THE PORTS ACT, 2004

ARRANGEMENT OF SECTIONS

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SCHEDULES

No. 17 of 2004

I ASSENT,
Benjamin W. Mkapa
President
8th February, 2005.

An Act to establish the Ports Authority and to provide for its functions and powers; to repeal the Tanzania Harbours Authority Act, 1977 and to provide for related matters.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART 1
PRELIMINARY PROVISIONS

Short title and comencement

1.-(1) This Act may be cited as the Ports Act, 2004.

(2) This Act shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Application

2.-(1) This Act shall apply to seaports and inland waterways ports in Mainland Tanzania and Tanzania Zanzibar.

(2) Notwithstanding the provisions of subsection (2), the Minister may, by notice in the Gazette declare any other place and any navigable river to be a sea port or an inland waterways port for the purpose of this Act.

Interpretation

3. In this Act, unless the context otherwise requires -

"Act" means the Tanzania Ports Authority Act, 2004;

"appointed day", means the date on which this Act shall come into operation;

Act No.8 of 2003

"authorized employee" means an employee authorized to exercise the powers or perform the duties in respect of which the expression is used;

"auxiliary police" means any member of the Auxiliary Police Force;

"basic infrastructure" means sea-locks, breakwaters, piers, sea walls and other protective works, not designed for the transfer of goods, maritime accesses and canals, primary roads to and from a port, and also railway tracks, pipeline tracks and buffer-zones situated at the borders of a port;

"beacon" means a specially constructed object forming a conspicuous mark as a fixed aid to navigation;

"Board" means the Board of Directors of the Authority established pursuant to section 6;

"buoy" means a floating object of any size, shape and colour which is moored to the seabed and serves as an aid to navigation or for specific purposes;

"Chairman" means the chairman of the Board;

"concession agreement", means an agreement entered into by the Authority and any person or company pursuant to which to provide marine or port services in a specific area of the port or terminal operations;

"container" means a metal box of at least twenty feet in length, suitable for transport of cargo;

"dangerous cargoes" means such cargoes, whether packaged, carried in bulk packaging or in bulk, as may be prescribed in the International Maritime Dangerous Goods Code;

"Director General" means the Director General appointed under section 34;

"dock" means an artificial excavation or construction in which vessels can be placed for loading, unloading fitting out or repairing and includes gridirons, slips, keel blocks, inclined planes and all machinery, works, fixtures and things whatsoever, attached or pertaining thereto;

"dues" includes port dues and wharf age levied under this Act but does not include rates and pilotage dues;

"equipment" includes any appliance, apparatus, machinery, system or accessory used or intended to be used for the purposes of providing marine or port services and facilities;

"fair competition" means to promote and protect effective competition

in Port services, to protect consumer from unfair and misleading market conduct and to provide for other related matters;

"goods" includes dangerous cargoes, animals, carcasses, baggage, containers and any other movable property of any kind whatsoever and whether in a refrigerated form or otherwise;

"harbour craft" means any vessel which is used in the port for any purpose;

"Harbour Master" means Harbour Master appointed under section 36;

"inland waterways ports" means a place, whether proclaimed a port or not and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passenger which is on the navigable lake, river or cause way to which the Minister may, by notice published in the Gazette, declare;

"land lord" means the Tanzania Ports Authority;

"lighthouse" means a distinctive structure on or off a coast exhibiting a major light designed to serve as an aid to navigation;

"marine police" means a department of the regular police force specialized in port issues;

"marine facility" means capability of carrying out a variety of ship maintenance repairs and modification work, where scientific equipment of every description can be loaded unloaded. Provision of mechanical and electrical support for marine field operations, this include fork lifts, mobile cranes bridles, cable spooling devices, truck mounted, winches boarding float, boat Ramp etc;

"marine services" means, *inter alia*, all services in respect of towage and pilotage of vessels, sounding of fairways and other navigable waters, the supply of water and fuel to vessels and sunken vessels, salvage of vessels, the fighting of fires aboard vessels, and all related activities as well as the provision of facilities, vessels and equipment to perform these activities and the term "marine services provider shall be construed accordingly;

"maritime access" means fairway, dredged channel and other waters providing access to a port, equipped with aids to navigation for sea-going and inland vessels;

"Master" includes any person, other than a pilot, having command or charge of any vessel;

"member" means member of the Board of the Authority;

"Minister" means the Minister responsible for matters relating to ports;

"operational infrastructure" means port facilities and constructed

works dedicated to commercial handling of sea-going and inland vessels such as quay walls, piers, jetties, roll-on and roll-off facilities, berthing aids and also secondary connecting roads within the port areas, including all appurtenances and components thereof;

"operator" means any person who, or a body corporate which, for the purposes of this Act performs any duty as a contractor, agent or a lessee to carry out the functions of port operations;

"owner", in relation to any vessel, includes any part owner, charterer, operator, consignee or mortgagee in possession of the vessel or any duly authorized agent of any such person;

"passenger" means any person carried on ship as defined in the Merchant Shipping Act 2003;

"pilot" means a person who is qualified to assist the master of a ship to navigate when enrering or leaving a port;

"pilotage port" means port whereby a pilot does an act of assisting the master of a ship in navigating when entering or leaving a port;

"port infrastructure" means supporting infrastructure necessary for cargo transport including adequate channel depths, with respective safety installations, rail linkage, link span, port basins, quay construction, major highways, the land and port area, power, water and telecommunications;

"port" means seaports or inland waterways ports;

"port community system" means a platform that allow all parties involved in the port logistic to share and exchange harmonized information regarding cargo and ships by applying information communication technology;

"Port Master" means a Port Master appointed under section 35;

"Port Manager" means the port manager appointed, under section 35;

"port services and facilities" means and includes port terminal services and facilities for the handling, storage and transportation of goods on land and for the handling of passengers carried by vessels and the term "port service provider" shall be construed accordingly;

"premises" includes messuagess, houses, buildings, structures, lands, tenements, easements and hereditaments of any tenure, whether open or enclosed, whether built-on or not, whether public or private, and whether maintained or not under statutory authority;

"rates" means any rates or charges leviable under this Act and includes any toll or rent but does not include dues;

Act No. 9 of 2001

"regulatory authority" means the Surface and Marine Transport

Regulatory Authority established under the Surface and Marine Transport Regulatory Authority Act, 2001;

"seamen" means any person normally engaged on ships' articles on any vessel going beyond the limits of the port, but does not include:

(a) masters, mates, engineers, radio officers, pursuers, cadets, laundrymen and stevedores;

(b) probationer deckhands, probationer engine room hands and probationer catering hands under any training scheme approved by the Authority.

(c) Any other person employed on board the vessel who is engaged in duties which are not normally the duties of seamen;

(d) "seaport" means any sea and land area along the Tanzania coast channel leading into such place, forming an operational and economic entity with the purpose of accommodating seagoing vessels.

"security officer" means any person employed or designated by the Authority to whom duty to protect a port or any part of the port and to whom powers to take any appropriate measurers for the protection of persons or property within the seaport or inland water ways ports;

"SUMATRA" means the regulatory authority established under the Surface and Marine Transport Regulatory Authority Act, 2001; Act No. 8 of 2003

"superstructure" means shed, silos, warehouses and housed facilities of all kinds, and all infrastructures not identified under basic and operational infrastructures;

"shipping services" includes pilotage, tug services, mooring and unmooring, single bouymooring, dockage and bouyage, navigational dues, lighterage and pontoons port dues jetty services and other services to ships;

"Tariff Book" means the tariff book published by the Authority or operator specifying the rates of fees and charges for specified services;

"Tribunal" means the Fair Competition Tribunal established by section 83 of the Fair Competition Act, 2003;

"vehicle" means any vehicle other than a ship;

"vessel" includes any ship or boat or air cushioned vehicle or floating rig or platform used in any form of operations at sea or in port, or any other description of a vessel;

"wharf " includes a pier, jetty, ramp or other landing place.

PART II
ESTABLISHMENT OF THE TANZANIA PORTS AUTHORITY

Establishment of Tanzania Ports Authority

4.-(1) There is established an authority to be known as the Tanzania Ports Authority which shall be a body corporate with perpetual succession and a common seal and shall, in its own name, be capable of -

(a) suing and being sued;

(b) acquiring, holding and alienating movable or immovable property;

(c) borrowing and lending;

(d) entering into any contract or other transaction, and doing or suffering to do all such other acts and things which a body corporate may lawfully perform, do or suffer to be done.

(2) Notwithstanding the preceding provisions of this section and the Authority having the status of a body corporate, the Attorney-General shall have the right to intervene in any suit or matter instituted by or against the Authority.

(3) Where the Attorney-General intervenes in any matter in pursuance of subsection (2), the provisions of the Government Proceedings Act, 1967, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

Underlying objective of the Authority

5. It shall be the underlying objective of the Authority in carrying on its functions and exercising its powers provided for under this Act, to enhance the advantages of geographical position of Tanzania as maritime nation by -

(a) promoting effective management and operations of sea and inland waterways ports;

(b) securing the provision of, or to provide services in relation to loading and unloading of cargo and passenger services;

(c) developing, promoting and managing port infrastructure and superstructure;

(d) maintaining port safety and security; and

(e) entering into contractual obligations with other persons or

body of persons in order to secure the provision of port services, whether by means of concession; joint venture, public, private partnership or other means, and to this end to delegate its own function of providing port services to one or more port operators.

