



LAWS OF MALAYSIA

Act A1393

**MERCHANT SHIPPING (AMENDMENT AND
EXTENSION) ACT 2011**

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LAWS OF MALAYSIA**Act A1393****MERCHANT SHIPPING (AMENDMENT AND
EXTENSION) ACT 2011**

An Act to amend the Merchant Shipping Ordinance 1952 and to extend specified provisions thereof to the States of Sabah and Sarawak, and to provide for matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Merchant Shipping (Amendment and Extension) Act 2011.

(2) Subject to subsection (3), this Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

(3) This Act comes into operation in the States of Sabah and Sarawak on such date as the Minister may, after consultation with the State authorities, appoint by notification in the *Gazette*.

Amendment of section 300

2. The Merchant Shipping Ordinance 1952 [*Ordinance No. 70/1952*], which is referred to as the “Ordinance” in this Act, is amended by deleting subsection 300(3).

Amendment of section 306c**3. Section 306c of the Ordinance is amended—**

- (a) by substituting for the definition of “discharge” the following definition:

‘ “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) by inserting after the definition of “discharge” the following definition:

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

- (c) by substituting for the definition of “harmful substance” the following definition:

‘ “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.’.

Amendment of sections 306B, 306CA, 306D, 306G, 306I, 306J, 306JA and 306Q

4. The Ordinance is amended—

- (a) in paragraphs 306B(1)(c) and (d), and subsections 306D(6) and 306J(1), by inserting after the words “Malaysian waters” wherever appearing the words “or the exclusive economic zone”;
- (b) in subsections 306CA(1), 306D(1), 306I(1) and 306JA(1) and paragraph 306I(3)(d), by inserting after the words “Malaysian waters,” wherever appearing the words “the exclusive economic zone, the atmosphere,”;
- (c) in subsection 306G(2)—
 - (i) by inserting after the words “Malaysian waters,” the words “the exclusive economic zone, the atmosphere,”; and
 - (ii) by inserting after the words “any such waters,” the words “zone, atmosphere,”; and
- (d) in subsection 306Q(2), by substituting for the words “or Malaysian waters” the words “, or Malaysian waters or the exclusive economic zone”.

Substitution of Part IX

5. The Ordinance is amended by substituting for Part IX the following part:

“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 judgement 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.”.

Amendment of section 366

6. Section 366 of the Ordinance is amended by inserting before the definition of “receiver” the following definition:

‘ “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.’.

Substitution of section 381

7. The Ordinance is amended by substituting for section 381 the following section:

“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 on conviction to a fine of not less than five hundred thousand ringgit and not more than one million ringgit.”.

New section 381A

8. The Ordinance is amended by inserting after section 381 the following section:

“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.”.

Amendment of section 405

9. Section 405 of the Ordinance is amended by substituting for the words “five hundred dollars” the words “fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both”.

Amendment of section 423

10. Subsection 423(2) of the Ordinance is amended by substituting for the word “fifty” the words “five thousand”.

Amendment of section 425

11. Subsection 425(3) of the Ordinance is amended by substituting for the words “one hundred” the words “five thousand”.

Amendment of section 426

12. Section 426 of the Ordinance is amended by substituting for the words “five hundred” the words “five thousand”.

Amendment of section 452

13. Section 452 of the Ordinance is amended by substituting for the word “fifty” the words “five thousand”.

Amendment of section 455

14. Subsection 455(2) of the Ordinance is amended by substituting for the words “five hundred” the words “fifty thousand”.

Amendment of section 458

15. Subsection 458(3) of the Ordinance is amended by substituting for the words “two hundred and fifty” the words “fifty thousand”.

Amendment of section 460

16. Subsection 460(2) of the Ordinance is amended by substituting for the words “one hundred” the words “fifty thousand”.

Amendment of section 462

17. Subsection 462(2) of the Ordinance is amended by substituting for the words “one hundred” the words “five thousand”.

Amendment of section 465

18. Subsection 465(1) of the Ordinance is amended by substituting for the words “two hundred and fifty” the words “ten thousand”.

Amendment of section 469

19. Section 469 of the Ordinance is amended by substituting for the word “fifty” the words “five thousand”.

Amendment of section 470

20. Section 470 of the Ordinance is amended by substituting for the words “one hundred” the words “five thousand”.

Amendment of section 471

21. Section 471 of the Ordinance is amended by substituting for the words “one hundred” the words “five thousand”.

Amendment of section 474

22. Subsection 474(2) of the Ordinance is amended by substituting for the word “one” the word “ten”.

Amendment of section 483B

23. Subsection 483B(2) of the Ordinance is amended by substituting for the word “one” the word “ten”.

Amendment of section 484

24. Section 484 of the Ordinance is amended by substituting for the word “one” the word “ten”.

Amendment of section 486

25. Subsection 486(2) of the Ordinance is amended by substituting for the words “one hundred” the words “five thousand”.

Amendment of section 487

26. Section 487 of the Ordinance is amended by substituting for the words “one hundred” the words “five thousand”.

Amendment of section 491c

27. Subsection 491c(1) of the Ordinance is amended by deleting the words “, with a warrant”.

Substitution of section 493

28. The Ordinance is amended by substituting for section 493 the following section:

“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.”.

Deletion of subheading in Part XIV

29. Part XIV of the The Ordinance is amended by deleting the subheading “*Limitation of Time for Proceedings.*” appearing after section 496 but before section 497.

Deletion of section 497

30. The Ordinance is amended by deleting section 497.

Amendment of section 512A

31. Subsection 512A(1) of the Ordinance is amended by substituting for the words “in a case where he deems fit and proper to do so” the words “with the consent in writing of the Public Prosecutor”.

Substitution of section 516

32. The Ordinance is amended by substituting for section 516 the following section:

“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.”.

New Sixteenth Schedule

33. The Ordinance is amended by inserting after the Fifteenth Schedule the following schedule:

“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.”.

Extension of Parts III, IV, VI, VIII, IX and X of the Ordinance to Sabah and Sarawak

34. (1) The provisions of Parts III, IV, VI, VIII, IX and X of the Ordinance are extended to the States of Sabah and Sarawak.

(2) Such of the definitions in section 2 of the Ordinance as are necessary to give effect to the extended provisions of the Ordinance shall apply to those extended provisions.

(3) Where references are made in the extended provisions of the Ordinance to other provisions in the Ordinance, such provisions of the Ordinance shall apply to those extended provisions to such extent as may be necessary to give effect to the extended provisions of the Ordinance.

Repeal of provisions in written laws of Sabah and Sarawak corresponding to the provisions of Parts III, IV, VI, VIII, IX and X of the Ordinance

35. (1) Part III of the Merchant Shipping (Implementation of Conventions Relating to Carriage of Goods by Sea and to Liability of Shipowners and Others) Regulations 1960 of Sarawak [*G.N. S 240/1960*] is repealed.

(2) Any reference to Part III of the said Regulations shall be construed as a reference to Part IX of the Ordinance.

(3) The provisions of any written law corresponding to the provisions of Parts III, IV, VI, VIII, IX and X of the Ordinance and in force in the State of Sabah or Sarawak immediately before the date or dates appointed in subsection 1(3) shall, upon the dates or dates so appointed, be repealed.

Provisions of Parts III, IV, VI, VIII, IX and X of the Ordinance to prevail over inconsistent or contrary written law

36. The provisions of Parts III, IV, VI, VIII, IX and X of the Ordinance shall prevail notwithstanding anything inconsistent with or contrary to those provisions in any other written law.

