

# The Gujarat Maritime Board Act, 1981

GUJARAT

India

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### Act 30 of 1981

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The Gujarat Maritime Board Act, 1981 Gujarat Act No. 30 of 1981 [Dated 3rd November, 1981] For Statement of Objects and Reasons, see Gujarat Government Gazette, Extraordinary, Part V, dated the 23rd June, 1981, 31 p-p 48 to 31-49. This Act was assented to by the President on the 23rd October, 1981. An Act to make provision for the constitution of a maritime Board for minor ports in the State of Gujarat and to vest the administration, control and management of such ports in that Board and for matters connected therewith. It is hereby enacted in the Thirty-second Year of the Republic of India as follows:

## Chapter 1 Preliminary

### 1. Short title, extent, commencement and application.

(1) This Act may be called the Gujarat Maritime Board Act, 1981. (2) It extends to the whole of the State of Gujarat. (3) It shall come into force on such date, as the State Government may, by notification in the Official Gazette, appoint. (4) It applies to all the minor ports in the State to which the Indian Ports Act applies on the date of the commencement of this Act and the State Government may, by notification in the Official Gazette, apply the provisions of this Act to any other minor port in the State to which the Indian Ports Act is extended by the State Government under Section 4 of that Act, and with effect from such date, as may be specified in the notification.

### 2. Definitions.

- In this unless the context otherwise requires, - (a) "appointed day" in relation to any minor port means the day on which this Act is made applicable to that port; (b) "Board" means the Gujarat Maritime Board constituted under Section 3; (c) "Board security" means debentures, bonds or dock certificates issued by the Board in respect of any loan contracted by it under the provisions of this

Act;(d)"Chairman" means the Chairman of the Board and includes the person appointed to act in his place under Section 9;(e)"dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, mooring, transit sheds, warehouses, godowns, open plots and other works and things appertaining to any dock and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;(f)"foreshore" in relation to a port means the area between the high water mark and the low water mark relating to that port;(g)"goods" includes live stock and every kind of moveable property;(h)"high water mark" in relation to a port means a line drawn through the highest points reached by ordinary spring tides at any season of the year at the port;(i)"immovable property" includes wharfage-rights and all other rights exercisable on, over or in respect of, land, any wharf, dock or pier.(j)"Indian Ports Act" means the Indian Ports Act, 1908 (15 of 1908);(k)"land" includes the bed of sea or river below high water mark and also things attached to the earth or permanently fastened to anything attached to the earth;(l)"low water mark" in relation to a port means a line drawn through the lowest points reached by ordinary spring tides at any season of the year at that port;(m)"master" in relation to any vessel or craft making use of any minor port means any person having for the time being the charge or control of such vessel or craft, as the case may be except a pilot, harbour master, dock master, or berthing master of the port;(n)"member" means a member of the Board or its Committee, as the case may be;(o)"minor port" means a port other than a major port declared as such by the Central Government under any law;(p)"owner"-(i)in relation to goods includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods, and(ii)in relation to any vessel or craft making use of any port, includes any port owner, charterer, consignee or mortgagee in possession thereof;(q)"pier" includes any stage, stairs, landing place, hard jetty, floating barge or pontoon and any bridges or other works connected therewith;(r)"port" means any minor port to which this Act applies within such limits as may from time to time be defined by the State Government under the Indian Ports Act;(s)"port approaches" in relation to a port means those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act is force;(t)"prescribed" means prescribed by rules or regulations made under this Act;(u)"public securities" means-(i)promissory notes, debentures, stock or other securities of the Central Government or of any State Government:Provided that securities both the principal whereof and the interest whereof have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purposes of this clause, to be securities of such Government,(ii)debentures or other securities for money issued by or on behalf of any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in the State (including the Board securities);(v)"rate" includes any toll, due, rent, fee or charge leviable under this Act;(w)"regulations" means regulations made under this Act;(x)"rules" means rules made by the State Government under this Act;(y)"State" means the State of Gujarat;[(y-a) "State charges" means the charges levied under section 22A.] [Clause (ya) inserted by Gujarat 15 of 2008, dated 30th September 2008 (w.r.e.f 01-04-2008)](z)"vessel" includes anything made for the conveyance, mainly by water, of human being or of goods;(z-a) "wharf" includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

## **Chapter II**

# **Establishment of Gujarat Maritime Board**

### **3. Establishment of Gujarat Maritime Board.**

(1)As soon as may be after the commencement of this Act, the State Government may, by notification in the Official Gazette, establish a Board to be called the Gujarat Maritime Board.(2)The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire, hold and dispose of property, both movable and immovable, and to contract, and may by the said name sue and be sued.(3)The head office of the Board shall be at such place as the State Government may, by notification in the Official Gazette, direct.(4)[ The Board shall consist of such number of members, not being less than five and not more than twelve, who shall be appointed by the State Government as follows, namely-(a)three members appointed by virtue of their office amongst officers of the State Government, of whom-(i)one shall be a representative of the department incharge of the administration of minor ports in the State,(ii)one shall be the Commissioner of Fisheries, and(iii)one shall be a representative of the Finance Department;(b)the other members appointed from amongst the persons who are, in the opinion of the State Government, having expertise or experience in or capable of representing any one or more of the interests of shipping, navigation, ports, sailing vessels, fisheries, trade, commerce, finance, industry, workers of minor ports and such other interests, as in the opinion of the State Government, ought to be represented on the Board.](5)The Chief Executive Officer of the Board appointed as such under Section 17 shall be an ex-officio member of the Board and he shall also be its Vice-Chairman.(6)The State Government shall appoint one of the members appointed under subsection (4) to be the Chairman of the Board.] [Sub-section (4) was substituted by Gujarat 3 of 1996, Section 2 (w.r.e.f. 08-09-1995).]

### **4. Disqualifications of members.**

- A person shall be disqualified for being appointed, or for continuing as a member of the Board, if he-(a)has been removed or dismissed from the service of Government or of local authority or of a Corporation owned or Controlled by Government;(b)has been convicted and sentenced to imprisonment for an offence which in the opinion of the State Government involves moral turpitude, or(c)is an undischarged insolvent; or(d)has directly or indirectly any share or interest in any work done by order of the Board or in any contract or employment with, by or on behalf of the Board;Provided that no person shall be deemed to have share or interest in such work, contract or employment by reason only of his-(i)having a share in any company or firm which may contract with or be employed by or on behalf of the Board; or(ii)having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted; or(iii)being interested in any loan of money to the Board; or(iv)having a share or interest in any lease, sale, exchange, or purchase of immovable property or any agreement for the same; or(v)having a share or interest in any licence by the Board or right by agreement or otherwise with the Board to the sole or preferential use of any premises or property belonging to the Board; or(vi)having a share or interest in the occasional sale to the Board to a value not exceeding ten thousand rupees in any one financial

year, of any article in which he trades.

## **5. Term of office of members.**

(1)The Chairman shall hold office during the pleasure of the State Government.(2)Subject to the provisions of this Act a member of the Board, other than the members appointed under clause (a) of sub-section (4) of Section 3 and the ex-officio members referred to in sub-section (5) of that Section shall hold office during the pleasure of the Government [\*\*\*] [Words 'and in any case not exceeding a period of three years commencing on the 1st day of April next following his appointment, and the member appointed under clause (a) of sub-section (4) of Section 3 shall hold office during the pleasure of the State Government' deleted by Gujarat 1 of 1999, dated 9th March 1999].

## **6. Vacation of office of the Board's members.**

(1)The State Government shall remove a member of the Board if he-(a)becomes subject to any disqualification mentioned in Section 4; or(b)refuses to act or becomes incapable of acting; or(c)has, in the opinion of the State Government, become incapable of representing the interests by virtue of which he was appointed; or(d)is, without the permission of the Board previously obtained, absent from six consecutive meetings of the Board; or(e)is absent from the meetings of the Board for a period exceeding six consecutive months;(f)acts in contravention of the provisions of Section 13.(2)The Chairman may resign from his office by tendering his resignation in writing to the State Government, but the resignation shall not take affect until it is accepted by the State Government.(3)A member of the Board, other than the ex-officio member and the members appointed under clause (a) of sub-section (4) of Section 3 may resign from his office by tendering his resignation in writing to the Chairman who shall forward the same to the State Government, but resignation shall not take effect until it is accepted by the State Government.

## **7. Eligibility of appointment.**

- Any person ceasing to be a member shall, disqualified under Section 4, be eligible for reappointment.