Board of Directors of the Authority

6.-(1) There shall be a Board of Directors which shall be responsible for management of the business and affairs of the Authority.

(2) The Board shall consist of-

(a) a Chairman who shall be appointed by the President;

(b) not less than five but not more than eight members who shall be appointed by the Minister from among persons who have experience in management.

(3) The First Schedule to this Act shall have effect with regards to the proceedings and other matters in relation to the Board.

Powers of the Board

7. Subject to any directions which may be given by the Minister, the Board may-

(a) Approve any individual capital work, for the purposes of the Authority, not included within a programme of works approved by the Minister of which the estimated cost does not exceed such amount as the Minister may determine from time to time;

(b) consider legislative proposal relating to ports and recommend their enactment to the Minister; and

(c) approve the provision of port services or facilities requested by the Government of any neighbouring country.

(2) The Board may give directions to the Director General in relation to the carrying out of any of the functions of the Authority.

Power of the Board to appoint committee

8.-(1) The Authority may form and appoint from among its members, such number of committees as it deems necessary for purposes which, in the opinion of the Authority, would be better regulated through committees.

(2) The Board may, subject to such conditions or restrictions as it deems necessary, delegate to any committee or employee of the Authority any functions or powers vested in it by this Act or any other written law, except for powers to prescribe or levy dues, setting rates or borrow money.

(3) Any power or function so delegated shall be exercised or performed by the committee in the name and on behalf of the Authority.

(4) The Board may exercise any power conferred upon it or perform any function under this Act or any other written law, notwithstanding the delegation of the power or function made.

Observance of impartiality

9. In order to maintain impartiality of the Board and for the purpose of avoiding conflict of interest, a person shall not be qualified for appointment as a member of the Board if owing to the nature of the office he holds is likely to exert undue influence on any matter to which the Authority is responsible.

Conflict of interest

10.-(1) A member of the Board or an employee of the Authority shall be considered to have a conflict of interest for the purposes of this Act, if he has or acquires any pecuniary or other interest that would conflict with the proper performance by that person of his functions or exercise of powers as a member of the Board or employee of the Authority.

(2) Where at any time a member of the Board or employee of the Authority has a conflict of interest in relation to -

(a) any matter before the Authority for consideration or determination; or

(b) any matter the Authority would reasonably expect to be likely to come before it for consideration or determination, that member or employee shall immediately disclose the interest held by him to the other members of the Board or the Director General and refrain from taking part or any

the Director General and refrain from taking part or any further part, in the consideration and, or determination of the matter.

(3) Upon the Authority becoming aware of any conflict of interest, it shall make a determination as to whether that conflict is likely to interfere with the proper and effective performance of the functions of the Authority or of the powers of the Authority and the member or employee who holds conflict of interest shall not vote on the matter under consideration.

(4) A member of the Board or employee of the Authority shall be considered to have conflict of interest if -

(a) he fails without reasonable cause to declare his interests as required;

(b) he knowingly makes a false or misleading declaration with the purpose of influencing the decision.

Fees and allowances

11. Members of the Authority shall be paid fees, allowances and as may be approved by the Minister.

PART III
FUNCTIONS AND POWERS OF THE AUTHORITY

Functions of the Authority

12.-(1) Subject to the provisions of this Act, the functions and powers of the Authority shall be -

(a) to administer land and waters within the limits of the ports;

(b) to promote the use, improvement and development of the ports and their hinterlands;

(c) to regulate and control navigation and the protection of the environment there of;

(d) to negotiate and or enter into lease, concession, operating contract, management contract, service contract or any other form of contractual arrangement with any person including a body corporate for the purpose of delegating powers of the Authority to the said person or body corporate to carry out such activities as provided in the contractual document;

(e) to supervise and manage lease, concession, operating contract, management contract, service contract or any other form of contractual arrangement entered into in accordance with paragraph (d);

(f) to regulate and control the transport, handling and storage of dangerous goods within the limits of the ports and the approaches to the ports;

(g) to provide and maintain adequate and efficient aids to navigation;

(h) to deal with any public emergency within the limits of the ports and the approaches to the ports;

(i) to provide for (whether by itself, committee or by any other party) the construction and adequate maintenance of basic infrastructure and operational infrastructure of the ports;

(j) the promotion of measures for the safety of life in the port and the protection of the environment;

(k) the promotion of training, research and development in the fields of marine and port services and facilities in collaboration with universities and other educational institutions for the promotion of technical and operations education and training in the fields of marine and port and port related services and facilities;

(l) promote local and foreign investments in port services and facilities;

(m) to maintain or provide for the maintenance of all other premises in the ports, except those premises, which are leased out, or concessioned out to marine and/or port services providers;

(n) to clean, deepen, improve or alter approaches and water areas within the limits of the ports;

(o) to ensure that there are provided in the ports adequate and efficient marine and port services and facilities;

(p) to ensure that any person by whom any marine or port services and facilities fall are efficiently provided whilst maintaining independent financial viability;

(q) to provide for (whether by itself or by any other party) a rail transport system within the limits of the ports, when and if feasible;

(r) to promote the construction, improvement, development and efficient use of hinterland connections of the ports (rail, road, waterway and pipeline) and enter into any arrangement with any body responsible for rail, road or pipeline services in Tanzania and abroad;

(s) to hold shares in any private company and/or to or acquire any subsidiary company, when the Authority consider this necessary for the proper conduct of its affairs;

(t) to prohibit, control and regulate the use of approaches, water areas and land within the limits of the ports and the presence of any person, ship vehicle and goods;

(u) to provide and maintain the modern Information and Communication Technology facilities for the Port Community Members to share and exchange cargo and ship information using a single platform; and

(v) to administer port security standards and port boundaries;

(w) to determine tariffs, rates and charges for services provided by the Authority.

(2) In addition to the functions specified under sub-section (1), the Authority may undertake other such functions as the Minister may assign to it.

(3) Subject to the provisions of sub-section (4), the Authority-

(a) may, for a period not exceeding two years, provide port services and facilities if the operator has failed to discharge

his contractual obligations with respect to delivery of such services; or

(b) shall provide port services and facilities in the period during which no operator has entered into contractual agreement to deliver such services.

(4) The Minister may, by notification in the *Gazette* extend the period referred to in sub-section (3) in the event of occurrence of special circumstances which prevent the provisions of port services and facilities to a new operator save that the extension shall not exceed two years.

Powers of the Authority

13.-(1) Subject to the provisions of this Act, the Authority may carry on such activities which are advantageous, necessary or convenient for carrying on or in connection with the discharge of its functions and duties under this Act or any other written law, and in particular, may exercise any of the powers specified in this Act.

(2) This section shall not be construed as limiting any powers of the Authority conferred by this Act or any other written law.

Port limits and jurisdiction over periport areas

14.-(1) The President may, by order published in the *Gazette,* define the limits of any port.

(2) The President may, by order, confer upon the Authority urisdiction to plan and develop or to carry out such development projects within such inshore or off shore area of any port as the President may in such order specify.

Powers under law to survey

15.-(1) Any authorized employee of the Authority may for the purposes of the Authority , enter upon any land and survey such land or any portion thereof.

(2) Where damage to land is caused by reason of the exercise of powers conferred by this section, the owner or occupier of the land shall be entitled to compensation.

Power to enter land to prevent accidents, etc

16.-(1) Any authorized employee of the Authority may for the purposes of preventing the occurrence of any accident, preserving the safety of navigation or the safe operation of any service provided by the

Authority, or repairing any damage caused by the accident, enter upon any land and-

(a) cut down or remove any tree or other obstruction, not being a building, which obscures the view of any beacon or other fixed signal or which is likely to cause any obstruction or any danger to the safety of navigations or of any such service;

(b) execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident.

(2) If any tree or other obstruction cut down or removed pursuant to subsection (1) (a), existed subsequent to the erection of any beacon or fixed signal or to the service being provided at that place, then no compensation shall be payable in respect of such entry, or the cutting down or removal of such tree or other obstruction.

(3) Where any person erects any building which obscures or is likely to obscure the view of any beacon or other fixed signal or navigation or to the operation of any service provided for under this Act or any other written law without approval of the Director General, the Authority may, apply to the court for an order for the demolition or modification of such building or, as the case may require, for the payment to the Authority of the cost incurred in resisting or replacing any beacon, signal or navigation equipment to prevent such obstruction or danger and the court, may make such order as to the payment of compensation and costs as circumstances may require.

Power to enter lan to alter position of pipes

17.-(1) The Authority, or any authorized employee may, for the purposes of the Authority, enter upon any land and alter the position of any pipe for the supply of gas, oil, water or compressed air or the position of any electric, telephone or electronic installations or the position of any drain.

(2) Where the Authority exercises any power under subsection (1), it shall give reasonable notice of its intention so to do to the authority or person having control of the pipes, water or drain and -

(a) such authority or person may authorize a representative to superintend such work and may require the Authority to execute such work to the satisfaction of such representative;

(b) the Authority shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, for the continuance of the telephonic or electronic communications or for the maintenance of the drainage, as the case may be, during the execution of such work.

