

No. S 27

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

MERCHANT SHIPPING ORDER, 2002

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation and long title.
2. Interpretation.
3. Exemption of naval ships etc.
4. Appointment of Director of Marine and other officers.
5. Appointment of surveyors.

PART II

BRUNEI DARUSSALAM REGISTRY

6. Application of this Part.
7. Conditions for registration of ships.
8. Registrar of Brunei Darussalam ships.
9. Marking of ship.
10. Application for initial registry.
11. Provisional registry.
12. Entry of particulars in register.
13. Fees and tonnage taxes on registration.
14. Documents to be retained by Registrar.

15. Port of Registry.
16. Certificate of registry.
17. Use, custody and delivery up of certificate.
18. Transfer of ship and registration of bill of sale.
19. Transfer to person qualified to own Brunei Darussalam ship.
20. Transfer to person not qualified to own Brunei Darussalam ship.
21. Transmission of property in ship on marriage, bankruptcy, death etc.
22. Order for sale on transmission to unqualified person.
23. Transfer of ship or sale by order of court.
24. Power of High Court to prohibit transfer.
25. Mortgage of ship or share.
26. Obligation of mortgagor before execution and registration of mortgage.
27. Entry of discharge of mortgage.
28. Priority of mortgages.
29. Mortgagee not deemed to be owner.
30. Powers of mortgagee.
31. Transfer of mortgages.
32. Transmission of interest in mortgage in certain circumstances.
33. Notice of trusts not received and equities not excluded.
34. Alteration of ship.
35. Procedure for registry anew.
36. National colours for Brunei Darussalam ships.
37. Penalty for not showing colours.
38. Certified copy or transcript of register.

39. Correction of errors in register.
40. Rectification of register by High Court.
41. Delivery up of certificate on loss etc. of ship.
42. Voluntary closure of registry.
43. Power of Registrar to close registry and cancel certificate of registry.
44. Rules as to name of ship.
45. Regulations on evidence of seaworthiness etc.

PART III

MANNING AND CERTIFICATION

46. Application of this Part.
47. Manning and certification.
48. Prohibition of going to sea undermanned.
49. Unqualified persons going to sea as qualified officers.
50. Production of certificates and other documents of qualification.
51. Certificate obtained by fraud.

PART IV

EMPLOYMENT OF SEAMEN

52. Employment of seamen.
53. Penalty for employment of seamen in contravention of section 52 or regulations made under section 54.
54. Regulations relating to seamen.
55. Percentage of seamen of citizens of Brunei Darussalam to be maintained on board Brunei Darussalam ships.

PART V

CREW MATTERS

56. Application of this Part and interpretation.
57. Crew agreements.
58. Regulations relating to crew agreements, engagement and discharge of seamen.
59. Discharge of seamen when ship ceases to be registered in Brunei Darussalam.
60. Payment of seaman's wages.
61. Account of seaman's wages.
62. Regulations relating to wages and accounts.
63. Settlement of disputes.
64. Restriction on attachment or assignment of and charge upon seaman's wages.
65. Assignment or sale of salvage invalid.
66. Allotment notes.
67. Right of person named in allotment note to sue in his own name.
68. Right, or loss of right, to wages in certain circumstances.
69. Compensation to seaman improperly discharged.
70. Protection of certain rights and remedies.
71. Remedies of master for remuneration, disbursements etc.
72. Powers of court in case of unreasonable delay in paying seaman's wages.
73. Provisions and water.
74. Complaints about provisions or water.
75. Other complaints.
76. Medical stores.

77. Medical treatment on board ship.
78. Expenses of medical treatment etc. during voyage.
79. Drunkenness etc. on board ship.
80. Continued or concerted disobedience, neglect of duty etc.
81. Offences committed by certain other persons.
82. Defence of drug taken for medical purposes.
83. Disciplinary offences.
84. Appeal against fine for disciplinary offences.
85. Prohibition of double prosecution.
86. Payment of fines for disciplinary offences.
87. Civil liability for smuggling.
88. Relief and repatriation of seaman left behind.
89. Limit of employer's liability under section 88.
90. Custody etc. of property of deceased seamen.
91. Disposal of property of deceased seamen.
92. Official and other log-books.
93. Discharge books.
94. Returns of births and deaths in ships etc.
95. Handing over of documents on change of master.
96. Stowaways.
97. Master's power of arrest.
98. Penalty for receiving remuneration from seamen for engagement.
99. Restriction on employment of young persons on board ship.
100. Extension to foreign ships.

PART VI

LICENSING OF SHIPS

101. Application to this Part.
102. Conditions for licensing of ships.
103. Duration of licence.
104. Registered owner and master.
105. Licensed ships registers.
106. Issuance and cancellation of licence.

PART VII

SURVEY AND SAFETY OF SHIPS

107. Application of this Part.
108. Prohibition on going to sea without certificates.
109. Powers of Minister to make regulations.
110. Overloaded ships.
111. Penalty for carrying passengers in excess.
112. Observance of collision regulations.
113. Defect or deficiency in ship etc.
114. Cancellation of certificate or exemption certificate.
115. Duty to render assistance.
116. Report of accidents etc. to Director.
117. Appointment of inspector to report on accident etc.
118. Notification of loss of ship.
119. Owner and master liable in respect of unsafe ship.
120. Master or seaman may claim discharge if ship is unsafe.

121. Obligation of shipowner to crew with respect to use of reasonable efforts to secure seaworthiness.
122. Detention of unsafe ship.
123. Owner liable for unsafe operation of ship.
124. Conduct endangering ships, structures or individuals.
125. Regulations for survey of ships and issue of certificates.

PART VIII

SAFETY OF NAVIGATION

126. Provision and maintenance of navigational aids.
127. Misconduct of person employed in lighthouse.
128. Prevention of false lights.
129. Navigational warning or information.
130. Hydrographic surveys etc.
131. Power to regulate and control navigation.
132. Control of navigation around artificial islands, installations and structures in Exclusive Economic Zone.

PART IX

INQUIRIES AND INVESTIGATIONS

133. Inquiry into fitness or conduct of officers.
134. Inquiries and investigations into shipping casualties.
135. Formal investigations into shipping casualties.
136. Re-hearing of and appeal from inquiries and investigations.
137. Regulations as to inquiries, formal investigations and appeals.
138. Failure to deliver cancelled or suspended certificate.
139. Power to restore certificate.

140. Payment to persons holding inquiries or investigations and assessors.

PART X

LIABILITIES AND LIMITATION OF LIABILITIES

141. Power of Minister to make regulations.

PART XI

WRECK AND SALVAGE

142. Interpretation of this Part.
143. Receiver of wrecks.
144. Duty of receiver in respect of ship in distress.
145. Powers of receiver in case of ships in distress.
146. Power to pass over adjoining lands.
147. Power of receiver to suppress plunder and disorder by force.
148. Exercise of powers of receiver in his absence.
149. Examination in respect of ships in distress.
150. Rules to be observed by persons finding wreck.
151. Penalty for taking wreck at time of casualty.
152. Notice of wreck to be given by receiver.
153. Claims of owners to wreck.
154. Immediate sale of wreck by receiver in certain cases.
155. Right of Government to unclaimed wreck.
156. Unclaimed wreck.
157. Delivery of unclaimed wreck by receiver not to prejudice title.
158. Removal of wreck by receiver.
159. Powers of removal extend to tackle, cargo etc.

160. Taking wreck to foreign port.
161. Interfering with wrecked ship or wreck.
162. Summary procedure for concealment of wreck.
163. Salvage payable for saving life.
164. Salvage of cargo or wreck.
165. Determination of salvage disputes.
166. Determination of disputes as to salvage summarily.
167. Appeal in case of salvage disputes.
168. Valuation of property by receiver.
169. Detention of property liable to salvage by receiver.
170. Sale of detained property.
171. Apportionment of salvage by receiver.
172. Apportionment of salvage by High Court.
173. Jurisdiction of High Court in salvage.
174. Receiver's fees.

PART XII

LEGAL PROCEEDINGS

175. Provision as to jurisdiction in case of offences.
176. Jurisdiction over ships lying off coast.
177. Jurisdiction in case of offences on board ship.
178. Presumption of jurisdiction.
179. Court for trial of offences.
180. Sums ordered to be paid leviable by distress on ship.
181. Depositions to be received in evidence when witness cannot be produced.

182. Admissibility of documents in evidence.
183. Service of documents.
184. Mode of making declarations.
185. Continuing offences.
186. Liability of beneficial owners.
187. Offences by body corporate.
188. Offences under this Order.
189. Forgery etc. of documents and fraudulent use.
190. False declaration etc.
191. Interfering with person in carrying out duty etc.
192. Misleading officer, refusal to answer questions, produce documents etc.
193. Offences relating to markings of ship.
194. Unauthorised presence on board ship.
195. Taking person performing duty to sea.
196. General penalties.
197. Persons appointed or authorised under this Order deemed public servants.
198. Costs of detention of unsafe ships.
199. Security for costs of detention of unsafe ships.
200. Immunity of Government, Director and their employees.

PART XIII

MISCELLANEOUS

201. Powers of Director etc.
202. Powers of inspector.
203. Power of arrest.

204. Power of High Court to remove master.
205. Power to prohibit ship from entering or direct ship to leave territorial waters of Brunei Darussalam.
206. Enforcing detention of ship.
207. Issue of new document.
208. Issue of certified copies or extracts.
209. Copy of Order and regulations to be kept on Brunei Darussalam ships.
210. Powers of Minister to prescribe fees, recovery of fees and application of moneys.
211. Documents to be in approved form.
212. Exemption.
213. Regulations.
214. Power to give effect to international agreements.
215. Transitional provisions.
216. Repeal of Chapter 145.

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

MERCHANT SHIPPING ORDER, 2002

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Merchant Shipping Order, 2002.

(2) The long title of this Order is "An Order relating to merchant shipping and for matters connected therewith or incidental thereto".

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

"alteration" includes deterioration;

"bankruptcy" includes insolvency;

"beneficial interest" includes interests arising under contract and other equitable interests;

"Brunei Darussalam licensed ship" means a ship licensed under Part VI;

"Brunei Darussalam ship" means a ship registered provisionally or otherwise, under Part II and its registry is not closed or deemed to be closed or suspended under that Part;

"cargo ship" means any ship which is not a passenger ship;

"certificated officer" means any officer holding a certificate issued or deemed to have been issued in accordance with regulations made under section 47;

"collision regulations" means regulations made under section 109;

"consular officer" includes —

(a) a consul, ambassador, high commissioner, commissioner or other head of a diplomatic mission;

(b) a Minister;

(c) a charge d'affairs; and

(d) a counselor, secretary or attaché of an embassy or other mission;

"court" in relation to any proceedings, includes any court, judge or magistrate having jurisdiction in the matter to which the proceedings relates;

"crew agreement" means an agreement made pursuant to section 57;

"Director" means the Director of Marine appointed under section 4 and includes the Deputy Director of Marine;

"effects" includes clothes and documents;

"equipment", in relation to a ship, includes every fitting, thing or article belonging to, on or in the ship used or to be used in connection with, or necessary for the navigation or safety of, the ship or persons on board or the prevention of pollution, whether or not the fitting, thing or article is prescribed by this Order and, in particular, includes machinery, boilers, cargo handling gear and any fitting, thing or article prescribed by this Order;

"functions" include powers and duties;

"harbour craft" means any ship that is used solely within the limits of the port declared under the Ports Act (Chapter 144);

"load line" means a line indicating the maximum depth to which a ship, other than a passenger ship, may be loaded in circumstances prescribed by regulations made under section 109 and determined in accordance with those regulations;

"master" includes every person, except a pilot, having command or charge of any ship;

"Minister" means the Minister of Communications;

"name" includes a surname;

"officer" includes a master, a mate, an engineer, a helmsman and an engine driver of any ship;

"officers of the Marine Department" means the officers for the time being appointed to be officers of the Marine Department under section 4;

"passenger" means a person carried on board a ship with the knowledge or consent of the owner, manager, charterer, operator, agent or master of the ship, not being —

(a) a person employed or engaged in any capacity on board the ship on the business of the ship;

(b) a person on board the ship in pursuance of an obligation imposed on the master by any law (including a law of a country or territory other than Brunei Darussalam) to convey persons left behind in any country or territory on being shipwrecked, distressed or by reason of circumstances that could not have been prevented or forestalled by the owner, manager, charterer, operator, agent or master of the ship;

(c) a person temporarily employed on the ship in port; or

(d) a child below one year of age;

"passenger ship" means a ship which carries more than 12 passengers;

"pilot" means any person who does not belong to, but has the conduct of, a ship;

"pleasure craft" means any ship used exclusively for owner's pleasure and not offered or used for hire or reward;

"port" means any area in Brunei Darussalam declared to be a port under the Ports Act (Chapter 144);

"Port Health Officer" means any person appointed under the Quarantine and Prevention of Disease Act (Chapter 47);

"port of return" means such port as is agreed upon by the master or seaman and his employer in the crew agreement or otherwise or, in the absence of agreement —

(a) Muara or Kuala Belait, in the case of a master or seaman who is resident in Brunei Darussalam; or

(b) the port where the master or seaman was employed or joined the ship, in any other case;

"premises" includes messuages, houses, buildings, lands, tenements, easements and hereditaments of any tenure, whether opened or enclosed, whether permanently built on or not, whether public or private, whether on land or on water, and whether maintained or not under statutory authority;

"prescribed" means prescribed by regulations made by the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan;

"Registrar" means the Registrar of Brunei Darussalam ships;

"repealed Act" means the Merchant Shipping Act (Chapter 145) repealed by this Order;

"representation" means probate, administration, confirmation, or other instrument constituting a person the executor, administrator or other representative of a deceased person, and "legal personal representative" means the person so constituted executor, administrator or other representative of a deceased person;

"salvor", in relation to salvage services rendered by the officers or crew or part of the crew of any naval ship, means the person in command of that ship;

"seaman" includes every person employed or engaged in any capacity on board a ship on the business of the ship, other than —

(a) the master of the ship;

(b) a pilot; or

(c) a person temporarily employed on the ship in port;

"ship" means any kind of vessel used in navigation by water, however propelled or moved and includes —

(a) a barge, lighter or other floating vessel; and

(b) an air cushion vehicle, or other similar craft, used wholly or primarily in navigation by water;

"subdivision load line" means a line indicating the maximum depth to which a passenger ship may be loaded having regard to the extent to which it is subdivided and to the space for the time being allotted to

passengers as determined in accordance with regulations made under section 109;

"surveyor" means a surveyor appointed under section 5;

"tons" means gross tonnage;

"voyage", in relation to a ship, means the whole time and the whole distance when the ship is at sea between the ship's port of departure and its port of arrival;

"wages" includes emoluments;

"young person" means any person who has not attained the age of 18 years.

(2) References in this Order —

(a) to a failure to do any act or thing include references to a refusal or neglect to do that act or thing;

(b) to going to sea include, in the case of a Brunei Darussalam ship, references to going to sea from any country or territory outside Brunei Darussalam;

(c) to dying in a ship include references to dying in a ship's boat or life raft and to being lost from a ship, ship's boat or life raft;

(d) to the date of commencement of this Order are to the date of commencement of the main substantive provisions of this Order; and

(e) to this Order include references to regulations made under this Order.

(3) For the purposes of this Order —

(a) a seaman is discharged from a ship when his employment on that ship is terminated;

(b) a seaman is discharged from a ship in any country or territory and left there shall be deemed to be left behind in that country or territory notwithstanding that the ship also remains there; and

(c) a ship shall be deemed to have gone to sea if it has got under way for any purpose except for the purpose of moving the ship from one berth or place in a port to another berth or place in the port.

Exemption of naval ships etc.

3. This Order shall not apply to or in relation to any ship belonging to the naval, military or air forces of Brunei Darussalam or any other country or territory.

Appointment of Director of Marine and other officers.

4. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a Director of Marine and a Deputy Director of Marine, and appoint such number of officers of the Marine Department under such official designations as His Majesty the Sultan and Yang Di-Pertuan may deem expedient for the purpose of carrying out all or any of the functions conferred on the Director by this Order.

(2) Subject to subsection (1), the officers performing the functions of the Director of Marine and the Deputy Director of Marine under section 4 of the Ports Act (Chapter 144) immediately before the date of commencement of this Order and all other officers of the Marine Department immediately before that date shall be deemed to be appointed under this section and shall have, enjoy and perform all powers, privileges and duties respectively conferred, granted and imposed upon the holders of their respective offices under this Order or any other written law.

(3) If the Director is temporarily absent from Brunei Darussalam or temporarily incapacitated by reason of illness or for any reason temporarily unable to perform his duties, a person may be appointed by the Minister to act in the place of the Director during any such period of absence from duty.

(4) The Director may delegate to any officer appointed under this section all or any of the powers conferred on the Director by this Order, except the powers conferred by section 122.

Appointment of surveyors.

5. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint, either generally or for special purposes or on special occasions, any person to be surveyor of ships or a radio surveyor for the purposes of this Order.

(2) Every surveyor of ships and every radio surveyor shall have and perform the powers, functions and duties prescribed by this Order.

PART II

BRUNEI DARUSSALAM REGISTRY

Application of this Part.

6. (1) This Part shall not apply to any fishing vessel, that is to say, any ship which is for the time being used for fishing or processing fish and pleasure craft.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the conditions to the manner in which ships, or classes of ships, belonging to the Government, except those ships, or classes of ships belonging to the army, navy, air force and the police, may be registered under this Part.

