directors-General;
- (b) shall appoint a Port Master and one or more Assistant Port Masters for one or more ports for the purposes of this Act;
- (c) may employ, on such terms and conditions as it thinks fit, such other officers and employees as may be necessary for the proper discharge of its functions.

14. Conditions of service of staff

The Board may make provision, in such form as it may determine, to govern the conditions of service of employees and in particular to deal with -

- (a) the appointment, dismissal, discipline, pay, leave of, and the security to be given by, employees;
- (b) appeals by employees against dismissal or other disciplinary measures; and
- (c) the establishment and maintenance of provident, pension fund and welfare schemes and the contributions payable to and the benefits recoverable from those schemes.

15. Protection of members and employees

(1) No liability, civil or criminal, shall attach to any member or employee in respect of loss arising from the exercise in good faith by him of his functions under this Act.

- (2) Every employee shall, for the purposes of the Public Officers' Protection Act, be deemed to be a public officer.

PART III - FINANCIAL PROVISIONS

16. Principles of financial management

(1) The Authority shall conduct its business on sound commercial principles with the objective of achieving sufficient return on investment to enable it to provide a sustained efficient service at minimum costs.

(2) The Authority shall ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable rate of return measured by taking its net operating income as a percentage of the fair value of its net fixed assets in operation.

(3) The net surplus of the Authority shall be applied for the creation of a general reserve, specific reserves or the payment of dividends as the Authority may think fit and as the financial situation of the Authority will permit.

(4) The Authority -

- (a) shall in every year cause to be prepared, and shall adopt, annual estimates of its income and expenditure for the ensuing year;
- (b) may adopt supplementary estimates at any time.

[Note]

17. Capital and borrowing

(1) The Government may provide to the Authority from time to time equity capital to meet expenditures of a capital nature for the discharge of its functions under this Act.

(2) In order to enable the Authority to meet expenditures of a capital nature for the discharge of its functions under this Act, the Authority may borrow such sums as it may require on such terms and conditions as may be agreed between it and any lender.

(3) The Government may guarantee the performance of any obligation undertaken by the Authority under this section on such terms and conditions as the Government and the Authority may from time to time agree upon.

(4) The Government may, from time to time, prescribe the maximum sums which the Authority may borrow.

18. Investments

The Authority may, for the purposes of its business -

- (a) acquire or dispose of any undertaking or part of an undertaking;
- (b) subscribe for, acquire or dispose of shares or securities of any body corporate;
- (c) invest any sums not immediately required for the purposes of its business in any investment or loans;
- (d) realise any investments, securities or loans under its control in order to finance its operation or for the purpose of reinvestment;
- (e) make loans to other bodies subject to the approval of the Minister;
- (f) acquire any land or building wherever situated, or any interest therein; and
- (g) form or subscribe to the share capital of a company, or enter into a management contract with any company or other person, for the purpose of managing its investments.

19. Exemption of Authority from taxation

The Authority may be exempted from the payment of any duty, levy, rate or tax on such conditions as may be imposed.

20. Rates, charges, dues and fees

(1) Subject to the provisions of this Act, the Authority may levy such rates, charges, dues and fees as the Authority may, with the approval of the Minister, from time to time prescribe for the use of services and facilities provided by the Authority, and for the issue or renewal of any licence by the Authority.

(2) The Authority may levy such charges as it thinks fit for services or facilities provided or goods supplied by it in pursuance of the power conferred by this Act or any other enactment in respect of which no rates, charges, dues or fees have been prescribed under subsection (1).

(3) (a) The Authority may, if it thinks fit, remit or waive the whole or any part of any rates, charges, dues and fees paid or payable under this Act, or grant special conditions and special tariffs to benefit any type of traffic, operation or activity.

(b) The owner or master of every vessel, other than -

- (i) a Mauritius Government vessel not engaged in trade;
- (ii) a foreign military vessel;
- (iii) a locally owned vessel not exceeding ten tons and not engaged in trade;
- (iv) a vessel plying solely within a port for purposes of trade or business;
- (v) a vessel calling for the sole purpose of landing survivors, which enters or is moored or anchored in a port,

shall pay to the Authority the prescribed fees.

(c) A receipt for every fee payable by virtue of this section shall be given to the payer, and any vessel in respect of which the receipt is not produced on demand by an officer may be detained until the receipt is produced.

(4) A rate, charge, due or fee exigible by virtue of this section may, without prejudice to section 22, be recovered by the Authority in any court of competent jurisdiction.

(5) The rates, charges, dues and fees applied by the Authority immediately before the commencement of this Act shall continue to be valid as though determined by the Authority under this section until rescinded, varied or otherwise determined by the Authority.

21. Power of entry into vessels

(1) Any officer of the Authority, duly authorised by the Port Master, may enter into any vessel within the limits of a port in order to inspect the vessel's holds, cargo, equipment and any relevant documents and also to ascertain any rates, charges, dues or fees payable in respect of any goods carried therein.

(2) A master of a vessel who fails to comply with a reasonable request made by an authorised officer who has entered a vessel pursuant to subsection (1) for information or for the production of a document shall be guilty of an offence and liable to a fine not exceeding 50,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

22. Power to distrain for non-payment of sums due

(1) If the owner or master of any vessel in respect of which any rates, charges, dues or fees or other sums are payable under this Act or any subsidiary enactment made under this Act refuses or neglects to pay the same or any part thereof on demand, the Authority may, notwithstanding any other enactment but without prejudice to any other remedy which it may be entitled to use, distrain or arrest of its own authority the vessel and the bunkers, tackle, apparel or furniture belonging thereto or any part thereof, and detain the same until the amount so due is paid.