(3) Where any damage is caused by reason of the exercise of the powers conferred by this section, the person suffering such damage shall be entitled to compensation.

Power to take water

18. The Authority may take any water from any natural water course subject to any law regulating the taking of any such water.

Authority note to be required- to provide services in certain cicumstances

19. The Authority shall not provide to any person or authority, port facilities or services ancillary thereto, either gratuitously or at a rate or charge which is insufficient to meet the cost involved in the provision of such facility or service unless the person or authority concerned undertakes to make good the amount of the loss incurred.

Directions by the Minister

20.-(1) The Minister may give to the Authority directions in relation to the discharge of the functions and the exercise of the powers under this Act.

(2) Without prejudice to subsection (1), the Minister may by certificate under his hand, give directions relating to -

(a) the occurrence of any emergency, in the interest of public security, national defence, or relations with the Government of another country; or

(b) discharge or facilitate the discharge of an obligation binding the Government by virtue of its being a member of an international organization or a party to an international agreement.

(3) The Authority shall give effect to any direction given by the Minister, save that, the Government may-

(a) pay compensation for any damage caused to the Authority by reason of its compliance with the direction of the Minister;

(b) make grants to the Authority for defraying or contributing towards loss which it may sustain by reason of compliance with the direction of the Minister.

(4) If any doubt arises as to the exercise of an emergency or as to whether any act done under this section was in the interests of public security, national defence or the relations with a government of any other country. a certificate signed by the Minister shall be conclusive evidence of the matter in question.

Furnishing of information

21.-(1) The Authority or any person authorized in that behalf may, by notice require any person to furnish, within such period as may be specified in the notice, all documents and information relating to any matter as may be required by the Authority for the purposes of this Act as are within the knowledge of that person or in his custody or under his control, with exception of confidential documents or information of a financial nature.

(2) Any person who, on being required to furnish any document or information under subsection (1), fails to comply with the notice, commits an offence.

(3) If any doubt arises as to the confidential or financial nature of the documents or information required pursuant to subsection (1), the Authority may apply within fourteen days to the court of or the decision on the issue.

(4) A person who-

(a) intentionally alters, suppresses or destroys any document which he has been required to furnish; or

(b) in furnishing any estimate, return or other information required of him, makes any statement which he knows to be false in any material particular, commits an offence.

Symbol, design or representation of the Authority

22.-(1) The Authority shall have the exclusive right to the use of such symbol, design or representation as it may select or devise and thereafter display or exhibit it in connection with its activities or affairs.

(2) Any person who uses a symbol, design or representation identical with that of the Authority or which so resembles the symbol, design or representation as to deceive or cause confusion or to be likely to deceive or cause confusion, commits an offence.

Inconsistency with the Act Act No. 9 of 2001

23. Where there is any inconsistency between the provisions of this Act and the provisions of the Surface and Marine Transport Regulatory Authority Act, 2001, the provisions of the Surface and Marine Transport Regulatory Authority Act, 2001 shall prevail and this Act shall be read down to the extent of such inconsistency.

Regulation of port safety and security

24.-(1) Without prejudice to the functions of the Authority referred to under Part III, the Surface and Marine Transport Regulatory Authority shall perform function in relation to the port safety and security.

(2) Port safety and security shall be regulated in accordance with the provisions of Merchant Shipping Act, 2003.

PART IV
PROVISION OF SERVICES BY OPERATORS

Provision of services by the operator

25. Subject to the terms and conditions of the relevant agreement, the operator may-

(a) provide the services of loading and discharging of any vessel including ancillary services, both on board vessels and ashore;

(b) provide passenger services;

(c) perform tallying, sorting, weighing, measuring, storing, warehousing or handling of any goods;

(d) erect, use, maintain, repair, cause to be erected and to control

erection and use of warehousing, shops, dwelling and any other buildings, works or instllations;

(g) install and use cranes, mobile and fixed equipment;

(h) provide services in respect to-

(i) slip way facilities;

(ii) engineering works;

(iii) craft repairs (dock yard);

(iv) hire of craft;

(v) link span;

(vi) Oil jetty;

(vii) Single Point Mooring services;

(viii) towage; and

(i) any other ancillary or similar service as may be necessary."

Operator may determine conditions for handling warehousing of goods

26.-(1) The operator may-

(a) determine conditions upon which goods shall be handled or warehoused and such conditions shall be published in the Tariff Book and have effect from the date of such publication or from such later dates as may be specified in the Tariff Book;

(b) determine the rates and charges for the handling warehousing of goods or for any other service or facility; and such rates and charges shall be published in the Tariff Book and have effect from the date of such publication or from such later date as may be specified in the Tariff Book.

(2) Notwithstanding the provisions of subsection (1), the operator may, in relation to the special circumstances of any particular case, determine conditions, rates, and charges applicable to such case for the handling or warehousing of goods by the operator or for any other service or facility and such conditions, rates and charges shall have immediate effect in relation to such cases.

(3) The conditions, rates and charges determined pursuant to subsection (1) shall, if they are of a continuing nature, be available to the public.

Description of goods to be delivered

27.-(1) The consignor, person or consignee tendering any goods for handling or warehousing, on request by an authorized employee shall deliver an account in writing signed by such consignor, person or consignee, as the case may be, containing the description of the goods as may be sufficient to enable such employee to determine the rates and charges payable in respect of the handling or warehousing of the goods.

(2) For the purpose of checking any account delivered pursuant to subsection (1), an authorized employee may require such consignor, person or consignee, as the case may be, to permit examination of such goods.

(3) If the consignor, person or consignee fails to deliver the account or to permit such goods to be examined, an authorized employee may-

(a) refuse to accept the goods for handling or warehousing unless a rate or charge not charge able payable for any class of goods is paid; or

(b) refuse to deliver the goods unless a rate or charge payable is paid.

(4) If in respect of goods which have been handled or warehoused by the operator, an account delivered is found to be false in any material particular to which it purports to relate, an authorized employee may refuse to deliver the goods unless a rate or charge not exceeding double the rate or charge payable for any class of goods is paid.

Goods may be sold to pay rates

28.-(1) Where any person fails to pay on demand made by an authorized employee, any rate or charge due from him in respect of any goods, the authority may detain the whole or any part of the goods or, if they have been removed from the possession of the authority any other goods of such person which may be in, or may thereafter come into, the possession of the authority.

(2) Where any goods have been detained under subsection (1), the authority may, if the rate of charge due is not sooner paid, sell by public auction goods sufficient to produce the rate or charge so owing and all the expenses of such detention and sale shall, in the case of-

(a) perishable goods, such auction may take place at once; or

(b) any other goods, such auction may take place on the expiration of at least fifteen days' notice of the intended auction published in one or more local newspapers.

(3) No imported goods shall be sold under this section until they have been entered in the customs records as being for home consumption.

(4) The authority may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the rate or charge due and expenses of the detention and sale; and shall deliver the balance, as remain unsold to the person appearing to the authority to be entitled thereto.

(5) If after notice such person fails to remove within a reasonable time such goods, or remaining unsold, the authority may sell such goods and dispose of the proceeds of such sale in accordance with the provisions of this section.

(6) Nothing in this section shall prejudice the right of the authority to recover any such rate or charge, or any part thereof, by any other lawful means.

Unclaimed goods in possession of the operator

29.-(1) Where any goods in possession of the operator are not claimed by the owner or any other person appearing to the operator to be entitled to such goods, the operator shall, if such owner or person is known, take all reasonable steps to cause a notice to be served upon him requiring him to remove the goods.

(2) If -

(a) the owner of any goods in the possession of the operator is not known and no person appears to be entitled to the goods;

(b) the notice referred to in subsection (1) cannot for any reason be served; or

(c) there has been a non-compliance with the provision of any notice served under subsection (1).

the operator may, within a reasonable time not being less (except in the case of perishable goods) than three months, sell the goods and dispose of the proceeds of sale thereof.

(3) No goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of the customs laws.

Indemnity where goods claimed by two persons

30. Where-

(a) any goods, or the proceeds of the sale of any goods are in the possession of the authority and such goods or proceeds are claimed by two or more persons; or

(b) any person claiming any goods in the possession of the Authority does not produce the documents showing that he is entitled to take delivery of such goods,

the operator may withhold delivery of such goods or proceeds, until the person appearing to the Director-General to be entitled to the goods has given satisfactory indemnity against the claim of any other person over such goods or proceeds.

Dangerous or offensive goods

31.-(1) No person shall tender to the operator for handling or warehousing any goods to which this section applies without giving notice of the nature of such goods to the authorized employee to whom such goods are so tendered.

(2) An authorized employee may-

(a) refuse to accept such goods for handling or warehousing or accept them only under, and in accordance with, any special provisions dealing with the handling or warehousing of any such goods; or

(b) require any such goods to be marked and packed in such manner as he may reasonably direct.

(3) Where any authorized employee has reason to believe that any goods to which this section applies are being handled or warehoused, or have been accepted for handling or warehousing in contravention of subsection (1) or (2), he may examine such goods and if found to be goods to which this section applies he may order their removal from any vehicle of, or premises occupied by, the operator.