## **8. Filling of vacancies.**

(1)Any vacancy in office of the Chairman shall be filled, as soon as may be, in the same manner as provided in [sub-section (6)] [These words, brackets and figure were substituted for the words, brackets and figure 'subsection (5)' by Gujarat 3 of 1996, Section 3 (w.r.e.f. 08-09-1995).] of Section 3.(2)Any vacancy in the office of a member of the Board other than that of the ex-officio member or of a member appointed under clause (a) of sub-section (4) of Section 3 shall be filled as early as possible after the occurrence of such vacancy, by appointment of a member under the relevant clause:[\*\*\*] [Proviso deleted by Gujarat 1 of 1999, dated 9th March 1999](3)Any vacancy in the office of a member appointed under clause (a) of sub-section (4) of Section 3 shall be filled as early as possible after occurrence of such vacancy by appointment of a member under the said clause.[\* \*

\*) [Sub-section (4) deleted by Gujarat 1 of 1999, dated 9th March 1999]

## **9. Absence of Chairman.**

- If the Chairman is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Vice-Chairman, and in the absence of both the Chairman as well as the Vice-Chairman, such person, as the State Government may appoint shall act as the Chairman. Provided that the Chairman while on deputation outside India may, if the State Government by order so directs and subject to such conditions and restrictions as may be specified in the order, exercise such of the power and perform such of the duties conferred or imposed on the Chairman by or under this Act as he may deem necessary, and the Chairman while exercising such powers and performing such duties shall be deemed to be a member of the Board notwithstanding anything to the contrary contained in this Act.

## **10. Meeting of Board.**

(1) The Board shall hold meetings at such times and places, and shall subject to the provisions of sub-sections (2), (3) and (4), follow such procedure in regard to the transaction of business at its meetings as may be provided in the regulations. (2) The Chairman, and in his absence the Vice-Chairman, and in the absence of both the Chairman as well as Vice-Chairman, any person chosen by the members present from amongst themselves, shall preside at meetings of the Board. (3) All questions at a meeting of the Board shall be decided by majority of the votes of the members present and voting and, in the case of any equality of votes, the person presiding shall have a second or casting vote. (4) The number of members necessary to constitute a quorum at a meeting shall be such as may be provided in the regulations. [\*\*\*] [The portion beginning with the words 'and no business' and ending with the words 'such meeting' were deleted, by Gujarat 3 of 1996, Section 4 (w.r.e.f. 08-09-1995).]

## **11. Committee of the Board.**

(1) The Board may from time to time, constitute from amongst its members one or more committees each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its duties and functions as may be delegated to such committee or committees by the Board. (2) A committee constituted under sub-section (1) shall meet at such time and at such place and shall follow such procedure in regard to the transaction of business at its meetings (including the quorum) as may be provided in the regulations.

## **12. Fees and allowances payable to members.**

- The members shall be paid by the Board such fees and allowances for attending meetings of the Board or of any of its committees and for attending any work of the Board as may be provided in the rules: Provided that-(a) no fees shall be payable to the Chairman or any other member who is a

member of Parliament or State Legislature or a servant of the State Government or the Board;(b)any allowances payable to a member who is a Member of Parliament or State Legislature shall not exceed the compensatory allowance as defined in clause (a) of Section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (X of 1960), or as the case may be, in the explanation in entry 11 in the Schedule to the Gujarat Legislative Assembly Members (Removal of Disqualifications) Act, 1960 (X of 1960).

### **13. Members of Board of Committee not to vote in certain cases.**

- A member of the Board or of a Committee thereof, who-(i)has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board or a Committee thereof, or(ii)is interested professionally on behalf of a client or as agent for any person other than the Government or an undertaking owned or controlled by the Government or a local authority or a trade union registered under the Trade Unions Act, 1926 (16 of 1926) or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and the disclosure shall be recorded in the minutes of the Board or, as the case may be, the committee, and the member shall not take part in any deliberation or decisions of the Board or the committee with respect to that matter.

### **14. Defects in appointments not to invalidate acts, etc.**

- No act or proceeding of the Board or of any its committees shall be invalid merely by reason of,-(a)any vacancy therein or any defect in the constitution thereof;(b)any disqualification of or any defect in the appointment of, a person acting as a member thereof; or(c)any member having acted or taken part in any proceeding in contravention of Section 13;(d)any irregularity in its procedure not affecting merits of the case.

### **15. [ Delegation of powers. [Section 15 was substituted by Gujarat 3 of 1996, Section 5 (w.r.e.f. 08-09-1995).]**

- The Board may, with the approval of the State Government, direct that such of the powers and duties conferred or imposed upon the Board by or under this Act as may be specified in such direction, may also be exercised or performed by the Chief Executive Officer subject to such conditions and restrictions as may be specified in such direction:Provided that the Chief Executive Officer shall exercise the powers and perform the duties specified in the direction subject to the supervision and the control of the Board.]

### **16. Duties of Chairman.**

(1)It shall be the duty of the Chairman and the Vice-Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause.(2)The Chairman shall, as soon as possible, transmit to the State Government a copy of the minutes of every meeting of the Board and shall

furnish to that Government such reports, returns, documents or other information as it may, from time to time call for.(3)The Chairman shall exercise supervision and control over the acts of all employees of the Board in the matters of executive administration and in matters concerning the accounts and records of the Board.

## **Chapter III**

### **Staff of the Board**

#### **17. [ Chief Executive Officer and other officers and servants of the Board. [Section 17 was substituted by Gujarat 3 of 1996, Section 6 (w.r.e.f. 08-09-1995).]**

(1)(a)The State Government shall appoint such person, as it may think fit, to be the Chief Executive Officer of the Board.(b)The terms and conditions of service of the Chief Executive Officer shall be such as may be prescribed by the rules.(2)The Board shall appoint such person, as it may think fit, to be the Financial Controller-cum-Chief Accounts Officer with the previous sanction of the State Government. The State Government may sanction such appointment on such terms and conditions as it thinks fit.(3)The Board may create such other posts and appoint such other officers and employees as it considers necessary for the efficient performance of the functions of the Board and determine by regulations their conditions of appointment and service and the remuneration payable to them:Provided that no person shall be appointed as a pilot at any port who is not for the time being authorised by the State Government under the Indian Port Act, 1908 (15 of 1908) to pilot vessels at that port.(4)The Board shall from time to time prepare and sanction a schedule of the officers and employees of the Board for whom it deems necessary, adequate and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the designation and grades of such officers and employees and the salaries, fees and allowances which are proposed to be paid to them.]

#### **18. [ [Section 18 was substituted, by Gujarat 3 of 1996, Section 8 (w.r.e.f. 08-09-1995).]**

Section [Power to make appointments.] Deleted by Gujarat 3 of 1996, section 7.]

#### **19. [ Disciplinary control over officers and employees by Board. [Section 19 was substituted, by Gujarat 3 of 1996, Section 8 (w.r.e.f. 08-09-1995).]**

(1)Subject to any regulations, the power of granting extension of service to, granting leave to, suspending, reducing, removing or dismissing or of disposing of any other question relating to the services of the officers and employees of the Board, including the power of dispensing with the service of any such officer and employee otherwise than by reason of the misconduct of such officer and employee, shall be exercised by the Board or such authority as may be prescribed by regulations.(2)Any officer of employee of the Board aggrieved by any order involving his reduction

in rank, removal or dismissal may, within such time and in such manner as may be provided for by regulations, prefer an appeal-(a)to the State Government, where such order is passed by the Chairman;(b)to the Chairman, where such order is passed by any such authority as may be prescribed by regulations.]

## **Chapter IV**

### **Property and Contracts**

#### **20. Transfer of assets and liabilities of State Government to Board.**

(1)As from the appointed day, in relation to any port,(a)all property, assets and funds and all rights to levy rates vested in the State Government for the purposes of the port immediately before such day, shall vest in the Board;(b)Transfer of debts, obligations and liabilities. - all debts, obligations and liabilities incurred, all contracts entered into, and all matters and things engaged to be done by, with or for the State Government immediately before such day, for or in connection with the purposes of the port shall be deemed to have been incurred, entered into and engaged to be done by, with, or for the Board;(c)Transfer of capital to Board. - all non-recurring expenditure incurred by the State Government for or in connection with purposes of the port upto such day and declared to be capital expenditure by the State Government shall be treated as the capital provided by the State Government to the Board (who shall repay the same at intervals and on terms and conditions as may be determined by the State Government);(d)Outstanding recovery of rates. - all rates, fees, rents and other sums of money due to the State Government in relation to the port immediately before such day, shall be deemed to be due to the Board.(e)Suits and litigation. - all suits and other legal proceedings instituted by or against the State Government immediately before such day for any matter in relation to port, may be continued by or against the Board;(f)Terms and conditions of service of employees. - every employee serving under the State Government immediately before such day solely or mainly for or in connection with the affairs of the minor port shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and condition of service are duly altered by the Board:Provided that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the State Government.(2)Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any employee under this Section to the Board shall not entitle such employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, Tribunal or other authority.(3)[Notwithstanding anything contained in sub-section (1), the State charges shall be levied by the State Government under section 22A.] [Sub-section (3) inserted by Gujarat 15 of 2008, dated 30th September 2008 (w.r.e.f 01-04-2008)]



## **21. Existing rates, etc. to continue until altered by Board.**

- As from the appointed day, all rates, fees and other charges in relation to any port, shall unless and until they are varied by the competent authority in accordance with the provisions of this Act, continue to be levied and collected at the same rate at which they were being levied and collected by the State Government before such day.