Conditions for registration of ships.

7. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the conditions for the registration of a ship as a Brunei Darussalam ship.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may make provision —

(a) describing the persons qualified to own Brunei Darussalam ships or any share therein (referred to in this Part as persons qualified to own Brunei Darussalam ships);

(b) requiring a corporation having a share capital to have a minimum amount of paid-up capital;

(c) limiting the age and tonnage of a ship;

(d) requiring a corporate owner to disclose to the Registrar such particulars and in such manner as may be specified before making an application to register a ship;

(e) requiring persons qualified to own Brunei Darussalam ships or the bareboat charterer to appoint representatives in relation to the ships; and

(f) empowering the Registrar to close the registry of a Brunei Darussalam ship and cancel its certificate of registry for any contravention of the regulations.

(3) The Registrar may refuse to register any ship as a Brunei Darussalam ship without assigning any reason.

Registrar of Brunei Darussalam ships.

8. (1) The Director shall be the Registrar of Brunei Darussalam ships.

(2) The Registrar shall keep a register of ships registered as Brunei Darussalam ships under this Part in accordance with the following provisions —

(a) the property in a ship may be divided into any number of shares and such number shall not be changed unless the ship is registered anew;

(b) a person shall not be entitled to be registered as an owner of a fractional part of a share in the ship;

(c) joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose of in severalty any interest in a ship or in any share therein in respect of which they are registered; and

(d) a corporation may be registered as an owner by its corporate name.

Marking of ship.

9. (1) Every ship shall, before registry, be marked permanently and conspicuously to the satisfaction of the Registrar as follows —

(a) its name shall be marked on each of its bows, and its name and the name of its port of registry shall be marked on its stern, on a dark ground in white or yellow letters or on a light ground in black letters, such letters to be of a length not less than one decimeter and of proportionate breadth;

(b) its official number shall be cut in on its main beam; and

(c) a scale of decimeters, or of metres and decimeters, denoting its draught of water shall be marked on each side of its stem and of its stern post —

(i) in figures at 2-decimetre intervals, if the scale is in decimeters;

(ii) in figures at each metre interval and at intervening 2-decimetre intervals, if the scale is in metres and decimeters; and

(iii) the capital letter "M" being placed after each metre figure; the top figure of scale showing both the metre and (except where it marks a full metre interval) the decimeter figure; the lower line of the figures, or figures and letters (as the case may be),

coinciding with the draught line denoted thereby, the figures and letters being not less than one decimeter in length and being marked by being cut in and painted white or yellow on a dark ground, or in such other way as the Registrar may approve.

(2) The Registrar may exempt any ship or class of ships from all or any of the requirements of this section.

(3) If the scale showing a ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Application for initial registry.

10. (1) An application for the registry of a ship shall be —

(a) made in writing by the person applying to be registered as owner or by some other person on his behalf; and

(b) submitted together with the declaration of ownership, the document of title to the ship, evidence of the cancellation of any foreign registry, the ship's tonnage certificate, a certificate specifying the ship's build and such other particulars as the Registrar may require, such evidence of seaworthiness as may be specified in the regulations made under section 45 and such other document relating to the ship as the Registrar may require.

(2) A person shall not be entitled to be registered as owner of a ship or of any share therein until he or, in the case of a corporation, the person authorised under this Order to make declaration on behalf of the corporation, has made and signed a declaration of ownership in the prescribed form and containing the following particulars —

(a) the name of the ship and its gross and net tonnages and such other particulars as may be prescribed;

(b) a statement of his qualification to own a Brunei Darussalam ship or, in the case of a corporation, such circumstances of the constitution and business thereof as prove it to be qualified to own a Brunei Darussalam ship;

(c) a statement of the time when and the place where the ship was built or, if the time and the place of building are unknown, a statement that the declarant does not know the time and place of its building;

(d) a statement as to the owner of the ship and his citizenship and, if the ship is owned by more than one person, the number of shares each of them is entitled to; and

(e) a declaration that, to the best of his knowledge and belief, no unqualified person is entitled as owner to any legal or beneficial interest in the ship or any share therein.

Provisional registry.

11. (1) The Registrar may provisionally register a ship and grant a provisional certificate of registry if the application under section 10 is not accompanied by the document of title, evidence of cancellation of any foreign registry, the tonnage certificate or such other document as the Registrar may determine.

(2) The provisional registry of a ship shall be valid for a maximum period of one year from the date of issue and the provisions of this Order and any other written law shall apply to a ship provisionally registered under this section, its owner and provisional certificate of registry as they apply to a Brunei Darussalam ship, its owner and certificate of registry.

Entry of particulars in register.

12. (1) The Registrar shall, if he is satisfied that the requirements preliminary to registry, whether provisional or otherwise, have been complied with by the applicant for the registry of a ship and, upon payment of the fees specified in section 13, enter in the register the following particulars of the ship —

(a) the name of the ship and the port to which it belongs;

(b) the ship's build and other particulars descriptive of the identity of the ship;

(c) the particulars respecting its origin stated in the declaration of ownership; and

(d) the name and description of its owner and, if there are more owners than one, the proportions in which they are interested in the ship.

(2) The Registrar may, at any time, make any other entries in the register as he considers necessary.

Fees and tonnage taxes on registration.

13. (1) The fee for the initial registration or registration anew of a ship registered under this Part shall be \$2.50 per net ton of the ship, subject to a minimum of \$1,250 and a maximum of \$100,000.

(2) An annual tonnage tax of 20 cents per net ton, subject to a minimum of \$100, shall be payable in respect of every Brunei Darussalam ship.

(3) The annual tonnage tax shall be paid at the time of initial registration or registration anew of the ship and thereafter annually on or before the anniversary date of the initial registration or registration anew, as the case may be.

(4) An international business company or a foreign international company incorporated, converted or registered under the International Business Companies Order, 2000 (S 56/2000) shall be exempted from paying the annual tonnage tax.

(5) All unpaid fees and tonnage taxes in respect of any ship due to the Registrar shall constitute a maritime lien on the ship, subject only to liens for wages.

(6) The Minister may, either generally or on specific occasions, reduce the fee or annual tonnage tax prescribed under this section or consider rewarding a rebate.

Documents to be retained by Registrar.

14. On the registry of a ship, the Registrar shall retain in his possession all the documents submitted under section 10, except the document of title.

Port of Registry.

15. (1) Ships registered under this Part shall be registered at the port of Muara.

(2) Any Brunei Darussalam ships registered at the port of Bandar Seri Begawan, under the repealed Act, so far as it is not inconsistent with this Order and except as otherwise expressly provided in this Order, shall be deemed to be registered under this Part, and shall maintain its port of registry as Bandar Seri Begawan, unless the owner requests to transfer the port of registry to Muara. Such application shall comply with the requirements of section 35.

Certificate of registry.

16. (1) On completion of the registry of a ship, the Registrar shall grant a certificate of registry which shall state the particulars entered in the register.

(2) Where a ship has been provisionally registered under section 11 without the tonnage certificate, the fees paid under section 13 shall be adjusted according to the tonnage established in the tonnage certificate.

(3) The provisional certificate of registry, if any, shall be delivered up to the Registrar for cancellation.

(4) Where a ship has been provisionally registered under section 11 and its registry is not completed within the period specified in that section, the registry of

the ship shall be deemed to be closed (except in relation to any unsatisfied mortgages entered therein) and the Registrar shall make an entry thereof in the register.

(5) In the event of the certificate of registry of a Brunei Darussalam ship being mislaid, lost or destroyed, the owner shall make a report to the police and such a report shall be attested by the magistrate. Upon satisfaction, the Registrar shall grant a new certificate in lieu of the ship's original certificate.

Use, custody and delivery up of certificate.

17. (1) The certificate of registry of a ship shall be used only for the lawful navigation of the ship and shall not be subject to detention by reason of any title, lien, charge or interest whatsoever had or claimed by any owner, mortgagee or other person to, on or in the ship.

(2) If any person, whether interested in the ship or not, refuses, without reasonable cause, on request to deliver up the certificate of registry when in his possession or under his control to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship, or to the Registrar; or to any person entitled by law to require such delivery, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(3) Where the registry of a ship is closed or deemed to be closed under this Part (except under section 43), the registered owner of the ship at the time of the closure shall deliver up the certificate of registry to the Registrar for cancellation within 60 days of the closure and if he fails, without reasonable cause, to deliver up the certificate of registry within that period, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(4) If any person uses or attempts to use for the navigation of a ship a certificate of registry which is not legally granted in respect of the ship or the registry of which has been closed or deemed to be closed, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Transfer of ship and registration of bill of sale.

18. (1) A Brunei Darussalam ship or any share therein shall be transferred by a bill of sale.

(2) The bill of sale for the transfer of a ship or any share therein to a person qualified to own a Brunei Darussalam ship shall be in the prescribed form and shall contain such description of the ship as is contained in the register and shall be executed by the transferor in the presence of, and be attested by, a witness or witnesses.

(3) Every bill of sale shall be produced to the Registrar and the Registrar shall thereupon enter in the register the name of the transferee and shall endorse on the bill of sale the fact of that entry having been made with the date and time thereof.

(4) Bills of sale shall be entered in the register in the order of their production to the Registrar.

(5) The Registrar shall not make an entry under this section in respect of any ship if there is —

(a) any unsatisfied mortgage entered in its register, unless, where the ship or any share therein is transferred to a person qualified to own a Brunei Darussalam ship, the mortgagee has given his consent in writing;

(b) any subsisting entry made under section 24 prohibiting any dealing with the ship;

(c) any unpaid fees within the meaning of subsection (4) of section 210 with respect to the ship; and

(d) any outstanding claims of the master or seamen of the ship in respect of wages which have been notified to the Director.

(6) Subsection (5) shall not apply in respect of a bill of sale executed pursuant to an order of the High Court for the sale of a Brunei Darussalam ship or any share therein.

Transfer to person qualified to own Brunei Darussalam ship.

19. (1) Where a Brunei Darussalam ship or any share therein is transferred to a person qualified to own a Brunei Darussalam ship and the bill of sale is registered under section 18, the ship shall, subject to section 42, be registered anew.

(2) If the ship is not registered anew or its registry is not closed within 60 days of the date on which the bill of sale (or the first bill of sale if there are more than one bill of sale) is registered, the registry of the ship shall be deemed to be closed (except in relation to any unsatisfied mortgages entered therein) and the Registrar shall make an entry thereof in the register.

Transfer to person not qualified to own Brunei Darussalam ship.

20. (1) A Brunei Darussalam ship or any share therein shall not be transferred to a person not qualified to own a Brunei Darussalam ship if there is —

(a) any unsatisfied mortgage entered in the register;

(b) any subsisting entry made under section 24 prohibiting any dealing with the ship;

(c) any unpaid fees within the meaning of subsection (4) of section 210 with respect to the ship; and

(d) any outstanding claims of the master or seamen of the ship in respect of wages which have been notified to the Director.

(2) Where a Brunei Darussalam ship or any share therein is transferred to a person not qualified to own a Brunei Darussalam ship and the bill of sale is registered under section 18, the registry of the ship shall be deemed to be closed and the Registrar shall make an entry thereof in the register.

(3) This section, except subsection (2), shall not apply to a Brunei Darussalam ship or any share therein sold pursuant to an order of the High Court.

Transmission of property in ship on marriage, bankruptcy, death etc.

21. (1) Where the property in a Brunei Darussalam ship or any share therein is transmitted to a person on the marriage, bankruptcy or death of any registered owner, or by any lawful means other than by a transfer under this Part –

(a) that person shall authenticate the transmission by making and signing a declaration of transmission identifying the ship and containing the particulars specified in paragraphs (b) and (e) of subsection (2) of section 10, or as near thereto as circumstances permit, or if that person is not qualified to own a Brunei Darussalam ship, a statement to that effect, and also a statement of the manner in which and the person to whom the property has been transmitted;

(b) if the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is for the time being receivable in courts of law as proof of the title of persons claiming under a bankruptcy; and

(c) if the transmission is consequent on death, the declaration of transmission shall be accompanied by the instrument of representation, or an official extract therefrom.

(2) The declaration of transmission and the evidence under subsection (1) shall be produced to the Registrar and the Registrar shall make an entry thereof in the register.

Order for sale on transmission to unqualified person.

22. (1) Where the property in a Brunei Darussalam ship or any share therein is transmitted on death or bankruptcy to a person not qualified to own a Brunei Darussalam ship, the High Court may, on the application by or on behalf of the unqualified person or any other person having an interest in the ship, order a sale of the property so transmitted and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under such transmission or as the High Court otherwise directs.

(2) The High Court may require any evidence in support of the application it thinks requisite, and may make the order on any terms and conditions or may refuse to make the order, and generally may act in such manner as the High Court thinks just.

(3) Every such application for sale shall be made within 60 days after the occurrence of the event on which the transmission has taken place, or within such longer period not exceeding in aggregate one year as the High Court may allow.

(4) If such an application is not made within the period specified or allowed under subsection (3), or if the High Court refuses an order for sale, the registry of the ship shall be deemed to be closed (except in relation to any unsatisfied mortgages entered therein) and the Registrar shall make an entry thereof in the register.

Transfer of ship or sale by order of court.

23. Where any court, whether under the preceding sections of this Order or otherwise, orders the sale of a ship or any share therein, the order of the court shall contain a declaration vesting in some person named by the court the right to transfer the ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof; and the Registrar shall accept the requisition of the person so named in respect of any such transfer to the same extent as if such person were the registered owner.

Power of High Court to prohibit transfer.

24. (1) The High Court may, if it thinks fit (without prejudice to the exercise of any other power of the High Court), on the application of any interested person make an order prohibiting for a specified time any dealing with a ship or any share therein, and the High Court may make the order on any terms or conditions it thinks just, or may refuse to make the order or may discharge the order when made, with or without costs, and generally may act in such manner as the High Court thinks just.

(2) The Registrar, without being made a party to the proceedings, shall, on being served with the order or an official copy thereof, accept the same and make an entry thereof in the register.

Mortgage of ship or share.

25. (1) A Brunei Darussalam ship or any share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (referred to in this Part as a mortgage) shall be in the prescribed form or as near thereto as circumstances permit, and on the production of that instrument the Registrar shall record it in the register.

(2) Mortgages shall be recorded by the Registrar in the order in time in which they are produced to him for that purpose, and the Registrar shall endorse and sign a memorandum on each mortgage stating the date and time of that record.

Obligation of mortgagor before execution and registration of mortgage.

26. (1) Before executing any mortgage to be registered under this Order, the mortgagor shall disclose in writing to the mortgagee the existence of any maritime lien, prior mortgage, or other liability in respect of the ship to be mortgaged, which is known to the mortgagor.

(2) Where the mortgagor has failed to comply with this section, the mortgage debt shall, at the election of the mortgagee, become immediately due and payable, notwithstanding anything to the contrary in the mortgage.

Entry of discharge of mortgage.

27. Where a registered mortgage is discharged, the Registrar shall, on production of the mortgage, with the discharge duly signed and attested, make an entry in the register to the effect that the mortgage has been discharged, and on the entry being made, the estate, if any, which passed to the mortgagee shall vest in the person in whom (having regard to any intervening acts and circumstances) it would have vested, if the mortgage had not been made.

Priority of mortgages.

28. If there are more mortgages than one registered in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied or constructive notice, be entitled in priority, one over the other, according to the date and time of the record of each mortgage in the register and not according to the date of each mortgage itself.

Mortgagee not deemed to be owner.

29. Except as far as may be necessary for making a mortgaged ship or any share therein available as a security for the mortgage debt, the mortgagee shall not, by reason of the mortgage, be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be the owner thereof.

Powers of mortgagee.

30. (1) Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but where there are more persons than one registered as mortgagees of the same ship or share, a subsequent mortgagee shall not, except under the order of the High Court, sell the ship or share without the concurrence of every prior mortgagee.

(2) Every registered mortgagee shall be entitled to enforce his mortgage by an action in rem in admiralty whenever any sum secured by the mortgage is unpaid when due or otherwise in accordance with the terms of any deed or instrument collateral to the mortgage.

Transfer of mortgages.

31. (1) A registered mortgage of a ship or any share therein may be transferred to any person and the instrument effecting the transfer shall be in the prescribed form or as near thereto as circumstances permit, and on production of such instrument, the Registrar shall record the transfer by entering in the register the name of the transferee as mortgagee of the ship or share and shall endorse and sign on the instrument of transfer a memorandum that the transfer has been recorded by him stating the date and time of the record.

(2) The person to whom any registered mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

Transmission of interest in mortgage in certain circumstances.

32. (1) Where the interest of a mortgagee in a Brunei Darussalam ship or any share therein is transmitted on the death or bankruptcy of the mortgagee, or by any lawful means other than by a transfer under this Order, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration made under this section shall contain a statement of the manner in which, and the person to whom, the property has been transmitted, and shall be accompanied by the like evidence as is by this Order required in the case

of a corresponding transmission of the ownership of a Brunei Darussalam ship or any share therein.

(3) The Registrar shall, on receipt of the declaration and production of the evidence as mentioned in subsection (2), enter the name of the person entitled under the transmission in the register as mortgagee of the ship or share.

Notice of trusts not received and equities not excluded.

33. (1) No notice of any trust, express, implied or constructive, shall be entered in the register or be receivable by the Registrar and, subject to any rights and powers appearing on the register to be vested in any other person, the registered owner of a ship or any share therein shall have power absolutely to dispose, in the manner provided in this Part, of the ship or share, and to give effectual receipts for any money paid or advanced by way of consideration.