(2) If any part of such rates, charges, dues, or fees or other sums, or the costs of the distraint or arrest, or of the keeping of the vessel, bunkers, tackle, apparel or furniture belonging thereto remains unpaid for 30 days, the Authority may, notwithstanding any other enactment, cause the vessel and the bunkers, tackle, apparel or furniture so distrained or arrested to be sold and disposed of in such manner as shall be prescribed and may recover as a debt, in any court of competent jurisdiction, from the owner or master of the vessel, the expenses of such distraint, arrest, sale or disposal or attempted sale or disposal of the vessel and the bunkers, tackle, apparel or furniture so distrained or arrested.

(3) The proceeds of sale of the vessel and bunkers, tackle, apparel or furniture so distrained or arrested may be used by the Authority to satisfy those rates, charges, dues, fees or other sums and costs, including costs of sale remaining unpaid, rendering the surplus, if any, to the owner or master of the vessel on demand and, in case no such demand is made within one year from the date of the disposal of the vessel and bunkers, tackle, apparel or furniture, by paying the surplus to the account of the Authority, whereupon all rights to the same by such person shall be extinguished.

(4) If the Authority gives to the Director of Shipping a notice stating that an amount therein specified is due in respect of rates, charges, dues, fees or other sums payable under this Act or any subsidiary enactment made under this Act against the vessel or the owner or master of the vessel, the Director of Shipping shall not grant port clearance under the Merchant Shipping Act 1986 until the amount so chargeable has been paid or security has been given to the satisfaction of the Authority for the amount thereof.

PART IV - GENERAL POWERS AND DUTIES

23. General powers

(1) The Authority shall have power to take such action as it considers necessary or desirable for the performance of any of its functions under this Act.

(2) Particular powers conferred on the Authority by this Act shall not be construed as derogating from the generality of subsection (1).

24. Licensing

(1) No person shall provide any port service or facility unless he is authorised to do so by a licence granted by the Authority.

(2) Any application for the grant of a licence under this section shall be made in writing and shall contain, or be accompanied by, such information and documents as may be specified by the Authority for the purposes of determining the application and the suitability of the applicant for the licence.

(3) The issue of a licence to a port operator by the Authority under this section shall not impose any liability on the Authority for any loss or damage occasioned by any act, omission or default of such operator.

25. Limits of ports

(1) Without prejudice to any functions which may be exercisable outside the limits of a port, the Authority shall have jurisdiction and the powers of a Port Master may be exercised within the limits of the ports specified in the Schedule.

(2) The Minister may, by regulations, amend the Schedule.

26. Land and buildings

(1) (a) The Authority shall, for all purposes, have the overall superintendence and administration of all land in a port and the responsibility for its proper allocation, in accordance with the port master plan and land-use policies and legislation.

(b) The Authority may make appropriate regulations to regulate and control the land allocation, use, development, operation and related matters.

(2) All land within a port which, at the date of the coming into force of this Act is State land, shall vest in, and be deemed to be the property of, the Authority.

(3) All existing State interests in land and buildings within a port, including but not limited to leases, shall be transferred to the Authority at the date of the coming into force of this Act.

(4) Land reclaimed by the Authority in a port shall automatically vest in the Authority.

(5) The Authority may grant leases of any land in a port under such terms and conditions as may be approved by the Board.

(6) (a) Subject to paragraphs(b) and (c), the Authority may sell, lease, exchange or otherwise dispose of any of the land or buildings acquired by it which is no longer required for the purposes of its business.

(b) No State land acquired by the Authority under this section or any land on the foreshore or adjacent to the foreshore shall be sold without the approval of the Minister.

(c) In the management of its land, the Authority shall give preference to long term leases and leasehold over the sale of land.

(7) For the purpose of its functions and in the public interest, the Authority may acquire land compulsorily in conformity with existing legislation.

27. Power to construct works

The Authority may lay down, maintain and operate in a port such works and equipment as are required for or in connection with any of its functions.

28. Control of development

(1) All development in a port shall be in accordance with such rules, regulations and procedures as the Authority may make or lay down.

(2) No person other than the Authority shall carry out any development within a port unless he has been duly authorised by the Authority.

(3) The Authority may, upon such terms and conditions as it thinks fit, grant to any person appropriate authorisation to carry out development within a port.

(4) In this section, "development" includes construction, placing, alteration, renewal or extension of any building, structure or works in, on, over or under any land or waters.

29. Power to allocate facilities for exclusive or preferential use

The Authority may allocate and set apart any part of a port for the exclusive use of any particular vessel or class of vessel or traffic.

30. Protection of the environment

(1) In discharging any of its functions, the Authority shall, so far as is consistent with the proper and efficient discharge of those functions —

- (a) have regard to protection of the environment; and
- (b) endeavour to achieve a reasonable balance between that consideration and any other considerations to which it is required to have regard.

(2) The Authority shall have power to take such action as it considers necessary or desirable for the performance of any functions relating to the protection of the environment which may be conferred or imposed upon it by or under any enactment.

PART V - NAVIGATION AND OTHER BUSINESS IN PORTS

31. Powers of officers

(1) Any officer of the Authority, duly authorised by the Port Master, may —

- (a) board any vessel;
- (b) examine, measure or weigh any cargo in the vessel or landed from or about to be embarked on the vessel;
- (c) require any person to give him such information as he may require;
- (d) remove to a place of storage any article which is obstructing or interfering with the use of port premises;
- (e) refuse entry to, or departure from, port premises to any person, cargo or vehicle;
- (f) on reasonable suspicion that any article, the subject matter of any offence against this Act or any subsidiary enactment made under this Act, is being carried by any person or in any vehicle, stop and, subject to subsection (2), search that person or vehicle; and
- (g) seize any article which is the subject matter of an offence against this Act or any subsidiary enactment made under this Act.