## **22. Repayment of Capital with interest.**

- The Board shall repay at such intervals and on such terms and conditions as the State Government may determine the amount which is treated under clause (c) of Sub-section (1) of Section 20 as capital provided by the State Government, with interest at such rate as may be fixed by the State Government and such repayment of capital or payment of interest shall be deemed to be a part of the expenditure of the Board.

## **22A. [ Levy of State charges. [Section 22A substituted by Gujarat 15 of 2008, dated 30th September 2008 (w.r.e.f 01-04-2008)]**

(1)The State Government shall levy,(i)charges for landing and shipping, licence fees, waterfront fees and lighterage charges at minor ports which are under administration, control and management of the Board; and(ii)waterfront royalty as applicable at minor ports in the State of Gujarat, at such rates as the State Government may, by notification in the Official Gazette specify.(2)The State charges referred to in sub-section (1) shall be collected, in the manner as may be prescribed, by the Board or by an officer as may be authorised by the Board or the State Government and all such moneys shall be credited to the Consolidated Fund of the State.(3)The State Government shall pay to the Board under the appropriation duly made by law in this behalf the administration charges computed at the rate of fifteen percent of the State charges levied by the State Government.]

## **23. Procedure when immoveable property cannot be acquired by agreement.**

- Where any immovable property is required for the purposes of the Board, the State Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 (1 of 1894), and on payment by the Board or the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

## **24. Contracts by Board.**

- With respect to the making of contracts by the Board for the purposes of this Act, the following provisions shall have effect, namely:-(a)Every contract shall be made on behalf of the Board by the [Chief Executive Officer] [These words were substituted for the word 'Chairman' by Gujarat 3 of 1996, Section 9 (1) (w.r.e.f. 08-09-1995).] or an officer authorised by the Board.(b)[ (i) No contract in respect of leasing of waterfront, jetty, waterway and corresponding infrastructural facilities

thereof for a term exceeding five years shall be made unless it is previously approved by the State Government, on such terms and conditions as it may think fit. [This clause was substituted, by Gujarat 3 of 1996, Section 9 (2) (w.r.e.f. 08-09-1995).](ii)Subject to sub-clause (i) of this clause, no contract for acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years shall be made unless it is previously approved by the State Government, on such terms and conditions as it may think fit](c)The form and manner of executing contract on behalf of the Board shall be such as may be prescribed by rules.(d)No contract which is not made in accordance with the provisions of this Act and the rules shall be binding on the Board.

## **Chapter V**

### **Works and Services to be Provided at Minor Ports by the Board**

#### **25. Power of Board to execute works and provide appliances.**

(1)The Board may subject to any other law for the time being in force execute such works within or without the limits of ports and provide such appliances as it may deem necessary or expedient.(2)Such work and appliances may include-(a)wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels and approaches, and buildings required for the residence of the employees of the Board as the Board may consider necessary;(b)buses, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;(c)moorings and cranes, scales and all other necessary means and appliances for loading and unloading of vessels;(d)reclaiming, excavating and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act or otherwise for the purposes of this Act;(e)such break waters and other works as may be expedient for the protection of the port;(f)dredgers and other machines for cleaning, widening, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;(g)light-houses, light-ships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and the port approaches in so far as it relates to State functions;(h)vessels, tugs, boats, barges and launches and lighters for the use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere and for the purposes of saving or protecting life or property and for the purpose of landing, shipping or trans-shipping passengers or goods under Section 32;(i)sinking of tubewells and equipment, maintenance and use of boats, barges and other appliances for the purpose or the supply of water at the port;(j)engines and other appliances necessary for the extinguishing of fires;(k)land abutting the sea coast including creeks;(l)ferry boats and other works and equipment appertaining to the running ferry service or between the ports;(m)construction of models and plans for carrying out hydraulic studies;(n)dry docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.

## **26. Power of Board to undertake certain works.**

(1)The Board may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Board and the person concerned.(2)The Board may, if it considers necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned.

## **27. Power of Board to order sea-going vessels to use docks, wharves, etc.**

(1)When any dock, berth, wharf, quay, stage, jetty or pier erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving landing or shipping goods or passengers from and upon sea-going vessels, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.(2)As from the date of the publication of such notification for the third time, it shall be lawful for the Board from time to time, when there is room at such dock, berth, wharf, quay, jetty or pier to order to come alongside of such dock, berth, quay, stage, jetty pier or place of anchorage for the purpose of landing and shipping goods or passengers or for landing or for shipping the same, any sea-going vessel within the port or port approaches which has not commenced to discharge goods or passengers or which being about to take in goods or passengers, has not commenced to do so:Provided that before making such order, the Board shall have regard, as far as possible, to the convenience of such vessel and of the shippers, in respect of the use of any particular dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:Provided further that if the Board is not the conservator of the port, the Board shall not itself make the order as aforesaid but shall require the conservator of the port, or other person exercising the rights, powers and authorities of the conservator of the port to make such order.

## **28. If accommodation sufficient, all sea-going vessels compelled to use docks, wharves, etc.**

- When a sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the minor port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

## **29. Power to order vessels not to come alongside of, or to be removed from docks, wharves, etc.**

- Any officer appointed by the Board in this behalf, may in cases of "emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or remove such vessel from, any dock, berth, wharf, quay, stage, jetty, pier or anchorage belonging to or under the control of the Board and if, such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding one thousand rupees for each day of twenty four hours or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage: Provided that in the case of a vessel ordered to be removed, such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner or agent of the vessel.

## **30. Power of Government to exempt vessels from obligation to use wharves, etc.**

- Notwithstanding anything contained in Section 27 or 28 the State Government may, if in its opinion it is necessary in the public interest so do, by general or special order from time to time permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods at such place in a port or within the port approaches, in such manner during such period and subject to such payments to the Board and on such conditions as the State Government may think fit.

## **31. Board to declare when vessels other than sea-going vessels compelled to use dock, wharves, etc.**

(1) When any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels, has been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval with all proper appliances in that behalf, the Board may, after obtaining the approval of the Collector of Customs, by order published in the Official Gazette-(i) declare that such, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing or shipment of goods or passenger from or on vessels not being sea-going vessels, and (ii) direct that within certain limits to be specified therein it shall not be lawful without the express sanction of Board, to land or ship any goods or passengers, out of, or into, any vessel not being sea-going vessels of any class, specified in such order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, (2) As from the date of the publication of the order mentioned in sub-section (1) it shall not be lawful, without the consent of the Board, for any vessel of such class-(i) to land or ship any goods or passengers at any place within the limits so specified except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage. (ii) while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low water mark. (3) If after publication of such order, any such vessel shall, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the

same to be removed out of the said limits at the expense of the master or owner or agent of the vessel.

### **32. Performance of services by Board or other person.**

(1)The Board shall have power to undertake the following services-(a)stevedoring, landing, shipping or trans-shipping passengers and goods between vessels in port and the wharves, piers, quays, or docks belonging to or in the possession of the Board;(b)receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;(c)carrying passengers within the limits of the port or port approaches, by such means and subject to such restrictions and conditions as the State Government may think fit to impose; and(d)piloting, hauling, mooring, re-mooring, hooking or measuring of vessels or any other service in respect of vessels.(2)The Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.(3)Notwithstanding anything contained in this Section, the Board may authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.(4)No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under Sections 37, 38 or 40.(5)Any such person shall, if so required by the owner perform in respect of the goods any of the services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.(6)The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under Section 151, 152 and 161 of the Indian Contract Act, 1872 (IX of 1872).(7)After any goods have been taken charge of and a receipt given for them under this section, on liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or trans-shipped.

### **33. Responsibility of Board for loss, etc. of goods.**

(1)Subject to the provisions of this Act, the responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall-(i)in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890 (IX of 1890), and(ii)in other cases, be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (IX of 1872), omitting the words "in the absence of any special contract" in Section 152 of the Act :Provided that no responsibility under the Section shall attach to the Board,-(a)until a receipt mentioned in sub-section (2) of Section 32 is given by the Board; and(b)after the expiry of such period as may be prescribed by regulations from the date of taking charge of such goods by the Board.(2)The Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of taking charge of such goods by the Board under subsection (2) of Section 32.

### **34. Accommodation to be provided for customs officers in wharves, etc., appointed under Customs Act, 1962 (52 of 1962).**

(1)Where the Collector of Customs has, under the provisions of any Act for the levy of duties of customs, appointed any dock, berth, wharf, quay, stage, jetty, pier, place of anchorage, warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea-going vessels to be an approved place for the landing or shipping of goods or a warehouse for the storing of dutiable goods on the first importation thereof without payment of duty, within the meaning of the first mentioned Act, the Board shall set apart and maintain such place on or adjoining such dock, wharf, quay, stage, jetty, pier, or a place of anchorage or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.(2)Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier, place of anchorage, warehouse or shed or portion thereof at any port has, under the provisions of sub-section (1), been set apart for the use of the officers of Customs at the port, all rates and other charges payable under this Act in respect thereof, or for the storage of goods therein, shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

### **35. Power to permit erection of private wharves, etc. within a port subject to conditions.**

(1)No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such conditions, if any, as the Board may specify.(2)If any person makes, erects or fixes any wharf, dock, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertakes reclamation of foreshore in contravention of sub-section (1), the Board may, by notice require such person to remove it within such time as may be specified in the notice and if the person fails so to remove it, the Board may cause it to be removed at the expense of that person.