(2) Subject to this section and sections 7 and 30, interests arising under contract or other equitable interests may be enforced by or against the owners and mortgagees of ships in respect of their interests therein in the same manner as in respect of any other personal property.

Alteration of ship.

34. (1) When a Brunei Darussalam ship is so altered as not to correspond with the particulars relating to its tonnage or description contained in the register, the owner shall apply for the ship to be registered anew.

(2) If the owner of a Brunei Darussalam ship fails without reasonable cause to register anew the ship so altered, he shall be guilty of an offence and liable on conviction for each offence to a fine not exceeding \$5,000 and to a further fine not exceeding \$200 for every day during which the offence continues after conviction.

Procedure for registry anew.

35. (1) Where a ship is to be registered anew, the Registrar shall proceed as in the case of initial registry and on the requisites to registry, or such of them as the Registrar considers material, being duly complied with, shall make such registry anew and grant a new certificate of registry.

(2) Where a ship has been registered anew under subsection (1), the former certificate of registry shall be delivered up to the Registrar for cancellation and the Registrar shall make an entry thereof in the former register.

(3) Where a ship is registered anew, its former register shall be deemed to be closed (except in relation to any unsatisfied mortgages entered therein) but the names of all persons appearing on the former register to be interested in the ship

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

as owners or mortgagees shall be entered on the new register, and the registry anew shall not in any way affect the rights of any of those persons.

National colours for Brunei Darussalam ships.

36. (1) The Minister shall prescribe an ensign, which shall be the proper national colours for a Brunei Darussalam ship.

(2) If any distinctive national colours other than the prescribed ensign are hoisted on board any Brunei Darussalam ship without the consent of the Minister, the master of the ship or the owner thereof if on board the ship, and every other person hoisting the colours shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Penalty for not showing colours.

37. (1) A Brunei Darussalam ship shall hoist the proper national colours on entering or leaving any port.

(2) If the master of a Brunei Darussalam ship fails without reasonable cause to comply with this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Certified copy or transcript of register.

38. (1) Any person may, on payment of the prescribed fee, on application to the Registrar at a reasonable time, inspect any register of Brunei Darussalam ships or apply for a certified copy or transcript thereof.

(2) If the register of a Brunei Darussalam ship is free of registered encumbrances, the Registrar may, at the request of the applicant, certify that fact in the copy or transcript of the register.

Correction of errors in register.

39. (1) The Registrar may correct any clerical error or obvious mistake in the register of a Brunei Darussalam ship.

(2) Any error relating to the particulars descriptive of a ship in the register may be corrected by entry (but so that the original entry remains legible) by the Registrar on the production to him, by the owner requiring such error to be corrected, of a declaration setting forth the nature of the error and the facts of the case and made by the owner or some other person having knowledge of the facts of the case.

Rectification of register by High Court.

40. (1) Any person who is aggrieved by any incorrect entry or omission in the register of a Brunei Darussalam ship may apply to the High Court for rectification of the register and the High Court may make such order as it thinks fit directing the rectification of the register.

(2) The High Court may, in proceedings under this section, decide any question that is necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of an application under this section by a person aggrieved shall be served on the Registrar, who may appear and be heard, and shall appear if so directed by the High Court.

(4) An official copy of an order under this section shall be served on the Registrar who shall, upon receipt of the order, rectify the register accordingly.

Delivery up of certificate on loss etc. of ship.

41. (1) Where a Brunei Darussalam ship is actually or constructively lost, taken by the enemy, burnt or broken up, every owner of the ship or any share therein shall, immediately on having knowledge of the event, if no notice thereof has already been given to the Registrar, give notice thereof to the Registrar, and the Registrar shall make an entry thereof in the register and the registry of the ship shall be deemed to be closed except in relation to any unsatisfied mortgages entered therein.

(2) In any such case, except where the ship's certificate of registry is lost or destroyed, the owner or the master of the ship shall, within 30 days of the event, deliver the certificate to the Registrar.

(3) Any owner or master of a ship who fails, without reasonable cause, to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Voluntary closure of registry.

42. (1) The owner of a Brunei Darussalam ship may make a written application to close its registry if there is no —

(a) unsatisfied mortgage entered in its register;

(b) subsisting entry made under section 24 prohibiting any dealing with the ship;

(c) unpaid fees within the meaning of subsection (4) of section 210 with respect to the ship; and

(d) outstanding claims of the master or seamen of the ship in respect of wages which have been notified to the Director.

(2) The application shall specify the name of the ship, the intended port and country or territory of registry (if applicable) or otherwise the reason for the closure and shall be submitted to the Registrar together with the certificate of registry of the ship.

(3) On receipt of the application and the certificate of registry, the Registrar shall, if he is satisfied of the matters mentioned in subsection (1), close the registry of the ship, make an entry thereof in the register and issue a certification of deletion to the owner in the specified form certifying that the ship's registry is closed and the date of such closure.

(4) For the purposes of this section, "owner" includes any transferee of, or any person entitled under a transmission to the property in, a Brunei Darussalam ship.

Power of Registrar to close registry and cancel certificate of registry.

43. (1) The Registrar may close the registry of a Brunei Darussalam ship (except in relation to any unsatisfied mortgages entered therein) and cancel its certificate of registry for any contravention of any of the provisions of this Order or any international convention applicable to Brunei Darussalam.

(2) The Registrar may close the registry of a Brunei Darussalam ship (except in relation to any unsatisfied mortgages entered therein) and cancel its certificate of registry if the Registrar is satisfied that it is not in the public interest for the ship to continue to be registered as a Brunei Darussalam ship.

(3) Where the registry of a ship is closed under this section, the registered owner of the ship at the time of the closure shall, within 30 days of the closure, deliver up the certificate of registry to the Registrar for cancellation and if he fails to deliver up the certificate of registry within the specified period, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Rules as to name of ship.

44. (1) A ship shall not be registered under any name except a name which is approved by the Registrar and a Brunei Darussalam ship shall not be described by any name other than that by which it is for the time being registered.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the approval of a ship's name and the changes thereto.

(3) Without prejudice to the generality of subsection (2), the Registrar may, with the approval of the Minister, in the regulations –

(a) require an existing ship to be registered under its existing name unless a change thereof has been approved in accordance with the regulations; and

(b) require an existing ship to change its name if it is the same as or similar to the name of a Brunei Darussalam ship.

Regulations on evidence of seaworthiness etc.

45. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as the Minister considers necessary or expedient to implement the provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations –

(a) specifying the documents which may be accepted as evidence of seaworthiness of a ship for the purposes of section 10;

(b) providing for the submission of such documents to the Registrar at any time after the registry of a ship;

(c) providing for the registration of ships which are bareboat chartered by persons qualified to own Brunei Darussalam ships;

(d) providing for the suspension of the registry of a Brunei Darussalam ship which is bareboat chartered out and registered in another state;

(e) specifying the provisions of this Order which shall be applied, with such modifications as may be specified, to a ship which is bareboat chartered by persons qualified to own Brunei Darussalam ships; and

(f) specifying the provisions of this Order which shall continue to apply, with such modifications as may be specified, notwithstanding the suspension of the registry of a Brunei Darussalam ship and its registration in another country or territory.

PART III

MANNING AND CERTIFICATION

Application of this Part.

46. (1) This Part shall not apply to —

- (a) any ship employed exclusively in the fishing industry;
- (b) any pleasure craft;
- (c) any harbour craft; and
- (d) any ship which is not propelled by mechanical means.

(2) Subject to subsection (1), this Part shall apply to every Brunei Darussalam ship and to any ship that enters or leaves any port in Brunei Darussalam.

Manning and certification.

47. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

- (a) requiring ships to carry such number of qualified officers of any description, qualified doctors and such number of qualified or other seamen of any description as may be specified in the regulations; and
- (b) prescribing standards of competence to be attained and other conditions to be satisfied (subject to any exemptions allowed by or under the regulations) by officers and other seamen of any description in order to be qualified for the purposes of this section.

(2) Without prejudice to the generality of paragraph (b) of subsection (1), the conditions prescribed or specified under that paragraph may include conditions as to nationality and regulations made for the purposes of that paragraph may make provisions for —

- (a) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;
- (b) the conduct of any examination, the conditions for admission to the examination and the appointment and remuneration of examiners; and
- (c) the issue, surrender, replacement, form and recording of certificates and other documents.

Prohibition of going to sea undermanned.

48. Subject to any exemption under section 212, if a ship goes to sea or attempts to go to sea without carrying such number of officers, doctors and other seamen as it is required to carry under section 47, the owner or the master of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and the ship may be detained.

Unqualified persons going to sea as qualified officers.

49. (1) If a person goes to sea as a qualified officer, doctor or seaman of any description without being such a qualified officer, doctor or seaman, that person shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(2) In this section, "qualified" means qualified for the purposes of section 47.

Production of certificates and other documents of qualification.

50. Any person serving or engaged to serve in any ship and holding any certificate or other document which is evidence that he is qualified for the purposes of section 47 shall on demand produce it to the Director or a surveyor of ships or any person authorised by the Director and (if he is not himself the master) to the master of the ship; and if he fails to do so without reasonable cause he shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Certificate obtained by fraud.

51. (1) Any person who fraudulently obtains a certificate under this Part shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both.

(2) The Director may cancel any certificate issued under this Part which is fraudulently obtained and the person to whom the certificate has been issued shall, upon being notified by the Director of its cancellation, forthwith deliver it or cause it to be delivered to the Director.

PART IV

EMPLOYMENT OF SEAMEN

Employment of seamen.

52. (1) No person other than an employer shall engage a seaman.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

(2) No employer shall engage a seaman and no seaman shall accept employment on board any ship except in accordance with regulations made under section 54.

(3) No employer shall enter into arrangements with any seaman to transport him outside Brunei Darussalam for the purpose of engagement in contravention of regulations made under section 54.

(4) For the purposes of this Part, "employer" includes the shipowner, charterer or operator, the agent of the shipowner, charterer or operator and the master of the ship.

Penalty for employment of seamen in contravention of section 52 or regulations made under section 54.

53. (1) Any person or employer who —

(a) contravenes section 52; or

(b) selects or engages a seaman otherwise than in accordance with regulations made under section 54,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 6 months or both.

(2) Any person or seaman who accepts employment or works in a ship as a seaman otherwise than in accordance with regulations made under section 54 shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 6 months or both.

Regulations relating to seamen.

54. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purposes of this Part, and in particular, may make regulations for the following purposes —

(a) to prescribe the age and other qualifications of applicants for registration as seamen;

(b) to prescribe the manner in which seamen may apply or be required to register;

(c) to make provisions for the medical examination of applicants for registration as seamen;

(d) to prescribe the procedures for dealing with the discipline of seamen;

(e) to prescribe the fee to be paid upon the issue of registration cards, and the fee for replacement of such cards when lost, destroyed or otherwise rendered unserviceable;

(f) to prescribe the conditions under which the Director may cancel, suspend or alter the registration of seamen; and

(g) to prescribe the fee to be paid on selection in respect of seamen selected in accordance with this Part.

Percentage of seamen of citizens of Brunei Darussalam to be maintained on board Brunei Darussalam ships.

55. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring Brunei Darussalam ships, to which Part II applies, to maintain in their crew lists such percentage of seamen who are of citizens of Brunei Darussalam as may be specified in the regulations.

(2) Regulations under this section shall specify the ships or description of ships to which this section is to apply and may make different provisions for different descriptions of ship or for ships of the same description in different circumstances.

PART V

CREW MATTERS

Application of this Part and interpretation.

56. (1) This Part shall not apply to —

(a) any ship employed exclusively in the fishing industry;

(b) any pleasure craft;

(c) any harbour craft; and

(d) any ship which is not propelled by mechanical means.

(2) Subject to subsection (1) and to any extension to foreign ships under section 100, this Part shall apply only to Brunei Darussalam ships.

(3) For the purposes of this Part, except sections 74, 75, 79, 80, 81, 83, 84 and 86, "seaman" (notwithstanding the definition in section 2) includes the master of a ship.

Crew agreements.

57. (1) Except as provided under subsection (4), an agreement in writing shall be made between each person employed as a seaman on a ship and the person employing him and shall be signed both by him and by or on behalf of the person employing him.

(2) The agreements made under this section with the several persons employed on a ship shall be contained in one document (referred to in this Order as a crew agreement) except in such cases as the Director may approve —

(a) the agreements to be made under this section with the persons employed on a ship may be contained in more than one crew agreement; and

(b) one crew agreement may relate to more than one ship.

(3) Subject to this section, a crew agreement shall be carried in the ship to which the agreement relates whenever the ship goes to sea.

(4) This section shall not apply to any ship of less than 25 tons exclusively employed in trading within such limits as are prescribed by regulations.

(5) If a ship goes to sea or attempts to go to sea in contravention of the requirements of this section, the master or the person employing the crew of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000, and the ship may be detained.

Regulations relating to crew agreements, engagement and discharge of seamen.

58. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the particulars to be entered in a crew agreement and the procedure to be followed in connection with the engagement and discharge of seamen from ships.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in the regulations, make provision —

(a) regarding the period of validity of a crew agreement and the circumstances under which it may be extended;

(b) requiring the engagement and discharge to be recorded, whether by entries in the crew agreement and discharge book or otherwise, and requiring copies of any such entry to be given to the Director;

(c) requiring the posting in ships of copies of or extracts from crew agreements;

(d) for cases where a seaman employed on a ship is left behind otherwise than on being discharged from the ship; and

(e) requiring the crew agreement to be produced to the Director when the ship is in Brunei Darussalam.

Discharge of seamen when ship ceases to be registered in Brunei Darussalam.

59. Where a ship registered in Brunei Darussalam ceases to be so registered, any seaman employed on the ship shall be discharged from the ship unless he consents in writing to continue his employment on the ship; and sections 60 to 63 shall apply in relation to his wages as if the ship had remained registered in Brunei Darussalam.

Payment of seaman's wages.

60. (1) Except as provided by this Order or any other written law, the wages due to a seaman under a crew agreement relating to a ship shall be paid to him in full at the time when he leaves the ship on being discharged therefrom (referred to in this section and in section 61 as the time of discharge).

(2) If the amount shown in the account delivered to a seaman under subsection (1) of section 61 as being the amount payable to him under subsection (1) is replaced by an increased amount shown in a further account delivered to him under subsection (3) of section 61, the balance shall be paid to him within 7 days of the time of discharge.

(3) If any amount which, under subsection (2), is payable to a seaman is not paid at the time at which it is so payable, the seaman shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid until the full amount is paid.

(4) Subsection (3) shall not apply if the failure to pay was due to any reasonable dispute as to liability or to the act or default of the seaman or to any other cause, not being the wrongful act or default of the person liable to pay his wages or of his employer or agent.

(5) Where a seaman is employed under a crew agreement relating to more than one ship, this section shall have effect, in relation to wages due to him under the agreement, as if for any reference to the time of discharge there were substituted a reference to the termination of his employment under the crew agreement.

(6) Where a seaman is discharged under section 59, from a ship outside his port of return but returns to that port under arrangement made by the person who employed him, this section shall have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the references in subsections (1) to (3) to the time of discharge there were substituted references to the time of his return to that port and subsection (5) were omitted.

Account of seaman's wages.

61. (1) Subject to subsection (4) and to regulations made under section 62 or 88, the master of every ship shall deliver to every seaman employed on the ship under a crew agreement an account of wages due to him under that crew agreement and of the deductions subject to which the wages are payable.

(2) The account shall indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and shall be delivered not later than 24 hours before the time of discharge or, if the seaman is discharged without notice or at less than 24 hours' notice, at the time of discharge.

(3) If the amounts stated in the account require adjustment, the person who employed the seaman shall deliver to him a further account stating the adjusted amounts; and that account shall be delivered to him not later than the time at which the balance of his wages is payable to the seaman.

(4) Where a seaman is employed under a crew agreement relating to more than one ship any account which under this section would be required to be delivered to him by the master of the ship shall instead be delivered to him by the person employing him and shall be so delivered on or before the termination of his employment under the crew agreement.

(5) If a person fails without reasonable cause to comply with any of the provisions of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Regulations relating to wages and accounts.

62. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) authorising deductions to be made from the wages due to a seaman under a crew agreement (in addition to any deduction authorised by any of the provisions of this Order or any other written law) in cases where a breach of his obligations under the crew agreement is alleged against him and such condition, if any, as may be specified in the regulations are complied with, or in such other cases as may be specified in the regulations;

(b) regulating the manner in which the amounts deducted under the regulations are to be dealt with;

(c) prescribing the manner in which such wages due to a seaman under a crew agreement are to be or may be paid;

(d) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seaman leaves his ship otherwise than on being discharged therefrom; and

(e) prescribing the form and manner in which any account required to be delivered under section 61 is to be prepared and the particulars to be contained therein (which may include estimated amounts).

Settlement of disputes.

63. (1) Any dispute, of whatever nature, between a seaman and the person employing the seaman, the master or the owner of a ship may be submitted by any party to the Director for decision or, in the case of a dispute relating to the amount payable to a seaman under a crew agreement and the amount exceeds \$5,000, by all the parties involved except that if the Director is of opinion that the dispute is one which ought to be decided by a court of law, the Director may refuse to decide it.

(2) The decision of the Director on a dispute submitted to him under this section shall be final.

(3) An award made by the Director upon the submission shall be conclusive as to the rights of the parties, and the submission or award shall not require a stamp; and a document purporting to be the submission or award shall be admissible as evidence thereof.