(2) A female shall not be searched under subsection (1) except by a female officer.

(3) For the purposes of exercising the powers under this section, the Port Master or any officer duly authorized by him may request the assistance of the Police.

[Note]

32. Directions of Port Master in relation to vessels

(1) The Port Master may give such general or specific directions as he thinks fit, either orally or otherwise, to any person for —

- (a) promoting or securing conditions conducive to the ease, convenience or safety of navigation in a port;
- (b) regulating the movement or mooring of a vessel in a port;
- (c) controlling the manner in which cargo, fuel, water or ship's stores are taken on, discharged or handled;
- (d) the welfare of persons working or living on a vessel in a port;
- (e) regulating the removal or disposal of any residues and mixtures containing oil or noxious liquid substances, sewage, and garbage, from vessels in a port and requiring any such matter to be deposited in reception facilities in the port;
- (f) carrying into effect the provisions of this Act or any subsidiary enactment made under this Act.

(2) A direction under subsection (1) may be given in any manner considered by the Port Master to be reasonable and appropriate.

(3) The Port Master shall cause reasonable steps to be taken for the purpose of bringing the contents of any general direction issued under subsection (1) to the notice of any person likely to be affected by it.

(4) Any person who without reasonable excuse fails to comply with a direction under subsection (1) shall be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

(5) (a) Where the Port Master is of the opinion that a vessel within or outside any port is unattended or is otherwise in such a condition that its continued presence may constitute a threat to the safety of the port or to the free movements of any vessel, he shall give notice to the owners, agents or representatives of the vessel.

- (b) A notice issued under paragraph (a) shall specify the time within which the vessel must be removed or otherwise dealt with in order that it may cease to constitute a threat as specified in paragraph (a), failing which the vessel shall be removed or otherwise dealt within such manner as the Port Master may think fit.
- (c) Where a person fails to comply with a notice issued under paragraph (a)-
 - (i) the Port Master may remove the vessel or deal with it otherwise as he thinks fit in the circumstances;
 - (ii) the person shall be liable to refund to the Authority all expenses incurred by the Port Master or the Authority under subparagraph (i).
- (d) Where the notice specified in paragraph (a) is served-
 - (i) on a company or a société, all the persons concerned in the management of the company or the société shall be liable jointly and severally under paragraph (c)(ii);
 - (ii) on more than one person, all of them shall be liable jointly and severally under paragraph (c) (ii).
- (e) No action, civil or criminal shall lie against the Port Master or the Authority for any action taken by the Port Master in good faith under paragraph (c) (i).
- (f) This subsection shall be in addition to, and not in derogation from, sections 51 and 52.

(6) Where there are doubts about the condition or safe operation of a vessel, the Authority, on report by the Port Master, may require the owner or master to provide a bank deposit, bond or other valid security covering the amount of any cost that the Authority may consider likely to be incurred by it in relation to the vessel due to its condition or operation.

33. Clearance of vessels

(1) If a vessel does not satisfy, or the owner or master of a vessel has contravened, a requirement of this Act or any subsidiary enactment made under this Act, the Port Master may refuse to grant an inwards or outwards clearance to the vessel or to pass an entry for any cargo imported by the vessel until such contravention has been corrected to the Port Master's satisfaction.

(2) Where the Port Master believes that any vessel is unfit to proceed to sea, he shall delay his clearance and report the facts to the Director of Shipping for action to be taken under the Merchant Shipping Act 1986.

34. General duties as to provision of pilotage services

(1) The Authority shall keep under consideration-

- (a) whether any and, if so, what pilotage services need to be provided to secure the safety of vessels navigating in ports; and
- (b) whether, in the interests of safety, pilotage should be compulsory for vessels navigating in any part of a port and, if so, for which vessels and in which circumstances and what pilotage services need to be provided for those vessels.

(2) Without prejudice to the generality of subsection (1), the Authority shall, in performing its functions under that subsection, have regard in particular to the hazards involved in the carriage of dangerous goods or harmful substances by vessel.

(3) The Authority shall provide, or ensure that there are provided, such tug and pilotage services as may be necessary for the safe movement of vessels in compliance with such regulations as may be made by the Authority.

35. Licensing of pilots

(1) The Authority may license such persons to act as pilots in or in any part of a port as it considers are suitably qualified to do so and such a licence shall specify the area within which it has effect and may specify that it only has effect in relation to vessels of a particular description.

(2) The Authority may determine the qualifications in respect of age, physical fitness, time of service, local knowledge, skill, character and otherwise to be required from persons applying for a licence and provide for the examination of such persons.

(3) The Authority may suspend or revoke a licence granted by it under this section if it appears to it —

- (a) that the licensed person has been guilty of any incompetence or misconduct affecting his capability as a pilot; or
- (b) that the licensed person has ceased to have the qualifications required from persons applying for a licence under this section or has failed to provide evidence that he continues to have those qualifications.

(4) Before suspending or revoking a licence under subsection (3), the Authority shall give written notice of its intention to do so to the licensed person, stating the reasons for which it proposes to act, and shall give him a reasonable opportunity of making representations.

(5) If any person who is not a licensed pilot for an area describes himself whilst he is in that area as being such a pilot or so holds himself out as to indicate or be reasonably understood to indicate that he is such a pilot, he shall be guilty of an offence and liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding one year or to both.