### **36. Compensation payable in certain cases where use of any private wharf, etc. rendered unlawful.**

(1)Where, as a result of an order published under Section 28, or Section 31, the use of any wharf, dock, quay, stage, jetty, pier, place of anchorage, made, fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned, by order, close, remove, fill up or destroy such wharf, dock, quay, stage, jetty, pier, place of anchorage, or permit the use thereof to such wharf, dock, quay, stage, jetty, pier, place of anchorage, or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the State Government, determine.(2)Save as otherwise provided under sub-section (3) no person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by an order made under sub-section (1).(3)If it is proved to the satisfaction of the Board that any such wharf, dock, berth, quay, stage, jetty, pier, or place of anchorage, was made, fixed or

erected by any person with the previous permission of the authority competent to grant such permission, he shall be paid by the Board compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say-(a)in computing the compensation, there shall not be taken into account any rates or other charges which such person shall be liable to pay for using any wharf, dock, berth, quay, stage, jetty, pier, or place of anchorage, provided by the Board;(b)the amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty, pier, or place of anchorage;(c)where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;(d)where no such agreement can be reached, the State Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as a Judge of a High Court;(e)the State Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the arbitrator in determining any question which has to be decided by him under this Section, and where such nomination is made the person to be compensated may also nominate an assessor for the same purpose;(f)at the commencement of the proceeding before the arbitrator, the Board and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;(g)the arbitrator shall after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid;(h)where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such person;(i)nothing in the Arbitration Act, 1940 (X of 1940) shall apply to arbitrations under this Section;(j)the arbitrator appointed under this Section, while holding arbitration proceedings under this Act, shall have all the power of a Civil Court while trying a suit under the Code of the Civil Procedure, 1908 (V of 1908), in respect of the following matters, namely-(i)summoning and enforcing the attendance of any person and examining him on oath;(ii)requiring the discovery and production of documents;(iii)receiving evidence on affidavits;(iv)issuing commissions for examination of witnesses or documents;(k)every award shall also state the amount of costs incurred in the arbitration proceedings under this Section and by what persons and in what proportions they are to be paid;(l)any person aggrieved by an award of the arbitrator made under this Section may within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:Provided that the High Court may entertain the appeal after the expiry of the said period to thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

## Chapter VI

### Imposition and Recovery of Rates at Ports

#### 37. Scales of rates for service performed by Board or other person.

(1)The Board shall from time to time frame a scale of rates at which and a statement of the conditions under which any of the services specified hereunder [Except the State charges]] [Inserted by Gujarat 15 of 2008, dated 30th September 2008 (w.r.e.f 01-04-2008)] shall be performed by

itself or any person authorised under Section 32 at or in relation to the port or port approaches-(a)trans-shipping of passengers or goods between vessels in the port or port approaches;(b)stevedoring, landing and shipping of passengers or goods from or to such vessels, to or from any wharf, quay, jetty, pier, dock, berth, mooring stage, or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;(c)cranage or portage of goods on any such place;(d)wharfage, storage or demurrage of goods on any such place;(e)any other service in respect of vessels, passengers or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act (15 of 1908).(2)Different scales of rates and conditions may be framed from different classes of goods and vessels and for different ports.

### **38. Scales of rates and statement of conditions for use of property belonging to Board.**

(1)The Board shall, from time to time also frame a scale of rates on payment of which and a statement of conditions under which any property belonging to, or the possession or occupation of, the Board or any place within the limits of the port or port approaches may be used for the purposes specified hereunder-(a)approaching or lying at or on any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;(b)entering upon or playing for hire at or on any wharf, quay, pier, dock, land, building, road, bridge, approach or place as aforesaid by animals or vehicles carrying passengers or goods;(c)leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;(d)any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.(2)Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

### **39. Consolidated rates of combination of services.**

- The Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in Section 37 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in Section 38.

### **40. Power to levy concessional rates in certain cases.**

- In framing scales of rates under any of the foregoing provisions of this Chapter, the Board may prescribe a lower rate in respect of-(a)coastal goods, that is to say, goods other than imported goods as defined in the Customs Act, 1962 (52 of 1962) carried in a vessel from one Indian port to another Indian port:Provided that the Board shall not make any discrimination between one Indian port and another such port in prescribing a lower rate under this Section:(b)Other goods in special cases.



#### **41. Prior sanction of State Government to rates and conditions.**

- Every scale of rates and every statement of conditions framed by the Board under the foregoing provisions of this Chapter shall be submitted to the State Government for sanction and shall have effect when so sanctioned and published by the Board in Official Gazette.

#### **42. Power of State Government to require modification or cancellation of rates.**

(1)Whenever the State Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct the Board to cancel any of the scales in force or modify the same within such period as that Government may specify in the order.(2)If the Board to whom a direction is given under sub-section (1) fails or neglects to comply with such direction within the specified period, the State Government may cancel any of such scales or make such modifications therein as it may think fit:Provided that before so cancelling or modifying any scale the State Government shall consider any objection or suggestion which may be made by the Board during the specified period.(3)When in pursuance of this Section any of the scales has been cancelled or modified, such cancellation or modification shall be published by the State Government in the Official Gazette and shall thereupon have effect accordingly.

#### **43. Remission of rates or charges.**

- The Board may, in special cases, and for reasons to be recorded in writing, exempt either wholly or partially any goods, vehicles, or vessels or class of goods, vehicles or, vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale of rates in force under this Act or remit the whole or any portion of such rate or charge so levied.

#### **44. Refund of over charges.**

- No person shall be entitled to a refund of an overcharge made by the Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all original relevant documents:Provided that the Board may, of its own motion remit overcharges made in its bill's at any time.

#### **45. Notice of payment of charges short levied or erroneously refunded.**

(1)When the Board is satisfied that any charge leviable under this Chapter has been short levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:Provided that no such notice shall be issued after the expiry of three years-(a)when the charge is short levied from the date of the payment of the charge;(b)where a charge has been erroneously refunded, from the date of the refund.(2)The Board may after considering the representation if any made by the person to whom notice is issued under

sub-section (1) determine the amount due from such person and thereupon such person shall pay the amount so determined.

#### **46. Time for payment of rates on goods.**

- Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Board or to be shipped for export or to be transshipped shall be payable before the goods are removed, shipped or trans-shipped.

#### **47. Board's lien for rates.**

(1) For the amount of all rates leviable by the Board under this Act in respect of any goods and for the rent due to the Board for any building, plinths, stackings are as or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods and may seize and detain the same until such rates are fully paid. (2) Such lien shall have priority over all other liens and claims, except for general average and for the ship owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of Section 48 and for money payable to the Central Government under any law for the time being in force, relating to customs other than by way of penalty or fine and to the State Government under any law for the time being in force.

#### **48. Shipowner's lien for freight and other charges.**

(1) If the master or owner of any vessel or his agent at or before the time of landing from such vessels and goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in occupation of the Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount. (2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned and godown and storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained. (3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from the amount of such lien, executed by the person by whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such line, provided that the Board shall have used reasonable care in respect to the authenticity of such document.

#### **49. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.**

(1) The Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter

period not being less than twenty four hours after the landing of the animals or goods as the Board, may think fit, sell by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner such goods or so much thereof as in the opinion of the Board may be necessary-(a)if any rates payable to the Board in respect of such goods have not been paid, or(b)if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or(c)if any line of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has been made to the Board an application for such sale.(2)Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Official Gazette, and also in at least one of the principal local daily newspapers:Provided that in the case of animals and perishable or hazardous goods the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency of the case admits of.(3)If the address of the owner of the goods has been stated in the manifest of the goods or in any of the documents which have come into the possession of the Board or is otherwise known, notice shall also be given to him by letter delivered at such address or sent by post but the title of a bona fide purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.(4)Notwithstanding anything contained in this Section, controlled goods may be sold at such time and in such manner as the State Government may direct.Explanation. - In this Section and Section 50 "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

## **50. Disposal of goods not removed from premises of Board within time limit.**

(1)Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereof from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette, and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction or by tender, private agreement or in any manner:Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice or removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.(2)The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.(3)If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1) the Board may at any time after the expiration of two months from the date of which such goods were placed in its custody, sell the goods by public auction or, in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner such goods or so much thereof in the opinion of the Board may be necessary after giving notice of the sale in the manner specified in sub-section (2) and (3) of Section 49.(4)Notwithstanding anything contained in sub-section (1) or sub-section (3)-(a)the

Board may in the case of animals and perishable or hazardous goods give notice of removal of such goods although the period of one month or as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale in such manner as in the opinion of the Board the urgency of the case requires;(b)controlled goods may be sold in accordance with the provisions of subsection (4) of Section 49.(5)The State Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this Section.