Restriction on attachment or assignment of and charge upon seaman's wages.

64. (1) Subject to this section, the following provisions shall have effect with respect to the wages due or accruing to a seaman employed on a ship —

(a) the wages shall not be subject to attachment;

(b) an assignment thereof before they have accrued shall not bind the seaman and the payment of the wages to the seaman shall be valid notwithstanding any previous assignment or charge; and

(c) a power of attorney or authority for the receipt of the wages shall not be irrevocable.

(2) Nothing in this section shall affect the provisions of this Order with respect to allotment notes.

(3) Nothing in this section shall apply to any disposition relating to the application of wages —

(a) in the payment of contributions to a fund declared by regulations to be a fund to which this section applies; or

(b) in the payment of contributions in respect of the membership of a body declared by regulations to be a body to which this section applies,

or to anything done or to be done for giving effect to such a disposition.

Assignment or sale of salvage invalid.

65. Subject to this Order, an assignment or sale of salvage payable to a seaman made prior to the accruing thereof shall not bind the person making the assignment or sale of salvage; and a power of attorney or authority for the receipt of any such salvage shall not be irrevocable.

Allotment notes.

66. (1) Subject to this section, a seaman may, by means of an allotment note issued in accordance with regulations, allot to any person part of the wages to which he will become entitled in the course of his employment on a ship.

(2) A seaman's right to make an allotment under this section shall be subject to such limitations as may, by virtue of subsection (3), be imposed by regulations.

(3) Regulations made for the purposes of this section may prescribe the form of allotment notes and may —

(a) limit the circumstances in which allotment notes may be made;

(b) limit (whether by reference to an amount or by reference to a proportion) the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated;

(c) limit the persons whom the allotments may be made by a seaman to persons of such descriptions or persons standing to him in such relationships as may be prescribed by the regulations; and

(d) prescribe the times and the intervals at which payments under allotment notes are to be made.

Right of person named in allotment note to sue in his own name.

67. (1) Any person to whom any part of a seaman's wages has been allotted by an allotment note issued in accordance with regulations made under section 66 shall have the right to recover that part in his own name and for that purpose shall have the same remedies as the seaman has for the recovery of his wages.

(2) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seaman's wages has been allotted, it shall be presumed, unless the contrary is proved, that the seaman is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

Right, or loss of right, to wages in certain circumstances.

68. (1) Where a ship is wrecked or lost, a seaman whose employment on the ship is thereby terminated before the date contemplated in the agreement under which he is so employed shall, subject to this section, be entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the 2 months following that date unless it is proved that he did not make reasonable efforts to save the ship and the persons and property carried in it.

(2) Where a ship is sold or ceases to be registered in Brunei Darussalam and a seaman's employment on the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless otherwise provided in the agreement, the seaman shall, subject to subsection (3), be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the 2 months following that date.

(3) A seaman shall not be entitled to wages by virtue of subsection (1) or (2) for a day on which he was unemployed, if it is shown —

(a) that the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be registered in Brunei Darussalam; or

(b) that the seaman was able to obtain suitable employment for that day but unreasonably refused to take it.

Compensation to seaman improperly discharged.

69. If a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, the seaman shall be entitled to receive from

the person employing him, in addition to any wages which he has earned, due compensation for the damage caused to him by the discharge, not exceeding one month's wages and may recover that compensation as if it were wages duly earned.

Protection of certain rights and remedies.

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

(2) Subsection (1) does not affect such term of any agreement made with a seaman belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, as provide for the remuneration to be paid to him for salvage services rendered by that ship.

Remedies of master for remuneration, disbursements etc.

71. The master of a ship shall have the same lien and remedies for his remuneration and all disbursements or liabilities properly made or incurred by him on account of the ship, as a seaman has for his wages.

Powers of court in case of unreasonable delay in paying seaman's wages.

72. In any action or other legal proceedings by any seaman of a ship for the recovery of any sum due to him on account of wages, the court may, if it appears that the payment of the sum due has been delayed otherwise than owing to the act or default of the seaman or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the person liable to make the payment, order that person to pay, in addition to any sum due on account of wages, such sum as the court thinks just as damages in respect of the delay, without prejudice to any claim which may be made by the seaman on that account.

Provisions and water.

73. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring such provisions and water to be provided for seamen employed on ships.

(2) Regulations made under this section may require a ship to carry such weighing and measuring equipment as may be necessary to ensure that the quantities of provisions and water supplied to seamen employed on the ship are in accordance with the regulations.

(3) If any regulation made under this section is not complied with, the master or the person employing the seamen of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 unless he proves that the failure to comply was not due to his neglect or default.

(4) If a person empowered under this Order to inspect the provisions and water to be supplied to the seamen employed on a ship is not satisfied that the provisions and water are in accordance with regulations made under this section, the ship may be detained.

Complaints about provisions or water.

74. (1) If 3 or more seamen employed on a ship consider that the provisions or water provided for the seamen employed on that ship are not in accordance with the regulations made under section 73 (whether because of bad quality, unfitness for use or deficiency in quantity) they may complain to the master of the ship who shall investigate the complaint.

(2) If the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action, they may state their dissatisfaction to him and may complain to the Director; and thereupon the master shall make adequate arrangements to enable the seamen to do so as soon as the service of the ship permits.

(3) The Director shall, upon receiving the complaint made under subsection (2), investigate the complaint and may examine the provisions or water or cause them to be examined.

(4) If the master of a ship fails without reasonable cause to comply with subsection (2), he shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and if he has been notified in writing by the person making any examination under subsection (3) that any provisions or water are found to be unfit for use or not of the quantity required by the regulations, then —

(a) if they are not placed within a reasonable time the master or the owner of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 unless he proves that the failure to replace them was not due to his neglect or default; and

(b) if the master of the ship, without reasonable cause, permits them to be used, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Other complaints.

75. (1) If a seaman employed on a ship considers that he has cause to complain about the master or any other seaman employed on the ship or about the conditions on board the ship, he may complain to the master.

(2) If the seaman is dissatisfied with the action taken by the master on the complaint or by his failure to take any action, he may state his dissatisfaction to the master and may complain to the Director; and thereupon the master shall make adequate arrangements to enable the seaman to do so as soon as the service of the ship permits.

(3) If the master of the ship fails without reasonable cause to comply with this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Medical stores.

76. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring ships to carry such medicines and other medical stores (including books containing instructions and advice) as may be specified in the regulations.

(2) If a ship goes to sea or attempts to go to sea without carrying medical stores which it is required to carry by regulations made under this section, the master or the owner of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 unless he proves that the failure to carry the medical stores was not due to his neglect or default.

(3) If a person empowered under this Order to inspect the medical stores carried in a ship is not satisfied that the ship carries the stores which it is required to carry by the regulations made under this section, the ship may be detained.

Medical treatment on board ship.

77. Where a ship does not carry a doctor among the seamen employed on it, the master of the ship shall make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for that purpose.

Expenses of medical treatment etc. during voyage.

78. (1) If a seaman, while employed on a ship, receives any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the person employing him, and if he

dies while so employed and is buried or cremated outside his port of return, the expenses of his burial or cremation or the return of the body to his home shall also be borne by that person.

(2) A compensation shall be payable by the person employing the seaman for the death of or injury to the seaman employed on a Brunei Darussalam ship who is not covered under the Workmen's Compensation Act (Chapter 74) and such compensation shall not be less than that provided under that Act.

Drunkenness etc. on board ship.

79. If a seaman employed on a ship is, while on board the ship, under the influence of drink or a drug to such an extent that his capacity to fulfill his responsibility for the ship or to carry out his duties is impaired, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Continued or concerted disobedience, neglect of duty etc.

80. (1) If a seaman employed on a ship —

- (a) persistently and wilfully neglects his duty;
- (b) persistently and wilfully disobeys lawful commands; or
- (c) combines with other seamen employed on the ship —
 - (i) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea;
 - (ii) to neglect any duty which is required to be discharged at such time; or
 - (iii) to impede, at such a time, the progress of a voyage or the navigation of the ship,

he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both.

(2) For the purposes of this section, a ship shall be treated as being at sea at any time when it is not securely moored in a safe berth.

Offences committed by certain other persons.

81. Where a person goes to sea in a ship without the consent of the master of the ship or of any other person authorised to give it or is conveyed in a ship in pursuance of paragraph (a) of subsection (4) of section 88, paragraphs (b) and (c) of

subsection (1) of section 80 shall apply as if that person were a seaman employed on the ship.

Defence of drug taken for medical purposes.

82. In any proceedings for an offence under section 79, it shall be a defence to prove that at the time of the act or omission alleged against the defendant he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice or that he had reason to believe that the drug might not have the influence it had.

Disciplinary offences.

83. (1) For the purpose of maintaining discipline on board a ship, the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing any misconduct on board as a disciplinary offence and enabling the master of the ship, or such officer as may under the regulations be required or authorised to exercise the powers of the master, to impose fines on any seaman committing any disciplinary offence.

(2) The regulations made under this section may provide for —

(a) the fine that may be imposed on a seaman in respect of each disciplinary offence;

(b) the procedure to be followed in dealing with the disciplinary offence; and

(c) the circumstances in which the master of a ship may remit the whole or part of any fine imposed thereunder.

Appeal against fine for disciplinary offences.

84. (1) A seaman on whom a fine has been imposed for a disciplinary offence may, in accordance with the regulations made under this section, appeal against the decision to the Director, and on such an appeal, the Director may confirm or quash the decision and may remit the whole or part of the fine.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations under this section to provide for —

(a) the procedure to be followed on any such appeal;

(b) the time within which notice of an intended appeal is to be given by the appellant to the master and by the master to the Director; and

(c) the place at which the appeal is to be heard.

Prohibition of double prosecution.

85. Where any conduct is both a disciplinary offence and an offence against any provision of this Order, then if it has been dealt with as a disciplinary offence, it shall not be dealt with as an offence against that provision.

Payment of fines for disciplinary offences.

86. (1) Except as otherwise provided in subsection (3), the amount of a fine imposed on a seaman for a disciplinary offence, so far as not remitted by the master or on appeal, may be deducted from his wages or otherwise recovered by the person employing him and shall be paid by him (whether or not it has been so deducted or otherwise recovered) to the Director.

(2) Except as otherwise provided in subsection (3) —

(a) if the wages or part thereof are paid by the master of a ship on his behalf or on behalf of the person employing the seaman, as the case may be, the said amount shall be paid at the time when the seaman leaves the ship at the end of his agreement or, if earlier, when his employment on the ship is terminated;

(b) in any other case, the master shall at that time notify the amount to the person employing the seaman, and the person shall pay it when the next payment in respect of the seaman's wages falls to be made by him.

(3) Where an appeal against such a fine is pending at the time mentioned in subsection (2), no amount shall by reason of the fine be deducted, recovered, paid or notified under subsections (1) and (2) until the appeal has been disposed of; but regulations made under section 83 may provide for the amount of the fine to be provisionally deducted from the seaman's wages pending the appeal.

Civil liability for smuggling.

87. If a seaman employed on a ship is found in civil proceedings before a court in Brunei Darussalam or elsewhere to have committed an act of smuggling, whether in Brunei Darussalam or elsewhere, he shall be liable to make good any loss or expense that the act has caused to any other person.

Relief and repatriation of seaman left behind.

88. (1) Where a person employed as a seaman on a ship is left behind in any country or territory or is taken to any country or territory on being shipwrecked,

the person who last employed him as a seaman shall make such provision for his return and for his relief and maintenance as may be required by regulations.

(2) The regulations to be so made may include the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seaman who dies before he can be returned.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations providing for the manner in which any wages due to any person left behind or taken to any country or territory as mentioned in subsection (1) and any property of his left on board the ship are to be dealt with.

(4) Without prejudice to the generality of subsections (1), (2) and (3), regulations made under this section may make provision —

(a) for requiring the master of any ship to convey a person to a place determined in accordance with the regulations and for enabling the Director to give the master directions for that purpose;

(b) for the making of payments in respect of the conveyance of a person in accordance with the regulations; and

(c) for the keeping of records and the rendering of accounts.

(5) This section shall also apply to a person left behind on being discharged in pursuance of section 59, whether or not at the time he is left behind the ship is still registered in Brunei Darussalam.

Limit of employer's liability under section 88.

89. Where a person left behind in or taken to any country or territory as mentioned in subsection (1) of section 88 remains there after the end of a period of 3 months, the person who last employed him as a seaman shall not be liable under that section to make provision for his return or for any matter arising after the end of that period, unless he has, before the end of that period, been under an obligation imposed on him by regulations made under that section to make provision with respect to him.

Custody etc. of property of deceased seamen.

90. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations providing for the custody of and dealing with —

(a) any property left on board a ship by a seaman dying while or after being employed on the ship;

(b) any property left in a country or territory outside Brunei Darussalam by a seaman dying while or within such period as provided for in the regulations after being employed on a ship; and

(c) the recovery by the Director of any wages which, at the time of a seaman's death, were due to him in respect of his employment on a ship.

(2) Regulations made under this section may require the recording of particulars and the rendering of accounts and may enable the Director or any person having custody of any such property to sell it by auction or otherwise and account for the proceeds.

Disposal of property of deceased seamen.

91. (1) Where, on the death of a seaman, any property comes into the hands of the Director by virtue of section 90, the Director may satisfy out of them any expenses incurred by the Director in respect of the seaman or his property.

(2) If the value of the residue of the property does not exceed \$5,000, the Director may at any time pay or deliver it to any of the persons mentioned in subsection (3) or distribute it among them, unless a grant of representation has been made and the Director knows of it; and the Director shall thereby be discharged from any further liability in respect of the residue.

(3) The persons referred to in subsection (2) are —

(a) any person appearing to the Director to be a person named as the seaman's next of kin in the crew agreement in which the seaman's name last appeared;

(b) any person appearing to the Director to be his widow or his child;

(c) any person appearing to the Director to be beneficially entitled, under a will or on intestacy, to the seaman's estate or any part thereof; or

(d) any person appearing to the Director to be a creditor of the seaman.

(4) Where no claim to the property received by the Director is substantiated within one year after the receipt of the property by the Director, the Director shall pay the property, the proceeds thereof, or the residue thereof, into the Consolidated Fund.

(5) If any subsequent claim is made to such property, or the residue thereof, and is established to the satisfaction of the Director, the amount, or so much as appears to be due to the claimant, shall be paid out of the Consolidated Fund.

(6) If any claim is not established to the satisfaction of the Director, the claimant may apply by summons to the High Court, and the High Court may, after taking evidence orally or on affidavit, make such order on the summons as it thinks just.

(7) After the expiration of 6 years from the receipt of such property or proceeds thereof by the Director, no such claim shall be made without the sanction of the Minister.

(8) If it appears to the Director that any of the persons to whom any property may be paid or delivered under this section is resident in a country or territory outside Brunei Darussalam, the Director may pay or deliver them to him by paying or delivering them to a consular officer of that country or territory for transmission to him.

(9) If the property exceeds \$5,000 in value, the Director shall pay and deliver the residue to the legal personal representative of the deceased.

(10) In this section, "child" includes an adopted child.

Official and other log-books.

92. (1) Except as provided by regulations made under this section, an official log-book and such other log-books as may be prescribed in the regulations shall be kept in every ship.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the particulars to be entered in the log-books, the persons by whom such entries are to be made, signed or witnessed, and the procedure to be followed in the making of such entries and their amendment or cancellation.

(3) Regulations may require the production or delivery of the log-books to such persons, in such circumstances and within such times as may be specified.

(4) Any person who wilfully destroys, mutilates or renders illegible any entry in any log-book shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Discharge books.

93. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations providing —

(a) for the issue of discharge books in such form and containing such particulars with respect to the holders thereof and such other particulars as

may be prescribed by the regulations and for requiring such persons to apply for such discharge books;

(b) for requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed by the regulations; and

(c) for the surrender of discharge books in such circumstances as may be prescribed by the regulations.

(2) Any provision of the regulations having effect by virtue of paragraph (a) of subsection (1) may be so framed as to apply to all such persons as are mentioned in that paragraph or any description of such persons and as to have effect subject to any exemptions for which provisions may be made by the regulations.

Returns of births and deaths in ships etc.

94. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) requiring the master of any ship to make a return to the Director of any birth or death occurring in the ship;

(b) requiring the master of any ship to conduct an inquiry to determine the nature and cause and make a report to the Director of any death occurring in the ship and, wherever occurring outside Brunei Darussalam, of any person employed on the ship, and to notify any such death to such person (if any) as the deceased may have named as his next of kin; and

(c) requiring the master of any ship not registered in Brunei Darussalam which calls at any port in Brunei Darussalam in the course of or at the end of a voyage to make a return to the Director of any birth or death of a citizen of Brunei Darussalam which has occurred in the ship during the voyage.

(2) Regulations made under this section may require the Director to send a certified copy of any return made thereunder to the Registrar of Births and Deaths.

(3) The Registrar of Births and Deaths to whom any such certified copies are sent —

(a) shall maintain the copies in a register kept by him for the purpose and to be called the marine register; and

(b) may also record in that register such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register,

and the provisions of any written law relating to the registration of births and deaths shall have effect with such modifications as are appropriate and so far as those provisions may be complied with in the circumstances as if the marine register were a register of births (other than still-births) or deaths, except that it shall not be necessary for any person to sign the register as an informant.