PART VI - HANDLING, STORAGE AND DISTRIBUTION OF GOODS IN PORTS

36. Provision of cargo handling and port services

(1) The Authority shall, in addition to the powers conferred and the functions and duties imposed upon it by any enactment exercise regulatory and controlling functions in respect of the provision of cargo handling services and other related activities in the ports including loading, unloading, shifting, storage, receipt and delivery, transportation and distribution.

(2) The Authority may enter into concession contracts with qualified and licensed operators for the provision of port and cargo handling services under such terms and conditions as the Authority may determine including working hours, the determination of their performance standards, quality of services provided by them and the enforcement thereof.

37. Suspension and revocation of contract or licence

(1) The Authority may at any time suspend or revoke a concession contract or licence upon breach of any condition of the contract or licence or upon any failure to comply with any provision of this Act or any regulations made thereunder.

(2) Before suspending, revoking or cancelling a licence or a contract, the Authority shall give written notice of its intention to do so to the licensee or contractor, stating the reasons for which it proposes to act, and shall give him a reasonable opportunity of making representations.

(3) A licensed operator may appeal to the Minister against the suspension or revocation of its licence or contract by the Authority under subsection (1).

(4) Where a contract or licence is suspended or revoked under subsection (1), the Authority may, if it considers that such suspension or revocation would materially affect the movement of cargoes in the port-

- (a) take temporary possession of any port facility or equipment and operate them; and
- (b) engage any servant or employee of the operator.

(5) The provisions of paragraph (4) shall be deemed to be implied terms of every contract or licence.

38. Submission of information

Every licensed operator shall submit such information as the Authority may require.

39. Power to remove goods

(1) If any goods are left in any part of a port otherwise than in accordance with arrangements approved by the Authority, the Authority may require the owner to remove them and if the goods are not so removed within 24 hours after the requirement has been made the Authority may cause the goods to be removed to any public warehouse or store.

(2) Any such removal shall be carried out at the expense and risk of the owner of the goods.

(3) Notwithstanding any such removal on behalf of the Authority, the goods shall be liable to a general lien for the cost of removal, and for any charges payable to the Authority by the owner.

(4) The power of the Authority to prevent the recovery of the goods until the cost of removal and the charges have been paid shall extend and apply to any goods removed or placed in store under this section.

40. Power to dispose of goods

(1) Subject to subsection (2) and the Customs Act 1988, where any goods which have been placed in or on port premises, other than goods accepted for storage by the Authority, are not removed from the premises within 21 days or, in the case of goods for which a bill of lading has been issued from the time when the goods were placed in or on the premises, within 42 days, the Authority may, at the expiry of the period of 21 days or 42 days, as the case may be, dispose of the goods in such manner as it thinks fit.

(2) Where goods to which subsection (1) applies are of a perishable nature, the Authority may direct their removal within such shorter period, not being less than 24 hours after the landing of the goods, as the Authority thinks fit and where the goods are not removed the Authority may dispose of the goods in such manner as it thinks fit.

(3) The proceeds of the sale, if any, of the goods seized and disposed of under this section shall be applied by the Authority in payment of-

- (a) the expenses of the sale;
- (b) any duty payable to the Government;
- (c) the fees and expenses due to the Authority in respect of the goods; and
- (d) freights and other claims or liens of which notice under any enactment has been given in writing prior to the date of the sale.

(4) Any surplus remaining after the payment required by subsection (3) shall be paid —

- (a) on demand, to the person entitled thereto; and
- (b) where no demand is made within one year from the date of the sale of the goods, to the account of the Authority.

(5) Where a payment is made into the account of the Authority under subsection (4), any rights of any person to that payment shall be extinguished.

(6) For the purposes of this section, except subsections (3)(c), 4(b) and (5), any reference to the word “Authority” shall be deemed to be a reference to such licensed operator of the Authority as may be prescribed.

[Note]

41. Bonded warehouses

(1) Where a warehouse of the Authority is approved and appointed as a bonded warehouse, the Authority shall give general security to the satisfaction of the Comptroller for payment of the duty in respect of goods stored in the bonded warehouse or for the due exportation of the goods.

(2) Where security has been given by the Authority under subsection (1), no further security shall be required by the Government from any other person to the same effect.

PART VII - LIABILITY OF THE AUTHORITY AND LICENSED OPERATORS

42. Liability for transshipment goods

(1) The Authority or its licensed operator, shall from the time of acknowledgement of the receipt of transshipment goods and until delivery of the goods alongside the on-carrying vessel for loading, be liable for any loss or destruction of, or damage to, the goods or their packaging or container.

(2) The liability of the Authority or its licensed operator under subsection (1) shall not exceed a sum of 50,000 rupees per 20 foot equivalent unit container or equivalent unless the nature and value of the goods have, before delivery to the Authority or its licensed operator, been declared in writing by the person delivering the goods.

(3) The Authority or its licensed operator shall not incur any liability under subsection (1) where the nature or value of the goods has been misstated.

43. Liability for goods other than transshipment goods

(1) Notwithstanding any other enactment, the Authority or its licensed operator shall not incur liability in damages or in any other respect for any loss caused to any person by reason of short delivery, mis-delivery or non-delivery of any goods, other than transshipment goods, placed in the custody or control of the Authority or its licensed operator, unless such damage or such loss is due to the negligence or fault of the Authority or its licensed operator.

(2) Where the negligence or fault of the Authority or its licensed operator is proved under subsection (1), the liability shall not exceed a sum of 50,000 rupees per 20 foot equivalent unit container or equivalent unless the nature and value of the goods have, before delivery to the Authority or its licensed operator, been declared in writing by the person delivering the goods.

(3) The Authority or its licensed operator shall not incur any liability under subsection (2) where the nature or value of the goods has been misstated.

