

D.R. 38/2010

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Ordinan Perkapalan Saudagar 1952 dan untuk memperluaskan peruntukan tertentu ke Negeri-negeri Sabah dan Sarawak, dan bagi mengadakan peruntukan mengenai perkara-perkara yang berkaitan dengannya.

[]

DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Perkapalan Saudagar (Pindaan dan Peluasan) 2010.

(2) Tertakluk kepada subseksyen (3), Akta ini mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*, dan Menteri boleh menetapkan tarikh yang berlainan bagi permulaan kuat kuasa peruntukan yang berlainan dalam Akta ini.

(3) Akta ini mula berkuat kuasa di Negeri-negeri Sabah dan Sarawak pada tarikh yang Menteri boleh, selepas berunding dengan pihak berkuasa Negeri, menetapkan melalui pemberitahuan dalam *Warta*.

Pindaan seksyen 300

2. Ordinan Perkapalan Saudagar 1952 [*Ordinan No. 70/1952*], yang disebut “Ordinan” dalam Akta ini, dipinda dengan memotong subseksyen 300(3).

Pindaan seksyen 306c

3. Seksyen 306c Ordinan dipinda—

(a) dengan menggantikan takrif “discharge” dengan takrif yang berikut:

‘ “discharge” means any release of oil or harmful substances, howsoever caused, from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include—

(a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters, done at London on 13 November 1972, or dumping with the consent of the Director of Marine;

(b) release of harmful substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral sources; or

(c) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control;’;

(b) dengan memasukkan selepas takrif “discharge” takrif yang berikut:

‘ “emission” means any release of harmful substances from ships into the atmosphere or sea;’; dan

(c) dengan menggantikan takrif “harmful substance” dengan takrif yang berikut:

‘ “harmful substance” means any substance which—

(a) if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea; or

(b) if introduced into the atmosphere, will adversely affect human health or the environment, or significantly deplete and otherwise modify the ozone layer.’.

Pindaan seksyen 306B, 306CA, 306D, 306G, 306I, 306J, 306JA dan 306Q

4. Ordinan dipinda—

(a) dalam perenggan 306B(1)(c) dan (d), dan subseksyen 306D(6) dan 306J(1), dengan memasukkan selepas perkataan “Malaysian waters” di mana-mana jua terdapat perkataan “or the exclusive economic zone”;

(b) dalam subseksyen 306CA(1), 306D(1), 306I(1) dan 306JA(1) dan perenggan 306I(3)(d), dengan memasukkan selepas perkataan “Malaysian waters,” di mana-mana jua terdapat perkataan “the exclusive economic zone, the atmosphere,”;

(c) dalam subseksyen 306G(2)—

(i) dengan memasukkan selepas perkataan “Malaysian waters,” perkataan “the exclusive economic zone, the atmosphere,”; dan

(ii) dengan memasukkan selepas perkataan “any such waters,” perkataan “zone, atmosphere,”; dan

(d) dalam subseksyen 306Q(2), dengan menggantikan perkataan “or Malaysian waters” dengan perkataan “, or Malaysian waters or the exclusive economic zone”.

Penggantian Bahagian IX

5. Ordinan dipinda dengan menggantikan Bahagian IX dengan bahagian yang berikut:

“PART IX**LIABILITY OF OWNERS AND OTHERS
AND COMPULSORY INSURANCE***Liability of owners and others in respect of maritime claims*

Application. **358.** This Part shall apply to every Malaysian ship, and to every ship when in Malaysian waters and the exclusive economic zone.

Interpretation. **359.** In this Part, unless the context otherwise requires—

“limitation of liability” means limitation of the aggregate amount of liability of any one or more persons in accordance with this Part;

“Malaysian waters” means the territorial waters of Malaysia as determined in accordance with the Emergency (Essential Powers) Ordinance No. 7 1969 [*P.U. (A) 307A/1969*];

“owner”, in relation to a ship means—

- (a) every person who owns the ship or has any interest in the ownership of the ship;
- (b) in any case where the ship has been chartered, the charterer;
- (c) in any case where the owner or charterer is not responsible for the navigation and management of the ship, every person who is responsible for the navigation and management of the ship;

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

“salvor” in relation to a ship, means every person rendering services directly connected with salvage operations carried out in relation to that ship.