(4) Goods to which this section applies are any dangerous or offensive and any goods which are likely to cause damage to person or property.

(5) Nothing in this section shall derogate from the provisions of any law relating to the possession or transportation of explosives, petroleum, fire arms or ammunition.

Notice of claim

32.-(1) No person shall be entitled to compensation for non-delivery of the whole of a consignment of goods, or for any separate package forming part of such consignment, accepted by the Authority for handling or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the operator within six months of the date upon which such goods were accepted by the Authority.

(2) No person shall be entitled to compensation for any goods missing from a packed or unpacked consignment or for misdelivery of, or damage to any goods accepted by the Authority for handling or warehousing unless -

(a) the operator is notified of such fact in writing within four days of the date upon which such goods were delivered to the consignee or person entitled to take delivery thereof; and

(b) a claim in writing, giving such particulars as may reasonably be necessary, is given to the within one month of such date.

(3) Where the person claiming compensation proves that it was impracticable for him to notify the operator, or give the his claim, as set out in subsections(1) and (2) within the time specified therein and that such notification or claim was made or given in reasonable time nothing in those subsections shall prejudice the right of such person to obtain compensation.

Power to set rates and charges Act No. 9 of 2001

33. Subject to the Surface and Marine Transport Regulatory Authority Act, 2001 or any other written law, all marine service providers and port service providers shall determine, set rates and charges and in the event that concession agreement and or a lease agreement has been concluded, the rates and charges agreed upon in agreement shall be valid during the duration of the agreement or such other period as agreed between marine services and port service providers and the Authority.

PART V
STAFF OF THE AUTHORITY

The Director General

34.-(1) There shall be the Director General of the Authority who shall also be the Chief Executive Officer and responsible to the Board for the proper administration and management of the functions and affairs of the Authority.

(2) The Director General shall be appointed by the Minister from a list of three persons recommended by the Board.

(3) A person shall not be qualified for appointment as Director General unless he-

(a) is a graduate of a recognized university,

(b) possesses at least ten years experience in one or more of the field of management, port operations, law, economics, finance, science or engineering; and

(c) has knowledge and experience of the maritime sector.

(4) The Director General shall be appointed to service on such terms and condition as shall be set out in the letter of his appointment or as may from time to time be determined by the Board of Directors with approval of the Minister.

(5) The Director General shall be the Secretary to the Board.

Office of the Port Manager and Port Master

35. There shall be a Port Manager of the Port of Dar es Salaam and Port Masters each for the ports of Tanga and Mtwara as well as for the inland waterways ports.

Harbours Master

36. There shall be a Harbour Master whose duties and functions shall include those provided for under Part VIII of this Act.

Harbour's Master may issue directions

37. All acts, orders or directions authorized to be done or given by the Harbour Master may be done or given by any Port Master subject to such directions and control of the Harbour Master.

Recruitment of employees and agents

38. The Board may from time to time appoint Port Manager, Port Masters and Harbour Master and such number of other employees of the Authority as it may deem necessary for the proper and efficient conduct of the business and the activities of the Authority.

PART VI
SPECIAL PROVISIONS RELATING TO INLAND WATERWAYS PORTS

Master to supply information etc.

39.-(1) The Master of any vessel arriving in an inland waterways port shall, if required, produce to any authorized employee-

(a) register of the vessel and its papers;

(b) list of the crew;

(c) list of the passengers, if any, showing particulars of their sex and occupation;

(d) list showing the deaths, if any, which have occurred during the voyage;

(e) list showing the stowaways, if any, on the vessel; and

(f) other information in relation to the vessel, passengers and cargo thereof, as such employee may require.

Port rates may be levied

40.-(1) There shall be levied upon every vessel entering an inland waterways port such rates and charges as the Authority may determine and publish in the Tariff Book.

(2) At every booking office within an inland waterways port there shall be maintained and made available for public inspection a list of rates and charges applicable to that port.

Power to arrest for port charges

41.-(1) Where any port charges are owing in respect of any vessel, an authorized employee may arrest the vessel and the tackle, apparel and its furniture and may detain it until the amount of such charges is paid.

(2) Where, after such arrest, any such port charges remain unpaid for a period of seven days, the authorized employee may cause the vessel and the tackle, apparel and furniture thereof, arrested to be sold and out of the proceeds of such sale he may retain the amount of any port charges which are owing and the expenses of the detention and sale, and shall deliver the balance, if any, to the person responsible, for the payment of such port charges.

(3) Where any vessel in respect of which port charges are owing, and have not been secured to the satisfaction of an authorized employee, leaves any inland waterways port and enters or in any other inland waterways port, then such vessel may be dealt with as if the port charges so owing and not secured were port charges owing in respect of such other inland waterways port.

Powers of authorized employes s in relation to inland waterways

42.-(1) Any authorized employee may -

(a) give directions to the master of any vessel within any inland waterways port with regard to the berthing of such vessel, or the removal of such vessel from one berth to another, and such master shall comply with such directions;

(b) remove any wreck or any other obstruction to an inland waterways port or its approaches or any timber, raft or other thing floating in such port or approaches which endangers or obstructs, or is likely to endanger or obstruct, the free navigation of the port or the use of any wharf or dock therein;

(c) in case of urgent necessity, take any action in an inland waterways port which, in his opinion, may be necessary to prevent any danger to life or shipping;

(d) enter upon any vessel or into any building in an inland waterways port if it is necessary for him so to do in the performance of any duty under this Act or if he has reasonable grounds for believing that an offence against this Act has been, or is about to be, committed therein.

(2) The owner of any wreck or other thing removed by an authorized employee under the provisions of paragraph (b) of subsection (1) shall, without prejudice to any other action which may be taken against him, be liable to pay the reasonable expenses of such removal; and such wreck or other thing may be detained by such employee until such expenses are paid.

(3) Where any wreck or other thing is removed under the provisions of paragraph (b) of subsection (1), and the expenses of removal have not been paid within seven days of such removal, the Authority may sell such wreck or other thing by public auction and may out of the proceeds of sale retain the expenses of such removal, detention and sale and shall deliver the balance, if any, to the person appearing to the Director General to be entitled thereto.

Master of the vessel is responsible for contravenetion of Act.

43.-(1) The master of a vessel shall be responsible for the compliance in respect of such vessel with the provisions of this Act, and, in the event of a contravention thereof, he may be proceeded against and held responsible for such contravention.

(2) The Authority shall, at every inland waterways port, maintain, for the inspection of the master of any vessel, a copy of this Act and any regulations relating to inland waterways made thereunder.

PART VII
REGULATIONS OF PORTS

Port Regulation

44.-(1) The Minister, may make regulations for the control and management of ports and their approaches, safety of vessels, the protection of the environment and maintenance of good order.

(2) Regulations made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication.

Powers of Auxiliary Police and security officers

45.-(1) The Authority may engage Auxiliary Police and security officers who shall be responsible for maintenance of peace and good order at the port.

(2) It shall be lawful for any member of Auxiliary Police and security officers to detain within the limits of any port.

(a) any person who commits an offence under this Act or any regulation made thereunder;

(b) any person against whom a reasonable suspicion exists that he is about to commit an offence;

(c) any person against whom reasonable suspicion exists that he has aided or abetted the commission of any offence under this Act or any regulation made thereunder;

(d) any person having in his custody or possession without lawful cause any instrument for housebreaking, or being armed with any dangerous or offensive weapon or any document that could be used for the unauthorized removal of any cargo which is in the custody or possession of the Authority;

(e) any person in possession of goods reasonably suspected to be the property stolen or fraudulently obtained and who may reasonably be suspected to have committed an offence under this Act or any regulation made thereunder;

(f) any person who is found within the limits of a port in circumstances which provide reason to believe that such person has committed or is about to commit theft of, or damage to, any property belonging to or in possession of the Authority-

(i) any person who is found taking precaution to conceal his presence;

(ii) any person detained under subsection (i) shall, unless released, be forthwith handed over to the nearest police station to be dealt with according to the law;

(g) where there is reason to believe that a person has acted or is acting in contravention of any of the provisions of the East African Customs Management Act, 1970, such person shall be handed over to a Customs Officer to be dealt with in accordance with the provisions of that Act;

(h) a member of the Auxiliary Police or security officer may search any person or his belongings or any conveyancewithin the limits of a port if he believes that, that person has committed or is about to commit an offence or his belongings or conveyance have been used for the commission or about to be used for the commission an offence.

Safety of vessel along side a wharf or anchor

46.-(1) Every vessel lying alongside a wharf or anchored within the water or approaches of a port, shall be kept so equipped, provided, loaded and ballasted so as to enable her to be removed safely whenever it is necessary.

(2) The Master or owner of the vessel who contravenes the provisions of subsection (1), commits an offence and is liable on conviction to a fine not exceeding five thousand US Dollars or its equivalent in Tanzanian shillings or to imprisonment for a term not exceeding twelve months or to both.

Passengers, cargo etc. to be embarked etc. only at ports

47.-(1) All vessel shall embark or disembark passengers or goods at an inland waterways port.

(2) Notwithstanding the provisions of subsection (1), the Director General may authorize the Master of any vessel to embark or disembark passengers or goods at any place other than an inland waterways port.