44. Exemption from liability

The Authority or its licensed operator shall not be liable 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 Authority or its licensed operator;
- (b) any act, omission or default of the owner or carrier of such goods;
- (c) insufficient or improper packing, defective or insufficient marks or leakage from defective drums, containers or packages;
- (d) any inherent liability to wastage in bulk or weight, latent or inherent defect or natural deterioration;
- (e) any deficiency in the contents of unbroken packages;
- (f) the dangerous nature of such goods;
- (g) an act of God;
- (h) a cyclone;
- (i) seizure under any legal process;
- (j) quarantine restrictions;
- (k) riots or civil commotions;
- (l) saving or attempting to save life or property;
- (m) strikes, lock outs, or stoppages or restraints of labour from whatever cause, whether partial or general; or
- (n) power failure or mechanical failure of any equipment or apparatus unless caused by actual fault or privity of the Authority or its licensed operator.

45. Liability for vessel under pilotage

(1) The owner or master of a vessel navigating under 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.

(2) A pilot who is an employee shall, while engaged in pilotage, be deemed to be the servant only of the owner or master of the vessel under pilotage and the Authority or its licensed operator shall not incur any liability for any loss or damage occasioned by any act or default of the pilot.

46. Liability in respect of dredging

(1) The Authority may specify the limits within which and the levels to which dredging may be carried out by the Authority or its licensed operator in a port.

(2) The Authority or its licensed operator shall not incur any liability for any loss or damage to any sea or river wall, wharf, quay, dock or other property arising out of any dredging carried out by the Authority or its licensed operator in a port within the limits and levels of which public notice has been given under subsection (1) unless such loss or damage is due to the negligence or fault of the Authority.

47. Limitation of liability for damage to vessels

(1) Subject to subsection (2) and sections 42 and 43, the Authority or its licensed operator shall not, where any loss or damage is caused to any vessel or to any vehicle, goods, merchandise or other things whatsoever on board any vessel, be liable to damages beyond an aggregate amount not exceeding 200 rupees for each ton of the vessel's registered tonnage.

(2) The Authority or its licensed operator shall not be entitled to limit its liability under this section if it is proved that the loss or damage resulted from its personal act or omission, committed with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

(3) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.

48. Limitations of liability in respect of one occasion

Notwithstanding any other enactment the limitations of liability under this Part shall relate to the whole of any loss or damage which may arise on any occasion, although the loss or damage may be sustained by more than one person.

49. Saving

Nothing in this Part shall —

- (a) preclude the Authority or its licensed operator from accepting goods for storage as well as liability for any loss, destruction or damage to the goods;
- (b) affect the liability of the Authority or its licensed operator under the Workmen's Compensation Act.

PART VIII - CONSERVANCY

50. Dredging

The Authority may from time to time deepen, dredge, scour, cleanse, alter and improve the foreshore and bed of the sea and blast any rock within the limits of a port and may use, appropriate or dispose of the material from time to time dredged by it.

51. Power to raise and remove wrecks

(1) The Authority may raise, remove, destroy or otherwise dispose of any vessel which is sunk, stranded or abandoned in the waters of a port.

- (2) (a) Where the Authority has exercised any of its powers under subsection (1), it may cause the vessel or its cargo or anything associated with the vessel to be sold in such manner as it thinks fit.
- (b) Where a sale is effected under paragraph (a), the Authority may, out of the proceeds of the sale, retain the expenses incurred by it —
 - (i) in marking, buoying, watching lighting or otherwise controlling the vessel or its cargo;
 - (ii) in removing or saving the cargo or anything associated with the vessel; or
 - (iii) in giving warning to shipping of the presence of the vessel.
- (c) The Authority shall pay any surplus remaining after retention of the expenses to any person entitled thereto, if an application for such payment is made to the Authority by that person before the expiration of one year from the date of the sale.

(3) If the proceeds of sale are insufficient to reimburse the Authority for the said expenses, or there is no sale, the Authority may recover from the person who, at the time of the sinking, stranding or abandonment of the vessel, is or was the registered owner thereof, or from the administrators or executors of such owner, or from any person claiming possession in title from such owner, any such expenses which are not reimbursed out of the proceeds of sale or, where there is no sale, the whole of the expenses.

52. Power to deal with idle vessels

(1) No vessel shall stay idle in Port without the prior approval of the Port Master.

(2) An idle vessel shall adhere strictly to any specific instructions of the Port Master and to regulations which may from time to time be made by the Authority.

(3) The Authority shall be empowered to remove, sell, destroy or otherwise dispose of a vessel not in compliance with subsections (1) and (2).

(4) The Authority shall not incur any liability, criminal or civil, in respect of action taken in good faith under subsection (3).

(5) The Authority may retain out of the proceeds of sale of any such vessel, or any part thereof, any expenses incurred by it in respect of the vessel or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence, and shall pay the surplus, if any, to the person entitled thereto, if an application for such payment is made to the Authority by that person before the expiration of one year from the date of the sale.

(6) If the proceeds of sale are insufficient to reimburse the Authority for the said expenses, or there is no sale, the Authority may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner.

(7) This section shall be in addition to, and not in derogation from, section 32.

53. Removal of obstructions other than vessels

- (1) The Authority may remove anything, other than a vessel, in, or on land adjoining, the waters of a port which is —
 - (a) causing or likely to cause, an obstruction to, or interference with, navigation;
 - (b) causing, or likely to cause, interference with the operation of any works of the Authority, or damage to any such works or to any property; or
 - (c) in the port without lawful authority,

and may take such steps as appear to it appropriate to prevent or minimise such obstruction, interference or damage.