(4) Regulations made under this section may contain provisions for authorising the registration of the following births and deaths occurring outside Brunei Darussalam in circumstances where no return is required to be made under subsection (1) —

(a) any birth or death of a citizen of Brunei Darussalam which occurs in a ship not registered in Brunei Darussalam;

(b) any death of a citizen of Brunei Darussalam who has been employed on such a ship which occurs elsewhere than in the ship.

(5) Any person who, being required under the regulations made under this section to make a return of any birth or death or a report on the inquiry into the cause of any death, furnishes as true any information in the return or report which he knows or has reason to believe to be false shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both.

Handing over of documents on change of master.

95. If a person ceases to be the master of a ship, he shall deliver to his successor the documents relating to the ship or its crew which are in his custody; and if he fails without reasonable cause to do so, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Stowaways.

96. (1) If a person, without the consent of the master of the ship or of any other person authorised to give it, goes to sea or attempts to go to sea in a ship, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 6 months or both.

(2) Nothing in section 177 shall be taken to limit the jurisdiction of any court in Brunei Darussalam to deal with an offence under this section which has been committed in a country or territory outside Brunei Darussalam by a person who is not a citizen of Brunei Darussalam.

Master's power of arrest.

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

Penalty for receiving remuneration from seamen for engagement.

98. (1) A person shall not demand or receive, directly or indirectly, from a seaman, or from a person seeking employment as a seaman, or from a person on his behalf, any remuneration whatever for providing him with employment.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months or both.

Restriction on employment of young persons on board ship.

99. (1) No young person shall be employed on any ship except as permitted by regulations made under this section.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the circumstances in which and the conditions subject to which young persons who have attained such specified age may be employed on a ship in such capacities as may be specified.

(3) If any person is employed on a ship in contravention of any regulations made under this section or if any condition subject to which a person may be employed under any such regulation is not complied with, the owner or the master of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Extension to foreign ships.

100. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations extend the application of all or any of the provisions of this Part to foreign ships subject to such modifications as are specified in those regulations.

PART VI

LICENSING OF SHIPS

Application to this Part.

101. This Part shall not apply to any ship exceeding 100 tons.

Conditions for licensing of ships.

102. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to license, regulate and control the use and specify the manning of ships and fees for the licensing thereof.

(2) The Minister may, in making any regulations under this section, provide that any contravention of or failure to comply with any regulations shall be an offence and may prescribe as a penalty in respect of any one offence a fine not exceeding \$2,000 or imprisonment for a term not exceeding 2 years or both and, in the case of a continuing offence, a further fine of not exceeding \$200 for every day or part thereof during which such offence continues after conviction.

Duration of licence.

103. Every licence shall, unless the contrary is stated in regulations made under section 102 or in the licence, be valid for a period of one year from the date of issue.

Registered owner and master.

104. Unless the contrary is shown, the persons whose names appear in the register shall, for the purposes of this Part and for all the purposes of the police and prevention of offences, be considered the owner and master respectively.

Licensed ships registers.

105. The Director shall keep separate registers for each type of ship licensed.

Issuance and cancellation of licence.

106. (1) The Director shall deliver to the owner of every Brunei Darussalam licensed ship containing the particulars specified in the register of licenses and the owner shall cause such licence or a copy certified by the Director to be kept at all times on board his ship in the custody of the person in charge of the ship, and such person shall exhibit the same to the Director or any police officer who demands to see the same.

- (2) The Director may cancel any ship licence issued under this Part.

PART VII

SURVEY AND SAFETY OF SHIPS

Application of this Part.

107. This Part shall, unless otherwise provided, apply to all Brunei Darussalam ships wherever they may be and to all ships in Brunei Darussalam except harbour craft.

Prohibition on going to sea without certificates.

108. (1) Every ship unless exempted shall be surveyed or inspected in the manner provided in this Order.

(2) Subject to any exemption, no ship shall go to sea unless the owner or the master of the ship has been issued with certificates by the Director as to the surveys or inspections under this Order, the certificates being in force and applicable to the ship.

(3) If any ship goes or attempts to go to sea in contravention of this section —

(a) in the case of a passenger ship, the owner or the master of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$500 for every passenger on board the ship; and

(b) in the case of any other ship, the owner or the master of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000,

and the ship may be detained until the certificates are produced to the Director.

Powers of Minister to make regulations.

109. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for carrying out the purposes and provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations providing for —

- (a) the standards of construction and equipment of ships including the provision of life-saving and fire-fighting appliances and radio installations;
- (b) the standards of accommodation for crew and passengers;
- (c) the tonnage measurement of ships;
- (d) the determination of the load lines;
- (e) the loading and carriage of goods, including dangerous goods;
- (f) the carriage of livestock;
- (g) the safety of navigation;
- (h) the prevention of collisions at sea (referred to in this Order as the collision regulations);
- (i) the safety, health and welfare of persons employed on ships;
- (j) the manner and frequency of the survey or inspection and the issue, suspension, cancellation, extension and period of the validity of certificates or exemption certificates; and
- (k) the recognition of certificates or exemption certificates issued by or under the authority of the government of any other country or territory for the purposes of section 108.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in the regulations make provisions to give effect to the provisions of any international convention or agreement concerning or relating to ships, ships' safety, ships' equipment, property or goods carried in ships or persons employed on ships and to which Brunei Darussalam is a party.

(4) The owner and the master of any ship to which section 108 applies shall comply with any regulations made under this section and shall ensure that the ship and its equipment and in respect of any matter that is governed by the regulations comply with any such regulations before the ship goes to sea and at all times when the ship is at sea, unless otherwise provided in this Order.

(5) Any owner or master who contravenes subsection (4) shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and the ship may be detained.

Overloaded ships.

110. (1) Where a cargo ship is so loaded at any time that, if the ship were floating without a list in still salt water of a specific gravity of 1.025, the load line marked on either side of the ship that is the appropriate load line at the time would be submerged, the ship shall, for the purposes of this Order, be deemed to be overloaded and, subject to subsection (4), to be overloaded to the extent which that load line would be submerged.

(2) Where —

(a) a ship is at any time engaged on, or is about to engage on, a voyage during which, in the ordinary course, a load line marked on either side of the ship (not being a load line that is the appropriate load line at that time) would, at some later time during the voyage, become the appropriate load line; and

(b) the ship is so loaded at that first-mentioned time, that if the ship were floating without a list in still salt water of a specific gravity of 1.025 and there were unloaded from the ship the fuel and other material that would, in the ordinary course, be consumed or discharged before that later time, that load line would be submerged,

the ship shall, for the purposes of this Order, be deemed to be overloaded and, subject to subsection (4), to be overloaded to the extent to which that load line would be so submerged.

(3) Where a passenger ship is so loaded at any time that, if the ship were floating without a list in still salt water of a specific gravity of 1.025, the subdivision load line marked on either side of the ship that is the appropriate subdivision load line at that time would be submerged, the ship shall, for the purposes of this Order, be deemed to be overloaded and, subject to subsection (4), to be overloaded to the extent to which that subdivision load line would be so submerged.

(4) Where —

(a) in any proceedings under this Order, it is proved that a ship is deemed to be overloaded under the provisions of more than one subsection of this section; and

(b) the extent to which, under those subsections, the ship is deemed to be overloaded is not the same in each case,

the ship shall, for the purposes of this Order, be deemed to be overloaded to the greatest extent to which it is deemed to be overloaded under those subsections.

(5) Where a ship is overloaded in contravention of this section, the owner and the master of the ship shall each be liable on conviction to a fine not exceeding \$10,000 and to such additional fine not exceeding the maximum amount which the earning capacity of the ship would have been increased by reason of the contravention.

(6) Without prejudice to any proceedings under this section, any ship which is overloaded in contravention of this section may be detained until it ceases to be so overloaded.

(7) For the purposes of this section, the load line or subdivision load line marked on a ship that is the appropriate load line or subdivision load line at any time shall be determined in accordance with the regulations made under this Part.

Penalty for carrying passengers in excess.

111. (1) The owner or the master of any passenger ship shall not carry or receive on board thereof, or on or in any part thereof, any number of passengers which, having regard to the time, occasion and circumstances of the case, is greater than the number allowed by the passenger ship's safety certificate, and if he does so, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

(2) The Director may detain any ship which has contravened subsection (1) for such period until the ship complies with the passenger ship's safety certificate.

Observance of collision regulations.

112. (1) All owners, masters or persons in charge of the navigation of vessels shall obey the collision regulations and shall not carry, exhibit or use any other lights or use any other signals, than such as are required by those regulations.

(2) Any owner, master or person who does or suffers to be done any act or omission contrary to any of the provisions of the collision regulations shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

(3) In any case before a court in Brunei Darussalam concerning a contravention of the collision regulations arising within Brunei Darussalam, foreign vessels shall be treated as if they were registered in Brunei Darussalam.

(4) For the purposes of this section, "vessel" shall have the meaning assigned to it in the collision regulations.

Defect or deficiency in ship etc.

113. (1) Where a material defect or deficiency affecting safety is discovered in a Brunei Darussalam ship or its equipment, whether the defect or deficiency is due to wear and tear or to accident or to any other cause, the owner or the master of the ship shall report to the Director the nature and extent of the defect or deficiency and the probable cause thereof within 7 days of its discovery unless it has been reported to the Director under section 116.

(2) Where any material alteration is made to a Brunei Darussalam ship or its equipment or the purpose for which the ship is for the time being used is changed, the owner or the master of the ship shall report the nature and extent of the alteration or change to the Director within 7 days of the alteration or change.

(3) If any owner or master of a ship contravenes subsection (1) or (2), he shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

(4) If any person conceals or attempts to conceal or suffers to be concealed any material defect or deficiency in the ship or its equipment, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Cancellation of certificate or exemption certificate.

114. (1) The Director may cancel any certificate or exemption certificate issued by him in respect of any ship if he has reason to believe that the ship or its equipment or any matter to which the certificate or exemption certificate relates no longer complies with the regulations under which the certificate was issued or the conditions (if any) under which the exemption certificate was issued.

(2) Where a certificate or exemption certificate is cancelled by the Director under subsection (1), the owner or the master of the ship to which the certificate or exemption certificate relates shall deliver the certificate within 14 days upon being notified by the Director, and if he fails to do so without reasonable cause, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Duty to render assistance.

115. (1) The master or, in his absence, the person in charge of a Brunei Darussalam ship, in so far he can do without serious danger to the ship, crew and passengers (if any) shall —

(a) render assistance to any person found at sea in danger of being lost; and

(b) proceed with all possible speed to the rescue of persons in distress, if informed of his need of assistance, in so far as such action may reasonably be expected of him.

(2) In every case of collision between 2 ships, it shall be the duty of the master or, in his absence, the person in charge of each ship, if and so far as he can do so without danger to his own ship, crew and passengers (if any) —

(a) to render to the other ship, its master, crew and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other ship until he has ascertained that it has no need of further assistance; and

(b) to give to the master or person in charge of the other ship the name of his own ship and of the port to which it belongs, and also the names of the ports from which it came and to which it is bound.

(3) If the master fails without reasonable cause to comply with this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and if he is a certificated officer, an inquiry into his conduct may be held and his certificate may be cancelled or suspended.

Report of accidents etc. to Director.

116. (1) Where a ship —

(a) has sustained or caused an accident occasioning loss of life or serious injury to a person;

(b) has sustained an accident or received damage, or otherwise sustained a defect or deficiency in the ship or its equipment which has been discovered, and the accident, damage, defect or deficiency has affected, or is likely to affect the seaworthiness of the ship, or the efficiency or completeness of the life-saving appliances or other safety equipment of the ship;

(c) has been in a position of great peril, either from the action of some other ship or from danger of wreck or collision; or

(d) has been stranded or wrecked,

the owner or the master of the ship shall, within 24 hours of the happening, report the happening to the Director.

(2) Any owner or master of a ship who fails without reasonable cause to comply with this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Appointment of inspector to report on accident etc.

117. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint any person as an inspector to report to him —

(a) upon the nature and causes of any accident or damage which any ship has sustained or caused or is alleged to have sustained or caused;

(b) whether the provisions of this Order or any other written law have been complied with; or

(c) whether the hull, machinery and equipment of any ship are sufficient and in good condition.

Notification of loss of ship.

118. (1) If —

(a) the owner, manager or agent of a Brunei Darussalam ship has reason to believe that the ship has been wholly lost; or

(b) the owner, manager or agent of any other ship has reason to believe that the ship has been wholly lost on or near the coast of Brunei Darussalam,

he shall forthwith give notice in writing to the Director stating the name of the ship, its description, official number and the port to which it belongs and shall state to the best of his knowledge, the probable cause of the loss.

(2) Any owner, manager or agent who fails without reasonable cause to comply with this section within a reasonable time shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Owner and master liable in respect of unsafe ship.

119. (1) If, having regard to the nature of the service for which it is intended —

(a) a ship in a port in Brunei Darussalam; or

(b) a Brunei Darussalam ship which is in any other port,

is an unsafe ship, that is to say, is by reason of any of the matters mentioned in subsection (2) not fit to go to sea without serious danger to human life, then, subject to subsection (3), the master and the owner of the ship shall each be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.

(2) The matters referred to in subsection (1) are —

(a) the condition, or the suitability for its purpose, of —

(i) the ship or its machinery or equipment; or

(ii) any part of the ship or its machinery or equipment;

(b) undermanning;

(c) overloading or unsafe or improper loading; and

(d) any other matter relevant to the safety of the ship.

(3) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence —

(a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters falling within subsection (2) which are specified in the charge; or

(b) it was reasonable not to have made such arrangements.

Master or seaman may claim discharge if ship is unsafe.

120. If a ship is an unsafe ship, the master or seaman belonging to the ship shall not be deemed to have committed a breach of his agreement by reason of his having refused to sail in the ship while it is unsafe; and any master or seaman so refusing may claim his discharge unless the ship is made safe within a reasonable time.

Obligation of shipowner to crew with respect to use of reasonable efforts to secure seaworthiness.

121. (1) In every contract of service, express or implied, between the owner of a ship or the person employing the master and seamen and the master or any seaman thereof, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner of the ship and the master and every agent charged with the loading of the ship or the preparing of the ship for sea or the sending of the ship to sea shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep it in a seaworthy condition for the voyage during the voyage.

(2) Nothing in this section —

(a) shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable; or

(b) shall apply to any ship employed exclusively in trading or going from place to place in any river or inland water of which the whole or part thereof is in Brunei Darussalam.

Detention of unsafe ship.

122. (1) The Director may order any ship, which is an unsafe ship or appears to him to be an unsafe ship, to be provisionally detained.

(2) When any ship has been provisionally detained, a notification of the provisional detention of the ship shall be immediately served on the master of the ship, together with a statement of the grounds of detention.

(3) The Director may appoint a competent person to survey the ship and report to him.

(4) On receipt of the report, the Director may either finally detain the ship or order its release unconditionally or on such conditions as he thinks fit.

(5) Before the order for final detention is issued, the master of the ship shall be furnished with a copy of the report and he may, within 7 days after receipt of the copy, appeal to the Minister.

(6) The Minister may, upon appeal under subsection (5), order the final detention of the ship or order its release unconditionally or subject to such conditions as he thinks fit.

(7) When any order for the final detention of a ship has been made, the ship shall not be released until the Director or the Minister, as the case may be, is satisfied that its further detention is no longer necessary and orders its release.

Owner liable for unsafe operation of ship.

123. (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

(2) This section shall apply to —

(a) any Brunei Darussalam ship; or

(b) any ship which —

- (i) is registered under the law of any country or territory outside Brunei Darussalam; and
- (ii) is within the seaward limits of the territorial waters of Brunei Darussalam while proceeding to or from a port in Brunei Darussalam, unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.

Conduct endangering ships, structures or individuals.

124. (1) This section shall apply to the master of, or any seaman employed on —

(a) a Brunei Darussalam ship; and

(b) a ship which —

- (i) is registered under the law of any country or territory outside Brunei Darussalam; and
- (ii) is in a port in Brunei Darussalam or within the seaward limits of the territorial waters of Brunei Darussalam while proceeding to or from any such port, unless the ship would not be in that port or, as the case may be, would not be so proceeding but for weather conditions or any other unavoidable circumstances.

(2) If a person to whom this section applies, while on board his ship or in its immediate vicinity —

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

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

(b) omits to do anything required —

- (i) to preserve his ship or its machinery, navigational equipment or safety equipment, from loss, destruction or serious damage;
- (ii) to preserve any person on board his ship from death or serious injury; or
- (iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship,

and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, he shall, subject to subsections (5) and (6), be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.

(3) The conditions referred to in subsection (2) are —

(a) that the act or omission was deliberate or amounted to a breach or neglect of duty; and

(b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.

(4) If a person to whom this section applies —

(a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in paragraph (a) of subsection (2); or

(b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,

he shall, subject to subsections (5) and (6), be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.

(5) In any proceedings for an offence under this section, it shall be a defence to prove —

(a) in the case of an offence under subsection (2), where the act or omission alleged against the defendant constituted a breach or neglect of duty, that the defendant took all reasonable steps to discharge that duty;

(b) in the case of an offence under subsection (4), that the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or

(c) in the case of an offence under either of those subsections —

(i) that he could have avoided committing the offence only by disobeying a lawful command; or

(ii) that in all the circumstances, the loss, destruction, damage, death or injury in question or, as the case may be, the likelihood of its being caused, either could not reasonably have been foreseen by the defendant or could not reasonably have been avoided by him.