## **51. Application of sale proceeds.**

(1)The proceeds of every sale under Section 49 or Section 50 shall be applied in the following order-(a)in payment of the expenses of the sale;(b)in payment, according to their respective priorities of the liens and claims excepted in sub-section (2) of Section 47 from the priority of the lien of the Board.(c)in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof including demurrage (other than the penal demurrage) payable in respect of such goods for a period of four months from the date of landing;(d)in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;(e)in payment of any other sum due to the Board.(2)The surplus, if any shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods.(3)Where no application has been made under sub-section (2), the surplus shall be applied by the Board for purposes of this Act.

## **52. Recovery of rates and charges by distraint of vessel.**

(1)If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses, or neglects to pay the same or any part thereof on demand, the Board may distrain or\* arrest such vessel and the tackle, apparel and furniture belonging thereto or any part thereof and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest is paid.(2)In case any part of the said rates or penalties or of the cost of the distress or arrest or the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold and with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the cost of sale remaining unpaid, rendering the surplus (if any), to the master of such vessel on demand.

## **53. Grant of port clearance after payment of rates, realisation of damages, etc.**

- If the Board gives to the officer of the Central Government whose duty is to grant the port clearance to any vessel at the port, a notice stating-(i)that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or

orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or(ii)that an amount specified therein is due in respect of any damage referred to in Section 100 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that Section has not been realised, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised.

## **Chapter VII**

### **Borrowing Powers of Board**

#### **54. Power to raise loans.**

(1)A Board may raise loans with the previous sanction of the Government on such terms and conditions as may be prescribed by the State Government for the purposes of this Act.(2)Loans may be raised by the Board in the open market on Board securities issued by it or may be obtained from the Government or a bank approved by the Government.(3)The terms of all loans shall be subject to the approval of the State Government.

#### **55. Board securities.**

(1)The Board may with the sanction of the State Government prescribe the form in which the securities of the Board shall be issued by the Board and the mode in which, and the conditions subject to which, they may be transferred.(2)The holder of any Board security in any form may obtain in exchange therefor, upon such terms as the Board may from time to time determine a Board security in other form prescribed by regulations.(3)The right to sue in respect of money secured by the Board securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

#### **56. Right of joint or several payees of securities.**

(1)Notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872 (9 of 1872),-(a)when any Maritime Board's security is payable to two or more persons jointly and either or any of them dies, the Maritime Board's security shall be payable to the survivor or survivors of those persons, and(b)when any such security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons or to the representatives of the deceased or to any of them.(2)This Section shall apply whether such death occurred or occurs before or after the appointed day.(3)Nothing herein contained shall alter any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.(4)For the purposes of this Section, a body incorporated or deemed to be incorporated under the Companies Act, 1956 (1 of 1956), or the Co-operative Societies Act, 1912 (11 of 1912), or any other enactment for the time being in force, whether within or without India shall be deemed to die when it is dissolved.

## **57. Power of one or two or more joint holders to grant receipts.**

- Where two or more persons are joint holders of any Board security, any one of those persons may give an effectual receipt for any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other of the holders.

## **58. Endorsements to be made on a security itself.**

- Notwithstanding anything in Section 15 of the Negotiable Instruments Act, 1881 (XXVI of 1881), no endorsement of a Board security which is transferable by endorsement shall be valid unless made by signature of the holder inscribed on the back of the security itself.

## **59. Endorsement of security not liable for amount thereof.**

- Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (XXVI of 1881), a person shall not by reason only of his having endorsed any Board security be liable to pay any money due either as principal or as interest thereunder.

## **60. Impression of signature on securities.**

(1)The signature of the person authorised to sign Board securities on behalf of the Board may be printed, engraved or lithographed or impressed by such other mechanical process as the Board may direct on such securities.(2)A signature so printed, engraved, lithographed impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

## **61. Issue of duplicate security.**

(1)When any Board security is alleged to have been lost, stolen or destroyed either wholly or in part and a person claims to be the person to whom but for the loss, theft or destruction it would be payable, he may, on application to the Board and on producing proof to its satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed by regulations, obtain from the Board an order for-(a)the payment of interest in respect of the security said to be lost, stolen, or destroyed, pending the issue of a duplicate security; and(b)the issue of a duplicate security payable to the applicant.(2)An order shall not be passed under sub-section (1) until after the issue by the Board of the notification of the loss, theft or destruction in the manner prescribed by regulations.(3)A list of securities in respect of which an order is passed under sub-section (1) shall be published in such manner as the Board may prescribe by regulations.(4)If at any time before the Board become discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed such security is found, any order passed in respect thereof under this section shall be cancelled.

## **62. Issue of converted, etc. securities.**

(1)The Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Board security or securities issued by it, on being satisfied of the justice of the claim and on delivery of the security or securities respected in such manner and on payment of such fee, if any, as it may prescribe, convert, consolidate or sub-divide the security or securities, and issue to the applicant a new security or securities accordingly.(2)The conversion, consolidation or sub-division referred to in sub-section (1) may be into security or securities of the same or different classes or of the same or different loans.

## **63. Discharges in certain cases.**

- Notwithstanding anything contained in the Indian Limitation Act, 1963 (XXXVI of 1963)-(i)on payment of the amount due on a Board security on or after the date on which payment becomes due to, or(ii)when a duplicate security has been issued under Section 61, or(iii)when a new security or securities has or have been issued upon conversion, consolidation or sub-division under Section 62, the Board shall be discharged from all liabilities in respect of the security or securities so paid or in place of which a duplicate, or new security or securities has or have been issued-(a)in the case of payment, after the lapse of six years from the date on which payment was due;(b)in the case of a duplicate security after the lapse of six years from the date of the publication under sub-section (3) of Section 61 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever date is later;(c)in the case of a new security issued upon conversion, consolidation or sub-division, after the lapse of six years from the date of the issue thereof.

## **64. Security for loans taken by the Board.**

- All loans raised by the Board under this Act shall be a first charge on-(a)the property vested or which may hereafter during the currency of the loans become vested in the Board other than-(i)any sum set apart by the Board-(1)as the sinking fund for the purpose of paying off any loan; or(2)for the payment of pension to its employees; or(ii)the provident or pension fund established by the Board; and(b)the rates leviable by the Board under this Act.

## **65. Remedies of Government in respect of loans made to Board.**

- The Government shall in respect of loans made by it to the Board the same remedies as holders of Board securities issued by the Board; and the Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Board securities:Provided that when the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

## **66. Power of Board to repay loans before due date.**

- The Board may, with the previous sanction of the State Government apply any sums out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of the Board securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived: Provided that no such repayment shall be made of any sum less than ten thousand rupees; and that if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

## **67. Establishment of sinking fund.**

(1) If in respect of a loan raised by the Board under this Act which is not repayable before the expiration of one year from the date of the loan, the State Government by an order in writing so directs the Board shall set apart half yearly out of its income, as a sinking fund, a sum sufficient to liquidate the loan within a period which shall not in any case unless the previous consent of the State Government has been obtained exceed twenty five years; but the maximum period shall not in any case exceed forty years: Provided that a sinking fund need not in the absence of any stipulation to that effect be established in the case of loans taken by the Board from the Central Government or any State Government. (2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it, for which loan, the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this Section.

## **68. Investment and application of sinking fund.**

(1) The sum so set apart by the Board under sub-section (1) of Section 67 and the sums forming part of any sinking fund referred to in sub-section (2) of that Section shall be invested in public securities or in such other securities as the State Government may approve in this behalf and shall be held by Board in trust for the purposes of this Act. (2) The Board may apply the whole or any part of the sums accumulated in any sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that it pays into the fund in each year and accumulates until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied.

## **69. Examination of sinking fund.**

(1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the State Government in this behalf and the person so appointed shall ascertain whether the cash and the current market value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated if



investment had been regularly made and the rate of interest as originally estimated had been obtained thereon.(2)The Board shall pay forthwith into the sinking fund any amount which the person appointed under sub-section (1) to conduct the annual examination of the fund may certify to be deficient unless the State Government specifically sanctions a gradual readjustment.(3)If cash and current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credits, the person appointed under sub-section (1) shall certify the amount of the excess and the Board may, with the previous sanction of the State Government reduce or discontinue the half-yearly contributions to the sinking fund required under Section 67.

## **70. Powers of Board to raise loans on short term bills.**

- Nothing contained in this Act shall be deemed to affect the power of the Board to raise loans under the Local Authorities Loans Act, 1914 (IX of 1914).