(2) The Authority may, at such time and in such manner as it thinks fit, dispose of anything removed under subsection (1).

(3) If anything disposed of by the Authority under subsection (2) is sold, the Authority may retain out of the proceeds of sale any expenses incurred by it under this section and any surplus —

- (a) shall be paid to any person who, within 3 months from the time when the thing came into the custody of the Authority, proves to the reasonable satisfaction of the Authority that he was the owner thereof at that time; or
- (b) shall vest in the Authority, if, within that period, no person proves his ownership at the time referred to in paragraph (a).

(4) If the proceeds of the sale of anything removed under this section are insufficient to reimburse the Authority for the said expenses, or there is no sale, the Authority may recover the deficiency, or, where there is no sale, the whole of the expenses, from the person who was the owner at the time when the thing removed came into the custody of the Authority or who was the owner at the time of its abandonment or loss.

(5) This section shall be in addition to, and not in derogation from, section 32.

54. Removal of vehicles and obstructions

(1) If a vehicle, boat or any obstruction is left on land above the level of high water in a port without the permission of the Authority —

- (a) in any place where it is likely to obstruct or interfere with the use of the port; or
 - (b) in any part of the port where the parking of vehicles or leaving of obstructions is prohibited by notice erected by the Authority,
- the Authority may remove or cause to be removed the vehicle or obstruction.

(2) The expenses of, and expenses incidental to the removal of a vehicle or obstruction shall be recoverable by the Authority from any person responsible.

55. Pollution of a port

(1) Any person who without the consent of the Authority —

- (a) causes or permits any polluting substance or waste to be discharged into a port; or
- (b) causes or permits any polluting substance or waste to be deposited on port premises,

shall be guilty of an offence and shall be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

(2) Without prejudice to subsection(1), if any polluting substance or waste is discharged from a vessel into a port without the consent of the Authority, the owner or master of the vessel shall be guilty of an offence and shall be liable to a fine not exceeding 150,000 rupees or to imprisonment for a term not exceeding 4 years or to both.

(3) If any polluting substance or waste is discharged into a port or deposited on port premises without the consent of the Authority, the person who caused or permitted the discharge or deposit or the owner or master of a vessel from which the discharge occurred shall be liable to pay the cost of any measures taken by the Authority in removing or eliminating the polluting substance or waste and in remedying any damage caused by it.

(4) The Authority may require the owner or master of a vessel from which any polluting substance or waste is discharged into a port without its consent to provide a bank deposit, bond or other valid security covering the amount of any cost likely to be incurred under subsection (3).

56. Protection of acts of the Authority

Where any polluting substance is discharged in consequence of the exercise by the Authority of its powers under sections 51 to 54, the Authority or person employed by or acting on its behalf shall not be convicted of any offence under section 55, unless it is proved that they have failed to take reasonable preventive measures under the circumstances.

57. Power to investigate discharges of pollutants

(1) In the case of a vessel which is for the time being in any port, the Port Master and any other person appointed by the Authority under this section (either generally or in relation to a particular vessel) shall have power to go on board and inspect the vessel or any part thereof, or any of the machinery, boats, equipment or articles on board the vessel, for the purpose of ascertaining the circumstances relating to an alleged discharge of a polluting substance or waste from the vessel into the port.

(2) A person exercising any powers conferred by subsection (1) shall not unnecessarily detain or delay the vessel from proceeding on any voyage.

(3) If any person wilfully obstructs a person acting in the exercise of any power conferred by virtue of this section he shall be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

58. Power to detain vessels

(1) Where the Port Master has reason to believe that the owner or master of a vessel has committed an offence under section 55 by the discharge from a vessel of a polluting substance or waste into a port, the Port Master may detain the vessel.

(2) Where the Port Master detains a foreign vessel under this section he shall immediately notify the Authority who shall then inform the consul or diplomatic representative of the State whose flag the vessel is entitled to fly or the appropriate maritime authorities of that State.

(3) The Port Master who exercises the power conferred by subsection (1) shall immediately release the vessel —

- (a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the vessel is detained;
- (b) if such proceedings having been instituted within that period, are concluded without the owner or master being convicted;
- (c) if either —
 - (i) the sum of 150,000 rupees is paid to the Authority by way of security, or
 - (ii) security which, in the opinion of the Authority, is for an amount not less than 150,000 rupees is given to the Authority,

by or on behalf of the owner or master; or

- (d) where the owner or master is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.

- (4) The Authority shall repay any sum paid in pursuance of subsection (3) (c) or release any security so given —
- (a) if no proceedings are instituted within the period of 7 days beginning with the day on which the sum is paid; or
 - (b) if such proceedings, having been instituted within the period, are concluded without the owner or master being convicted.

(5) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (3) (c) and the owner or master is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows —

- (a) first, in payment to any costs or expenses ordered by the court to be paid by the owner or master; and
- (b) next, in payment of any fine imposed by the court;

and any balance shall be repaid to the first-mentioned person who paid the sum or gave the security, as the case may be.

- (6) This section shall not apply to any naval vessel or to any Government vessel.

59. Power to inspect International Oil Pollution Prevention Certificates

- (1) (a) In the case of a vessel which is for the time being in any port, the Authority shall have power to inspect the vessel for the purpose of verifying that there is on board a valid International Oil Pollution Prevention Certificate in the form prescribed by the International Convention for the Prevention of Pollution from Ships.
- (b) If there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially to the particulars of that certificate, or if the vessel does not carry a valid certificate, the Authority shall —
- (i) take such steps as it may consider necessary to ensure that the vessel shall not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment; and
 - (ii) report the matter to the Director of Shipping;
- (c) Notwithstanding paragraph (b), the Authority may permit the vessel to leave the port for the purposes of proceeding to the nearest appropriate repair yard.