Limitation of liability of owners, salvors, etc., for maritime claims.

360. (1) The Convention on Limitation of Liability for Maritime Claims 1976 as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 (referred to as the “Protocol of 1996”), and as set out in Part I of the Sixteenth Schedule (referred to in this Part and Part II of that Schedule as “the Convention”), shall have the force of law in Malaysia.

(2) Part II of the Sixteenth Schedule shall have effect in connection with the Convention and subsection (1) shall have effect subject to the provisions of that Part.

(3) If it appears to the Minister that the Government has agreed to any revision or amendment of the Convention, the Minister may by order published in the *Gazette* make such modifications to Parts I and II of the Sixteenth Schedule.

(4) Without prejudice to subsection (3), the Minister may by order published in the *Gazette* make such amendments to Parts I and II of the Sixteenth Schedule as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with Article 8 of the Protocol of 1996.

(5) For the purposes of subsection (4), a “relevant limit” means any of the limits for the time being specified in—

(a) Article 6, paragraph 1 of Part I of the Sixteenth Schedule; and

(b) Article 7, paragraph 1 of Part I of the Sixteenth Schedule.

(6) No revision or amendment made by virtue of subsection (3) or (4) shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the revision or amendment comes into operation.

(7) Notwithstanding the provisions of Articles 6 and 7 of Part I of the Sixteenth Schedule, the Minister may by order published in the *Gazette* provide specific provisions on the limitation of liability to ships which are intended for navigation on inland waterways and ships of less than 300 tons.

Compulsory
insurance
or other
financial
security.

361. (1) Any ship shall not enter or leave a port in Malaysia, or any part of Malaysian waters or the exclusive economic zone, unless there is in force in respect of the ship a contract of insurance or other financial security satisfying the requirements of the Convention in respect of the limits of liability.

(2) This section shall not apply to—

(a) a foreign ship while it is exercising—

(i) the right of innocent passage; or

(ii) the right of transit passage through straits used for international navigation;

(b) ships of war and troopships; and

(c) any ship for the time being used by the government of any State for purposes other than commercial purposes.

(3) If a ship enters or leaves, or attempts to enter or leave, a port in Malaysia or any part of Malaysian waters or the exclusive economic zone in contravention of subsection (1), the master or the owner of the ship shall be guilty of an offence and shall be liable on conviction to a fine of not less than two hundred thousand ringgit and not more than five hundred thousand ringgit.

(4) If a ship attempts to leave a port in Malaysia or any part of Malaysian waters or the exclusive economic zone in contravention of this section, the ship may be detained.

(5) Any contract of insurance or other financial security required by this section to be in force in respect of a ship shall be carried in the ship, and shall on demand be produced by the master to the Director of Marine or any person authorized in writing by the Director of Marine.

(6) If a ship fails to carry, or the master of the ship fails to produce, a contract of insurance or other financial security as required by subsection (5), the master of the ship shall be guilty of an offence and shall be liable on conviction to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit.

Release of ships, etc.

362. Where the Court has found that a person who has incurred a liability under this Part is entitled to limit that liability under this Part and he has paid a sum or deposited a bank guarantee or security into the Court for a sum of not less than that amount—

(a) the Court shall order the release of any ship or other property arrested in connection with the claim in respect of that liability or any bail or other security given to avoid such arrest; and

(b) no judgment or order in respect of any such claim shall be enforced, except so far as it is for costs,

if the claimant has access to the Court and if the payment or the bank guarantee or security or such part thereof as corresponds to the claim will be actually available to the claimant.

Proof of passengers on board ship.

363. In any proceedings under this Part against the owner of a ship with respect to loss of life, the passengers lists under Part IV of this Ordinance shall be received as evidence that the person upon whose death proceedings are taken under this Part was a passenger on board the ship at the time of death.