## **71. Powers of Board to take temporary loans or overdrafts.**

- Notwithstanding anything contained in this Act the Board may-(i)borrow moneys by means of temporary overdraft or otherwise by placing the securities held by the Board in its reserve fund or on security of the fixed deposits of the Board in its banks;(ii)obtain advances from such banks on pledge or hypothecation of its current assets without the previous sanction of the State Government:Provided that such temporary overdrafts or other loans-(a)shall not at any time have a longer currency than six months; and(b)shall not be taken, without the previous sanction of the State Government, if at any time in any year the amount of such overdrafts, or other loans exceeds such amount not exceeding ten lakhs of rupees, as the State Government may fix in this behalf:Provided further that all moneys so borrowed by overdrafts or otherwise shall be expended for the purposes of this Act.

## **72. Power of Board to borrow money from International Bank for reconstitution and development or other foreign institutions.**

- Notwithstanding anything contained in this Act but subject to any other law for the time being in force, the Board may, with the previous sanction of State Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other Bank or Institution in any country outside India; and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the State Government otherwise provide.

## **Chapter VIII**

### **Revenue and Expenditure**

### **73. General account of port.**

- All moneys received by or on behalf of a Board under the provisions of this Act and all moneys received by it as the Conservators of the Ports and of their approaches or as the body appointed under Section 36 of the Indian Ports Act, 1908 (15 of 1908) shall be credited to a fund called the General Account of the Minor Ports.

### **74. Application of moneys in general accounts.**

(1)The moneys credited to the general account under Section 73 shall be applied by the Board in payment of the following charges, namely-(a)the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable and payments to the sinking fund established for such loan ;(b)the salaries, fees, remunerations, allowances, pensions, gratuities, compassionate allowances or other moneys due to(i)the Chairman, and other member of the Board;(ii)the employees of the Board; and(iii)the surviving relatives, if any, of such employees;(c)the contributions, if any, payable to the Central Government or any State Government on account of the pension and leave allowance of any officer lent to the Board by such Government;(d)the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident or welfare fund or loan or special fund established by the Board;(e)the contributions, if any, duly authorised to be made by regulations made under this Act to any such fund as is referred to in clause (d);(f)such sums as may, from time to time, be agreed upon by the Board and the State Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the Police Force or the Central Industrial Security Force or any other Force which the State Government or the Central Government or any other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;(g)the cost of repairs and maintenance of the property belonging to or vested in the Board and all charges upon the same and all working expenses;(gg)[ the waterfront royalty payable to the State Government under section 22A;] [Clause (gg) inserted by Gujarat 18 of 2005, dated 23rd March, 2005 (w.r.e.f 01-04-1999)](h)the cost of the execution and provision of any new work or appliance specified in Section 25 which the Board may determine to charge to revenue;(i)any expenditure incurred under section 26;(j)any other expenditure which may be incurred by the Board generally for the purposes of this Act;(k)any other charge which may on the application of the Board or otherwise be specially sanctioned by the State Government or for which the Board may be legally liable.(2)All moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub-section (1) shall(a)be deposited in the State Bank of India or any corresponding new bank as defined in clause (d) of Section 2 of the Banking Companies Acquisition and Transfer of Undertakings Act, 1970 (5 of 1970) [or in any corporation or financial institution controlled and managed by the State Government] [These words were inserted by Gujarat 3 of 1996, Section 10 (w.r.e.f. 08-09-1995).], as the Board may decide, or(b)be invested in such public securities as may be determined by the Board and the said securities shall be held in trust by the Board for the purposes of this Act.

## **75. Power to transfer moneys from general account as specified in particular account and vice-versa.**

- The Board may, with the previous sanction of the State Government, apply any sum out of the moneys credited to the general account of the port towards meeting deficits, if any, in the particular or specified account such as pilotage account, if so maintained or transfer the whole or part of any surplus funds in such particular account to the general account of the port.

## **76. Establishment of Reserve Funds.**

- The Board may from time to time set apart such sums out of its surplus income as it thinks fit as a reserve fund or funds for the purpose of expending existing facilities or creating new facilities at the ports or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclone, shipwrecks or other accident or for any other emergency arising in the ordinary conduct of its works under this Act: Provided that the sums set apart annually in respect of, and the aggregate at any time of any such reserve fund or funds shall not exceed such amount as may, from time to time be fixed in that behalf by the State Government.

## **77. Power to reserve Maritime Board securities for Board's own investments.**

(1) For the purposes of any investment which the Board is authorised to make under this Act, it shall be lawful for the Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the State Government has been given provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan. (2) The issue by the Board of such securities direct to and in the name of the Board shall not operate to extinguish or cancel such securities, but every security so issued shall be valid in all respects as if issued to and in the name of, any other person. (3) The purchase by the Board or the transfer, assignment or endorsement to the Board of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by or transferred or assigned or endorsed to any other person.

## **78. Prior sanction of the Government to charge expenditure to capital.**

(1) No expenditure shall be charged by the Board to capital without the previous sanction of the State Government: Provided that the Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified and subject to such conditions as may be imposed by the State Government. (2) Nothing in sub-section (1) shall be deemed to require the further sanction of the State Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the State Government unless the excess is more than ten per cent of the expenditure so sanctioned.

## **79. Works requiring sanction of Board or State Government.**

(1) No new work or appliance the estimated cost of which exceeds such amount as may be fixed by the State Government in this behalf, shall be commenced or provided by the Board, nor shall any contract be entered into by the Board in respect of any such new work or appliance until a plan of an estimate for such work or appliance has been submitted to, and approved by the Board; and in case the estimated cost of any such new work or appliance exceeds such amount, as may from time to time, be fixed by the State Government in this behalf, sanction of the State Government to the plan and estimate shall be obtained before such work is commenced or appliance provided. (2) Nothing in sub-section (1) shall be deemed to require the further sanction of the State Government in any case where the actual expenditure incurred does not exceed by more than ten per cent of the estimated cost so sanctioned.

## **80. Power of Chairman as to execution of works.**

- Notwithstanding anything contained in Section 79, the [Chief Executive Officer] [These words were substituted for the word 'Chairman' by Gujarat 3 of 1996, Section 11 (w.r.e.f. 08-09-1995).] may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the State Government in that behalf and may enter into contracts for the execution of such works, but in every such case the [Chief Executive Officer] [These words were substituted for the word 'Chairman' by Gujarat 3 of 1996, Section 11 (w.r.e.f. 08-09-1995).] shall, as soon as possible, make a report to the Board of any such direction given or contract entered into by him.

## **81. Power of Board to compound or compromise claims.**

- The Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient: Provided that no settlement shall be made under this Section without the previous sanction of the State Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the State Government in this behalf.

## **82. Writing off losses.**

(1) Subject to such conditions as may be specified by the State Government, where the Board is of opinion that any amount due to or any loss, whether of money or of property incurred by the Board is irrecoverable, the Board may with the previous approval of the State Government sanction the writing off finally of the said amount or loss: Provided that no such approval of the State Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case, five thousand rupees or in the aggregate in any year, one lakh of rupees. (2) Notwithstanding anything contained in sub-section (1), where the [Chief Executive Officer] [These words were substituted for the word 'Chairman', by Gujarat 3 of 1996, Section 12 (w.r.e.f. 08-09-1995).] is of opinion that any amount due to or any loss, whether of money or of property, incurred by the Board is irrecoverable, the [Chief Executive Officer] [These words were

substituted for the word 'Chairman', by Gujarat 3 of 1996, Section 12 (w.r.e.f. 08-09-1995).] may sanction the writing off finally of such amount or loss provided that such amount or loss does not exceed, in an individual case, one thousand rupees or in the aggregate in any only year, twenty thousand rupees and in every such case, the [Chief Executive Officer] [These words were substituted for the word 'Chairman', by Gujarat 3 of 1996, Section 12 (w.r.e.f. 08-09-1995).] shall make a report, to the Board giving reasons for such sanction.

### **83. Power, etc. of Board as conservators.**

- All the powers, authorities and restrictions contained in this Act in respect of the work by this Act authorised, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under sub-section (1) of Section 36 of the Indian Port Act, 1908 (15 of 1908) and also to the sanction of such works, the estimate therefor and the expenditure thereunder.

### **84. Budget estimates.**

(1)The Board shall on or before the thirty first day of January in each year, hold a special meeting at which the Chairman of the Board shall submit an estimate of the income and expenditure of the Board for the next financial year, in such form as the State Government may specify.(2)A copy of such estimate shall be sent by post or otherwise to each member of the Board so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1).(3)The Board shall consider the estimate at such-meeting and may provisionally approve of it with or without modification.(4)The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the State Government.(5)The State Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.(6)When an estimate is returned under sub-section (5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the State Government may call for and shall, if necessary, modify or alter the estimate and re-submit it to the State Government.(7)The State Government shall sanction the estimate with or without modifications.(8)Where any such estimate is not sanctioned by the State Government before the commencement of the financial year to which it relates, the State Government may authorise the Board to incur such expenditure as may be necessary in the opinion of the State Government until such time as the approval of the estimate by the State Government is communicated to the Board.