(3) Nothing in this section shall apply to small boats carrying passengers or goods from any place within the United Republic.

(4) The term "small boats" as used in subsection (3) means boats of less than twenty four metres in length or less than fifty gross registered tonnage.

Power of health officers at the ports

48.-(1) A health officer may board any vessel arriving from a port otherwise than within the United Republic -

(a) medically examine any person in the vessel;

(b) inspect the provisions, medicines and accommodation therein;

(c) require the master to produce the log-book and any other documents which such health officer may think necessary for the purpose of ascertaining the state of health of such persons therein;

(d) question any person therein for the purpose of ascertaining the state of health of such person;

(e) prohibit any person therein who appears to be infected with, or who has been exposed to the risk of infection of, any infectious or contagious disease from leaving such vessel or cause any such person to be landed and detained in any hospital or quarantine station.

(2) In this Act the expression "health officer" means a medical practitioner appointed under any written law to discharge the duties of a health officer at an inland waterways port or such other person as may be deputed by such health officer to perform any of his duties under this section.

Evidence of identity

49.-(1) Any auxiliary police or security officer who reasonably believes that any person has committed an offence under this Act or any other written law may require such person to furnish evidence of his identity.

(2) Any person who refuses to furnish information required of him by auxiliary police or security officer under this section or willfully gives false information, commits an offence.

Economic regulatory powers

50.-(1) Without prejudice to the provisions of this Act, the SUMATRA shall exercise economic regulatory powers and functions in respect of the ports sector, including the following-

(a) to establish standards for the terms and conditions of supply of port and marine operations and services;

(b) to carry out regular review of rates and charges;

(c) to monitor the performance of the ports in relation to-

(i) levels of investment;

(ii) availability, quality, standards and cost of service;

(iii) efficiency of production and supply of port operations and marine services;

(d) to facilitate resolution of complaints and disputes; and

(e) to enforce competition in the supply of marine transport and port services.

(2) The SUMATRA shall deal with all competition issues which may arise in the course of providing marine and port operations and services and may investigate and report on those issues, take measures and, or make appropriate recommendations in accordance with the Fair Competition Act, 2003.

PART VIII

POWERS AND RESPONSIBILITIES OF PORT MANAGER, PORT MASTERS AND HARBOUR MASTERS

Functions of Port Managers and Port Masters

51.-(1) The Port Manager and Port Masters shall perform the following functions:

(a) regulate and control navigation and the protection of environment within the limits of a port and their approaches;

(b) regulate and control the transport, handling and storage of dangerous goods within the limits of a port and their approaches;

(c) provide and maintain adequate and efficient aids to navigation within the limits of a port and their approaches;

(d) to secure the provision of, or to provide services in relation to loading and unloading of cargo and passenger services; and

(e) deal with any emergency within the limits of the port and their approaches

Duties of the Harbour Master

52. Without prejudice to other duties which may be discharged by him, the Harbour Master may -

(a) direct where any vessel shall be berthed, moored or anchored and the method of anchoring; and

(b) direct the removal of any vessel from any place within the limits or approaches to the port.

Owner, agent or Master of vessel to report arrival or departure

53.-(1) The Harbour Master may direct the owner, Master or agent of any vessel intending to enter or leave a port to furnish, before to entering or leaving the port such information as the Harbour Master may require relating to the vessel, its cargo and the estimated time of entering or leaving the port.

(2) The owner, agent or Master of any vessel arriving in a port, shall-

(a) on arrival, report or cause to be reported by such means as the Harbour Master may from time to time direct, the arrival of the vessel;

(b) provide within such time and by such means to the Harbour Master-

(i) a general declaration of arrival in such form as the Harbour Master may determine;

(ii) the clearance from the last port;

(iii) a list of passengers on board;

(iv) a crew list;

(v) a copy of the manifest of goods to be discharged or transshipped in the port;

(vi) such other documents as may be required by the Harbour Master from time to time; and

(c) in the case of vessels belonging to a country not having a diplomatic representation in Tanzania, produce to the Harbour Master the certificate of registry and shall deposit with him the ship's articles.

(3) The owner, agent or Master of any vessel who fails to comply with this section, commits an offence and shall be liable on conviction to a fine not exceeding five thousand US Dollars or its equivalent in Tanzanian shillings or to imprisonment for a term not exceeding five months or to both.

Harbour Master may require vessel in transit to provide information

54.-(1) The Harbour Master may at any time require in writing, the owner or Master of any vessel which is in transit in a port or the approaches to a port to provide him with such particulars of the vessel, its cargo and equipment

(2) The owner or Master of a vessel who fails to comply with a request made under subsection (1), commits an offence and shall be liable on conviction to a fine not exceeding five thousand US Dollars or its equivalent in Tanzanian shillings or to imprisonment for a term not exceeding six months or to both.

Port clearance by Harbour Master

55.-(1) No vessel, other than a vessel referred to in subsection (3), shall leave the port without the owner, agent or Master obtaining port clearance from a Harbour Master.

(2) The provisions of subsection (1) shall not apply to-

(a) a man of war;

(b) any vessel belonging to or for the time being in the service or employment of the Government or the Authority and does not carry or habitually carry cargo or passengers for freight or fares; and

(c) a vessel which has been exempted by the Harbour Master.

(3) If any vessel, not being exempted from complying with this section, leaves or attempts to leave a port without port clearance, the owner, agent or Master of the vessel or any person who attempts to send the vessel to sea shall, if that owner, agent, Master or person is party or privy to the offence, commit an offence and shall be liable on conviction to a fine not exceeding five thousand US Dollars or its equivalent in Tanzanian shillings or to imprisonment for a term not exceeding six months or to both.

(4) No port clearance shall be granted to any vessel-

(a) whose owner, agent or Master has not complied with any written law or regulation relating to the import and export of goods into and from Tanzania; or

(b) until the owner, agent or Master has disclosed the name of the country to which he claims that the vessel belongs, and if so required by the Harbour Master, has produced the certificate of registry of the vessel.

(5) Where under this Act or any other written law the vessel is to be detained, the Harbour Master shall refuse to grant port clearance to that vessel.

(6) Without prejudice to the provisions of subsection (5), the Harbour Master may refuse to grant port clearance to any vessel whose owner, or Master has not complied with, or has been charged with an

offence under, any of the provisions of this Act or any other written law.

(7) A Harbour Master may refuse to grant port clearance to any vessel which has anchored in a submarine cable corridor or a submarine pipeline corridor unless the owner, agent or Master of the vessel has deposited such sum of money or furnished such security as may be required by the Authority in order to meet the cost of making good the damage, whether actual or estimated by the Authority to a submarine cable corridor or a submarine pipeline corridor and their associated submersible plants.

(8) Where the Authority has reason to believe that a submarine cable or pipeline has been damaged by a vessel, it may require the owner, agent or Master of that vessel to carry out an inspection or survey of the submarine cable or pipeline and their associated submersible plants in such manner as it considers necessary.

(9) The expenses of any inspection or survey of the submarine cable or pipeline and their associated submersible plants carried out under subsection (8) shall be paid by the owner, agent or Master of the vessel, unless proven that no damage was caused by the vessel.

(10) For purposes of this section, "submarine cable corridor" or "submarine pipeline corridor" means, the area previously designated as such by a Harbour Master.

Owner, agent or Master of vessel not leaving within forty eight hours after port clearance

56.-(1) The owner, agent or Master of any vessel which fails to leave a port within forty eight hours or such shorter period as may be specified by the Harbour Master, after obtaining port clearance, shall within six hours after expiry of the forty eight hours, return it and, if so required, obtain fresh port clearance.

(2) Any owner, agent or Master of a vessel who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction for every offence to a fine not exceeding five thousand US Dollars or its equivalent in Tanzanian shillings or to imprisonment for a term not exceeding twelve months or to both.

Power to prohibit or compelling vessels from entering or leaving ports or the approaches

57.-(1) The Minister may order the Authority to prohibit any vessel from entering the limits of any port or the approaches to such a port if he is of the opinion that it would not be in the public interest for the vessel to enter in any port.

(2) The Minister may order the Authority to direct any vessel to the provisions of leave the limits of any port or the approaches to such a port if he is of the opinion that it would not be in the public interest for the vessel to remain in the limits of or the approach to such a port.

(3) Where a vessel to which an order has been issued pursuant to the provisions of subsection (1) fails to leave the port within specified time, the Authority may cause that vessel to be detained.

Removal of obstruction or impediment

58.-(1) Notwithstanding that any obstruction or impediment to the navigation of a port has been lawfully made, the Authority may cause the same to be removed or altered.

(2) If any dispute arises concerning compensation for the removal or alteration of the obstruction or impediment and, if necessary, any question of liability shall be ascertained and determined by the court of competent jurisdiction.

Fire on Board vessels

59.-(1) In the event of fire breaking out on board, any vessel in a port the Harbour Master may, proceed on board the vessel with such assistance and persons he deems fit, and give such orders necessary to contain the fire, or for removing that vessel or any other vessel to such place as he deems proper and necessary to prevent in either case danger to other vessels and the taking of any other measures that appear to him expedient for the protection of life and property.

(2) Any expenses incurred in the exercise of the powers conferred by subsection (1) shall be recoverable from the Master or owner of the vessel concerned.