Exclusion of application.

364. The Minister may, by order published in the *Gazette*, pursuant to Article 18 of the Convention exclude—

(a) the application of Article 2, paragraphs 1(d) and (e) of Part I of the Sixteenth Schedule; and

(b) claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

Priority of claims.

365. Without prejudice to the right of claims for loss of life or personal injury in accordance with Article 6, paragraph 2 of Part I of the Sixteenth Schedule, the Minister may, by order published in the *Gazette*, provide for claims in respect of damage to harbour works, basins, waterways and aids to navigation to have priority over other claims under Article 6, paragraph 1(b) of Part I of that Schedule.

Compulsory insurance or financial security for master and seamen

Compulsory insurance or financial security for master and seamen.

365A. (1) The owner of every Malaysian ship shall maintain a contract of insurance or other financial security in respect of the master and every seaman carried on board the ship, to cover all claims arising out of a contract or otherwise in respect of the death, personal injury or abandonment of the master or seaman.

(2) If the owner of a Malaysian ship fails to comply with subsection (1), he shall be guilty of an offence and shall be liable on conviction to a fine of not less than fifty thousand ringgit and not more than one hundred thousand ringgit.”.

Pindaan seksyen 366

6. Seksyen 366 Ordinan dipinda dengan memasukkan sebelum takrif “receiver” takrif yang berikut:

‘ “owner” means the person registered as the owner of the ship or, in the absence of registration, the person owning the ship at the time of casualty, except that in relation to a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “owner” shall mean such company.’.

Penggantian seksyen 381

7. Ordinan dipinda dengan menggantikan seksyen 381 dengan seksyen yang berikut:

“Removal
of wreck.

381. (1) Where any ship is sunk, stranded or abandoned in any port, navigable river, tidal waters or in any place within Malaysian waters in such manner as, in the opinion of the receiver, is a wreck that is or is likely to become a hazard to navigation or a public nuisance, or causes or is likely to cause inconvenience, or causes or is likely to cause harmful consequences to the marine environment, the owner shall, upon the direction of the receiver, locate, mark and remove the wreck and take measures to prevent pollution from the wreck.

(2) Notwithstanding subsection (1), the owner shall furnish financial security in such amount as determined by the receiver for the purpose of ensuring the performance of all actions which the owner undertakes in pursuance of subsection (1).

(3) If the owner fails to comply with subsection (1), the receiver may—

- (a) locate and mark the wreck;
- (b) take possession of, and raise, remove or destroy, the whole or any part of the wreck;
- (c) sell, in such manner as he thinks fit, the whole or any part of the wreck so raised or removed and also any other property recovered in the exercise of his powers under this section, and out of the proceeds of the sale—
 - (i) reimburse himself for the expenses incurred by him in relation thereto under this section; and
 - (ii) shall hold the surplus, if any, of the proceeds in trust for the persons entitled thereto; or
- (d) take reasonable measures to prevent pollution from the wreck.

(4) Apart from the proceeds of any sale carried out by the receiver pursuant to subsection (3), the receiver may also resort to the financial security furnished under subsection (2) to reimburse himself, and if the proceeds of the sale together with any security are insufficient to cover the costs incurred by the receiver when acting under subsection (3), he may recover the difference from the owner of the ship concerned.

(5) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable to a fine of not less than five hundred thousand ringgit and not more than one million ringgit.”.

Seksyen baru 381A

8. Ordinan dipinda dengan memasukkan selepas seksyen 381 seksyen yang berikut:

“Compulsory insurance for removal of wreck. **381A.** (1) The owner of any ship of 300 tons and above that enters or leaves a port in Malaysia or any part of Malaysian waters shall maintain in respect of that ship a contract of insurance or other financial security in an amount equal to the amount calculated in accordance with Article 6, paragraph (1)(b) of Part I of the Sixteenth Schedule to cover the liability that may be incurred under section 381.