(6) In the application of this section to any person falling within paragraph (b) of subsection (1), subsections (2) and (4) shall have effect as if sub-paragraph (i) of paragraphs (a) and (b) of subsection (2) were omitted.

(7) In this section —

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

"duty" —

(a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and

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

"structure" means any fixed or movable structure of whatever description other than a ship.

Regulations for survey of ships and issue of certificates.

125. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purposes of authorising any organisation for the survey or inspection of Brunei Darussalam ships and the issue of any certificate under this Part.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in the regulations —

(a) specify the surveys or inspections and the issue of certificates or endorsements;

(b) provide for the registration of any person belonging to or acting on behalf of any organisation as a surveyor for the purposes of surveying or inspecting Brunei Darussalam ships; and

(c) prescribe the conditions for the registration of any person under paragraph (b) and the cancellation of the registration of any person.

(3) Any certificate issued or endorsement made by any authorised organisation in accordance with any regulations made under this section shall be deemed to be issued or made by the Director for the purposes of this Order.

PART VIII

SAFETY OF NAVIGATION

Provision and maintenance of navigational aids.

126. (1) The Director shall provide and maintain such number of lighthouses, buoys, beacons and other navigational aids as may seem to him to be deemed necessary to assist navigation and levy such dues in respect of them.

(2) Any person who wilfully and without lawful excuse —

(a) injures any lighthouses or lights exhibited therein, or any buoy, beacon or navigational aid, or any cables, wires or other apparatus or structures, either in connection therewith; or

(b) removes, loosens, sets adrift, alters or destroys any buoy, beacon or navigational aid or any cables, wires or other apparatus or structures, either in connection therewith or otherwise; or

(c) rides by, makes fast to, or runs foul of any buoy, beacon or navigational aid,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both and in addition, payment of the expenses of making good any damage so occasioned.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prohibiting or regulating the provision and maintenance of lighthouses, buoys and beacons or other navigational aids not owned or erected by the Government.

Misconduct of person employed in lighthouse.

127. Any person employed in the operation of a lighthouse who wilfully or negligently omits to do any act proper and requisite to be done by him with respect to the lights or signals exhibited in a lighthouse shall, if such omission is of a nature likely to cause danger to navigation, be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Prevention of false lights.

128. (1) Wherever any fire or light is burnt or exhibited at such place or in such manner as to be liable to be mistaken for a light proceeding from a lighthouse or in such a manner as to affect the visibility of the light proceeding from a lighthouse, the Director may serve a notice upon the owner of the place where the fire or light is burnt or exhibited, or on the person having the charge of the fire or light, directing that owner or person, within a reasonable time to be specified in the notice, to take effectual means of extinguishing or effectually screening the fire or light and for preventing for the future of any similar fire or light.

(2) Any owner or person, on whom a notice is served under this section, who fails, without reasonable cause, to comply with the directions contained in the notice, shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

(3) If the owner or person on whom a notice under this section is served neglects for a period of 2 days to extinguish or effectually screen the fire or light mentioned in the notice, the Director may, by his officers or employees, enter upon the place where the fire or light is, and forthwith extinguish the same, doing no unnecessary damage, and the expenses incurred by him in so doing shall be paid to him by the owner or person on whom the notice has been served.

Navigational warning or information.

129. (1) The Director shall disseminate navigational warnings or information as may seem to him to be deemed necessary to assist and to ensure the safety of navigation. Such a warning or information shall be disseminated in the form of a written notice and, if such warning or information is of a grave danger to navigation, by a marine radio broadcast.

(2) The owner, master or person in charge of a ship shall obey the warning or information issued by the Director under subsection (1) and failure to do so shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Hydrographic surveys etc.

130. (1) No person shall carry out or caused to be carried out any hydrographic or hydrologic surveys or other studies of the waters and sea-bed within the waters of Brunei Darussalam except with the approval of the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

(3) This section shall not apply to any hydrographic or hydrologic survey or other study carried out —

(a) for or on behalf of the Government; or

(b) pursuant to a licence issued or lease granted under the Mining Act (Chapter 42); or

(c) pursuant to a petroleum mining agreement entered into under the Petroleum Mining Act (Chapter 44).

Power to regulate and control navigation.

131. (1) The Director shall be charged with the regulation and control of navigation in Brunei Darussalam waters and it shall be his duty to establish control stations at the locations as may seem to him to be necessary to regulate and control navigation.

(2) Such control stations, when established, shall carry out the functions of —

(a) controlling the movement of ships entering and leaving a port area;

(b) receiving distress messages from ships at sea;

(c) performing the functions of at least for sea area A1 as required by the Global Maritime Distress Signal Systems of the International Convention on the Safety of Life at Sea;

(d) assisting in the coordination of a maritime search and rescue;

(e) broadcasting of navigational warnings and information; and

(f) carrying out such other duties as are imposed by the Director or any other written law.

Control of navigation around artificial islands, installations and structures in Exclusive Economic Zone.

132. (1) Without prejudice to Article 60 of the United Nations Convention on the Law of the Sea, any construction of artificial islands, installations and structures in the Exclusive Economic Zone shall be communicated to the Director for the purpose of issuing navigational warnings and information as required by section 129.

(2) Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organisation. Such removal shall also have due regard to fishing and the protection of the marine environment. For the purpose of section 129, any removal shall be communicated to the Director, including the depth, position and dimensions of any installations or structures not entirely removed.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, and where necessary, by regulations, establish reasonable safety zones around artificial islands, installations and structures as measures to ensure the safety of navigation and of the artificial islands, installations and structures.

(4) Without prejudice to the generality of subsection (3), the breadth of such zones shall be designed to ensure that they are reasonably related to the nature and functions of the artificial islands, installations and structures and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorised by generally accepted international standards or as recommended by the competent international organisation.

(5) Notice on construction, removal and the extent of every safety zone established shall be published in the *Gazette*.

(6) All ships, except those specified in subsection (7), are prohibited from entering the safety zones established under subsection (3). The owner, master or person in charge of any ship or any person found contravening subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 10 years or both and the ship shall be liable to be detained.

(7) The following ships or classes of ships are exempted from the requirements of subsection (6) —

(a) ships engaged in providing services, maintenance and operation of the artificial islands, installations and structures and authorised by the operators of such artificial islands, installations and structures;

(b) ships engaged in search and rescue operation to save life and property;

(c) ships engaged in oil spill clean-up operation;

(d) ships belonging to the Government, and other statutory bodies performing safety, security, customs, fiscal, health and immigration enforcement activities in the zones; and

(e) ships drifted due to mechanical breakdown or due to the stress of weather.

(8) Ships or classes of ships exempted under this section shall observe all the safety requirements enforced by the operator of the artificial islands, installations and structures and any other written laws, while operating in the safety zones.

PART IX

INQUIRIES AND INVESTIGATIONS

Inquiry into fitness or conduct of officers.

133. (1) If it appears to the Minister that an officer —

(a) is unfit to discharge his duties, whether by reason of incompetence, misconduct or physical or mental disability or for any other reason;

(b) has been seriously negligent in the discharge of his duties; or

(c) has failed to comply with section 115,

the Minister may cause an inquiry to be held by one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate issued or deemed to be issued to the officer under section 47 and require the officer to deliver it to him.

(2) Where a certificate issued to an officer has been suspended under subsection (1), the suspension may, on the application of the officer, be terminated by the High Court and the decision of the High Court on such an application shall be final.

(3) An inquiry under this section shall be conducted in accordance with the regulations made under section 137.

(4) The persons holding an inquiry under this section into the fitness or conduct of the officer —

(a) may, if satisfied of any of the matters mentioned in paragraphs (a), (b) and (c) of subsection (1), cancel or suspend any certificate issued or deemed to be issued to the officer under section 47 or censure him;

(b) may make such order with regard to the costs of the inquiry as they think just; and

(c) shall make a report on the case to the Minister,

and if the certificate is cancelled or suspended, the officer (unless he has delivered it to the Minister in pursuance of subsection (1)) shall deliver it forthwith to the persons holding the inquiry or to the Director.

(5) Any costs which a person is ordered to pay under paragraph (b) of subsection (4) may be recovered from him by the Director.

Inquiries and investigations into shipping casualties.

134. (1) Where any of the following casualties has occurred —

(a) the loss or presumed loss, stranding, grounding, abandonment of or damage to a ship;

(b) a loss of life or serious personal injury caused by fire on board or by an accident to a ship or ship's boat, or by an accident occurring on board a ship or ship's boat; or

(c) any damage caused by a ship,

and, at the time it occurred, the ship was registered in Brunei Darussalam or the ship or boat was in Brunei Darussalam —

(i) the Minister may cause a preliminary inquiry into the casualty to be held by a person appointed by him; and

(ii) His Majesty the Sultan and Yang Di-Pertuan may (whether or not a preliminary inquiry into the casualty has been held) cause a formal investigation into the casualty to be held by a judge or magistrate appointed by His Majesty the Sultan and Yang Di-Pertuan.

(2) A person appointed under this section to hold a preliminary inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 202.

Formal investigations into shipping casualties.

135. (1) A judge or magistrate holding a formal investigation into a casualty under section 134 shall conduct it in accordance with the regulations made under section 137, and those regulations shall require the assistance of one or more assessors and, if any question as to the cancellation or suspension of an officer's certificate is likely to arise, the assistance of not less than 2 assessors.

(2) The judge or magistrate holding the formal investigation shall have all the powers of a Court of a Magistrate and shall also have all the powers of an inspector under this Order.

(3) If as a result of the investigation the judge or magistrate is satisfied, with respect to any officer, of any of the matters mentioned in paragraphs (a), (b) and (c) of subsection (1) of section 133 and, if it is a matter mentioned in paragraph (a) or (b) of subsection (1) of that section, is further satisfied that it caused or contributed to the casualty, he may cancel or suspend any certificate issued or deemed to be issued to the officer in accordance with the regulations made under section 47 or censure him; and if he cancels or suspends the certificate, the officer shall deliver the certificate forthwith to him or the Director.

(4) The judge or magistrate may make such order as to the costs of the investigation as he thinks just and shall make a report on the case to His Majesty the Sultan and Yang Di-Pertuan.

(5) His Majesty the Sultan and Yang Di-Pertuan may, if in any case His Majesty the Sultan and Yang Di-Pertuan thinks fit so to do, order the costs of any such investigation to be paid out of the Consolidated Fund.

Re-hearing of and appeal from inquiries and investigations.

136. (1) Where an inquiry or formal investigation has been held under section 135, His Majesty the Sultan and Yang Di-Pertuan may order the whole or part of the case to be re-heard, and shall do so —

(a) if new and important evidence which could not be produced at the inquiry or investigation has been discovered; or

(b) if it appears to His Majesty the Sultan and Yang Di-Pertuan that there are other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the re-hearing to be held by the persons who held the inquiry or investigation or by the High Court.

(3) Any re-hearing under this section which is not held by the High Court shall be conducted in accordance with the regulations made under section 137;

and section 135 shall apply in relation to a re-hearing of an investigation by a judge or magistrate as it applies to the holding of an investigation.

(4) Where the persons holding the inquiry or investigation have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no application for an order under subsection (1) has been made or such application has been refused, that person or any other person who, having an interest in the inquiry or investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the High Court.

Regulations as to inquiries, formal investigations and appeals.

137. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the conduct of inquiries under section 133 and of formal investigations under section 135 and for the conduct of any re-hearing under section 136 which is not held by the High Court.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

Failure to deliver cancelled or suspended certificate.

138. If a person fails to deliver a certificate as required under section 133 or 135, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Power to restore certificate.

139. Where a certificate has been cancelled or suspended under this Part, the Minister may, if he is of the opinion that the justice of the case requires it, order the certificate to be re-issued or, as the case may be, reduce the period of suspension and order the certificate to be returned, or may order a new certificate of the same or lower grade in place of the cancelled or suspended certificate to be granted.

Payment to persons holding inquiries or investigations and assessors.

140. His Majesty the Sultan and Yang Di-Pertuan may direct such remuneration, if any, to be paid out of the Consolidated Fund to any person appointed to hold an inquiry under section 133 or an investigation under section 135 and to any assessor under this Part.

PART X

LIABILITIES AND LIMITATION OF LIABILITIES

Power of Minister to make regulations.

141. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations on matters related to liabilities and limitation of liabilities of carriers, shipowners, masters and salvors.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations on liabilities and limitation of liabilities with regard to —

(a) the carriage of passengers and their luggage by sea and the carriage of goods by sea;

(b) the maritime claims; and

(c) collision.

PART XI

WRECK AND SALVAGE

Interpretation of this Part.

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

"receiver" means a receiver of wreck;

"salvage" includes all expenses properly incurred by the salvor in the performance of salvage services;

"wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

Receiver of wrecks.

143. The Director shall have the general supervision throughout Brunei Darussalam over all matters relating to wrecks and may, by notification in the *Gazette*, appoint any person to be a receiver of wreck and to perform the duties of a receiver under this Part.

Duty of receiver in respect of ship in distress.

144. (1) Where any ship is wrecked, stranded or in distress at any place on or near the coasts of Brunei Darussalam or any tidal water within the limits of Brunei Darussalam, the receiver shall, upon being made acquainted with the circumstances, forthwith proceed there, and upon his arrival shall take the command of all persons present and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the ship and of the lives of the persons belonging to the ship (referred to in this Part as shipwrecked persons) and of the cargo and apparel of the ship.

(2) Any person who wilfully disobeys any direction of the receiver shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000, but the receiver shall not interfere between the master and the crew of the ship in reference to the management thereof unless he is requested to do so by the master.

Powers of receiver in case of ships in distress.

145. (1) The receiver may, with a view to the preservation under section 144 of shipwrecked persons or of the ship, cargo or apparel —

(a) require such persons as he thinks necessary to assist him;

(b) require the master or other person having the charge of any ship near at hand to give such aid with his men or ship as is in his power; and

(c) demand the use of any vehicle that may be near at hand.

(2) Any person who refuses without reasonable cause to comply with any such requisition or demand shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Power to pass over adjoining lands.

146. (1) Whenever a ship is wrecked, stranded or in distress as mentioned in section 144, all persons may, for the purpose of rendering assistance to the ship, or of saving the lives of the shipwrecked persons, or of saving the cargo or apparel of the ship, unless there is some public road equally convenient, pass and repass, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also on the like condition, deposit on those lands any cargo or other article recovered from the ship.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the ship, cargo or articles, in respect of or by which the damage is occasioned, and the amount payable in respect of the damage shall, in case of dispute, be determined and shall,

in default of payment, be recoverable in the same manner as the amount of salvage is under this Part determined or recoverable.

(3) Any owner or occupier of any land who —

(a) impedes or hinders any person in the exercise of the rights given by this section by locking his gates, or refusing upon request to open the same, or otherwise;

(b) impedes or hinders the deposit of any cargo or other article recovered from the ship as mentioned in subsection (1) on the land; or

(c) prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until the cargo or article can be removed to a safe place of public deposit,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Power of receiver to suppress plunder and disorder by force.

147. (1) Whenever a ship is wrecked, stranded or in distress as mentioned in section 144, and any person plunders, creates disorder or obstructs the preservation of the ship or of the shipwrecked persons or of the cargo or apparel of the ship, the receiver may cause that person to be apprehended.

(2) The receiver may use force for the suppression of any such plundering, disorder or obstruction, and may command all persons to assist him in so using force.

Exercise of powers of receiver in his absence.

148. (1) Where a receiver is not present, the following officers or persons in succession, each in the absence of the other, in the order in which they are named, namely, superintendent or assistant superintendent of police, magistrate, or commissioned officer on full pay in the Royal Brunei Armed Forces, may do anything by this Part authorised to be done by the receiver.

(2) An officer acting under this section for a receiver shall, with respect to any goods or articles belonging to a ship the delivery of which to the receiver is required by this Order, be considered as the agent of the receiver, and shall place the goods or articles in the custody of the receiver, but the officer shall not be entitled to any fees payable to receivers or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

Examination in respect of ships in distress.

149. (1) Where any ship is or has been in distress on the coasts of Brunei Darussalam, a receiver of wreck or, in his absence, a magistrate shall, as soon as conveniently may be, examine on oath any person belonging to the ship, or any other person who is able to give any account thereof or of the cargo or stores thereof, as to the following matters —

- (a) the name and description of the ship;
- (b) the names of the master and the owner;
- (c) the names of the owners of the cargo;
- (d) the ports from and to which the ship was bound;
- (e) the occasion of the distress of the ship;
- (f) the services rendered; and

(g) such other matters or circumstances relating to the ship or to the cargo on board the ship as the person holding the examination thinks necessary.

(2) The person holding the examination shall take the examination down in writing, and shall send one copy thereof to the Director, where the copy shall be placed in some conspicuous place for the inspection of persons desirous of examining it.

(3) The person holding the examination shall for the purposes thereof have all the powers of an inspector under this Order.

Rules to be observed by persons finding wreck.

150. (1) Where any person finds or takes possession of any wreck within the limits of Brunei Darussalam or of any wreck found or taken possession of outside the limits of Brunei Darussalam and brought within the limits of Brunei Darussalam, he shall —

(a) if he is the owner thereof, give notice to the receiver stating that he has found or taken possession of the wreck, and describing the marks by which the wreck may be recognised; or

(b) if he is not the owner thereof, as soon as possible deliver the wreck to the receiver.

(2) Any person who fails without reasonable cause to comply with this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000, and shall, in addition, if he is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or if it is unclaimed to the person entitled to the wreck, double the value thereof, to be recovered in the same way as a fine of a like amount under this Order.