Power to Board vessels

60.-(1) The Harbour Master, any auxiliary police or security officer on duty may go on board any vessel within the limits of a port or the approaches to a port where he suspects that any offence against this Part has been or is about to be committed in any vessel or where he considers it necessary in the discharge of any duty imposed upon him by this Act or any other written law.

(2) Any Master of a vessel who, without lawful excuse, refuses to allow the Harbour Master, an auxiliary police or security officer to enter such vessel, commits an offence and shall be liable on conviction to a fine not exceeding five thousand US Dollars or its equivalent in Tanzanian shillings or to imprisonment for a term not exceeding twelve months or to both.

PART IX
REMOVAL OF VESSEL AND AIRCRAFT SUNK AND OTHER OBSTRUCTION

Powers to require owner to raise, remove or destroy vessel, craft or other obstructions

61.-(1) If any vessel, aircraft or other object sunk, stranded or abandoned or is in danger of capsizing within a port or its approaches thereby becoming an obstruction, impediment or danger to navigation or to the safe and convenient use or operation, the Authority may, by notice in writing, require the Master, owner or agent to remove the vessel, aircraft or object within a specified time.

(2) A notice by the Authority under subsection (1) shall be deemed to be properly served if addressed to Master, owner or agent of the vessel, aircraft or object, as the case may be, and:

(a) sent by fax, electronic mail or registered post to the last known place of residence or business or registered office of the owner of the vessel, aircraft or object, or

(b) affixed to some conspicuous part of the vessel, aircraft or object.

(3) Notwithstanding the provisions of subsection (2), the Authority may in the case of urgent necessity, take any action in a port which is necessary to prevent any danger to life, navigation, safe and convenient use for shipping.

Authority may raise, remove or destroy vessel etc., and recoup expenses

62.-(1) Notwithstanding the provisions of section 63, where the vessel, aircraft or other object is not raised, removed or destroyed within such time as may be given in the notice the Authority may-

(a) take possession of, raise or destroy the whole or any part of such vessel, aircraft or object;

(b) light, mark or buoy such vessel, aircraft or object until the raising, removal or destruction thereof; or

(c) sell, in such manner as it deems fit, any such vessel, aircraft or object.

(2) The Authority may recoup expenses incurred by it in the exercise by way of -

(a) demand from the Master, owner or agent of the vessel, craft or object;

(b) sale according to powers under paragraph (c) of subsection (1); or

(c) in the event the proceeds are insufficient to defray the costs, the owner of such vessel, craft or object shall reimburse the Authority the outstanding expenses.

(3) The Authority shall on demand pay the surplus, of the proceeds of the sale under paragraph (c) of subsection (1) to the owner or any person entitled to it and, if no demand is made by the owner or any person entitled to the surplus within twelve months from the date of such sale, the surplus shall be paid into the funds of the Authority.

(4) If the proceeds of the sale under paragraph (c) of subsection (1) are insufficient to reimburse the Authority for the whole expenses incurred by it, the Authority may recover the balance from the owner of the vessel, aircraft or object as a debt in any court of competent jurisdiction.

PART X
PILOTAGE

Declaration and compulsory pilotage

63.-(1) The Authority may, by notification in the Gazette, declare any area to be a pilotage port.

(2) The ports specified in Part I of the Second Schedule to this Act, shall be compulsory pilotage ports and all ships other than exempted ships navigating whether by entering, leaving or moving within the limits of a compulsory pilotage port, shall be under the pilotage of a pilot.

(3) For purposes of this section, the following ships shall be exempted from compulsory pilotage:

(a) ships owned or operated by the Government;

(b) ships owned or operated by the Authority;

(c) ferry boats plying exclusive within the limits of a port;

(d) ships of less than 200 tonnes net register;

(e) ships plying in the inland waterways;

(f) ships trading exclusively between ports within the United Republic; and

(g) tug dredgers, barges or similar vessels whose ordinary course of navigation does not extend beyond the limits of the port.

(4) The Authority shall not be responsible for any loss or damage caused by act, omission, neglect or default of any pilot.

(5) The Master, owner or agent of a ship navigating under circumstances in which pilotage is compulsory, shall be answerable for any loss or damage caused by ship or by any fault of the navigation of the ship in the same manner as if pilotage were not compulsory.

Power of the Authority to exempt

64. The Authority may, exempt any vessel or a class of vessels while navigating in any pilotage port being under pilotage subject to such conditions as it may think fit to impose.

PART XI
DREDGING, HYDROGRAPHIC AND HYDROLOGIC SURVEYS

Limits within and levels to which dredging may be carried out

65. The Authority may prescribe the limits within the levels to which dredging may be carried out by or on its behalf in the ports under its jurisdiction and the approaches.

Approval of Ports Authority for hydro-graphic or hydro-logical survey

66.-(1) No person shall conduct any hydrographic or hydrologic survey or other study of the waters and the seabed within the limits of the port without prior written approval of the Authority.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

(3) This section shall not apply to any hydrographic survey or other study carried out for or on behalf of the Government.

PART XII
FINANCIAL PROVISIONS

Funds of the Authority

67.-(1) The principal sources of funds and resources of the Authority shall consist of::-

(a) concession fees;
(b) wharfage;
(c) rentals;
(d) shipping services;
(e) royalties;
(f) licence fee;
(g) levies;
(h) miscellaneous port services;
(i) all other payments or property due to the Authority in respect of any matter incidental to its functions; and
(j) any grants, donations, bequests or other contributions made to the Authority.

(2) The Authority shall disclose details of the sources of its funds in the Annual Report.

Applica-tion of revenue

68.-(1) The revenue of the Authority for any financial year shall be applied in defraying the following charges:-

(a) the remuneration, fees and allowances of the members of the Board;

(b) the salaries, fees, remuneration, pensions, superannuation, allowances and gratuities of the officers, agents, employees, and advisors of the Authority;

(c) working and establishment expenses and expenditure on, or provision for the discharge of the functions of the Authority;

(d) interest on any loan raised by the Authority;

(e) sums required to the Government or to any other public authority towards repayment of any loan made by the Government or by any other public body to the Authority;

(f) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of making provision for the repayment of borrowed money;

(g) such sums as may be deemed appropriate to be set aside in respect of depreciation or renewal of the property of the Authority, having regard to the amounts set aside out of revenue under paragraphs (c) and (f);

(h) sums required to be transferred to a maintenance fund for the purpose of making provision for the proper and regular maintenance of basic and operational infrastructure, aids to navigation and buildings;

(i) the cost, or any portion thereof, of any new works, plants, vessels, vehicles, machinery;

(j) equipment or appliances not being a renewal of the property of the Authority;

(k) such sums by way of contribution, for the purposes associated with the objects of this Act as the Authority may determine; and

(l) any other expenditure authorized by the Authority and properly chargeable to revenue account.

(2) The balance of the revenue of the Authority shall be applied to the creation of general reserve and such other reserves as the Authority may deem fit.

(3) All profits and losses of business entities shall be separately shown in the audited accounts of the Authority.

Guarantee of payment

69. The Minister responsible for finance may, with the concurrence of the Minister, guarantee the repayment of the principal of, and the payment of interest on any loan from any person, organization or institution in or outside Tanzania.

Subsidy, grants or loans of the Authority

70.-(1) The Minister may, with the concurrence of the Minister responsible for finance, give a subsidy, grant or recast a loan to the Authority, if this subsidy, grant or loan is necessary for furtherance of the functions of the Authority.

(2) Notwithstanding the provisions of subsection (1), the Minister may request the Parliament to appropriate such amount of money to the Authority for defraying expenses with respect to:

(a) the construction and maintenance of basic operational infrastructure of ports;

(b) the provisional of port services and facilities within the ports which cannot meet or sustain operational costs as a result of economical or geographical disadvantages attendant to such a port or facility;

(c) any other function of activity aimed at promoting the provision of ordinary port services.

Authority to prepare Tariff Book

71.-(1) The Authority shall cause to be prepared and published in such manner as it may deem fit:

(a) a Tariff Book containing all matters which under this Act are required to be contained therein together with such other matters as under this Act, may be determined by the Authority; and

(b) such other books and other documents as are required to be kept under this Act.

(2) There shall be available for public inspection at every port office a copy of the Tariff Book containing all amendments for the time being in force.

(3) The Authority may, by notification in the *Gazette*, levy goods dues as may be prescribed, on goods brought into or taken out of a terminal, wharf, pier, landing place or otherwise located within a port (by any means of transportation) as may be specified in the notification.

(4) Goods dues may be paid by:

(a) the operator;

(b) the owner or occupier of any terminal, wharf, pier or landing place;

(c) the owner of the vehicle or vessel used in the carriage of the goods into or out of a terminal, wharf, pier or landing place; or

(d) any person authorized to act as an agent for the owner of such vehicle or vessel in the carriage of such goods into or out a terminal, wharf, pier or landing place.

(5) The rates, charges, dues and fees applied by the Tanzania Harbours Authority and Marine Services Company immediately before the appointed day, shall continue to be valid as though determined by the Authority until rescinded, varied or otherwise determined.

Account and Audit

72.-(1) The Authority shall keep books of account and maintain proper records of its operation in accordance with commercial accounting standards.

Act No. 33 of 1972

(2) The accounts of the Authority may at any time and shall, at the end of each financial year, be audited by a person registered as an auditor under the Auditors and Accountants (Registration) Act, 1972, appointed by the Authority on such terms and conditions as the Authority may determine.

Annual Report

73.-(1) Before 31st December each year, the Authority shall prepare an annual report in respect of the year up to the immediately preceding 30th June and submit it to the Minister.

(2) The annual report shall provide detailed information regarding the exercise of the functions and powers of the Authority during the year to which it relates and shall include:

(a) a copy of the audited accounts of the Authority;

(b) such information and other material as the Authority may be required by this Act or the regulations to include in the Annual Report.

(3) The Minister shall cause a copy of the annual report of the Authority to be laid before the National Assembly, within two months or at the next Meeting of the National Assembly, after he has received the report.

Estimates of income and expenditure

74.-(1) Before the end of a financial year, the Authority shall prepare a budget showing estimates of income and expenditure for the following financial year.

(2) Subject to the provisions of subsection (1), the Authority shall submit a copy of the budget to the Minister for approval.

(3) The Minister may require the Authority to revise the budget if in his opinion the budget does not represent a fair and reasonable projection of income and expenditure.

PART XIII

TRANSFER OF ASSETS, LIABILITIES AND PERSONEL

Transfer to authority property, assets and liabilities

75.-(1) With effect from the effective date, all land and water area within the limits of the ports, and all land at any other place held, possessed or administered by the Tanzania Harbourts Authority, all movable and immovable property held or possessed by the Tanzania Harbours Authority on the Mainland of Tanzania, including all assets, powers, rights, interests and privileges of the Tanzania Harbours Authority, subsisting on the day immediately preceding the appointed date, shall vest in the Authority.

(2) Subject to the provisions of subsection (7), with effect from effective date, all land and water area within the limits of the ports including the port of Kasanga and all land at any other place held, possessed or administered by Marine Services Company Limited including all port assets, subsisting on the day immediately preceding the effective date, shall stand transferred to and vested in the Authority.

(3) For the purpose of subsection (2), port assests shall mean work-shops, floating docks, operational and administration buildings, cargo handling equipment, slipway, tugs, warehouses, rail sidings and link spans.

(4) Upon vesting all debts, liabilities and obligations in connection with or appertaining to the property of the Tanzania Harbours Authority within or beyond limits of the ports referred to in subsection (1), shall be deemed to have been incurred by the Authority.

(5) Upon transfer, all long term loans, liabilities and obligations in connection with or appertaining to the property of the Marine Services Company Limited within or beyond limits of the ports referred to in subsection (2) up to the effective date, shall be transferred to the Government.

(6) Where any question arises as to whether any particular property, right or liability has been vested or transferred in the Authority under subsections (1) and (2), a certificate under the hand of the Minister shall be conclusive evidence that the property, right or liability was or was not transferred or vested as such.

(7) Notwithstanding the provisions of subsection (2), all land and water area within the limits of the ports including the port of Kasanga and all land at any place held, possessed or administered by the Marine Services Company Limited including all port assets, subsisting on the date immediately proceeding the effective date shall continue to be used or utilized by the Marine Services Company Limited without charge or any other fees until such time when it is wholly divested.

(8) "Effective date" as used in this section and subsequent provisions of this Part, means the date appointed by the Minister to be the date on which assests and liabilities of the Tanzania Habours Authority and

Marine Services Company Limited shall vest inthe Authority and as the case may be, persons employed by the Tanzania Harbours Authority and Marine Services Company Limited shall be deemed or transfered to the Authority."

Approval of acquisition of land by the Minister. Act No. 47 of 1967

76. Where any land is required by the Authority, that land may, if the Minister by Order published in the *Gazette*, approve its acquisition, be deemed to be needed for a public purpose and be acquired under the Land Acquisition Act, 1967.

Giving vacant possesion by unauthorized persons

77. Where any land is vested in or transferred to the Authority, the Authority may, in writing, order any person who is in unauthorised possession or occupation of such land or part of it, to vacate that land within the time specified in that order.

Exemption for obtaining building permit

78. Notwithstanding the provisions of any other written law, it shall not be necessary for the Authority to secure approval of any local government authority for the construction of any works or buildings other than residential buildings, within the limits of the ports.

Transfer of employees and staff

79.-(1) As from the effective date, every employee and staff of the Tanzania Harbours Authority and every employee and staff of the Marine Services Company Limited who are necessary for the purpose of the Authority shall be, as the case may be, deemed to have been employed or transferred to the Authority on the terms and conditions not less favourable than those applicable to them immediately before the effective date.

(2) Every employee and staff of the Tanzania Harbours Authority and the Marine Services Comapny Limited whose service is not deemed or transferred to the Authority shall be paid terminal benefits in accordance with the laws and regulations governing the terms and conditions of his service immediately before the termination.

(3) An employee or a staff whose service with Tanzania Harbours Authority or Marine Services Company Limited is deemed to be

employed or transferred to the Authority shall continue to be member of any statutory, voluntary pension or any other superannuation scheme and shall continue to be governed by the same laws and regulation to such employee or staff, make contributions to that scheme.

Terms and conditions of service

80.-(1) The terms and conditions to be drawn up by the Authority shall as much as possible, take into account the salaries and terms and conditions of service, including any accrued rights to leave, enjoyed by the persons transferred to the service of the Authority, while in the employment of the Tanzania Harbours Authority and any such term and condition relating to the length of the service with the Authority shall provide for the recognition of service under the Tanzania Harbours Authority.

(2) Where any person in the service of the Authority does not fall within the scope of any pension or other schemes established under this section retires or dies in the service of the Authority, or is discharged from such service, the Authority may grant to him or to such person or persons wholly or partly dependent on him, as the Authority deems fit, such allowance or gratuity as it may determine.

Deeds, bonds, agreements and instruments to be transferred to the Authority

81.-(1) All deeds, bonds, agreements, instruments and working arrangement subsisting immediately before the appointed day affecting the property, rights and liabilities transferred to the Authority under this Act or affecting any employee transferred to the Authority under this Act shall continue in full force and effect on and after that day and shall be enforceable by or against the Authority, instead of the Tanzania Harbours Authority, or any person acting on its behalf, as if the Authority, or any person acting on its behalf, had been named therein or had been party thereto.

(2) Any proceedings or cause of action relating to the property, rights and liabilities transferred to the Authority under this Act or to any employee transferred to the service of the Authority under this Act pending or existing immediately before the appointed day by or against the Tanzania Harbours Authority, or any person acting on its behalf, may be continued and shall be enforced by or against the Authority.

PART XIV
LIABILITY OF THE AUTHORITY

Exclusion of liability of the Authority

82. Notwithstanding the grant of any licence or the conclusion of any concession agreement, the Authority shall not be liable in any circumstances for any injury, loss, damage or cost sustained by any person as a result of any default, negligence, breach or other wrongful act or omission of any licencee or any concessionaire or any agent or employee of a licencee or concessionaire.

Limitation of liability for loss or damage to or on board any vessel. Act No. 21 of 2003

83.-(1) The Authority shall not, where, without its actual fault or privity, be liable for any loss, damage or destruction, caused to any vessel or any goods or other thing whatsoever on board any vessel, beyond an aggregate amount not exceeding, in the currency of Tanzania, the equivalent of SDR 1000 Units of Accounts for each ton of the vessel's tonnage.

(2) The measurement of ships tonnage shall be ascertained as provided for in the Merchant Shipping Act, 2003.

Liability for Authority when guiding, assisting or directing vessels Terms and conditions of services

84. Where the Authority provides any service for the guidance, assistance or direction of any vessel, neither the Authority nor any of their employees or agents shall be liable for any loss or damage suffered by any person-

(a) by reason of any act or omission of the Authority, its employees or agents which is made in good faith and in the ordinary course of the discharge of the duties of those employees or agents, or

(b) if the loss or damage occurred or arose as a result of any defect or breakdown in the service of any equipment used for the provision of such service or for the receipt or transmission of such information and not as a result of any act or omission of the Authority.

Liability for demurrage

85. The Authority shall not be liable for demurrage which may occur or be due on any ship however such demurrage may have been caused.

Compounding offences

86.-(1) Subject to provisions of this Act, where any person commits an offence under this Act to which the Board or, as the case may be, the Director General may at any time prior to the institution of court proceedings-

(a) compound the offence; and

(b) order the person to pay a sum of money specified by the Director General but not exceeding the amount of the fine prescribed for the offence.

(2) The Director General may compound an offence under this section only if the person concerned admits in writing that the person has committed the offence.

(3) Where the offence is compounded under this section, the order referred to in subsection (1)-

(a) shall be in writing, specifying the offence committed, the sum of money to be paid and the date for payment and have attached the written admission referred to in subsection (2);

Oaths

(b) shall be served on the person who committed the offence;

(c) shall be final and not subject to any appeal; and

(d) may be enforced in the same manner as an order of the High Court for the payment of the amount stated in the order.

Staf of the Commission

(4) Where the Director General compounds an offence under this section, the person concerned shall not be liable for a penalty prosecution with respect to that offence.