(2) This section shall not apply to—

- (a) ships of war and troopships; and
- (b) any ship for the time being used by the government of any State for purposes other than commercial purposes.

(3) If a ship enters or leaves, or attempts to enter or leave, a port in Malaysia or any part of Malaysian waters in contravention of subsection (1), the owner of the ship shall be guilty of an offence and shall be liable on conviction to a fine of not less than two hundred thousand ringgit and not more than five hundred thousand ringgit.

(4) If a ship attempts to leave a port in Malaysia or any part of Malaysian waters in contravention of this section, the ship may be detained.

(5) Any contract of insurance or other financial security required by this section to be in force in respect of a ship shall, be carried in the ship, and shall on demand be produced by the master to the Director of Marine or any person authorized in writing by the Director of Marine.

(6) If a ship fails to carry, or the master of the ship fails to produce, a contract of insurance or other financial security as required by subsection (5), the master of the ship shall be guilty of an offence and shall be liable on conviction to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit.”.

Pindaan seksyen 405

9. Seksyen 405 Ordinan dipinda dengan menggantikan perkataan “five hundred dollars” dengan perkataan “fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both”.

Pindaan seksyen 423

10. Subseksyen 423(2) Ordinan dipinda dengan menggantikan perkataan “fifty” dengan perkataan “five thousand”.

Pindaan seksyen 425

11. Subseksyen 425(3) Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “five thousand”.

Pindaan seksyen 426

12. Seksyen 426 Ordinan dipinda dengan menggantikan perkataan “five hundred” dengan perkataan “five thousand”.

Pindaan seksyen 452

13. Seksyen 452 Ordinan dipinda dengan menggantikan perkataan “fifty” dengan perkataan “five thousand”.

Pindaan seksyen 455

14. Subseksyen 455(2) Ordinan dipinda dengan menggantikan perkataan “five hundred” dengan perkataan “fifty thousand”.

Pindaan seksyen 458

15. Subseksyen 458(3) Ordinan dipinda dengan menggantikan perkataan “two hundred and fifty” dengan perkataan “fifty thousand”.

Pindaan seksyen 460

16. Subseksyen 460(2) Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “fifty thousand”.

Pindaan seksyen 462

17. Subseksyen 462(2) Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “five thousand”.

Pindaan seksyen 465

18. Subseksyen 465(1) Ordinan dipinda dengan menggantikan perkataan “two hundred and fifty” dengan perkataan “ten thousand”.

Pindaan seksyen 469

19. Seksyen 469 Ordinan dipinda dengan menggantikan perkataan “fifty” dengan perkataan “five thousand”.

Pindaan seksyen 470

20. Seksyen 470 Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “five thousand”.

Pindaan seksyen 471

21. Seksyen 471 Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “five thousand”.

Pindaan seksyen 474

22. Subseksyen 474(2) Ordinan dipinda dengan menggantikan perkataan “one” dengan perkataan “ten”.

Pindaan seksyen 483B

23. Subseksyen 483B(2) Ordinan dipinda dengan menggantikan perkataan “one” dengan perkataan “ten”.

Pindaan seksyen 484

24. Seksyen 484 Ordinan dipinda dengan menggantikan perkataan “one” dengan perkataan “ten”.

Pindaan seksyen 486

25. Subseksyen 486(2) Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “five thousand”.

Pindaan seksyen 487

26. Seksyen 487 Ordinan dipinda dengan menggantikan perkataan “one hundred” dengan perkataan “five thousand”.

Pindaan seksyen 491c

27. Subseksyen 491c(1) Ordinan dipinda dengan memotong perkataan “, with a warrant”.

Penggantian seksyen 493

28. Ordinan dipinda dengan menggantikan seksyen 493 dengan seksyen yang berikut:

“Power to prosecute offences. **493.** No prosecution for an offence under this Ordinance or any subsidiary legislation made thereunder shall be instituted except with the consent in writing of the Public Prosecutor.”.