### **85. Preparation of supplemental estimates.**

- The Board may in the course of any year for which an estimate has been sanctioned by the State Government cause one or more supplemental estimates for the residue of such year to be prepared and the provisions of Section 84 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

## **86. Re-appropriation of amounts in estimates.**

- Subject to any directions which the State Government may give in this behalf, any sum of money or part thereof which the expenditure has been authorised in an estimate for the time being in force sanctioned by the State Government and which has not been so spent, may at any time be re-appropriated by the Board to meet any excess in any other expenditure authorised in the said estimate.

## **87. Adherence to estimate except in emergency.**

(1) Subject to the provisions of Section 86 no sum exceeding such amount as the State Government may fix in this behalf shall, save in cases of emergency, be expended by, or on behalf of, the Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Government. (2) If any sum exceeding such limit as may have been fixed in this behalf under subsection (1) is so expended by the Board on a pressing emergency, the circumstances shall be forthwith reported by the [Chief Executive Officer] [These words were substituted for the word 'Chairman', by Gujarat 3 of 1996, Section 13 (w.r.e.f. 08-09-1995).] to the State Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

## **88. Accounts and audit.**

(1) The Board shall maintain proper accounts and other relevant records and prepare the annual statement of account including the balance-sheet in such form as may be approved by the State Government. (2) The accounts of the Board shall be audited once in every year and if so required by the State Government concurrently with the compilation of such accounts by an auditor appointed by the State Government in consultation with the Comptroller and Auditor-General of India (hereinafter referred to as "the Auditor") and any amount payable to such auditor by the Board in respect of such audit shall be debitable to the general account of the Board. (3) The auditor shall have the same rights, privileges and authority in connection with the audit of the accounts of the Board as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and in particular, shall have the right to demand production of books of accounts, connected vouchers and other documents of the Board.

## **89. Publication of audit report.**

(1) Within fourteen days after the audit and examination of the accounts of the Board have been completed, the auditor shall forward copies of the audit report to the State Government and to the Board. (2) The State Government shall cause every audit report to be laid for not less than thirty days before the State Legislature as soon as may be after such report is received by the Government.

## **90. Board to remedy defects and irregularities pointed out in audit report.**

- The Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the auditor, in the audit report on the income and expenditure of the Board and shall take such action thereon as the Board may think fit and shall also send a report of the action so taken to the State Government.

## **91. State Government to decide difference between Board and auditors.**

- If there is a difference of opinion between the Board and the auditor on any point included in the audit report, and the Board is unable to accept and implement the recommendations, if any, made by him on such point the matter shall forthwith be referred to the State Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

## **Chapter IX**

## **Supervision and Control of State Government**

## **92. Administration report.**

- [(1)] [Section 92 was renumbered as sub-section (1) of that section by Gujarat 3 of 1996, Section 14 (w.r.e.f. 08-09-1995).] As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the State Government, the Board shall submit to the State Government a detailed report of the administration of the ports during the preceding year ending on the thirty-first day of March, in form as the State Government may direct.(2)[ The State Government shall cause such report to be laid for not less than thirty days before the State Legislature as soon as may be after such report is received by the Government.] [Sub-section (2) was added, by Gujarat 3 of 1996, Section 14 (w.r.e.f. 08-09-1995).]

## **93. Submission of statements of income and expenditure to State Government.**

(1)The Board shall annually, or often or if directed by the State Government so to do, submit statements of its income and expenditure in such form and at such time as that Government may direct.(2)A copy of all such statements shall be open to inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may from time to time be fixed by the Board.

## **94. Power of State Government to supersede Board.**

(1)If, at any time, the State Government is of opinion-(a)that on account of a grave emergency, the Board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law, or(b)that the Board has persistently made default in the performance of the duties

imposed upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board or the administration of the ports has greatly deteriorated, the State Government may by notification in the Official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification: Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the State Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board. (2) Upon the publication of notification under Sub-section (1) superseding the Board- (a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members of the Board; (b) all the powers and duties which may, be or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Board, shall until the Board, is reconstituted under clause (b) or clause (c) or Sub-section (3) be exercised and performed by such person or as persons the State Government may direct; (c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or clause (c) of Sub-section (3), vest in the State Government. (3) On the expiration of the period of supersession specified in the notification issued under Sub-section (1), the State Government may- (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary, or (b) reconstitute the Board by fresh appointment and in such case, any persons who vacated their offices under clause (a) of Sub-section (2) shall not be deemed disqualified for appointment, or (c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case the persons who vacated their offices under clause (a) or Sub-section (2) shall not be deemed disqualified for such appointment merely because they were members of the Board when the Board was superseded: Provided that the State Government may, at any time before the expiration of the period of supersession, whether as originally specified under Sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this subsection. (4) The Government shall cause a notification issued under Sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before State Legislature at the earliest possible opportunity.

## **95. Power of State Government to give directions to Board.**

(1) Without prejudice to the foregoing provisions of this Chapter, the Board shall in the discharge of its functions under this Act, be bound by such directions on question of policy, as the State Government may give in writing to it from time to time: Provided that the Board shall be given opportunity to express its view before any direction is given under this sub-section. (2) The decision of the State Government whether question is one of policy or not shall be final.

## **Chapter X**

### **Penalties**

## **96. Persons employed under this Act to be public servants for certain purpose.**



- Every person employed by the Board under this Act shall, for the purposes of Sections 161 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code (XLV of 1860), and for the purposes of the Prevention of Corruption Act, 1947 (11 of 1947), be deemed to be a public servant within the meaning of Section 21 of the said Code.

### **97. Penalty for contravention of sections 27, 28, 30 and 31.**

- Whoever contravenes the provision of any order issued under Section 27 or Section 29 or fails to comply with any condition imposed under Section 30 shall be punishable with the fine which may extend to one thousand rupees and where the contravention or failure is a continuing one with further fine which may extend to one hundred rupees for every day after the first during which such contravention or failure continues.

### **98. Penalty for setting-up wharves, quays, etc. without permission.**

- Any person who contravenes the provisions of section 35 shall be punishable with fine which may extend to one thousand rupees for the first contravention, and with a further fine which may extend to one hundred rupees for every day after the first during which the contravention continues.

### **99. Penalty for evading rates, etc.**

- Any person who with the intention of evading payment of the rates lawfully due in respect of any goods or vessels carrying any goods, to the Board-(a)understates or incorrectly give the weight, quantity, value or description of such goods, or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or(b)remove or attempts to remove or abets the removal of such goods or such vessel;shall be punishable with fine which may extend to twice the amount of rates so due subject to a minimum of fifty rupees.

### **100. Recovery of value or damage to property of Board.**

- If, through the negligence of any person having the guidance or command of any vessel, or of any of mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of the Board or any movable property belonging to the Board the amount of such damage shall, on the application of the Board be recoverable together with the cost of such recovery, by distress and sale under a Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel:Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and if he appears until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

### **101. Person interested in contracts, etc. with the Board to be deemed to have committed an offence under section 168 of the Indian Penal Code.**

- Any person who, being a member of an employee of the Board, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of the Board, shall be deemed to have committed an offence under Section 168 of the Indian Penal Code (XLV of 1860): Provided that nothing in this section shall apply to a person who is deemed not to have a share or interest in any contract or employment under the proviso to clause (d) of Section 4.

### **102. Other offences.**

- Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder for the contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may extend to two hundred rupees.

### **103. Cognizance of offences.**

- No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act or any rule or regulation made thereunder.

### **104. Offence by companies.**

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purposes of this section-(a) "company" means a body corporate and includes a firm or other association of individuals; and (b) "director" in relation to firm, means a partner in the firm.

## **Chapter XI**

### **Miscellaneous**

## **105. Constitution of State Ports Consultative Committee.**

(1)The State Government may, by notification in the Official Gazette, constitute a State Ports Consultative Committee consisting of members of the Board and such other persons, being not less than ten and not more than twenty as the State Government may appoint from amongst persons who are, in the opinion of the State Government, capable of representing the interest of the Chamber of Commerce, Shipping, Sailing, Vessels, Customs, Railways, Road Transport, Labour, Communications, Fisheries and Industries, so however that, there shall be at least one member from each of the aforesaid interest.(2)The Chairman of the Board shall be the Ex-Officio Chairman of the Committee.(3)Such officer of the Board as the State Government may appoint in this behalf shall act as Secretary to the Committee.(4)The functions of the Committee as so constituted shall be as under-(a)to advise the Board on all general questions pertaining to the minor ports;(b)to advise the Board in respect of any scheme pertaining to development of any minor port;(c)to review the administration of minor ports and to suggest ways and means of improving their work;(d)to suggest ways and means to remove any difficulty experienced by the Board in its administration of minor ports;(e)to make suo motu recommendation to the Board in regard to any matter to administration of the minor ports;(f)to report to the State Government or as the case may be the Board on such matter as may be referred to it either by the State Government or the Board for its opinion.(5)The State Government may by general or special order provide for,-(a)the calling of the meeting of the Committee and the procedure of meetings;(b)duties of the Secretary of the committee;(c)the term of the office of persons appointed to be the members of the committee to represent any of the aforesaid interests, travelling allowance and daily allowance to the committee and rate thereof.(6)Any person appointed to the Committee to represent any of the aforesaid interest may resign from the membership by tendering his resignation in writing to the Chairman and the resignation shall take effect from the date on which it is received by the Chairman who shall give intimation of the vacancy to the State Government.