PART XV
MISCELLANEOUS PROVISIONS

Code of conduct

87. -(1) Within the first twelve months from the commencement of this Act, the Authority shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and employee of the Authority in the performance of their duties.

(2) After adopting a code of cunduct, the Authority shall publish it in the Gazette and Annual Report.

Public licence for Marine and Port Services Act No. 8 of 2003

88. Subject to the provisions of the Fair Competition Act, 2003, the Authority may grant a licence subject to such conditions it may impose to provide any marine or port service or facility, except in respect of those services and facilities exclusively provided by any operator under a concession agreement and in respect of services of representatives of shipping lines, shipping and liner agents.

Master owner or person in charge of vessel answarable for damage

89.-(1) Where damage is done to ports; equipment facilities and any property of the Authority by any vessel, vehicle, person or any floating object, the costs of making good the damage, including the expenses of any inspection or survey carried out by or on behalf of the Authority to ascertain such damage may be recovered by the Authority from the Master, owner or agent of the vessel, craft or floating object.

(2) The Authority may detain any such vessel or object until the costs of making good such damage and the expenses described in subsection (1) have been paid to the Authority or may require the Master, owner or person in charge of the vessel or object to deposit such sum of money or furnish such security as may be required by the Authority to meet such costs and expenses.

Exemption from distress and attachment of property of the Authority

90. When any property, fixture or fitting belonging to the Authority is placed in or upon any premises not being in the possession of the Authority for the purposes of carrying out its functions, such property, fixture or fitting shall not be subject to distress nor taken in execution under process of court or any proceedings in bankruptcy against the person in whose possession it is.

Transmission of notices, orders, receipt, by the Authority

91. All notices, orders, receipts and other documents and all information of whatever nature which the Authority is empowered to give under this Act or any other written law may be given by any means including digital, electronic and mechanical means.

Accidents to be reported

92. Where any accident occurs in any port, then if that accident-

(a) is attended, or is of a kind usually attended, with loss of human life or with serious injury to any person or property;

(b) involves any collision between ships or vehicles carrying passengers;

(c) involves the derailment of any train, or any part thereof, carrying passengers;

(d) is of such other kind as the Minister may specify;

the Director General shall, as soon as practicable, give notice of the occurrence of such accident to the Minister and the Board and, in the case of any such accident involving injury to any person, also to police station or administrative authority nearest to the scene of such accident.

Minister or the Board may order inquiry

94.—(1) The Minister or the Board may order inquiry into any accident which occurs in any port as the Minister or the Board may deem necessary.

(2) In the case of an accident of the kind referred to in section 91, the Board shall submit to the SUMATRA and the Attorney-General a report on such accident setting out, *inter alia,* the probable cause of such accident and the steps, if any, which have been taken, or it has directed, shall be taken, with a view to avoiding a repetition of the accident.

(3) The Director General shall submit to the Minister and the Board a report in respect of any accidents occurring in any port.

Protection of members of the Board and employees

95. No suit or other legal proceedings shall lie against any member of the Board, or employee of the Authority or other person acting under the direction of the Authority personally for any thing done in good faith or intended to be done in the execution or the purported execution of the functions or the exercise of the powers of the Board or the Authority.

Repeal and savings Act No. 12 of 1977

96.—(1) The Tanzania Harbours Authority Act, 1977, is hereby repealed.

(2) Notwithstanding repeal of the Tanzania Harbours Authority Act, 1977, any scheme, contract, document, licence, permission or resolution prepared, made granted or approved under the Tanzania Harbours Authority Act, 1977, shall, so far as it is not inconsistent with the provisions of this Act and except as otherwise expressly provided for in this Act or in any other written law, continue and be deemed to have been prepared, made, granted or approved by the Authority under the corresponding provisions of this Act.

(3) Any subsidiary legislation made under the provisions of the Tanzania Harbours Authority Act, 1977 which were in force immediately before the appointed day shall, so far as it is not inconsistent with the provisions of this Act, until such time as they shall be revoked, remain in force as if they were made under this Act.

FIRST SCHEDULE

(Made under section 6(3))

BOARD OF DIRECTORS

Vice-Chairman

1. The members of the Board shall elect a member from amongst themselves to be a Vice-Chairman of the board, and any member elected as Vice-Chairman shall, subject to his continuing to be a member, hold office for a term of one year from the date of his election, and shall be eligible for re-election.

Tenure of appointment

2.—(1) A member of the Board shall, unless his appointment is sooner terminated by the appointing authority, or ceases in any other way to be a member, hold office for the period specified in the instrument of his appointment or, if no period is so specified, for a period of three years from the date of his appointment and shall be eligible for re-appointment.

(2) Any member of the Board may at any time resign his office by giving notice in writing addressed to the appointing authority, and from the date specified in the notice or, if no date is so specified, from the date of the receipt of the notice by the appointing authority, he shall cease to be a member.

Appointment of temporary member

3. When any member of the Board is by reason of absence from the United Republic or illness or other sufficient cause unable to perform his duties as a member of the Board, the appointing authority may appoint a temporary member in his place, and the temporary member shall hold office until the resumption of duty of the substantive member or until the term of office of the substantive member expires, whichever occurs first.

Meeting of the Board

4.—(1) The Board shall ordinarily meet for the transaction of its business at the time and at the places decided upon by the Board, but shall meet at least once every two months.

(2) The Chairman, or in his absence the Vice-Chairman, may at any time call a special meeting of the Board, upon a written request by a majority of the members of the Board in office.

(3) The Chairman, or in his absence the Vice-Chairman, shall preside at every meeting of the Board. In the absence of both the Chairman and the Vice-Chairman the members present shall appoint a member from amongst themselves to preside over the meeting.

Quorum

5. The quorum at a meeting of the Board shall be the majority of the members in office.

Decisions of the Board

6.—(1) Questions proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and in the event of an equality of votes the person presiding shall have a second or casting vote.

(2) Notwithstanding the provisions of subparagraph (1), a decision may be made by the Board without a meeting by circulation of the relevant papers among the members of the Board, and the expression of the views of the majority of the members of the Board in writing, but any member shall be entitled to require that the decision be deferred and the subject matter be considered at a meeting of the Board.

Minutes of meetings

7. The Board shall cause to be recorded and kept minutes of all proceedings of its meetings, and the minutes of each meeting of the Board shall be confirmed by the Board at the next meeting and signed by the Chairman of the meeting.

Vacancies, etc not to invalidated proceedings

8. The validity of any act or proceeding of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

Execution of contracts etc

9.—(1) The application of the official seal of the Authority shall be authenticated by two signatures, namely-

(a) the signature of the Chairman of the Board or some other member of the Board authorized by the Board in that behalf; and

(b) the signature of the Director General or some other employee of the Authority authorized by the Board to act for that purpose in place of the Director General.

(2) Any instrument or contract which, if executed or entered into by a person other than a body corporate, would not be required to be under seal, may be executed or entered into on behalf of the Authority by the Director General or any other member of the Board if that member has previously been authorized, either specifically or generally by resolution of the Board, to execute or enter into that particular instrument or contract or that class of instrument or contracts.

(3) Every document purporting to be a document executed or issued by or on behalf of the Authority and to be-

(a) sealed with the official seal of the Authority authenticated in the manner provided by subparagraph (1); or

(b) signed by the Director General or by a member of the Board authorized in accordance with subparagraph (2) to act for that purpose,

shall be deemed to be so executed or issued until the contrary is proved.

Board may regulate its own proceedings

10. Subject to the provisions of this Schedule, the Board may regulate its own proceedings.

Proof of documents

11. Any document purporting to be a document duly executed or issued under the seal of the Authority or on behalf of the Authority shall be received in evidence and be deemed to be a document so executed or issued (as the case may be) without further proof unless the contrary is proved.

SECOND SCHEDULE

(Made under section 2(2))

SEAPORTS:

PART I

Dar es Salaam, Tanga, Mtwara and Zanzibar.

PART II

Bagamoyo, Kwale, Kilwa Kivinje, Kilwa Masoko, Lindi, Mikindani, Pangani, Mafia, Songosongo, Chakechake, Mkoani and Wete.

INLAND WATER WAYS PORTS:

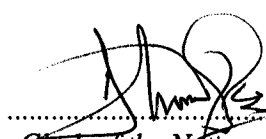
PART I

Mwanza South, Mwanza North, Bukoba, Kemondo Bay, Nansio, Musoma, Kigoma, Kasanga, Itungi, Manda, Liuli,and Mbamba Bay.

PART II

Shirati, Kinesi, Maisome, Kome, Bukondo, Kahunda, Chato, Nyamirembe, Nkome, Muharamba, Buchosa, Nansio, Solima, Karumo, Tongwe, Kirando, Kalya, Kapalamsenga, Ikola, Mtanga, Kagunga, Karema, Sigunga, Kipili, Msamba, Ninde, Kala, Wampembe, Lagosa and Kibwesa. Matema, Lundu, Lupingu, Ifungu, Mkili, Njambe, Ndumbi, Ujiji, Ukara, Nyakalilo, Mgambo, Kyankwikwi and Buchenzi.

Passed in the National Assembly on the 9th November, 2004.



Clerk of the National Assembly