Pemotongan tajuk kecil dalam Bahagian XIV

29. Ordinan dipinda dengan memotong tajuk kecil “*Limitation of Time for Proceedings.*” yang terdapat selepas seksyen 496 tetapi sebelum seksyen 497.

Pemotongan seksyen 497

30. Ordinan dipinda dengan memotong seksyen 497.

Pindaan seksyen 512A

31. Subseksyen 512A(1) Ordinan dipinda dengan menggantikan perkataan “in a case where he deems fit and proper to do so” dengan perkataan “with the consent in writing of the Public Prosecutor”.

Penggantian seksyen 516

32. Ordinan dipinda dengan menggantikan seksyen 516 dengan seksyen yang berikut:

“Interpretation of owners. **516.** For the purposes of sections 513 to 515, unless the context otherwise requires, “owner” means—

- (a) every person who owns the ship or has any interest in the ownership of the ship;

- (b) in any case where the ship has been chartered, the charterer; or
- (c) in any case where the owner or charterer is not responsible for navigation and management of the ship, every person who is responsible for the navigation and management of the ship.”.

Jadual Keenam belas baru

33. Ordinan dipinda dengan memasukkan selepas Jadual Kelima belas jadual yang berikut:

“SIXTEENTH SCHEDULE
[section 360]

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

PART I

TEXT OF CONVENTION

CHAPTER I - THE RIGHT OF LIMITATION

Article 1

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term “shipowner” shall mean the owner, charterer, manager and operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraphs 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel itself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2

Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraphs 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Article 3

Claims excepted from limitation

The rules of this Convention shall not apply to—

- (a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

Article 4

Contract barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article 5

Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II - LIMITS OF LIABILITY

Article 6

The general limits

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

- (a) in respect of claims for loss of life or personal injury,
 - (i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 800 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 600 Units of Account; and
 - for each ton in excess of 70,000 tons, 400 Units of Account,
- (b) in respect of any other claims,
 - (i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 400 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 300 Units of Account; and
 - for each ton in excess of 70,000 tons, 200 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

4. For the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

Article 7

The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

2. For the purpose of this Article “claims for loss of life or personal injury to passengers of a ship” shall mean any such claims brought by or on behalf of any person carried in that ship:

- (a) under a contract of passenger carriage, or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Article 8

Unit of Account

The Unit of Account referred to in Articles 6 and 7 is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

Article 9

Aggregation of claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) against the salvor or salvors who are operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

Article 10

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III - THE LIMITATION FUND

Article 11

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.
3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

Article 12

Distribution of the fund

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

Article 13

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.
2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:
 - (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
 - (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
 - (c) at the port of discharge in respect of damage to cargo; or
 - (d) in the State where the arrest is made.
3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

Article 14

Governing law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV - SCOPE OF APPLICATION

Article 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.
2. This Convention shall not apply to:
 - (a) air-cushion vehicles;
 - (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH
CONVENTION

Interpretation

1. In this Part any reference to a numbered article is a reference to the article of the Convention which is so numbered.

Right to limit liability

2. The right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of "shipowner" in paragraph 2 of Article 1 shall be construed accordingly.

Limit for passenger claims

3. (1) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognized by safety regulations, the ship's certificate mentioned in Article 7, paragraph 1 shall be that certificate.

(2) In Article 7, paragraph 2 of the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under any written law in Malaysia.

Units of Account

4. (1) For the purposes of converting the amounts mentioned in Articles 6 and 7 from special drawing rights into Ringgit Malaysia, one special drawing right shall be treated as equal to such a sum in Ringgit Malaysia as the International Monetary Fund has fixed as being the equivalent of one special drawing right for—

- (a) the relevant date under Article 8, paragraph 1; or
- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Minister of Finance stating—

- (a) that a particular sum in Ringgit Malaysia has been fixed as mentioned in subparagraph (1) for a particular date; or
- (b) that no sum has been so fixed for that date and that a particular sum in Ringgit Malaysia has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those Articles; and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Constitution of fund

5. (1) The Minister may, with the concurrence of the Minister of Finance, by order prescribe the rate of interest to be applied for the purposes of Article 11, paragraph 1.