Penalty for taking wreck at time of casualty.

151. (1) Where a ship is wrecked, stranded or in distress at any place on or near the coasts of Brunei Darussalam, or any tidal water within the limits of Brunei Darussalam, any cargo or other articles belonging to or separated from the ship which are washed on shore or otherwise lost or taken from the ship shall be delivered to the receiver.

(2) Any person, whether the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the cargo or article to the receiver or any person authorised by the receiver to demand the cargo or article, shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

(3) The receiver or any person authorised under subsection (2) may take any such cargo or article by force from the person so refusing to deliver the cargo or article.

Notice of wreck to be given by receiver.

152. Where a receiver takes possession of any wreck, he shall within 48 hours cause to be posted at the office of the Director and, if he thinks it desirable, he shall send to the secretary of Lloyd's in London, a description thereof and of any marks by which it is distinguished.

Claims of owners to wreck.

153. (1) The owner of any wreck in the possession of the receiver, upon establishing his claim to the wreck to the satisfaction of the receiver within one month from the time at which the wreck came into the possession of the receiver, shall, upon paying the salvage fees and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

(2) Where any article belonging to or forming part of a foreign ship which has been wrecked on or near the coasts of Brunei Darussalam, or belonging to and forming part of the cargo, are found on or near those coasts or are brought into any port in Brunei Darussalam, the consular officer of the country or territory to which the ship or, in the case of cargo, to which the owners of the cargo may have belonged shall, in the absence of the owner and the master or other agent of the

owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the articles.

Immediate sale of wreck by receiver in certain cases.

154. (1) A receiver may at any time sell any wreck in his custody, if in his opinion —

(a) it is under the value of \$1,000;

(b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or

(c) it is not of sufficient value to pay for warehousing.

(2) The proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

Right of Government to unclaimed wreck.

155. The Government is entitled to all unclaimed wreck found in any part of Brunei Darussalam except in places where the Government has granted to any person the right to the wreck.

Unclaimed wreck.

156. (1) Where no owner establishes a claim to any wreck found in Brunei Darussalam or to any wreck found or taken possession of outside Brunei Darussalam and brought within Brunei Darussalam and in the possession of a receiver within one month after it came into his possession, the receiver shall sell the wreck, and shall pay the proceeds of the sale into the Consolidated Fund, after deducting therefrom the expenses of the sale and any other expenses incurred by him and his fees and paying there out to the salvors such amount of salvage as the Minister in each case or by any general rule determines.

(2) Nothing in this section shall alter the application of any droits of admiralty or droits of the Government.

Delivery of unclaimed wreck by receiver not to prejudice title.

157. Upon delivery of the wreck or payment of the proceeds of sale of the wreck by a receiver under this Part, the receiver shall be discharged from all liability in respect thereof, but the delivery thereof shall not prejudice or affect any question which is raised by third parties concerning the right or title to the wreck.

Removal of wreck by receiver.

158. (1) Where any ship is sunk, stranded or abandoned within the territorial waters of Brunei Darussalam but outside the limits of any port in such a manner as, in the opinion of the receiver, to be or to be likely to become an obstruction or danger to navigation, the receiver may —

(a) take possession of, and raise, remove or destroy the whole or any part of, the ship;

(b) light or buoy any such ship or part until the raising, removal or destruction thereof; and

(c) sell, in such manner as the receiver thinks fit, any ship or part so raised or removed, and also any other property recovered in the exercise of his powers under this section, and out of the proceeds of the sale reimburse himself for the expenses incurred by him in relation thereto under this section, and he shall hold the surplus, if any, of the proceeds in trust for the persons entitled thereto.

(2) A sale shall not, except in the case of any property which is of a perishable nature, or which would deteriorate in value by delay, be made under this section until at least 7 clear days' notice of the intended sale has been given by advertisement in a newspaper circulating in Brunei Darussalam.

(3) At any time before any property is sold under this section, the owner thereof shall be entitled to have the property delivered to him on payment to the receiver of the fair market value thereof, to be ascertained by agreement between the receiver and the owner, or failing agreement, by some person to be named for the purpose by the Director.

(4) The sum paid to the receiver as the value of any property under this section shall be deemed to be the proceeds of sale of that property.

Powers of removal extend to tackle, cargo etc.

159. The provisions of this Part relating to removal of wrecks shall apply to every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a ship in the same manner as if it were included in the term "ship", and for the purposes of those provisions any proceeds of sale arising from a ship and from the cargo thereof, or any other property recovered therefrom, shall be regarded as a common fund.

Taking wreck to foreign port.

160. Any person who takes into any foreign port any ship, stranded, derelict or otherwise in distress found on or near the coasts of Brunei Darussalam, or any

tidal water within the limits of Brunei Darussalam, or any part of the cargo or apparel thereof or anything belonging thereto, or any wreck found within those limits, and there sells the same, shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Interfering with wrecked ship or wreck.

161. (1) No person shall, without the leave of the master, board or endeavour to board any ship which is wrecked, stranded or in distress, unless he is, or acts by command of, the receiver or a person lawfully acting as such.

(2) Any person who acts in contravention of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and the master of the ship may repel him by force.

(3) No person shall —

(a) impede or hinder, or endeavour in any way to impede or hinder, the saving of any ship stranded or in danger of being stranded, or otherwise in distress on or near any coast or tidal water, or of any part of the cargo or apparel thereof or of any wreck;

(b) secrete any wreck, or deface or obliterate any marks thereon; or

(c) wrongfully carry away or remove any part of a ship stranded or in danger of being stranded, or otherwise in distress on or near any coast or tidal water, or any part of the cargo or apparel thereof or any wreck.

(4) Any person who acts in contravention of subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000, and such fine may be imposed in addition to any punishment to which he may be liable by law under this Order or otherwise.

Summary procedure for concealment of wreck.

162. (1) Where a receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof or that any wreck is otherwise improperly dealt with, the receiver may apply to a Court of a Magistrate for a search warrant.

(2) The Court of a Magistrate may grant the search warrant, and the receiver, by virtue thereof, may enter any house or other place wherever situate and also any ship and search for, seize and detain any such wreck found therein.

(3) If any such seizure of wreck is made in consequence of information given by any person to the receiver, the informer shall be entitled, by way of salvage, to such sum as the receiver allows.

Salvage payable for saving life.

163. (1) Where the services are rendered wholly or in part within Brunei Darussalam in saving life from any ship, or elsewhere in saving life from any Brunei Darussalam ship, there shall be payable to the salvor by the owner of the ship, cargo or apparel saved, a reasonable amount of salvage to be determined in case of dispute in the manner mentioned in section 165.

(2) Salvage in respect of the preservation of life when payable by the owners of the ship shall be payable in priority to all other claims for salvage.

(3) Where the ship, cargo and apparel are destroyed, or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, in his discretion, award to the salvor out of the Consolidated Fund such sum as he thinks fit in whole or part satisfaction of any amount of salvage so left unpaid.

Salvage of cargo or wreck.

164. Where any ship is wrecked, stranded or in distress at any place on or near the coasts of Brunei Darussalam, or in any tidal water within the limits of Brunei Darussalam, and services are rendered by any person in assisting that ship or saving the cargo or apparel of that ship or any part thereof, and where services are rendered by any person other than a receiver in saving any wreck, there shall be payable to the salvor by the owner of the ship, cargo, apparel or wreck, a reasonable amount of salvage to be determined in case of dispute in the manner mentioned in section 165.

Determination of salvage disputes.

165. (1) Disputes as to the amount of salvage, whether of life or property and whether rendered within or outside Brunei Darussalam, arising between the salvor and the owners of any ship, cargo, apparel or wreck shall, if not settled by agreement, arbitration or otherwise, be determined summarily by a Court of a Magistrate in any case where —

- (a) the parties to the dispute consent;
- (b) the value of the property saved does not exceed \$50,000; and
- (c) the amount claimed does not exceed \$50,000.

(2) Subject to subsection (1), disputes as to salvage shall be determined by the High Court, but if the claimant does not recover in the High Court more than \$50,000, he shall not be entitled to recover any costs, charges or expenses incurred by him in the prosecution of his claim unless the High Court certifies that the case is a fit one to be tried by the High Court.

(3) Disputes relating to salvage may be determined on the application either of the salvor or of the owner of the property saved or of their respective agents.

Determination of disputes as to salvage summarily.

166. A Court of a Magistrate may, for the purpose of determining a dispute as to salvage, call in to its assistance any person conversant with maritime affairs as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum as the Director directs.

Appeal in case of salvage disputes.

167. Where a dispute relating to salvage has been determined by a Court of a Magistrate, any party aggrieved by the decision may appeal therefrom in accordance with the Rules of Court to the Court of Appeal, but no such appeal shall be allowed unless the sum in dispute exceeds \$2,000.

Valuation of property by receiver.

168. (1) Where any dispute as to salvage arises, the receiver may, on the application of either party, appoint a valuer to value the property, and shall give copies of the valuation to both parties.

(2) Any copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the receiver, shall be admissible as evidence in any subsequent proceedings.

(3) Such fee as the Director directs shall be paid in respect of the valuation by the person applying for the valuation.

Detention of property liable to salvage by receiver.

169. (1) Where salvage is due to any person under this Order, the receiver shall —

(a) if the salvage is due in respect of services rendered in assisting any ship, or in saving life therefrom, or in saving the cargo or apparel thereof, detain the ship and cargo or apparel; and

(b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Order, detain the wreck.

(2) Subject to subsection (3), the receiver shall detain the ship and the cargo and apparel, or the wreck (referred to in this Order as detained property), until payment is made for salvage or process is issued for the arrest or detention thereof by the High Court.

(3) A receiver may release any detained property if security is given to his satisfaction or, if the claim for salvage exceeds \$1,000 and any question is raised as to the sufficiency of the security, to the satisfaction of a judge of the High Court.

(4) Any security given for salvage under this section to an amount exceeding \$1,000 may be enforced by the High Court in the same manner as if bail had been given in that Court.

Sale of detained property.

170. (1) The receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention in the following cases —

(a) where the amount is not disputed and payment of the amount due is not made within 20 days after the amount is due;

(b) where the amount is disputed but no appeal lies, and payment is not made within 20 days after the decision of the High Court; or

(c) where the amount is disputed and an appeal lies from the decision of the High Court to the Court of Appeal, and within 20 days of the decision neither payment of the sum due is made nor have any proceedings been taken for the purpose of appeal.

(2) The proceeds of sale of the detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees and salvage and, so far as not required for that purpose, shall be paid to the owners of the property or any other persons entitled to receive the proceeds.

Apportionment of salvage by receiver.

171. (1) Where the aggregate amount of salvage payable in respect of salvage services rendered in Brunei Darussalam has been finally determined, either summarily in the manner provided by this Order or by agreement, and does not exceed \$1,000, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay the amount may apply to the receiver for liberty to pay the amount to him.

(2) The receiver shall, if he thinks fit, receive the amount accordingly, and shall grant to the person paying the amount a certificate of the amount paid and of the services in respect of which it is paid, and that certificate shall be a full discharge and indemnity to the person by whom the money is paid and to his ship, cargo, apparel and effects against the claims of all persons whomsoever in respect of the services mentioned in the certificate.

(3) The receiver shall, as soon as practicable, distribute any amount received by him under this section among the persons entitled to the money on such evidence and in such shares and proportions as he thinks fit, and may retain any money which appears to him to be payable to any person who is absent.

(4) A distribution made by the receiver under this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

Apportionment of salvage by High Court.

172. Whenever the aggregate amount of salvage payable in respect of salvage service rendered in Brunei Darussalam has been finally ascertained and exceeds \$1,000 and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever that amount may be, then, if any delay or dispute arises as to the apportionment thereof, the High Court may —

(a) cause the amount to be apportioned amongst the persons entitled thereto in such manner as the High Court thinks just, and may for that purpose, if the High Court thinks fit, appoint any person to carry that apportionment into effect;

(b) compel any person in whose hands or under whose control the amount may be to distribute the amount or to bring the amount into court to be there dealt with as the High Court directs; and

(c) for the purposes of paragraphs (a) and (b), issue such processes as the High Court thinks fit.

Jurisdiction of High Court in salvage.

173. Subject to this Order and any other written law in force in Brunei Darussalam, the High Court shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed on the high seas or within Brunei Darussalam, or partly on the high seas and partly within Brunei Darussalam, and whether the wreck in respect of which salvage is claimed is found on the sea or on the land or partly on the sea and partly on the land.

Receiver's fees.

174. (1) There shall be paid to every receiver the expenses properly incurred by him in the performance of his duties, and such fees as may be directed by the Director in respect of such matters as the Director may, by notification in the *Gazette*, specify; but the receiver shall not be entitled to any remuneration other than those payments.

(2) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses or fees, have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him.

(3) Whenever any dispute arises as to the amount payable to any receiver in respect of expenses or fees, that dispute shall be determined by the Minister whose decision shall be final.

(4) All fees received by a receiver in respect of services performed by him as receiver shall be accounted for to the Director and shall form part of the Consolidated Fund.

PART XII

LEGAL PROCEEDINGS

Provision as to jurisdiction in case of offences.

175. For the purpose of giving jurisdiction under this Order, every offence shall be deemed to have been committed and, every cause of complaint to have arisen, either in the place in which the offence actually was committed or arose or in any place in which the offender or person complained against may be.

Jurisdiction over ships lying off coast.

176. Where any place within which any court has jurisdiction either under this Order or any other written law or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river or other navigable water, every such court shall have jurisdiction over any ship being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that ship or for the time being belonging thereto, in the same manner as if the ship or persons were within the limits of the original jurisdiction of the court.

Jurisdiction in case of offences on board ship.

177. Where any person is charged with having committed any offence on board any Brunei Darussalam ship on the high seas or elsewhere outside Brunei

Darussalam or on board any foreign ship to which he does not belong and that person is found within the jurisdiction of any court in Brunei Darussalam which would have had cognisance of the offence if it had been committed on board a Brunei Darussalam ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

Presumption of jurisdiction.

178. Where, in any legal proceedings under this Order, a question arises whether or not any ship or person is or is not within the provisions of this Order or some part thereof, the ship or person shall be presumed to be within those provisions unless the contrary is proved.

Court for trial of offences.

179. Unless the context otherwise requires, any offence under this Order may be tried by a Court of a Magistrate and such Court shall, notwithstanding the provisions of the Criminal Procedure Code (Chapter 7) and any other written law, have jurisdiction to impose the maximum penalty provided for by this Order.

Sums ordered to be paid leviable by distress on ship.

180. Where any court has power to make an order directing payment to be made of any master's or seaman's wages, fines or other sums of money, then, if the party so directed to pay the same is the person employing the master or seaman, or the owner of a ship, and the same is not paid at the time and in the manner prescribed in the order, the court which made the order may, in addition to payment, direct the amount remaining unpaid to be levied by distress and sale of the ship and its equipment.

Depositions to be received in evidence when witness cannot be produced.

181. (1) Whenever in the course of any legal proceedings instituted before any court, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of that proceedings, then upon due proof that the witness cannot be found in Brunei Darussalam, any deposition that the witness has previously made on oath in relation to the same subject-matter before any judge, magistrate or any consular officer elsewhere shall be admissible in evidence subject to the following provisions —

(a) if the deposition was made in Brunei Darussalam, it shall not be admissible in any proceedings instituted in Brunei Darussalam; and

(b) if the proceedings is criminal, it shall not be admissible unless it was made in the presence of the person accused.

(2) A deposition so made shall be authenticated by the signature of the judge, magistrate or consular officer before whom it is made; and the judge, magistrate or consular officer shall certify, if the fact is so, that the accused was present at the taking thereof.

(3) A deposition so made shall be deemed to be duly authenticated if it purports to be signed by the judge, magistrate or consular officer before whom it is made.

(4) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceedings a certificate under this section shall, unless the contrary is proved, be sufficient evidence of the accused having been present in the manner thereby certified.

(5) Nothing herein shall affect any case in which depositions taken in any proceedings are rendered admissible in evidence by any written law or interfere with the practice of any court in which depositions not authenticated as hereinbefore mentioned are admissible.

Admissibility of documents in evidence.

182. (1) The following documents shall be admissible in evidence —

(a) any register under Part II on its production from the custody of the Registrar or other person having lawful custody thereof;

(b) a certificate of registry under Part II purporting to be signed by the Registrar;

(c) any amendment to a certificate of registry purporting to be signed by the Registrar;

(d) every declaration made in pursuance of Part II in respect of a Brunei Darussalam ship;

(e) a certificate issued or deemed to be issued in accordance with regulations made under section 47;

(f) crew agreements and copies of entries given under Part V of additions to or changes in crew agreements;

(g) documents purporting to be submissions to or decisions by the Director under section 63;

(h) the official log-book kept under section 92 and, without prejudice to subsection (3), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship; and

(i) returns or reports made under section 94.

(2) The documents mentioned in subsection (1) shall, on their production from the proper custody, be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Order or by any officer in pursuance of his duties as such officer.

(3) A copy of any such document or extract therefrom shall also be so admissible in evidence, if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish such certified copy or extract to any person applying at a reasonable time for the certified copy or extract, upon payment of such fee as may be prescribed.

Service of documents.