(2) If any vessel fails to comply with any requirement duly made in pursuance of subsection (1), the owner or master shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

(3) If any person wilfully obstructs a person acting in the exercise of any power conferred by virtue of this section he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

60. Power to deny entry to vessels

(1) If the Port Master has reason to believe that a vessel which he believes proposes to enter the port does not comply with the requirements of any international convention relating to pollution or safety which is in force in Mauritius, he shall immediately report the matter to the Authority, which, if it is satisfied that the vessel presents an unreasonable threat of harm to the marine environment or the safety of the port, may deny the entry of such vessel and shall report the matter to the Director of Shipping.

(2) If any vessel fails to comply with any requirement duly made in pursuance of subsection (1), the owner or master shall be liable to a fine not exceeding 150,000 rupees or to imprisonment for a term not exceeding 4 years or to both.

(3) If the owner or master of any vessel fails to comply with any direction given in pursuance of subsection (1), the owner or master shall, notwithstanding section 32(4), commit an offence and shall, on conviction, be liable to a fine not exceeding 150,000 rupees or to imprisonment for a term not exceeding 4 years or to both.

[Note]

61. Provision of reception facilities

- (1) The Authority shall have power to provide, or to ensure that there are provided, at ports —
- (a) facilities for the reception and treatment of dirty ballast and tank washing water from tankers, and reception facilities for other residues and oily mixtures from other vessels;
 - (b) facilities which enable vessels to discharge or deposit residues and mixtures containing noxious liquid substances;
 - (c) facilities into which vessels may discharge sewage; and
 - (d) facilities into which vessels may discharge garbage.

(2) The Authority may make charges for the use of reception facilities at ports, and may impose conditions in respect of the use thereof.

62. Provision of fire and emergency service

The Authority may provide such fire and emergency service as it deems necessary for the purpose of extinguishing fires and preserving or protecting life, property and the environment.

63. Fire on board

(1) In the event of fire breaking out on board any vessel in a port, the Port Master or his authorised representative may —

- (a) proceed on board the vessel with such assistance and persons as he thinks fit; and
- (b) give such orders as seem to him necessary for—
 - (i) scuttling the vessel or for removing the vessel or any other vessel to such place as to him seems proper to prevent danger to other vessels; and
 - (ii) for the taking of any other measures expedient for the protection of life, property and the environment.

(2) Where orders under subsection (1) are not forthwith carried out by the owner or master of the vessel, the Port Master may himself proceed to carry them into effect.

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

(4) The Port Master shall hold an inquiry into the circumstances leading to a fire on board a vessel in port and the actions taken thereof.

- (5) For the purposes of the inquiry under subsection (4), the Port Master or his authorised representative may —
- (a) go on board any vessel and inspect the vessel or any part thereof;
 - (b) enter and inspect any premises, the entry or inspection of which appears to him to be necessary;
 - (c) by notice under his hand, require the attendance of any person to give any evidence, produce any document or other things in his possession relating to the subject matter of the inquiry;
 - (d) cause the vessel to be detained if in his opinion such detention is necessary.
- (6) Any person who, being notified to attend such inquiry —
- (a) fails to do so;
 - (b) refuses to answer any question relating to the subject matter of the inquiry; or
 - (c) refuses or fails to give any document or other thing,

shall be guilty of an offence and shall be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

64. Powers of entry during an emergency

(1) In the event of any emergency threatening life, property or the environment in a port, the Port Master or his authorised representative may —

- (a) enter any premises, with or without the consent of the owner or occupier for the purpose of dealing with the emergency; and
- (b) do such acts and use such convenient equipment, tools, extinguishing medium there as are deemed necessary.

(2) The Port Master or his authorised representative may, without thereby incurring any liability, enter at any time of the day or night any premises or vessel in the port for the purpose of attending to any emergency or making any survey or inspection.

(3) No action for damages in respect of anything done under subsection (1) may be maintained against the Port Master or any officer of the Authority.

(4) Any person who wilfully obstructs or hinders the Port Master or any officer of the Authority in the execution of the powers conferred upon him by this section shall commit an offence and shall be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

PART IX - REGULATORY POWERS

65. Power to make regulations

(1) The Authority may, with the approval of the Minister, make regulations for the maintenance, control and management of a port and for the maintenance of good order therein and, generally, for carrying out the purposes of this Act, and in particular and without prejudice to the generality of the foregoing power, may make regulations for or in respect of all or any of the following matters —

- (a) movements and stay of vessels in a port;
- (b) pilotage;
- (c) loading, discharging and storage of cargo;
- (d) safety of navigation and cargo handling operations;
- (e) protection of the environment;
- (f) port security;
- (g) concession contracts, licences and leases; and
- (h) finance, including levying of rates, charges, dues and fees.

(2) Regulations under subsection (1)—

- (a) may make different provision in relation to different classes of vessels; and
- (b) may otherwise make different provision for different circumstances; and
- (c) may provide that any person who contravenes them shall, subject to such defence to any prosecution as may be specified, commit an offence and shall on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

[Note]

PART X - MISCELLANEOUS PROVISIONS

66. Damage to Authority's property

(1) Any person who wilfully removes, destroys or damages any property belonging to the Authority or hinders or prevents such property from being used or operated in the manner in which it is intended to be used or operated shall be guilty of an offence and shall be liable to a fine not exceeding 150,000 rupees or to imprisonment for a term not exceeding 4 years or to both, and, on an application by the Authority, a court may order the offender to pay compensation to the Authority for any damage done by him.