(2) Any order made under subparagraph (1) shall be laid before Dewan Rakyat.

(3) Where a fund is constituted with the court in accordance with Article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

Distribution of fund

6. No lien or other right in respect of any ship or property shall affect the proportions in which under Article 12 the fund is distributed among several claimants.

Bar to other actions

7. Where the release of a ship or other property is ordered under Article 13, paragraph 2 the person on whose application it is ordered to be released shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

Meaning of “court”

8. References in the Convention and the preceding provisions of this Part to the court are references to the High Court.

Meaning of “ship”

9. References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

Meaning of “State Party”

10. An order made by the Minister for the purposes of this paragraph and declaring that any State specified in the order is a party to the Convention shall, subject to the provisions of any subsequent order made for those purposes, be conclusive evidence that the State is a party to the Convention.”.

Peluasan Bahagian III, IV, VI, VIII, IX dan X Ordinan ke Sabah dan Sarawak

34. (1) Peruntukan Bahagian III, IV, VI, VIII, IX dan X Ordinan diperluaskan ke Negeri-negeri Sabah dan Sarawak.

(2) Mana-mana takrif dalam seksyen 2 Ordinan yang perlu bagi memberi kesan kepada peruntukan Ordinan yang diperluaskan hendaklah terpakai kepada peruntukan yang diperluaskan itu.

(3) Apabila sebutan dibuat dalam peruntukan Ordinan yang diperluaskan kepada peruntukan lain dalam Ordinan, peruntukan Ordinan itu hendaklah terpakai kepada peruntukan yang diperluaskan itu setakat mana yang perlu bagi memberi kesan kepada peruntukan Ordinan yang diperluaskan itu.

Pemansuhan peruntukan dalam undang-undang bertulis Sabah dan Sarawak yang bersamaan dengan peruntukan dalam Bahagian III, IV, VI, VIII, IX dan X Ordinan

35. (1) Bahagian III Peraturan-Peraturan Perkapalan Saudagar (Pelaksanaan Konvensyen yang Berhubungan dengan Pengangkutan Barang-Barang melalui Laut dan Liabiliti Pemunya Kapal dan Lain-Lain) 1960 bagi Sarawak [*G.N. S 240/1960*] dimansuhkan.

(2) Apa-apa sebutan kepada Bahagian III Peraturan-Peraturan tersebut hendaklah ditafsirkan sebagai suatu sebutan kepada Bahagian IX Ordinan.

(3) Peruntukan mana-mana undang-undang bertulis yang bersamaan dengan peruntukan dalam Bahagian III, IV, VI, VIII, IX dan X Ordinan dan yang berkuat kuasa dalam Negeri Sabah atau Sarawak sebaik sebelum tarikh atau tarikh-tarikh yang ditetapkan dalam subseksyen 1(3) hendaklah, pada tarikh atau tarikh-tarikh yang ditetapkan itu, dimansuhkan.

Peruntukan dalam Bahagian III, IV, VI, VIII, IX dan X Ordinan hendaklah mengatasi undang-undang bertulis yang tidak selaras atau berlawanan

36. Peruntukan dalam Bahagian III, IV, VI, VIII, IX dan X Ordinan hendaklah mengatasi walaupun terdapat apa-apa yang tidak selaras atau berlawanan dengan peruntukan itu dalam mana-mana undang-undang bertulis yang lain.

HURAIAN

Rang Undang-Undang ini bertujuan untuk meminda Ordinan Perkapalan Saudagar 1952 (“Ordinan”) untuk mengadakan peruntukan bagi perkara-perkara yang termasuk pelaksanaan Konvensyen mengenai Pembatasan Liabiliti untuk Tuntutan Maritim 1976 sebagaimana dipinda oleh Protokol 1996 untuk meminda Konvensyen mengenai Pembatasan Liabiliti untuk Tuntutan Maritim 1976 (“Konvensyen”) di Malaysia.