183. (1) Where, for the purposes of this Order, any document is to be served on any person, that document may be served —

(a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the copy at his last known place of abode;

(b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the document for him on board that ship with the person being or appearing to be in command or charge of the ship;

(c) if the document is to be served on the master of a ship, where there is no master, and the ship is in Brunei Darussalam, on the operator of the ship, or on some agent of the owner residing in Brunei Darussalam, or by affixing a copy thereof at the means of access to the ship, or in any place on board the ship which appears to be frequented by people; and

(d) if the document is to be served on the owner or bareboat charterer of a ship, on the representative appointed in relation to the ship.

(2) Any person who obstructs the service on the master of a ship of any document under section 122 shall be guilty of an offence and liable on conviction for each offence to a fine not exceeding \$2,000.

(3) Any owner or bareboat charterer, or the representative thereof, or master of the ship who is party or privy to such obstruction shall be guilty of an

offence and liable on conviction for each offence to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both.

Mode of making declarations.

184. (1) Any declaration required by this Order may be made before the magistrate or any other person authorised to take or receive a declaration by any law in force in Brunei Darussalam.

(2) Any declaration required by this Order may be made on behalf of a corporation by the director, the secretary or any other agent of the corporation authorised by the corporation for that purpose.

Continuing offences.

185. Where by a provision of this Order an act or thing is required to be done within a particular period or before a particular time, the obligation to do that act or thing continues, notwithstanding that the period has expired or that time has passed, until that act or thing is done.

Liability of beneficial owners.

186. (1) Where any person has a beneficial interest in any ship or any share therein registered in the name of some other person as owner, the person so interested shall, as well as the registered owner of the ship, be subject to all pecuniary penalties imposed by this Order or any other written law on the owner of the ship or the shares therein and proceedings may be taken for the enforcement of any such penalty against both or either of the aforesaid parties, with or without joining them.

(2) For the purpose of this section, a person who has an interest in any ship or any share therein by way of mortgage, charge or lien, shall not be deemed to have a beneficial interest in the ship unless he is in possession of the ship.

Offences by body corporate.

187. (1) Where an offence under this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in

connection with his functions of management as if he were a director of the body corporate.

Offences under this Order.

188. No person shall be charged with any offence under this Order except on the complaint or with the sanction of the Public Prosecutor, the Director, or a surveyor of ships.

Forgery etc. of documents and fraudulent use.

189. (1) If any person forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures or suffers to be forged or fraudulently altered any of the following documents —

(a) any declaration;

(b) any builder's certificate, bill of sale or other document or instrument of title to a ship or any share therein;

(c) any document evidencing the deletion of a ship from its former registry;

(d) any crew agreement, instrument of mortgage, register, certificate, licence, book, instrument or other document prescribed by this Order (including replacement or certified copies thereof or certified extracts therefrom) or any entry or endorsement prescribed by this Order to be made in or on any of those documents; or

(e) any document produced to the Director for the purposes of obtaining for himself or any other person any certificate, licence, book or other document issued under this Order (including replacement or certified copies thereof) or for the purposes of obtaining an entry or endorsement in or on any of those documents,

that person shall be guilty of an offence.

(2) If any person fraudulently uses or allows any other person to fraudulently use —

(a) any of the documents mentioned in subsection (1) which is forged, altered or otherwise false or misleading in any material particular; or

(b) any of the documents mentioned in paragraph (d) of subsection (1) which has expired or has been cancelled or suspended, or has become invalid for any reason,

that person shall be guilty of an offence.

(3) If any person fraudulently uses any document mentioned in paragraph (d) of subsection (1) which is issued to or issued in relation to a person and he is not that person named in the document or to which the document relates, he shall be guilty of an offence.

(4) If any person allows any other person to fraudulently use any of the documents mentioned in paragraph (d) of subsection (1) which is issued to or issued in relation to a person and that other person is not the person named in that document or to which the document relates, he shall be guilty of an offence.

False declaration etc.

190. If any person knowingly or recklessly, for any purpose prescribed by this Order —

(a) makes a declaration, statement or representation which is false or otherwise misleading in any material particular;

(b) gives false evidence on oath; or

(c) makes in any document produced or delivered to any person authorised to receive it under this Order, any statement or entry which is false or otherwise misleading in any material particular,

he shall be guilty of an offence.

Interfering with person in carrying out duty etc.

191. Any person who —

(a) by violence, threat or intimidation, hinders or interferes with or otherwise obstructs the master or an officer of a ship in performing his duty; or

(b) resists or wilfully obstructs, assaults, molests or otherwise intimidates a person who is carrying out or exercising any duty, function, right or power imposed on him by this Order,

shall be guilty of an offence.

Misleading officer, refusal to answer questions, produce documents etc.

192. Any person who —

(a) misleads any other person on whom a duty, function or power is imposed on him under this Order in any material particular which is likely to affect the discharge thereof;

(b) refuses to answer any question lawfully put to him, or to produce documents in his possession or custody lawfully demanded of him;

(c) refuses to give all reasonable assistance to any person who is carrying out any duty, function or power imposed on him under this Order; or

(d) refuses to attend as a witness before an inspector or any person having the powers of an inspector, or to make or subscribe any declaration required by the inspector or person having the powers of an inspector,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Offences relating to markings of ship.

193. (1) The markings required by this Order to be made on or in a ship shall be permanently continued, and no alteration shall be made, except in the manner provided by this Order.

(2) If —

(a) an owner or the master of a ship, without reasonable cause, neglects to cause the ship to be so marked, or to keep it so marked; or

(b) any person, without reasonable cause, conceals, removes, alters, defaces, obliterates or suffers any person under his control to conceal, remove, alter, deface or obliterate any of the marks,

he shall be guilty of an offence.

Unauthorised presence on board ship.

194. Where a ship registered in Brunei Darussalam or elsewhere is in Brunei Darussalam and a person who is not authorised by law to do so —

(a) goes on board the ship without the consent of the master or any other person authorised to give it; or

(b) remains on board the ship after being requested to leave by the Director, the master or a police officer or any person authorised by the Director to act in that behalf,

he shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Taking person performing duty to sea.

195. If any person performing his duties or functions under this Order is taken to sea in a ship without his consent, the owner and the master of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and shall both be jointly and severally liable to pay all expenses incidental to the person's return to duty.

General penalties.

196. (1) Any person guilty of an offence under this Order for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

(2) Any person who fails to comply with or does or suffers to be done anything contrary to this Order shall, unless otherwise provided, be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Persons appointed or authorised under this Order deemed public servants.

197. Every person appointed or authorised under this Order for any of the purposes of this Order, when acting in pursuance of any such purpose, shall be deemed to be a public servant within the meaning of the Penal Code (Chapter 22).

Costs of detention of unsafe ships.

198. (1) If it appears that there was no reasonable or probable cause for the provisional detention of a ship under section 122, the Director shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

(2) An action for any costs or compensation payable by the Director under subsection (1) may be brought against the Director by his official title.

(3) If —

(a) a ship is finally detained under section 122;

(b) a ship is provisionally detained under section 122 and the ship was, at the time of detention, an unsafe ship; or

(c) a ship is detained under this Order which provides for the detention of a ship,

the owner of the ship shall be liable to pay to the Director its costs of and incidental to the detention and survey of the ship.

(4) Any costs payable to the Director under this Order may be recovered by the Director and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Security for costs of detention of unsafe ships.

199. (1) Where a complaint is made to the Director that a ship is an unsafe ship, the Director may, if he thinks fit, require the complainant to give security to his satisfaction for any costs and compensation which the Director may become liable to pay in consequence of the detention and survey of the ship.

(2) Such security shall not be required where the complaint is made by 3 or more seamen belonging to the ship and is not in the opinion of the Director frivolous or vexatious, and if the complaint is made in sufficient time before the sailing of the ship, the Director shall take proper steps to ascertain whether the ship ought to be detained.

(3) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Director is liable under section 198 to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay the Director all costs incurred and compensation paid by the Director in respect of the detention and survey of the ship.

Immunity of Government, Director and their employees.

200. No suit or other legal proceedings shall lie against the Government, the Director or any officer or employee of the Government or the Director or any person appointed under this Order or acting under the direction of the Government or the Director for any act done in good faith in the performance, or intended performance, of any duty, or in the exercise of any power under this Order, or for any failure or default in the performance or exercise in good faith of such duty or power.

PART XIII

MISCELLANEOUS

Powers of Director etc.

201. (1) The Director, a Port Health Officer, a surveyor of ships or a police officer may, at any time, for the purposes of this Order —

(a) go on board any ship and inspect and examine the ship or any part thereof or its equipment;

(b) enter and inspect any premises;

(c) require and enforce the production of any book, certificate or document relating to any ship or persons on board the ship;

(d) muster the crew and passengers of any ship;

(e) summon any person before him and require him to answer questions; and

(f) require any ship to be taken into a dock for the purpose of surveying the hull.

(2) The Director may, in his discretion, compound any offence under this Order or the regulations which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

Powers of inspector.

202. An inspector and any person having the powers of such an inspector —

(a) shall have the powers conferred under subsection (1) of section 201; and

(b) may administer oaths or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe to a declaration of the truth of the statements made by him in his examination.

Power of arrest.

203. (1) The Director, a Port Health Officer, a surveyor of ships or a police officer may arrest without warrant any person who has committed an offence

under this Order and take him before a Court of a Magistrate, as the case may be, to be dealt with according to law.

(2) Any article concerning, by or for which an offence has been committed may be seized and taken to a police station, unless given up sooner by order of a Court of a Magistrate.

Power of High Court to remove master.

204. (1) The High Court may remove the master of any ship within the jurisdiction of the High Court, if that removal is shown to the satisfaction of the High Court by affidavit evidence to be necessary.

(2) The removal of the master under subsection (1) shall be made upon the application of any owner of the ship or his agent, or of the authorised agent of the ship, or of any certificated mate or engineer, or of one-third or more of the crew of the ship.

(3) The High Court may appoint a new master in place of the one removed, but where the owner or agent of the ship is within the jurisdiction of the High Court, such an appointment shall not be made without the consent of the owner or agent.

(4) The High Court may also make such order and require such security in respect of the costs of the matter as the High Court thinks fit.

Power to prohibit ship from entering or direct ship to leave territorial waters of Brunei Darussalam.

205. (1) The Director may prohibit any ship from entering and may direct any ship to leave the territorial waters of Brunei Darussalam if he is of the opinion that it would not be in the public interest for the ship to enter or remain within the territorial waters of Brunei Darussalam.

(2) Any person aggrieved by the direction of the Director under subsection (1) may, within 7 days of the receipt of such direction, appeal to the Minister whose decision shall be final.

(3) If any ship fails to leave the territorial waters of Brunei Darussalam within the time specified by the Director, or where an appeal has been made to the Minister under subsection (2), after the appeal has been refused, the Director may take possession of and dispose of the ship in any manner he thinks fit.

Enforcing detention of ship.

206. (1) Where under this Order a ship is to be or may be detained, the Director, a surveyor of ships, a police officer not below the rank of inspector or a commissioned officer on full pay in the Royal Brunei Armed Forces may detain the ship if it is in Brunei Darussalam, and the ship may be detained until it complies with the provisions which it contravened.

(2) If the ship, after detention, or after service on the master of the ship of any notice of or order for detention, goes to sea before it is released by the competent authority, the owner and the master of the ship, and also any person who is party or privy to the offence, shall each be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.

(3) Any person authorised under this section to detain a ship may, if he thinks it necessary to do so, place a police guard on board.

(4) Any police guard so placed on board a ship may take such steps as are necessary to prevent the ship from going to sea.

Issue of new document.

207. (1) Where a document issued by the Director or Registrar under this Order is mislaid, lost or destroyed —

(a) in the case of a document which relates to a ship, the master or the owner of the ship;

(b) in the case of a document which relates to a person, the person,

or some other person having knowledge of the facts of the case, shall make a declaration stating the facts of the case to the best of his knowledge and belief, and the Director or Registrar may thereupon issue a new document in lieu of the original document.

(2) The declaration under subsection (1) shall contain an undertaking to surrender to the Director or Registrar the document declared mislaid, lost or destroyed, when the document is subsequently recovered.

(3) The Director or Registrar may, on the delivery up to him of a document issued by him under this Order, issue a new document in lieu thereof.

Issue of certified copies or extracts.

208. The Director or Registrar may issue certified copies of or extracts from any document issued by him or in his custody.

Copy of Order and regulations to be kept on Brunei Darussalam ships.

209. (1) The master of a Brunei Darussalam ship which is propelled by mechanical means shall keep a copy of this Order on board the ship, except that he shall not be obliged to keep a copy of any regulations which do not apply to the ship.

(2) Any master who contravenes or fails to comply with this section without reasonable cause shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Powers of Minister to prescribe fees, recovery of fees and application of moneys.

210. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the fees to be paid in respect of the issue or recording of any certificate, licence or other instrument or the doing of any other thing in pursuance of this Order.

(2) All fees prescribed under this Order shall be paid to the Director.

(3) All fees due to or which may be recovered by the Director under this Order shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

(4) For the purposes of this section, "fees" includes —

(a) the fees prescribed under section 13;

(b) fees made under section 102;

(c) the dues made under section 126;

(d) the fines imposed on the seamen of a ship for disciplinary offences required by section 86 to be paid to the Director;

(e) the fees in respect of survey or inspection of a ship or its equipment or other services rendered to or in relation to a ship by a surveyor of ships or a radio surveyor; and

(f) the fees in respect of services rendered to or in relation to a ship by the Director or a person authorised by the Director.

(5) All moneys recovered or received under this Order shall be paid to the Director.

Documents to be in approved form.

211. Every register, certificate, licence, book, instrument or other document prescribed by this Order shall be made in such form, if any, as may be approved by the Director or as near thereto as circumstances permit.

Exemption.

212. (1) The Minister may exempt any person or ship or description of persons or ships from all or any of the provisions of this Order.

(2) Any power conferred by this Order to provide for or grant an exemption shall include the power to provide for or grant the exemption subject to conditions and to revoke the exemption.

Regulations.

213. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as are necessary or expedient for the purpose of carrying into effect the provisions of this Order and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) to exempt any person or ship or description of persons or ships from all or any of the provisions of this Order;

(b) to empower the Director to exempt any person or ship or description of persons or ships from all or any of the provisions of the regulations;

(c) to prescribe the form of any document that may be required and to prescribe different forms for different circumstances;

(d) to make different provision for different descriptions of persons or ships or for persons or ships of the same description in different circumstances;

(e) to prescribe the offences which may be compounded;

(f) to make provisions for any incidental or supplementary matters for which the Minister thinks it expedient for the purposes of the regulations to provide;

(g) to make a contravention of any provision of any regulation an offence punishable with a fine not exceeding \$10,000; and

(h) to provide for all matters stated or required by this Order to be prescribed.

Power to give effect to international agreements.

214. (1) In this section —

"international agreement" means any international agreement which has been ratified by or on behalf of Brunei Darussalam and which, in the opinion of the Minister, relates to merchant shipping or to any matter incidental to or connected with merchant shipping;

"agreement" includes an agreement which provides for the modification of another agreement.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order make, in relation to Brunei Darussalam, such provision as appears to him to be requisite for enabling Brunei Darussalam to implement any international agreement.

(3) The powers conferred by subsection (2) to make provision to implement an international agreement include power to provide for the provision to come into force although the international agreement has not come into force.

(4) Without prejudice to the generality of subsection (2), an order under that subsection may in particular include provision —

(a) for amending this Order and any other written law to the extent requisite as mentioned in subsection (2);

(b) with respect to the application of the order to the Government and the extra-territorial operation of any provision made by or under the order;

(c) for imposing penalties in respect of any contravention of a provision made by or under the order; and

(d) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 206, with such modifications, if any, as are prescribed by the order.

(5) Without prejudice to the generality of paragraph (a) of subsection (4), the power to amend by virtue of that provision includes power so to amend this Order and any other written law as to extend the scope of the subsidiary legislation which may be made by virtue thereof.

(6) An order under subsection (2) may —

- (a) make different provision for different circumstances;
- (b) provide for exemptions from any provisions of the order;
- (c) provide for the delegation of functions exercisable by virtue of the order;
- (d) include such incidental, supplemental and transitional provisions as appear to the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, to be expedient for the purposes of the order;
- (e) authorise the making of regulations and other instruments for any of the purposes of this section; and
- (f) provide that any written law applied by the order shall have effect as so applied subject to such modification as may be specified in the order.

(7) No order shall be made under this section unless a draft of the order has been laid before, and approved by a resolution of, the Council of Ministers.

(8) The powers conferred on the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, under this section shall be in addition to and not in derogation of the powers conferred on him under this Order.

Transitional provisions.

215. (1) Every Brunei Darussalam ship registered before the date of commencement of this Order shall be deemed to be registered under Part II of this Order and the provisions of this Order shall apply to the ship and all matters relating thereto as they apply to a ship registered on or after that date.

(2) Any document, endorsement, exemption or certificate prepared, made or granted under the repealed Act shall, so far as it is not inconsistent with the provisions of this Order and except as otherwise expressly provided in this Order or in any other written law, continue and be deemed to have been prepared, made or granted under the corresponding provisions of this Order and shall have effect accordingly.

(3) Any subsidiary legislation or appointment made and any thing done under the repealed Act or any other written law relating to merchant shipping and in force immediately before the date of commencement of this Order shall, so far as it is not inconsistent with the provisions of this Order, continue to be in force as if made or done under this Order until it is amended, revoked or repealed under this Order.

Repeal of Chapter 145.

216. The Merchant Shipping Act is hereby repealed.

Made this 3rd. day of Rabiulawal, 1423 Hijriah corresponding to the 16th. day of May, 2002 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM