



LAWS OF MALAYSIA

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Act 422

PORTS (PRIVATIZATION) ACT 1990

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LAWS OF MALAYSIA

Act 422

PORTS (PRIVATIZATION) ACT 1990

An Act to facilitate privatization of the port undertakings of any port authority and for matters connected therewith.

[2 April 1990, *P.U. (B) 198/1990*]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Ports (Privatization) Act 1990 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

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

“licence” means a licence issued under subsection 9(3) of this Act;

“licensed operator” means any person or body of persons licensed under Part III of this Act;

“Minister” means the Minister for the time being charged with the responsibility for ports;

“port authority” means a port authority or port commission specified in the Schedule to this Act;

“port privatization plan” means a plan approved by the Minister under section 5 of this Act;

“port undertakings”, in relation to any port authority, means the undertakings of the port authority that relate to the provision by the port authority of any facility or service of any description in connection with the exercise and performance of its powers and duties under any written law and includes any movable and immovable property and the rights of the port authority that relate to such facility or service;

“principal Act”, in relation to a port authority, means the Act which established the port authority.

Amendment of Schedule

2A. The Minister may, from time to a time by order published in the *Gazette*, add to or amend any of the provisions in the Schedule.

PART II

TRANSFER OF PORT UNDERTAKINGS AND PORT PRIVATIZATION PLAN

Application

3. (1) This Act shall apply to any transfer or disposal by a port authority, whether by one transaction or by a series of transactions, of all or any part of its port undertakings.

(2) No port undertakings of a port authority shall be transferred or disposed of to any person except pursuant to and in accordance with the provisions of this Act.

Transfer of port undertakings

4. Notwithstanding the provisions of any written law to the contrary, a port authority shall, subject to section 5, have the power to transfer or dispose of all or any part of its port undertakings to any operator licensed under this Act.

Port privatization plan

5. (1) Before exercising its power under section 4, the port authority shall prepare and submit to the Minister a port privatization plan for his approval.

(2) The port privatization plan required by subsection (1) shall—

- (a) identify the port undertakings of the port authority;
- (b) state the estimated value of those port undertakings;
- (c) state the nature and extent of the liabilities, if any, to be transferred;
- (d) state the manner in which those port undertakings and liabilities are to be transferred or disposed of;
- (e) state the arrangement relating to the transfer of the relevant officers and servants from the port authority to a prospective operator; and
- (f) state such other matters as the port authority considers appropriate.

(3) Where any matter is not included in the port privatization plan and the Minister considers that it should be so included, the Minister may direct the port authority to consider the matter and report to the Minister concerning its inclusion in the port privatization plan.

(4) No port privatization plan shall be put into effect until it has been approved by the Minister.

(5) Every port privatization plan shall be put into effect in the form approved by the Minister.

(6) The Minister may grant approval of part of a port privatization plan if he considers it appropriate and this Act shall apply to that part as if it were a port privatization plan.

(7) The Minister may, after consultation with the port authority as he considers appropriate or on the application of the port authority, amend any approved port privatization plan.

Port undertakings to be transferred to licensed operator

6. The port undertakings of a port authority that are to be transferred to an operator in accordance with the port privatization plan shall be transferred as soon as practicable after—

- (a) the approval of the plan by the Minister under section 5;
- (b) the execution of any necessary agreement between the port authority and the operator; and
- (c) the issue of the licence to the operator under subsection 9(3).

Liabilities in respect of port undertakings

7. (1) Where any port undertakings are to be transferred to a licensed operator the port authority shall identify its liabilities in relation to the same undertakings in the port privatization plan.

(2) The liabilities so identified shall remain liabilities of the port authority except to the extent of any written agreement to the contrary between—

- (a) the port authority;
- (b) the licensed operator;
- (c) the person to whom the liability is owed; and
- (d) any guarantor of the liability.

Powers, functions and duties of a port authority

8. The port authority shall, in addition to the powers conferred, and the functions and duties imposed upon it by any written law, exercise regulatory functions in respect of the conduct of the port activities and the running of port facilities and services in the port by licensed operators including the determination of their performance standards and standards of facilities and services provided by them and the enforcement thereof.

PART III

LICENSING

Licensing of port operators

9. (1) No port undertakings included in any approved port privatization plan shall be transferred to or managed by any person other than a person licensed by the port authority under subsection (3).

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

(3) Upon receiving any application made in accordance with subsection (2), the port authority may—

- (a) subject to the provisions of subsection (4) and the payment of such fees as the port authority thinks fit, issue the licence to the applicant; or
- (b) refuse to issue the licence.

(4) Every licence issued under subsection (3) shall set out the duration of the licence and shall further prescribe—

- (a) the types of services or facilities to be provided by the licensee;
- (b) the annual licence fee payable by the licensee;
- (c) the particular duties of the licensee in respect of the services or facilities provided by it; and
- (d) such other matters or conditions as the port authority thinks fit.

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

Suspension and revocation of licence

10. (1) A port authority may at any time suspend or revoke any licence issued under section 9 upon the breach of any of the conditions of the licence or upon any failure to comply with any provision of this Act, the principal Act or any of the regulations or by-laws made thereunder.

(2) A licensed operator may appeal to the Minister against the suspension or revocation of its licence by the port authority under subsection (1).

(3) Every such appeal shall be made in writing within thirty days from the date on which the decision of the port authority is served on the licensed operator.

(4) The decision of the Minister under this section shall be final and conclusive.

(5) A decision of the port authority under subsection (1) shall be of immediate effect notwithstanding any appeal made under subsection (2).

(6) Where a licence is suspended or revoked under subsection (1), the port authority may, if it considers that such suspension or revocation would materially affect the movement of cargoes or passengers at the port and with the consent of the Minister—

- (a) take temporary possession of any port undertaking;
- (b) operate any such port undertaking; and
- (c) engage any servant or employee,

of the operator.

Engagement of any person by a port authority for the purpose of carrying out any duty of the licensed operator

11. (1) Without prejudice to the provisions of subsection 10(1), if it appears to the port authority that a licensed operator has failed to carry out any of its duties under the licence, the port authority may give notice in writing to the licensed operator requiring it to perform such duties within the period prescribed in the notice.

(2) If upon the expiry of the period prescribed in such notice the licensed operator fails to carry out the duties mentioned therein, the port authority may engage any other person to perform those duties and all costs and expenses incurred by the port authority in respect thereof shall on demand be immediately reimbursed by the licensed operator.

(3) A person engaged by a port authority under subsection (2) may enter into any of the premises of the licensed operator and bring into the premises any equipment or machinery as may be necessary or proper for the purposes of carrying out those duties.

(4) In every licence issued under section 9, there shall, in the absence of any express provision therein to the contrary, be the implied condition that any person engaged by a port authority under subsection (2) may in respect of the duties stated in the notice given by the port authority—

(a) take temporary possession of and operate any equipment or machinery belonging to or utilized by the licensed operator; and

(b) employ any servant or employee of the licensed operator.

(5) Where any equipment or machinery of the licensed operator is temporarily taken over and operated under subsection (4), adequate compensation shall be paid to the licensed operator by the person taking over and operating such equipment or machinery.

(6) The person engaged by a port authority under subsection (2) shall continue to perform the duties for which he was engaged notwithstanding any dispute as to adequate compensation referred to in subsection (5).

(7) A port authority shall not be liable for any damage or injury occasioned by any act, omission or default of the person engaged by the port authority under subsection (2).

PART IV

DUTIES OF LICENSED OPERATORS

General duties of licensed operators

12. (1) It is the duty of a licensed operator to provide port services and facilities specified in its licence to such extent as is necessary

for the licensed operator to meet the performance standards determined by the port authority under section 8.

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

Submission of reports, accounts, statistical information, etc.

