

Malaysian Maritime Enforcement Agency Act No. 633 of 2004.

An Act to establish the Malaysian Maritime Enforcement Agency to perform enforcement functions for ensuring the safety and security of the Malaysian Maritime Zone with a view to the protection of maritime and other national interests in such zone and for matters necessary thereto or connected therewith.

PART I PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Malaysian Maritime Enforcement Agency Act 2004.
- (2) 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 in different parts of Malaysia.

2. Interpretation.

In this Act, unless the context otherwise requires-

"Agency" means the Malaysian Maritime Enforcement Agency established under section 3;

"relevant agency" means a body or agency that is for the time being responsible in Malaysia for the enforcement of any federal law which is applicable in the Malaysian Maritime Zone;

"offence" means any offence under any federal law which is applicable in the Malaysian Maritime Zone;

"Director General" means the Director General of Malaysian Maritime Enforcement appointed under subsection 4(1);

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

"Minister" means the Minister charged with the responsibility for Malaysian maritime enforcement;

"officer of the Agency" includes the Director General and any officer appointed under subsection 5(1);

"continental shelf" means the continental shelf of Malaysia as defined under section 2 of the Continental Shelf Act 1966 [*Act 83*];

"internal waters" means any areas of the sea that are on the landward side of the baselines from which the breadth of the territorial sea of Malaysia is measured;

"**Malaysian fisheries waters**" means the Malaysian fisheries waters as defined under section 2 of the Fisheries Act 1985 [*Act 317*];

"**exclusive economic zone**" means the exclusive economic zone of Malaysia as determined in accordance with the Exclusive Economic Zone Act 1984 [*Act 311*];

"**Malaysian Maritime Zone**" means the internal waters, territorial sea, continental shelf, exclusive economic zone and the Malaysian fisheries waters and includes the air space over the Zone.

PART II

ESTABLISHMENT OF AGENCY AND APPOINTMENTS

3. Establishment of the Malaysian Maritime Enforcement Agency.

(1) For the purpose of this Act, the Malaysian Maritime Enforcement Agency is established.

(2) The Agency shall, subject to this Act, be employed in the Malaysian Maritime Zone for the maintenance of law and order, the preservation of the peace, safety and security, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.

4. Appointment of the Director General of the Agency.

(1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint a Director General of Malaysian Maritime Enforcement, who shall head the Agency, from among members of the public services for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) The period of appointment of the Director General shall not extend beyond the date of his compulsory retirement from the public service, but where he attains the age of such compulsory retirement he may be re-appointed as Director General by the Yang di-Pertuan Agong, on the advice of the Prime Minister, on contract for such period and on such terms and conditions as may be specified in the instrument of appointment.

(3) The Director General shall, during the period of his appointment as set out in the instrument of appointment, hold office at the pleasure of the Yang di-Pertuan Agong, subject to the advice of the Prime Minister.

(4) The Director General shall, during his term of office as such, be deemed to be a member of the general public service of the Federation for purposes of discipline.

(5) The Director General shall be responsible for the direction, command, control and supervision of all matters relating to the Agency.

(6) The Director General shall, before assuming the duties and responsibilities of his office, make, in such manner as he may declare to be most binding on his conscience before the Yang di-Pertuan Agong, such declaration as may be prescribed by the Minister by regulations made under section 19.

(7) There shall be issued to the Director General a certificate of appointment in the form of an authority card as evidence of his appointment.

5. Appointment of other officers of the Agency.

(1) There shall be appointed such number of officers of the Agency as may be necessary, whose ranks shall be determined by the Yang di-Pertuan Agong by order, for the purpose of carrying into effect the provisions of this Act.

(2) The Yang di-Pertuan Agong may, in the order made under subsection (1), determine that the ranks of such appointed officers shall be regarded as equivalent to the ranks of-

(a) police officers as specified in or under the Police Act 1967 [*Act 344*];

(b) officers of customs as specified in or under the Customs Act 1967 [*Act 235*]; and

(c) any other officers whose ranks are specified in or under any other written law, and the Criminal Procedure Code [*Act 593*] and laws specified in subsection 7(3) shall be construed accordingly.

(3) An officer appointed under subsection (1) shall have such powers as may be provided for him under this Act and shall be subject to the direction, command, control and supervision of the Director General or any other officer of the Agency superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties in compliance with such directions or instructions as may be specified orally or in writing by the Director General or any other officer of the Agency superior to him in rank.

(4) A certificate of appointment in the form of an authority card shall be issued to every officer of the Agency appointed under subsection (1), and such card shall be signed by the Director General and shall be *prima facie* evidence of the appointment under this Act.

PART III
FUNCTIONS AND POWERS OF THE AGENCY

6. Functions of the Agency.

(1) The functions of the Agency shall be-

- (a) to enforce law and order under any federal law;
- (b) to perform maritime search and rescue;
- (c) to prevent and suppress the commission of an offence;
- (d) to lend assistance in any criminal matters on a request by a foreign State as provided under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*];
- (e) to carry out air and coastal surveillance;
- (f) to provide platform and support services to any relevant agency;
- (g) to establish and manage maritime institutions for the training of officers of the Agency;
and
- (h) generally to perform any other duty for ensuring maritime safety and security or do all matters incidental thereto.

(2) Subject to the provisions of this Act, the functions of the Agency shall be performed within the Malaysian Maritime Zone.

(3) Notwithstanding subsection (2), the Agency shall be responsible-

- (a) for the performance of maritime search and rescue;
- (b) for controlling and preventing maritime pollution;
- (c) for preventing and suppressing piracy; and
- (d) for preventing and suppressing illicit traffic in narcotic drugs, on the high seas.

7. Powers of the Agency.

(1) The Agency shall have powers to carry out the purposes mentioned in subsection 3(2) and to do all things reasonably necessary for or incidental to the performance of its functions under section 6.

(2) In particular, but without prejudice to the generality of subsection (1), the Agency shall have power-

- (a) to receive and consider any report of the commission of an offence;

(b) to stop, enter, board, inspect and search any place, structure, vessel or aircraft and to detain any vessel or aircraft;

(c) to demand the production of any licence, permit, record, certificate or any other document and to inspect such licence, permit, record, certificate or other document or make copies of or take extracts from such licence, permit, record, certificate or other document;

(d) to investigate any offence which it has reason to believe is being committed, or is about to be committed or has been committed;

(e) to exercise the right of hot pursuit;

(f) to examine and seize any fish, article, device, goods, vessel, aircraft or any other item relating to any offence which has been committed or it has reason to believe has been committed;

(g) to dispose of any fish, article, device, goods, vessel, aircraft or any other item relating to any offence which has been committed or it has reason to believe has been committed;

(h) to arrest any person whom it has reason to believe has committed an offence; and (i) to expel any vessel which it has reason to believe to be detrimental to the interest of or to endanger the order and safety in the Malaysian Maritime Zone.

(3) Without prejudice to the generality of subsection (1), an officer of the Agency shall have, for the purpose of this Act, all the powers which any relevant agency may exercise under any federal law which is applicable in the Malaysian Maritime Zone.

(4) Notwithstanding subsection (2), no vessel shall be stopped, entered, boarded, searched, inspected or detained within the area of territorial sea if the passage of the vessel within the territorial sea is an innocent passage.

(5) For the purpose of subsection (4) the passage of a vessel is an innocent passage if and so long as the passage of the vessel is not prejudicial to the peace, good order or security of Malaysia.

(6) Notwithstanding any written law, for the purposes of subsection (5), the following activities shall be considered to be prejudicial to the peace, good order and security of Malaysia:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of Malaysia or any act which in any manner is a violation of the principles of international law;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of Malaysia;

(d) any act of propaganda aimed at affecting the peace, defence or security of Malaysia;

- (e)* the launching, landing or taking on board of any aircraft;
- (f)* the launching, landing or taking on board of any military device;
- (g)* the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or health laws of Malaysia;
- (h)* any act of pollution;
- (i)* any fishing activities;
- (j)* the carrying out of unauthorised research or survey activities;
- (k)* any act aimed at interfering with any systems of communication or any other facilities or installations of Malaysia; and
- (l)* any other activity not having a direct bearing on passage.