2. *Fasal 1* mengandungi tajuk ringkas dan peruntukan mengenai permulaan kuat kuasa Akta yang dicadangkan.

3. *Fasal 2* bertujuan untuk memotong subseksyen 300(3) Ordinan memandangkan bahawa seksyen 493 Ordinan sebagaimana yang dipinda oleh *fasal 28* mengadakan peruntukan berkenaan dengan pendakwaan kesalahan di bawah Ordinan atau mana-mana perundangan subsidiari yang dibuat di bawahnya.

4. *Fasal 3* bertujuan untuk mengadakan peruntukan mengenai pindaan kepada takrif bagi ungkapan tertentu di bawah Bahagian VA Ordinan supaya mematuhi Konvensyen Antarabangsa bagi Pencegahan Pencemaran daripada Kapal, 1973 sebagaimana dipinda oleh Protokol 1978, yang kepadanya Malaysia telah menjadi suatu Pihak. *Fasal 4* bertujuan untuk meminda peruntukan tertentu di bawah Bahagian VA Ordinan, iaitu, seksyen 306B, 306CA, 306D, 306G, 306I, 306J, 306JA dan 306Q, untuk memperluaskan pemakaian Bahagian itu kepada zon ekonomi eksklusif.

5. *Fasal 5* bertujuan untuk menggantikan Bahagian IX Ordinan dan memasukkan seksyen baru 358 hingga 365A. Seksyen baru 360 mengadakan peruntukan mengenai pelaksanaan Konvensyen mengenai Pembatasan Liabiliti untuk Tuntutan Maritim 1976 sebagaimana dipinda oleh Protokol 1996 untuk meminda Konvensyen mengenai Pembatasan Liabiliti untuk Tuntutan Maritim 1976, manakala seksyen baru 361 menghendaki kapal-kapal yang memasuki atau meninggalkan sesuatu pelabuhan di Malaysia, atau mana-mana bahagian perairan Malaysia atau zon ekonomi eksklusif untuk mengadakan suatu kontrak insurans atau cagaran kewangan lain yang berkuat kuasa berkaitan dengan kapal itu, yang memenuhi keperluan Konvensyen berkenaan dengan batasan liabiliti. Seksyen baru 364 memberi Menteri kuasa supaya tidak memperuntukkan bagi pemakaian peruntukan yang dinyatakan dalam seksyen itu, dan untuk tidak memasukkan di bawah Konvensyen tuntutan bagi kerosakan menurut pengertian Konvensyen Antarabangsa mengenai Liabiliti dan Pampasan bagi Kerosakan Berkaitan dengan Pengangkutan Bahan Berbahaya dan Beracun melalui Laut, 1996 atau apa-apa pindaan atau protokol kepadanya. *Fasal* ini juga memasukkan suatu seksyen baru 365A yang menghendaki pemunya kapal untuk menanggung suatu kontrak insurans atau cagaran kewangan lain yang berkenaan dengan nakhoda dan pelaut yang dibawa di atas kapal itu bagi meliputi semua tuntutan yang berbangkit daripada suatu kontrak atau selainnya berkenaan dengan kematian, kecederaan diri atau peninggalan nakhoda atau pelaut itu.

6. *Fasal 6* bertujuan untuk meminda seksyen 366 Ordinan bagi memasukkan takrif “pemunya” bagi maksud Bahagian X yang berkenaan dengan bangkai dan salvaj.

7. *Fasal 7* bertujuan untuk menggantikan seksyen 381 Ordinan bagi mengadakan peruntukan mengenai pemindahan bangkai dalam mana-mana pelabuhan, sungai boleh lalu, air pasang surut atau di mana-mana tempat dalam perairan Malaysia yang pada pendapat penerima ialah bangkai yang berbahaya kepada pelayaran, kacau ganggu awam, atau yang menyebabkan kesulitan atau akibat mudarat kepada alam sekitar laut.