13. (1) Every licensed operator shall—

(a) within three months after the end of each financial year or such longer period as the port authority may allow, submit to the port authority—

- (i) a report of its operation during that financial year containing such information as is necessary to enable the port authority to make an informed assessment of such operation; and
- (ii) its audited annual balance sheet, profit and loss account, together with any note thereon, and the reports of the auditor and the directors; and

(b) submit to the port authority—

- (i) such statistical information relating to its operation as may be required by the port authority from time to time;
- (ii) its cargo forecast over such period and in such form as may be determined by the port authority from time to time; and
- (iii) future development plans relating to any service or facility which it is bound to provide under the conditions of the licence.

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

Licensed operator to keep port authority informed of certain matters

14. (1) It shall be the duty of every licensed operator at all times to immediately inform the port authority of the following matters:

- (a) any change in the control of the licensed operator;
- (b) any industrial dispute between the licensed operator and its employees;
- (c) any industrial accident or mishap involving any servant, employee or agent of the licensed operator;
- (d) any fire occurrence within its premises;
- (e) any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control; and
- (f) any proceeding or claim instituted or made against the licensed operator which may affect its ability to perform any condition under the licence.

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

PART V

**BY-LAWS, GENERAL PENALTY, OFFENCE
BY BODY CORPORATE AND CONDUCT OF PROSECUTION**

By-laws

15. (1) A port authority may, with the approval of the Minister, from time to time, make such by-laws as may be necessary or expedient for carrying out or achieving the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), by-laws may be made—

- (a) to provide for the control by a port authority of any project for the improvement and development of facilities and services at the port;

- (b) to regulate the safe use of docks, wharves, piers, landing places, warehouses, sheds and premises vested in or are under the control of any person engaged in the carrying out of any port operation or in the provision of any port facility or service;
- (c) to provide for the cleanliness of the basins, works and premises within the limits of the port and to prevent pollution of the waters therein;
- (d) to provide for the safety of persons employed in the port and on ships or vessels using the port;
- (e) to provide for the prevention of nuisance and misuse of the premises within the port;
- (f) to provide for the classification and regulation of the conveyance, loading and unloading of dangerous goods by any licensed operator; and
- (g) generally to give effect to the provisions of this Act.

General penalty

16. Any licensed operator who contravenes or fails to comply with any condition of the licence or any of the provisions of this Act, the principal Act or any of the regulations or by-laws made thereunder for which no penalty is expressly provided shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Offence committed by a body corporate

17. Where an offence under this Act, the principal Act or under any of the regulations or by-laws made thereunder is committed by a body corporate (whether or not the body corporate has been prosecuted), every director, secretary or manager of the body corporate shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances of the case.

Conduct of prosecution

18. Prosecutions in respect of offences committed under this Act or any by-law made thereunder may be conducted by any officer or servant of the port authority specially authorized in that behalf by the chairman of the port authority.

PART VI

MISCELLANEOUS

Licensed operator to employ officer or servant of the port authority

19. (1) A licensed operator shall employ such officer or servant of the port authority, who upon being given an option by the port authority has opted to serve as an employee of such operator, in accordance with such arrangement as provided by an approved port privatization plan.

(2) Section 13 of the Statutory and Local Authorities Pensions Act 1980 [*Act 239*] shall apply to an officer or servant of a port authority who is employed by any licensed operator in accordance with an approved port privatization plan as though such officer or servant was appointed with the approval of the Government to serve in an organization pursuant to that section.

Imposition and variation of charges by a licensed operator

20. (1) Notwithstanding any provision of the principal Act or any other written law, a licensed operator may, in relation to any facility or service provided by it pursuant to the conditions of the licence levy such charges as are prescribed under any by-law made under the principal Act and in respect thereof—

- (a) give any discount at such rate as it thinks fit;
- (b) impose interest on any sum outstanding; and
- (c) in the case of any package facility or package service provided by it, levy such higher charges not exceeding such percentage of the prescribed charges as may be approved by the port authority.