PART IV GENERAL

8. Prosecution.

Notwithstanding any other written law, where a person is arrested under this Act, no prosecution shall be instituted against that person except by or with the written consent of the Public Prosecutor.

9. Report on status of investigation.

(1) Any person who has given information to the Agency under any federal law may request for a report on the status of the investigation of the offence complained of in his information from the Agency.

(2) The Agency shall give a status report on the investigation of such offence to the informant not later than two weeks from the receipt of the request made under subsection (1).

(3) Notwithstanding subsection (2), the Agency shall not be required to provide a status report on an investigation of an offence-

(a) unless the offence complained of is a seizable offence;

(b) unless a period of four weeks has lapsed from the date of the giving of the information; and

(c) which contains any matter that is likely to adversely affect the investigation into the offence or the prosecution of the offence.

(4) Where a request has been made under subsection (1) and the Agency has failed to furnish the informant with a status report within the period specified in subsection (2), but subject to subsection (3), the informant may make a report to the Public Prosecutor of the failure.

(5) Upon receipt of the report under subsection (4), the Public Prosecutor shall direct the Agency to furnish him with a detailed status report on the investigation that has been conducted by the Agency in relation to the offence in the information given by the informant.

(6) The Public Prosecutor shall cause to be furnished to the informant, or direct the Agency to furnish to the informant, a status report containing such information as may be directed by the Public Prosecutor.

(7) Any officer of the Agency who fails to comply with a directive of the Public Prosecutor under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand ring

10. Protection of officers of the Agency.

No action shall be brought against any officer of the Agency in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties under this Act.

11. Identification.

Every officer of the Agency when acting under this Act shall, on demand, declare his office and produce to the person against whom he is acting or from whom he seeks any information the authority card issued to him under this Act.

12. Carrying of arms.

An officer of the Agency may in the performance of his duties carry arms.

13. Desertion.

(1) Any officer of the Agency who, without reasonable cause, the burden of proof of which lies on him, absents himself from duty for a continuous period of twenty-one days or in circumstances which show that he has the intention of not returning to his duty shall be deemed to have deserted, and commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months.

(2) Where a person has been convicted under this section, his Disciplinary Authority may direct that all arrears of pay due to such person be forfeited

14. Mutiny.

Any officer of the Agency who causes, incites, or joins in any mutiny or disaffection against the Agency or conspires with any other person to cause such mutiny or disaffection, or does not use his utmost endeavour to suppress any such mutiny or disaffection or, having knowledge of any mutiny or disaffection or intended mutiny or disaffection, does not, without delay, give information of such mutiny or disaffection to the officer of the Agency to whom he is subordinate, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

15. Penalty for causing disaffection.

(1) Any person who causes or attempts to cause or does any act calculated to cause disaffection amongst the officers of the Agency, or induces or attempts to induce any such officer to withhold his services or to commit a breach of discipline, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

(2) Any officer of the Agency may, without warrant, arrest any person who is reasonably suspected of having committed an offence under this section.

16. Co-ordination.

The Agency and the relevant agencies shall closely co-ordinate, consult and liaise with each other and render to each other assistance for carrying out the provisions of this Act.

17. Power during emergency, special crisis or war.

(1) Notwithstanding any provisions of this Act or any other federal law, the Agency, or any part of the Agency as may be determined by the Minister, shall be under the general command and control of the Armed Forces of Malaysia during any period of emergency, special crisis or war.

(2) If any doubt arises as to whether an emergency, special crisis or war has occurred, a proclamation signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof of that fact.

18. Standing orders.

The Director General may issue administrative orders to be called "Standing Orders", not inconsistent with the provisions of this Act, on the general control, training, duties and responsibilities of officers of the Agency, and for such other matters as may be necessary or expedient for the good administration of the Agency or for the prevention of the abuse of power or neglect of duty, and generally for ensuring the efficient and effective functioning of the Agency.

19. Regulations.

The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.