(2) Any officer duly authorised by the Authority may apprehend any person who, within his view, commits an offence under the provisions of this section and shall, on such apprehension, without unreasonable delay hand over the person so apprehended to a police officer.

(3) Nothing in this section shall prevent the Authority from taking any legal proceedings open to it at law before any court having jurisdiction for the recovery of the full amount of the damage caused by such person.

(4) Where any damage is done to any property of the Authority by any vessel or by any person employed in or about the vessel, the cost of making good such damage may be recovered by the Authority from the owner or master of such vessel.

(5) The Authority may detain any such vessel until the cost of making good such damage has been paid to the Authority or security has been given to the Authority for the amount thereof.

- (6) Where by reason of any act, neglect or default by a person —
- (a) that person has incurred any penalty imposed under this Act; or
 - (b) damage has been caused to the property of the Authority,

that person shall be liable to make good such damage as well as pay such penalty.

(7) The amount of such damage shall, in case of dispute, be determined by the court in which the party incurring such penalty has been convicted, and may be recovered as if it were a fine imposed by the court.

67. Powers of arrest

A police officer may arrest a person found committing, or who he has reason to believe has committed, an offence against this Act or any subsidiary enactment made under this Act.

68. Jurisdiction

The Intermediate Court shall have jurisdiction to try any offence under this Act or regulations made under this Act and may, notwithstanding section 113 of the Courts Act, impose any penalty provided by this Act or by any regulations made under this Act.

69. Repeal

The Ports Act is repealed.

70. Consequential amendments

(1) The Statutory Bodies (Accounts and Audit) Act is amended in Part II of the Schedule by inserting in its appropriate alphabetical place the following item—

The Mauritius Ports Authority

(2) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Authority.

(3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Authority.

71. Transitional provisions

(1) All the assets, rights, and liabilities of the Mauritius Marine Authority shall vest in the Authority.

(2) All proceedings, judicial or extra-judicial, started by or against the Mauritius Marine Authority shall be deemed to have been started by or against the Authority.

(3) Any regulations made under the Ports Act shall continue in force until revoked by regulations made under this Act.

72. Commencement

(1) This Act shall come into force on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into force of different parts or provisions of this Act.

Passed by the National Assembly on the twenty sixth day of May one thousand nine hundred and ninety eight.

SCHEDULE

(sections 2, 5, 25)

Name of Port

Limits of Port

Port Louis The port area shall be the area within the following limits- From monument No.1 (996835.00E, 1006695.00N) at the mouth of Rivulet Terre Rouge South East along the North Eastern bank of the Rivulet to pt 1 A (997292.86E,1006673.67N) thence North East to pt 1B(997362.08E, 1006736.28N) thence South East along the Baie du Tombeau road up to pt 1C997605.42E, 1006657.67N), thence South up to pt 1D(997588.18E, 1006475.50N), thence South South East to pt 1E (997546.32E, 1006401.04N), thence South to monument No.2 (997380.94E, 1 006140.44N) at the intersection of the prolongation of the Western bank of a manmade drain with the edge of Rivulet Terre Rouge; thence south along the western bank of the said drain to Monument No.3 (997206.65E, 1005783.08N) at the intersection of the prolongation of the Northern edge of Ng Cheng Hin Street and the Western edge of the above-mentioned drain; thence generally south west along first the north Eastern and Western boundaries of a portion of land belonging to the Municipality of Port Louis and then the Western boundary of Eastern cemetery to monument No.4 (997009.81E, 1005379.52N); thence first North East along the South Eastern edge of Cemetery Road, then along the Eastern boundary

of the property of Shell Mauritius Ltd. to monument No.5 (997382.75E, 1005261.30N) at the Northern bank of Lataniers River, thence East along the Northern bank of Lataniers River to monument No.6 (997592.22E, 1005214.74N) at its intersection with the Western edge of Northern Entrance Road; thence South along the outer edge of the pavement along the Western edge of the Northern Entrance Road, the Port Louis Through Road and the Southern Entrance Road to Caudan Roundabout; thence along the Eastern edge of the road leading to the Bulk Sugar Terminal to monument No.7 (995978.87E, 1004257.00N) at the entrance of the Bulk Sugar Terminal; thence North West first along the South Western fence of the Bulk Sugar Terminal compound and the Northern edge of a wide drain and then West along a sewerage pipe to monument No. 8 (995085.90E, 1004599.20N) at the intersection of the sewerage pipe with the shore; thence Eastwards along the shore up to Pointe aux Sables (Lat. 20°10'.32S long. 57°25'.4E),thence Northwards along an imaginary line to Petite Pointe aux Piments (Lat. 20°03'.37 S Long.57°30'.78E), thence Southwards along the coast to monument No. 1.

Port Mathurin
Rodrigues

The port area shall be the area within the following limits —

From Pointe Cornes (Lat. 19°39'.9 S Long. 63°27.4 E) along the Shore line to the Western side of the Jetty at Port Mathurin; thence southward to Fisherman Lane; thence Southeast along Fisherman Lane and along the northern boundary wall of the CEB power station to the shore; thence to the Southeast along the shore up to the DDS Petroleum Station, thence Western bank of the creek; thence along the Eastward side of the road to Pointe Moyenne; thence along an imaginary line to Pointe aux Boeufs; thence along an imaginary line to Booby Island (Lat. 19°39'.85 S Long. 63 °23.4 E), thence the area within the rectangle formed by extending the imaginary line from Booby Island to Pointe Cornes (Lat. 19°39'.9 S Long. 63 °27'.4 E) seaward by 1.5 nautical miles.

[Note]