## **106. Local advisory committee.**

(1)The State Government may from time to time constitute for such ports as it may determine Local Advisory Committees, consisting of such number of persons as it may think fit in each case and on such terms and conditions as may be prescribed.(2)The Board may, if it thinks fit, consult the Local Advisory Committee concerned on any business coming before it, and shall do so in respect of such business as the State Government may by general or special order in this behalf, specify or when required by the regulation so to do.(3)The Regional Port Officer shall be the ex-officio Chairman of a Local Advisory Committee.(4)Local Advisory Committees shall meet at such intervals as may be prescribed, and for the transaction of urgent business on such other occasions as the Chairman of the Board may require.(5)The number of members necessary to constitute a quorum at a meeting of a Local Advisory Committee shall as the State Government when constituting the Committee may specify.

## **107. Limitation of proceedings in respect of things done under Act.**

- No suit or other proceeding shall be commenced against the Board or any [member or officer] [These words were substituted for the word 'member' by Gujarat 3 of 1996, Section 15 (w.r.e.f. 08-09-1995).] or employee for anything done, or purporting to have been done in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months after the accrual of the cause of action.

## **108. Protection of act done in good faith.**

- No suit or other legal proceeding shall lie against the Board or any [member or officer] [These words were substituted for the word 'member', by Gujarat 3 of 1996, Section 16 (w.r.e.f. 08-09-1995).] or employee thereof in respect to anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the mooring, hawsers or other things belonging to or under the control of the Board.

## **109. Power of the State Government to make rules.**

(1)The State Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may be made, for all or any of the following matters, namely-(a)fees and allowances payable to the members of the Board or any of its committees for attending meetings of the Board or its committee or for attending any work of the Board, under Section 12;(aa)[ the terms and conditions of service of the Chief Executive Officer under subsection (1) of Section 17;] [Clause (aa) was inserted, by Gujarat 3 of 1996, Section 17 (1) (w.r.e.f. 08-09-1995).](b)the mode of executing contracts under Section 24 ;(c)factors to be taken into consideration for determining fair and reasonable compensation under sub-section (3) of Section 36 ;(d)the terms and conditions of appointment of persons as member of a Local Advisory Committee under sub-section (1) of Section 106 : and(e)any other matter which is to be may be prescribed by rules.(3)The power to make rules conferred by this Section is subject to the condition of the rules being made after the previous publication :[Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with previous publication of any rule to be made under this section.] [This proviso was added, by Gujarat 3 of 1996, Section 17 (2) (w.r.e.f. 08-09-1995).](4)All rules made under this Section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.(5)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

## 110. General power to make regulations.

- The Board may make regulations not inconsistent with this Act and the rules with respect to all or any of the following matters, namely:-(1)the time and places of the meetings of the Board or its committees, the procedure to be followed for the transaction of business at such meetings and the number of members necessary to constitute a quorum at such meetings.(2)the appointment, promotion, suspension, removal and dismissal of its [officers and employees] [ These words were substituted for the word 'employees', by Gujarat 3 of 1996, Section 18 (w.r.e.f. 08-09-1995).](3)leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances of the [officers and employees] [These words were substituted for the word 'employees', by Gujarat 3 of 1996, Section 18 (w.r.e.f. 08-09-1995).] and the establishment and maintenance of a provident fund or any other fund for their welfare;(4)the time within which and manner in which appeals may be preferred under sub-section (2) of Section 19 and the procedure for deciding such appeals;(5)the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of Section 20;(6)any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its [ officers and employees] [These words were substituted for the word 'employees', by Gujarat 3 of 1996, Section 18 (w.r.e.f. 08-09-1995).];(7)the form of receipt to be given under sub-section (2) of Section 32;(8)the period within which notice may be given under sub-section (2) of Section 33;(9)the factors to be taken into consideration in respect of payment of fair and reasonable compensation, under sub-section (3) of Section 36;(10)the guidance of persons employed by the Board under this Act;(11)the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act;(12)the reception, portorage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;(13)keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;(14)the mode of payment of rates leviable by the Board under this Act;(15)regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;(16)regulating the manner in which and the conditions under which, the loading and unloading of all vessels within the port or port approaches shall be carried out;(17)regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;(18)the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;(19)ensuring the safety of the port;(20)generally for the efficient and proper administration of the ports;(21)the person, if any, authorised to sign and the mode of affixing the corporate seal and of attestation of documents relating to Board securities issued, or to be issued by the Board;(22)the manner in which payment of interest in respect of such Board securities is to be made, recorded and acknowledged;(23)the circumstances and the manner in which Board securities may be renewed;(24)the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;(25)the form in which such securities delivered for renewal, conversion, Consolidation or sub-division are to be receipt;(26)the proof which is to be

produced by a person applying for duplicate securities;(27)the form and manner of publication of the notification mentioned in subsection (2) of Section 61 and the manner of publication of the list mentioned in sub-section (3) of that Section,(28)the nature and amount of indemnity to be given by a person applying for the payment of interest in the Board securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Board securities;(29)the conditions subject to which Board securities may be converted, consolidated or sub-divided;(30)the amounts for which stock certificate may be issued;(31)generally all matters connected with a grant of duplicate, renewed, converted, consolidated and sub-divided securities;(32)the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Board securities;(33)the fees to be levied in respect of the issue of stock certificate.

### **111. Provisions with respect to regulations.**

(1)No regulation made by the Board under this shall have effect until the same has been published by the Board in the Official Gazette with the previous approval of the State Government.(2)Any regulation made under this Act may provide that a breach thereof shall be punishable with fine which may extend to two hundred rupees and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which such breach continues.

### **112. Power of State Government to direct regulations to be made or to make regulations.**

(1)Whenever the State Government considers necessary in the public interest so to do, it may by order in writing together with a statement of reasons therefor, direct the Board to make any regulation for all or any of the matters specified in Section 110 or to amend any regulations, within such period as the State Government may specify in this behalf:Provided that the State Government may extend the period specified by it by such period or periods as it may consider necessary.(2)If the Board, to whom a direction is issued by the State Government under subsection (1) fails or neglects to comply with such directions within the period allowed under sub-section (1), the Government may make the regulations or amend the regulations, as the case may be, either in the form specified in the direction or with such modification thereof as the State Government may think fit:Provided that before so making or amending the regulations the State Government shall consider any objection or suggestion made by the Board within the said period.(3)Where in pursuance of sub-section (2) any regulation have been made or amended, the regulations so made or amended shall be published by the State Government in the Official Gazette and shall thereupon have effect accordingly.

### **113. Power of State Government to make first regulations.**

- Notwithstanding anything contained in this Act, the first regulations under this shall be made by the State Government and shall have effect on being published in the Official Gazette.

#### **114. Posting of certain regulations, etc.**

- The Text of the regulations made under clauses (10) to (19) of Section 110 and the scale of rates together with a statement of conditions framed by the Board under Chapter VI shall be prominently posted by the Board in English and in Gujarati on special boards to be maintained for the purposes at the wharves, docks, berth, piers and other convenient place on the premises of the Board.

#### **115. Saving of right of Government and municipalities to use wharves, etc. for collection of duties and power of Customs officers.**

- Nothing in this Act shall affect-(1)the right of the central Government to collect customs, duties or of any municipality to collect town duties at any dock, wharf, quay, stage, jetty or pier in the possession of the Board, or(2)any power of authority vested in the customs authorities under any law for the time being in force.

#### **116. Application of provisions of air to air craft.**

- The provisions of this Act shall also apply to all air crafts making use of any port while on water in the same manner as they apply in relation to vessels.

#### **117. Power to remove difficulties.**

(1)If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactment repealed by this Act to the provisions of this Act the State Government may by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty:Provided that no such order shall be made in respect of a minor port after the expiry of a period of two years from the appointed day.(2)Every order made under sub-section (1) shall as soon as may be after it is made, be laid before the State Legislature.

#### **118. Repeal and saving.**

- On the application of this Act to any minor port, the Bombay Landing and Wharfage Fees Act, 1882 (Bombay VII of 1882), shall stand repealed in relation to that port:Provided that such repeal shall not affect-(a)the perious operation of the Act so repealed, or anything, duly done or suffered thereunder;(b)any right, privilege, obligation or liability acquired, accrued and incurred under the Act, so repealed:(c)any penalty, forfeiture, or punishment incurred in respect of any offence committed under the Act so repealed; or(d)any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture and punishment may be imposed, as if this Act had not been passed:Provided further that, subject to the preceding proviso, anything done or any action taken under the repealed Act, shall in so far as it is not inconsistent with the provisions of this Act, be

deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.