(2) Where, in respect of any facility or service provided by a licensed operator, no charges have been prescribed under any by-law, the licensed operator shall, notwithstanding the provisions of any written law, be entitled to levy charges at the rate as may be approved in writing by the port authority.

(3) For the purposes of this section, “package facility” or “package service” means a combination of two or more facilities or services in respect of which the charges have been prescribed under any by-law.

Inspectorial power

21. A port authority may for the purposes of this Act, the principal Act or any of the regulations or by-laws made thereunder enter upon any of the premises occupied by a licensed operator to inspect and examine the state of such premises or any building or facility therein.

Special powers in emergency

22. (1) The Prime Minister may, on the occurrence of any industrial unrest, strikes, lockout or any other event which gives rise to an emergency, or in the interest of public safety, authorize a port authority to—

- (a) suspend the licence of the licensed operator, take temporary possession of any undertaking of such licensed operator and operate it in such manner as it deems fit; or
- (b) withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public at large.

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

(3) Where the port authority takes possession of any port undertaking under paragraph (1)(a) adequate compensation shall be paid.

PART VII

AMENDMENT AND TRANSITIONAL PROVISION

Consequential amendments to the principal Acts

23. (1) The principal Acts are amended in the manner specified in subsections (2), (3) and (4).

(2) Section 16A of the Port Authorities Act 1963 [*Act 488*] is amended by inserting after the words “this Act” in subsections (1) and (3) the words “or the Ports (Privatization) Act 1989”.

(3) Section 33A of the Penang Port Commission Act 1955 [*Act 140*] is amended by inserting after the words “this Act” in subsections (1) and (3) the words “or the Ports (Privatization) Act 1989”.

(4) Section 27A of the Bintulu Port Authority Act 1981 [*Act 243*] is amended by inserting after the words “this Act” in subsections (1) and (3) the words “or the Ports (Privatization) Act 1989”.

Transitional provision

24. Any licence which has been granted to any person under any principal Act for the purpose of enabling such person to take over or operate any undertaking of a port authority and is in force at the commencement of this Act shall be deemed to have been granted under this Act and shall remain valid until it is revoked under this Act and the provisions of this Act shall apply to such person as if he were a licensed operator.

SCHEDULE

[Section 2]

(1) <i>Port</i>	(2) <i>Port Authority</i>	(3) <i>Principal Act</i>
Penang Port	Penang Port Commission	Penang Port Commission Act 1955
Port Kelang	Kelang Port Authority	Port Authorities Act 1963
Kuantan Port	Kuantan Port Authority	Port Authorities Act 1963
Pasir Gudang Port	Johore Port Authority	Port Authorities Act 1963
Bintulu Port	Bintulu Port Authority	Bintulu Port Authority Act 1981
Malacca Port	Malacca Port Authority	Port Authorities Act 1963
Kemaman Port	Kemaman Port Authority	Port Authorities Act 1963
Tanjung Pelepas Port	Johor Port Authority (Tanjung Pelepas)	Port Authorities Act 1963

LAWS OF MALAYSIA**Act 422****PORTS (PRIVATIZATION) ACT 1990****LIST OF AMENDMENTS**

Amending law	Short title	In force from
Act A934	Ports (Privatization) (Amendment) Act 1995	10-11-1995
P.U. (A) 442/1999	Ports (Privatization) (Amendment of Schedule) Order 1999	11-11-1995
P.U. (A) 517/1996	Ports (Privatization) Kemaman Port Order 1996	18-10-1996
P.U. (A) 328/1999	Ports (Privatization) (Tanjung Pelepas Port) Order 1999	13-08-1999

LAWS OF MALAYSIA**Act 422****PORTS (PRIVATIZATION) ACT 1990****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
2A	Act A934	10-11-1995
Schedule	P.U. (A) 442/1999	11-11-1995
	P.U. (A) 517/1996	18-10-1996
	P.U. (A) 328/1999	13-08-1999