8. *Fasal 8* bertujuan untuk memasukkan suatu seksyen baru 381A yang menghendaki pemunya kapal 300 tanan dan lebih untuk menanggung suatu kontrak insurans atau cagaran kewangan lain untuk melindungi daripada liabiliti yang mungkin ditanggung dan sebagaimana dinyatakan dalam seksyen 381 yang dimasukkan oleh *fasal 7*.

9. *Fasal 9* hingga 26 bertujuan untuk meminda seksyen 405, 423, 425, 426, 452, 455, 458, 460, 462, 465, 469, 470, 471, 474, 483B, 484, 486 dan 487 Ordinan, masing-masing, untuk mengadakan peruntukan bagi penambahan denda yang boleh dikenakan berkenaan dengan kesalahan yang dilakukan di bawah seksyen itu.

10. *Fasal 27* bertujuan untuk meminda seksyen 491c Ordinan untuk membolehkan Pengarah Laut untuk menjalankan, tanpa waran, kuasa yang diberikan kepadanya di bawah seksyen itu.

11. *Fasal 28* bertujuan untuk menggantikan seksyen 493 Ordinan untuk memperuntukkan bahawa pendakwaan terhadap suatu kesalahan di bawah Ordinan atau mana-mana perundangan subsidiari yang dibuat di bawahnya hendaklah dimulakan dengan keizinan Pendakwa Raya.

12. *Fasal 30* bertujuan untuk memotong seksyen 497 Ordinan yang berkaitan dengan peruntukan mengenai pembatasan masa berkenaan dengan prosiding bagi suatu kesalahan atau yang berbangkit daripada sebab aduan yang dimulakan di Mahkamah Sesyen atau Mahkamah Majistret. Namun demikian peruntukan khusus dalam Ordinan berkenaan dengan pembatasan masa akan terus terpakai. *Fasal 29* mengadakan peruntukan bagi suatu pindaan yang berbangkit daripada pindaan yang dicadangkan dalam *fasal 30*.

13. *Fasal 31* bertujuan untuk meminda seksyen 512A Ordinan berkenaan dengan pengkompaunan kesalahan di bawah Ordinan.

14. *Fasal 32* bertujuan untuk menggantikan seksyen 516 Ordinan dengan memasukkan takrif bagi ungkapan “pemunya” bagi maksud seksyen 513 hingga 515 Ordinan.

15. *Fasal 33* bertujuan untuk memasukkan Jadual Keenam belas baru yang menyatakan peruntukan dalam Konvensyen mengenai Pembatasan Liabiliti untuk Tuntutan Maritim 1976 sebagaimana dipinda oleh Protokol 1996 untuk meminda Konvensyen mengenai Pembatasan Liabiliti untuk Tuntutan Maritim 1976.

16. *Fasal 34* bertujuan untuk memperluaskan Bahagian III, IV, VI, VIII dan IX Ordinan ke Sabah dan Sarawak supaya menstandardkan undang-undang yang berhubungan dengan nakhoda dan pelaut, kapal penumpang, garis beban dan muatan dan liabiliti pemunya kapal bagi seluruh Malaysia. Peruntukan yang sama di bawah Ordinan Perkapalan Saudagar 1960 bagi Sabah dan Ordinan Perkapalan Saudagar 1960 bagi Sarawak tidak lagi digunakan pada masa ini. *Fasal* ini juga bertujuan untuk memperluaskan Bahagian X Ordinan yang berhubungan dengan bangkai dan salvaj ke Sabah dan Sarawak untuk memastikan undang-undang seragam berhubung dengannya di seluruh Malaysia.

17. *Fasal 35* dan *36* bertujuan untuk memansuhkan peruntukan yang bersamaan dalam peraturan-peraturan yang dibuat di bawah Ordinan Perkapalan Saudagar 1960 bagi Sarawak, dan untuk memperuntukkan bahawa Bahagian III, IV, VI, VIII, IX dan X Ordinan hendaklah mengatasi peruntukan yang tidak selaras atau berlawanan dalam mana-mana undang-undang bertulis yang lain.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan.