



A LAW TO INCORPORATE THE 2014 AMENDMENTS OF THE MARITIME LABOUR CONVENTION INTO THE LAWS OF THE FEDERAL REPUBLIC OF NIGERIA

**A Legislation Drafting Project submitted in partial fulfilment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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Explanatory Notes

Abstract

The maritime sector is one of the earliest and most internationalised industries of the world. This is evident in the structure of maritime activities wherein the owner(s) of the vessel are citizens of a state, the vessel itself is a citizen of a different state and to complicate matters its employees are may be drawn from various parts of the world. A classic example of this scenario is the *SS Torrey Canyon* an oil tanker carrying crude oil, ran aground off the Western coast of Cornwall, England in 1967 and spilled its cargo. At that time, the Torrey Canyon oil spill was the worst and most serious oil spills in history resulting in great environmental damage. The ship was registered in Liberia, owned by Barracuda Tanker Corporation, a subsidiary of the Union Oil Company in California, chartered and operated by British Petroleum in the United Kingdom and the master and its crew were Italians.

The international nature of the shipping industry creates global challenges. At the centre of these global challenges is the issue of abandonment of seafarers at sea. Where abandonment happens, aspects such as financial security, cost of repatriation, maintenance while abandoned, payment of remuneration/entitlements amongst others must be taken into consideration and should by all means form part of the seafarer's contractual rights where the ship owner is unable to perform its obligations.¹ Also, in cases of sickness, injury or death in the course of employment, there must be in place minimum international standards for the responsibilities of the ship-owner. Hence there must be adequate financial security in place such as an insurance cover accessible to the seafarer. These arrangements should form part of the ship-owners responsibilities in providing safe and decent working conditions to the seafarer.²

This explanatory note sequel to the legislative drafting, examines what abandonment at sea is to the seafarer and the amendments made to the MLC 2006 to ensure a better financial security for the seafarer in cases of abandonment, sickness, injury or death occurring in connection with their employment by highlighting the salient provisions of the MLC 2006 as amended.

¹Insights to the Maritime Labour Convention 2006 available at <https://www.asil.org/insights/volume/10/issue/23/maritime>.

² Preamble of the IMO resolution A930(22).

Finally, this legislative drafting project concludes the by preparing a draft regulation of the 2014 amendments to the MLC for incorporation into Nigerian Maritime laws.

Introduction

In many instances, seafarers work on different ships for varying periods of time and under differing employment agreements governed by local laws which they are either not aware of or understand. Sometimes, they may also be recruited through third party agencies operating in countries different from that of the seafarer.³ The seafarer was therefore faced with the difficulty of enforcing his labour rights and interests in countries whose laws or courts he was not familiar with. This situation presents serious jurisdictional challenges and difficulty in determining what laws should govern the seafarer's employment contract or regulate the working conditions of the seafarer including the repatriation of the seafarer when abandoned at sea and compensation for sickness, injury or death in the course of employment.

Under international law, the flag state is assigned the primary jurisdiction of implementing the seafarer's social/labour conditions on board, ship safety and environmental protection standards.⁴ The flag state is also responsible for the repatriation of an abandoned seafarer where the ship-owner had failed in its responsibility to repatriate.⁵ This approach was convenient under the traditional maritime states wherein seafarers were citizens of the flag state of the ship they were contracted to work in. However, as the maritime industry evolved due to varying factors such as new inventions and innovations in the build of ships, the steady growth of the shipping industry and the emergence of flags of convenience. Seafarers employed on flags of convenience ships are often denied their basic rights because flags of convenience do not enforce minimum social standards. Seafarers were no longer required to be nationals or residents of the flag state and thus have no connection with the flag State other than the fact that he/she is working on board a ship flying the State's flag.⁶ Hence, flag states experienced difficulties in assessing or determining the circumstances of the abandoned seafarer and his/her repatriation.

This situation creates great difficulties to the seafarer such as unlawful termination of

³ Desislava N. Dimitrova & Roger Blanpain, *Seafarers' Rights in the Globalised Maritime Industry* (Kluwer Law International 2010) 15-25.

⁴ Article 94 United Nations Convention on Law of the Sea.

⁵ Standard A.2.5 MLC.

⁶ *Supra* n 3.

employment, inability to claim unpaid wages and entitlements, cost of repatriation back to home country, compensation for sickness, injury or death amongst others.⁷

To address the challenges faced at sea by a seafarer, a system of financial security was incorporated into the MLC in 2014. The 2014 amendments to the MLC was adopted and approved by the 103rd session of the International Labour Organisation (ILO) on 11th June 2014. The amendments came into force on the 18th January 2017. However, before embarking on an analysis of the 2014 amendments, it is important to examine what exactly constitutes abandonment at sea.

What is Abandonment of seafarers at Sea

The issue of abandonment in the maritime industry has been a long standing problem to the international community wherein several seafarers have been left stranded in foreign ports with no other means of survival on board the vessel and with little or no hope of recovering wages for work done.

Abandonment has been described as the severance of ties between the ship-owner and the seafarer.⁸ In such situation, the master of the ship is left without any financial means for the ship's operation which results in the ship-owner failing to fulfil its fundamental obligations to the seafarer such as payment of outstanding remuneration, timely repatriation of the seafarer back home, provision of the basic needs on board the vessel such as; adequate food, medical care etc.⁹

Abandonment can happen for a number of different reasons such as bankruptcy of the ship-owner, arrest of the vessel by creditors or port state detention due to unseaworthiness of the ship or simply because the ship owners make more money by not paying wages owed. When abandonment occurs particularly in a foreign port and the ship master is left with no funds to maintain the ship further, the seafarers who are mostly far from home are stranded and usually refuse to leave the ship until there is a judicial sale to enable them recover their wages, entitlement and cost of repatriation.¹⁰ Such judicial sale takes a lengthy process of months and sometimes even years while the seafarer continually lives on board the vessel

⁷ Ibid.

⁸ Resolution A.930(22) para 2.1.3.

⁹ Ibid.

¹⁰ Jennifer Lavelle, 'The Maritime Labour Convention 2006: International labour Law Redefined' (Informa Law from Routledge, 2014).

waiting for such sale to be conducted.¹¹ As time passes, the supplies on board the vessel continue to dwindle or become non-existent leading to harsh and demeaning living conditions for the seafarers. The seafarers are thus left to rely on charitable organisations or persons who may opt to provide basic needs to the seafarers pending their repatriation to their home countries.¹²

The ILO between the year 2001 and 2014 reported the abandonment of over 159 ships with over 1,600 seafarers stranded.¹³ In 2009, especially at the height of the global economic crisis, over 50 vessels were reported to have been abandoned with over 600 seafarers left in the dark.¹⁴

The Director of International Labour Standards Department of the ILO whilst addressing the issue of abandonment, stated that when abandonment occurs at sea, it has tremendous and far-reaching consequences for seafarers and their families.¹⁵ He asserts further that to the ILO, this is an unacceptable form of work and the legal solution must be one in which a financial security regime will be a requirement under the MLC to cover the issue of claims and injuries in order to have a long lasting solution to those circumstances in which a ship-owner, for whatever reasons exist, decides to abandon the ship.¹⁶

International Response to the Challenges of Abandonment at Sea

The first step to providing a lasting solution was the establishment of the Joint IMO/ILO Ad Hoc Expert Working Group in 1998 to consider questions of liability of the ship-owner and the rights of seafarers to adequate compensation for loss of life, personal injury and abandonment and to formulate suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO, as appropriate. The expert working group met nine times between the years 1999 – 2009.¹⁷

In 2001, the IMO adopted resolution A.930 (22) guidelines on provision of financial security

¹¹ Ibid.

¹² Supra n 10.

¹³ Supra n 3.

¹⁴ Ibid.

¹⁵ http://www.ilo.org/global/standards/maritime-labour-conventions/WCMS_246823/lang--en/index.htm.

¹⁶ Ibid.

¹⁷ Supra n 10.

in cases of Abandonment of seafarers.¹⁸ The resolution set out a framework for providing seafarers with basic financial security in the event that ship-owners were unable to fulfil their responsibilities. The provisions of this resolution were aimed at providing financial security to cover inter-alia repatriation costs, payment of outstanding remuneration, essentials need. The seafarers with the benefit of such financial security will have direct access to the funds so that abandonment by their employer would not preclude them from relying upon the security to which they are entitled. The problem with this resolution was that it was not a convention that could be ratified by states and had limited force of application amongst states as it was also not mandatory.¹⁹

At its sixth session, the expert working group began discussing the incorporation of the provisions of resolution A.930 (22) into MLC being an international convention dealing with the rights of seafarers, it was the perfect instrument to empower the planned provisions on financial security for abandoned seafarers.²⁰ After the ninth session of the expert working group, the report and proposed draft of the financial security system was transferred to the Special Tripartite Committee of the ILO to begin work on the incorporation of the abandonment provisions into the MLC.²¹

The incorporation of the abandonment provisions as stated earlier was adopted in 2014. However, before proceeding on an analysis of the 2014 amendments, it is crucial to give a general overview of the MLC 2006 before the amendments.

General Overview of the MLC 2006

The MLC 2006 was adopted on 23 February 2006 at the 10th maritime session and 94th session of the International Labour Conference (ILC) of the ILO by a joint resolution of international seafarers, ship-owners organisations and State governments. The MLC came into force on the 20th of August 2013 and as at November 2017, with over 61 States representing more than 80 percent of the world's global shipping tonnage have ratified the Convention. Thus it is safe to certify that the wide number of ratifications addresses one of the underlying concerns of unifying the distortion in the application and enforcement of labour conventions in the maritime industry.

¹⁸ The resolution was adopted on the 29th of November 2001 at the 22nd session of the IMO Assembly.

¹⁹ Supra n 10 at 121.

²⁰ Ibid.

²¹ Ibid.

The MLC 2006 consolidates and improves on over 68 existing international maritime labour conventions. It is described as the fourth pillar of the international maritime regulatory regime complementing the major International Maritime Organization (IMO) conventions on the International Convention for the Safety of Life at Sea, 1974 (SOLAS), the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL) and the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW), all of which are intended to ensure the safety and security of shipping.

The aim of the MLC was to create a single, coherent document embodying the standards of existing international maritime labour conventions and the fundamental principles of international labour law. It also ensures that the minimum rights and needs of seamen to safe and secure workplace in compliance with safety standards are provided. It further attempts to achieve a level playing ground, a uniformity of practice and implementation of the ILO conventions between states by extending the application of MLC 2006 to ships of non-ratifying states.²² This effectively means that ships that fly the flag of any state that is yet to ratify the MLC do not receive any favourable treatment of being excluded from its application because their flag states are yet to ratify the Convention and are subject to inspections by port states that have incorporated the convention.

The MLC applies to all seafarers, defined in article II paragraph 1(f) as being all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies. Where there is doubt as to the capacity of anyone working on board a vessel as a seafarer, the Convention leaves the determination of such situation to competent authority in each ratifying state after due consultation with ship-owners and seafarers' organisations.²³ The Convention also applies to all ships whether publicly or privately owned ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks but does not apply to warships or naval auxiliaries.²⁴

The Convention is divided into three different but related parts of Articles, Regulations and

²² Article V para 4, Standard 5.2 on Port State responsibilities.

²³ Article II MLC 2006.

²⁴ Ibid Article 2 para 2.

the Code. The Articles and Regulations set out the core rights and basic obligations of the ratifying states. The regulations and codes are further divided into part A (the mandatory standards) and part B (non-mandatory guidelines). States which have ratified the Convention are not bound by part B of the code and as indicated in the provisions in Title 5 on port state control, inspections would deal only with the mandatory requirements of the Convention. Notwithstanding, the Convention implores States to give due consideration to implementing their responsibilities under Part A of the Code in the manner provided for in Part B.²⁵

The Regulations and the Code are organized into general areas under five Titles as follows:

Title 1: sets out the minimum requirements for seafarers to work on a ship. These include the minimum age, the certificate indicating that one is medically fit, aptly trained and qualified to perform duties, as well as the establishment of an efficient and well-regulated seafarer recruitment and placement system.

Title 2: Conditions of employment; It ensures that all conditions of work are fair and regulated including the minimum wages paid, the hours of work and rest, the entitlement to leave, the right to be repatriated, the seafarers' compensation for the ship's loss or foundering, manning levels as well as opportunities for career and skill development.

Title 3: Accommodation, recreational facilities, food and catering; It provides for a number a number of minimum requirements as to the size of rooms, heating, ventilation, noise, sanitary facilities, lighting and hospital accommodation. It also ensures that seafarers have access to good quality food, drinking water under regulated hygienic conditions which are consistent with promoting the health and well-being of the seafarers.

Title 4: Health protection, medical care, welfare and social security protection; Protects the health of seafarers and ensure their prompt access to medical care on board ship and ashore. It includes measures aimed at providing seafarers with health protection and medical care.

Title 5: Compliance and enforcement; Provides for the measures of implementation by flag states and port state through an effective system of regular inspections and enforcements on-board and onshore and the establishment of seafarers' complaint procedures.

²⁵ Ibid Article IV para 2.

One of the outstanding features of the MLC 2006 is the introduction of the special accelerated amendment procedures for technical provisions/codes of the Convention as opposed to the previous amendment procedure of the traditional ILO conventions.²⁶ The simplified process of amendments will address the constant changes in the industry, providing a unique mechanism for the continuous revision and updating of the standards of the Convention.²⁷

2014 Amendments of the MLC 2006

As afore-stated, the amendments to the MLC 2006 establish mandatory requirements that ship-owners have financial security to cover abandonment of seafarers, as well as death or long-term disability of seafarers due to occupational injury and hazard. These requirements as described, guarantees that seafarers are not abandoned, alone and legally adrift for months on end without pay, adequate food and water. In addition, the amendments clearly define the role of flag States in ensuring that adequate financial security exists through national laws to mitigate against the financial, legal and human cost of abandonment, death and long-term disability due to occupational hazards.²⁸ The next section analyses the amendments with respect to abandonment and ship owners' liability to pay compensation to the seafarer in the event of death and long term disability.

Abandonment Financial Provisions

Despite its success in achieving favourable working conditions for seafarers, the MLC 2006 did not address the issue of abandonment of seafarers. It is presumed that this was because the Expert Working group was working on the issue as at the time and had the required knowledge and expertise at the time to come up with appropriate solutions.²⁹ After the ninth session of the Expert Working group, the issue of abandonment was transferred to the Special Tripartite Committee of the ILO to begin work on incorporation of the Abandonment financial provisions into the MLC.

The only protection available to the seafarer under the MLC 2006 before its amendment was those related to repatriation under Standard A2.5, which was to ensure the return of the seafarer back to his home country at no cost to him. Hence the regulation provided for the

²⁶ Ibid Article XIV & XV.

²⁷ Supra n 10.

²⁸ Director of the ILO Labour Standards Department, Dr. Doumbia-Henry.

²⁹ Supra n 10.

responsibility of the flag state to repatriate the seafarers where the ship-owner had failed to do so and recoup the cost of such repatriation from the ship owner.³⁰ The issue with relying on the ship owner or the flag state was that the seafarer is subjected to the whims and caprices of the ship owner in providing funds for his repatriation and the flag states bureaucratic process of repatriating him where the ship owner fails to. In addition, there was no provision for the seafarer's outstanding wages, entitlements and provision of necessities while awaiting repatriation. The original intention of the Standard A2.5 was to ensure that seafarers were always able to return home but there were no modus operandi in place or a financial security to cover the ship owner's liability to repatriate.

The Special Tripartite Committee adopted the amendments implementing Standard 2.5.2, 4.2 and the appendices of the MLC on 11th April 2014 and was approved by the ILO Governing Body at its 103rd session on the 11th of June 2014. The amendments came into force on the 17th of January 2017.

Standard A2.5.2 on abandonment financial provisions requires that a financial security system be in place to ensure that seafarers have recourse to some finance that will cater for them when abandoned at sea. The amendment tightens the provisions in A2.5.

Mandatory certificates and other evidential documents will be required to be carried on board to establish that the financial security system is in place to protect the seafarers working on board.

Standard A.2.5.2 on financial security provision is triggered where a seafarer has been abandoned. Abandonment is deemed to have occurred where there has been a violation of the requirements of the Convention or the terms of the seafarer's employment agreement, the ship-owner:

- a. fails to cover the cost of the seafarer's repatriation; or
- b. has left the seafarer without necessary maintenance and support; or
- c. unilaterally severed their ties including failure to pay contractual wages for a period of at least two months.³¹

³⁰ Article 2.5 MLC 2006.

³¹ Article A2.5.2(2) MLC 2006.

This provision enables the seafarer to know when to ‘*sound the alarm*’ and take steps for enforcing its compensation for repatriation where any of the above circumstances arises. Necessary maintenance and support required on board the vessel at every given time as provided for in Standard A.2.5.2 (2b) has been described to include food, accommodation, drinking water supplies, essential fuel for survival on board the ship, medical care amongst others.³² Flag States shall ensure that a financial security system is in place for ships flying its flag and that such financial security system provide direct access, sufficient coverage and expedited financial assistance to any seafarer on board a ship of a member state flying its flag.³³

The seafarer or its representatives upon request must be granted prompt assistance by the financial security system whenever it is deemed that the seafarer has been abandoned with proof of necessary justification of entitlement.³⁴ This means that the seafarer at all times be armed with all necessary contact information of the financial security provider to enable the seafarer have direct communication to the security provider when any of the circumstances provided for in A2.5.2 (2) arises.³⁵ The financial security system must be sufficient to cover outstanding wages/entitlements due to the seafarer under his employment contract, all expenses incurred by the seafarer including the cost of repatriation and the essential needs of the seafarer required until the seafarer’s arrival at home.³⁶

Flag States are to require ships flying its flag carry on board mandatory certificates and other documentary evidence on the financial security provisions of the MLC as evidence of compliance. Such documentary evidence must be posted in a conspicuous place on board the ship and readily accessible to seafarers.³⁷ Where the certificate of compliance or other documentary evidence is not written in English language, it must be accompanied by an English translation.³⁸

It is important to state that all these mandatory provisions of the Standard A2.5.2 are not exclusive neither do they prejudice any other rights, claims or remedies that may also be

³² Ibid A2.5.2(5).

³³ Ibid A.2.5.2(3) & (4).

³⁴ Ibid A2.5.2(8).

³⁵ Ibid Appendix A2-1.

³⁶ Ibid A2.5.2(9).

³⁷ Ibid A2.5.2(6).

³⁸ Ibid A2.5.2(7).

available to sufficiently compensate a seafarer who has been abandoned at sea. States are thus allowed to provide for any other additional protection to the seafarer through their National laws or offset against amounts received from other sources arising from any rights, claims or remedies that maybe the subject of compensation under the present standard.³⁹

Indeed, from the foregoing provisions and financial security regime of the MLC 2006 provides an assurance and protection to the seafarer when abandoned at sea and removes the excruciating pain of waiting for a judicial sale of the vessel before recovering outstanding wages or flag states to repatriate them back home when abandoned. The regime also allows for the seafarer to get all wages and entitlements before returning to their home country. The amendment is beneficial not only to the seafarer, but also to flag states because where shipping companies or ship owners are unable to meet responsibilities for repatriation, the financial security provider will foot the cost of repatriation rather than the flag state. Although Standard A.2.5 provides recourse to the flag state to recover the cost of repatriation from the ship owner as a civil debt, the process of such recovery may be time consuming and expensive. Hence, if the seafarer can recover the cost of repatriation, wages and other necessities from the financial security provider, it reduces cost to the flag state.

Ship owner(s) Liability to Pay Compensation in the Event of Death or Long Term Disability

Standard A4.2.1 on ship owners' liability was amended to protect from the financial consequences of sickness, injury or death occurring in connection with their employment. Paragraph 8 was inserted and provides that flag states are to ensure a system of financial security to assure of compensation in the event of death or long term disability of seafarers due to an occupational injury, illness or hazard as set out in the seafarer's employment agreement or collective agreement.⁴⁰ Such financial security must meet the following minimum requirements such as a claim for contractual compensation may be brought directly by the seafarer concerned, his next of kin, nominated beneficiary or designated beneficiary.⁴¹ The payment of compensation must be paid in full and without delay. Where the nature of the long term disability of a seafarer make it difficult to assess the full compensation, an interim

³⁹ Ibid A.2.5.2(14) MLC 2006.

⁴⁰ Standard A4.2.1 (1b) & 8 MLC 2006.

⁴¹ Ibid A4.2.1(8e).

payment must be made to the seafarer to avoid any undue hardship.⁴² No seafarer or his representative shall be pressured into accepting anything less than the contractual amount of the compensation.⁴³ Where the financial security system providing compensation is to be cancelled or terminated for whatever reasons, the security provider must give 30 days prior notice to the authorised agency.⁴⁴ To ensure compliance by ship owners' to these provisions, the flag state must ensure that that ship flying its flag carry on board a certificate or other documentary evidence of financial security issued by a security provider.⁴⁵ Where such certificate or documentary evidence is not in English language, such certificate or documentary evidence must be accompanied by an English translation and conspicuously displayed on board the ship.⁴⁶

Ratification and Domestication of the MLC in Nigeria

On 18 June 2013, the Government of Nigeria deposited with the International Labour Office the instrument of ratification of the MLC 2006. Nigeria which heavily relies on seaborne trade to sustain its domestic economy through imports of raw materials, equipment and manufactured products for its population of over 180 million and exports of crude oil and agricultural products recognises the need for international labour standards for the protection of seafarers and ship-owners in such a globalized industry as the shipping industry. Therefore, Nigeria ratified this significant Convention, known as the seafarers' Bill of Rights. Nigeria has also acceded to the 2014 amendments of the MLC through the tacit amendment procedure. However, Nigeria is yet to incorporate the MLC 2006 and the amendments thereto and seafarers in Nigeria are yet to benefit from the MLC convention that have been ratified.

Nigeria being a dualist state, has two methods of incorporating international maritime conventions into its national laws. The first is by way of direct reference of the Convention in the Merchant Shipping Act and the delegation of power to the Minister of Transportation to implement the convention by way of regulations. The second option, is that after ratification, if the convention is not stated or provided for in the Merchant Shipping Act, such convention in accordance with section 12 of the Constitution of the Federal Republic of Nigeria on implementation of treaties, must pass through the legislative process of enacting an Act in the

⁴² Ibid (8c).

⁴³ Ibid (8b).

⁴⁴ Ibid para 10.

⁴⁵ Ibid para 11.

⁴⁶ Ibid para 14 & 11.

National Assembly.

Unfortunately, the MLC 2006 falls within the second option. The problem associated with the second option is the long, arduous and costly process associated with enacting bills through the National Assembly. In some instances, before the completion of the legislative process, the government is changed, and the process begins afresh with lobbying and convincing of politicians on the significance of the bill(s).

Hence, legally speaking, seafarers in Nigeria working on board Nigerian flagged vessels cannot benefit from the MLC 2006 by virtue of section 12 of the Nigerian Constitution which provides that ratified conventions do not automatically translate to its citizens having rights and obligations under such convention until it is incorporated and becomes part and parcel of the Nigerian law.

To remedy this situation and explore a faster and cheaper process of domesticating not only the MLC 2006 and its amendments, but any other international maritime conventions, the Agency is in the process of amending the Merchant Shipping Act, 2007 by empowering the Minister of Transportation to domesticate maritime conventions already ratified by the Executive arm of government by way of regulations. This is crucial to the development of maritime law in Nigeria because the maritime industry is a dynamic one which constantly evolves and its conventions are constantly updated to align with changing practices. This will enable NIMASA ensure that Nigerian maritime legislations align with international best practices at all times.

This legislative drafting therefore pre-empts the amendment of the Nigerian Merchant Shipping Act by domesticating the amendments to the MLC 2006 by way of regulation. The amendment of the Merchant Shipping Act would empower the Minister of Transportation to enact by way of regulation, the MLC 2006 and any other amendments to the MLC. The regulations in accordance with existing practice, will be attached to the Merchant Shipping Act as its subsidiary legislation and will be referred to as the Merchant Shipping (Maritime Labour Convention, Financial Security System for Seafarers) Regulation 2018. This regulation will therefore incorporate the amendments to the MLC as the parent Convention itself is presumed domesticated.

Implementing Agency

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the apex Agency responsible for the implementation and enforcement of maritime labour regulations/laws under the supervision of the Ministry of Transportation. It performs port state control and flag state implementation on behalf of the Government of Nigeria. The Agency is also responsible for the training and certification of seafarers in Nigeria. In furtherance of its mandate, the Agency recognising the economic benefits of the blue economy, have over the years trained Nigerian seafarers in the Philippines, United Kingdom and Romania to boost the maritime labour market in Nigeria. Furthermore, the Agency is responsible for initiating maritime laws either at the Ministerial level or national level. The Agency although yet to incorporate the MLC, apply the provisions of the MLC in its flag state implementation and port state control responsibilities.

The legal effect of enforcement of laws contrary to the provisions of the Constitution, is a question for the Courts in the nearest future or in the interim, speed up the amendment of the Merchant Shipping Act and redress the chaos.

Explanation of the Draft Regulation

The draft law contains regulations passed by the current Minister of Transportation.⁴⁷ The draft regulation is derived from the Maltese and English models of the MLC legislation and tailored to suit the peculiarities of the Nigerian environment to the extent allowed under the MLC Convention itself. As afore mentioned, the draft regulation envisages the amendment of the Merchant Shipping and presumes that the parent Convention of the MLC has been domesticated already by way of regulations. Hence the Merchant Shipping (Amendment Act) 2015 page is left blank and when the amendment of the Merchant Shipping Act is concluded, this regulation will be attached to the amended Merchant Shipping Act as a subsidiary legislation.

The Regulation applies to all Nigerian seagoing ships wherever they are and to all other ships while they are in Nigerian ports as determined by the Convention and to all seafarers serving on board such ships. Where there is a conflict in determining the capacity of any staff working on board a ship, the regulation provides for the determination of such by the

⁴⁷ Honourable Chibuike Rotimi Amaechi.

authorised Agency in consultation with ship owners' and seafarers organisations. The draft regulation further provides for the duty of ship-owners to provide financial security system for seafarers in cases of abandonment and in the event of death or long term disability due to sickness or occupational hazard as provided in the 2014 amendments. The financial security system must comply with the requirements of the regulation. The regulation further provides for offence and penalties against irresponsible ship owners and erring financial security providers who do not fulfil their obligations.

DRAFT REGULATIONS

MERCHANT SHIPPING, ACT, 2007



(MARITIME LABOUR CONVENTION, FINANCIAL SECURITY SYSTEM FOR SEAFARERS') REGULATIONS 2018

ARRANGEMENT OF REGULATIONS

Regulations

1. Citation and commencement
2. Application
3. Duty of ship owner(s) to provide financial security
4. Abandonment of seafarers
5. Requirements for ship owner(s) financial security for abandonment at sea
6. Claims for relief and payment for abandonment at sea
7. Requirements for ship owner(s) financial security for death or long term disability
8. Payment of compensation for death or long term disability
9. Duty of financial security provider(s) to issue certificate
10. Duty of ship owner(s)/master to carry and display certificates of financial security
11. Termination of a financial security system
12. Offences and penalties
13. Interpretation

SCHEDULES

First Schedule

Information to be Included in the Certificate or other Documentary Evidence of Financial Security for Abandonment of Seafarers

Second Schedule

Information to be Included in the Certificate or other Documentary Evidence of Financial Security for Death or Long Term Disability

Merchant Shipping Act, 2007

Merchant Shipping (Maritime Labour Convention, Financial Security System for Seafarers') Regulation, 2018

S.I.....No. of 2018

..... 2018

S/N2018	<i>Commencement</i>
	In exercise of powers conferred upon me by section 336(3) of the Nigerian Merchant Shipping Act 2007, and all other powers enabling me in that respect, I Rotimi Amaechi, Honourable Minister of Transportation, hereby make the following Regulations -	
1.	This Regulation may be cited as the Merchant Shipping (Maritime Labour Convention (Financial Security System for Seafarers') Regulation 2018.	<i>Citation</i>
2.(1)	This regulation shall apply to all Nigerian seagoing ships wherever they are and to all other ships while they are in Nigerian ports as determined by the Convention and to all seafarers serving on board such ships.	<i>Application</i>
(2)	This regulation shall not apply to: (a) fishing vessels; (b) ships of traditional build; (c) pleasure yacht; (d) vessels not ordinarily engaged in commercial activities; (d) ship owned, operated or used by a state; (e) warships or naval auxiliaries.	
(3)	Provided that in case of doubt as to whether any categories of persons are to be regarded as seafarers, or as to whether any ship/vessel are to be regarded as ships, the matter shall be determined by the authorised Agency after consultation with the ship owner(s) and seafarers' organisations concerned.	
3.(1)	A ship which this regulation applies shall not be operated unless a ship owner(s) provides for: (a) an expeditious and effective financial security system which complies with the provisions of this regulation to aid the seafarer in the event of being abandoned at sea; and (b) a financial security system to assure compensation in the event of death or long term disability due to occupational injury or hazard in the course of their employment which complies with the requirements of this regulations.	<i>Duty of ship owner(s) to provide financial security.</i>
(2)	Such security system whether by way of insurance, social security scheme or any other similar arrangement must be registered with the authorised Agency responsible for the implementation and enforcement of maritime labour standards.	
(3)	The authorised Agency shall confirm the issuance of such financial security from the financial security provider before registration.	

<p>4.(1)</p> <p>(a)</p> <p>(2)</p> <p>(3)</p>	<p>A seafarer shall be deemed to have been abandoned where, in violation of the requirements of these regulations or the terms of the seafarer’s employment agreement, the ship owner:</p> <ul style="list-style-type: none"> (a) fails to cover the cost of the seafarer’s repatriation; or (b) has left the seafarer without the necessary maintenance and support; or (c) has otherwise unilaterally severed his ties with the seafarer including failure to pay contractual wages for a period of at least two months. <p>(a) For the purposes of Regulation 3(1)(b) necessary maintenance and support for the seafarers shall include:</p> <ul style="list-style-type: none"> i. food; ii. accommodation; iii. fresh drinking water; iv. fuel or bunker oil necessary for the effective running of the ship; v. medical supplies in the case of injury or sickness. <p>For the purposes of this regulation the period of the seafarer’s abandonment begins when the seafarer is abandoned and ends with the earliest of the following events:</p> <ul style="list-style-type: none"> (a) the seafarer is in or is repatriated to— <ul style="list-style-type: none"> i. the seafarer’s country of residence; ii. the destination provided in the seafarer’s seafarer employment agreement as being that to which the seafarer should be returned in the event that the seafarer is repatriated, or iii. such place as the seafarer has agreed in advance with— <ul style="list-style-type: none"> aa. the security provider, or bb. any person who has made provision for the seafarer’s repatriation; (b) the seafarer confirms in writing to the security provider that financial assistance is no longer required; (c) the seafarer dies; (d) the seafarer unreasonably refuses to be repatriated or to cooperate with arrangements made for the seafarer’s repatriation. 	<p><i>Abandonment of seafarers.</i></p>
<p>5.(1)</p>	<p>Subject to regulation 3(1)(a), the financial security system provided by the ship owner shall be sufficient to cover the following:</p> <ul style="list-style-type: none"> (a) outstanding wages and other entitlements due from the ship owner to the seafarer under their employment agreement, the relevant collective bargaining agreement or these regulations, limited to four months of any such outstanding wages and four months of any such outstanding entitlements; (b) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer’s arrival at home. (c) all expenses reasonably incurred by the seafarer, including the cost of 	<p><i>Requirements for ship owner(s) to provide financial security for abandonment at sea.</i></p>

<p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5)</p> <p>(6)</p>	<p>repatriation referred to in regulation 4(3).</p> <p>The cost of repatriation of the seafarer from the time of leaving the ship until arrival at the seafarer’s home shall cover:</p> <p>(a) travel by appropriate and expeditious means, normally by air which shall include passage and transport of personal effects and include provision for food and accommodation;</p> <p>(b) provision of food and accommodation, necessary medical care (if any) and any other reasonable costs or charges arising from the abandonment.</p> <p>The financial security shall provide that a seafarer is entitled to receive financial assistance if the seafarer:</p> <p>(a) has been abandoned as provided in regulation 4; and</p> <p>(b) is or was working on the ship to which the abandonment financial security relates.</p> <p>The abandonment financial security must provide that a claim for relief may be made either by the seafarer or the seafarer’s nominated representative.</p> <p>If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this rule, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.</p> <p>Nothing in this rule shall prejudice any right of recourse of the insurer or provider of financial security against third parties.</p>	
<p>6.(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5)</p>	<p>A security provider who receives a claim for relief must promptly decide whether the seafarer in respect of whom the claim is made is entitled to receive financial assistance.</p> <p>A security provider who decides that a seafarer is entitled to receive financial assistance, whether in relation to the whole or any part of a claim for relief, must promptly provide such assistance, irrespective of whether there are further elements of the claim yet to be decided upon.</p> <p>If an abandonment security provider does not decide within [10] days of receiving a claim for relief whether to provide financial assistance to the seafarer in respect of whom the claim is made, the abandonment security provider must without delay make an advance payment to the seafarer.</p> <p>The amount of the advance payment must, in the reasonable opinion of the security provider, be sufficient to provide for the seafarer’s relief and maintenance until a decision on entitlement to financial assistance under the abandonment financial security has been made.</p> <p>If, in contravention of paragraph (3), an advance payment is not made, the abandonment security provider must pay interest on the amount of the unpaid advance payment at the rate of 20% per annum from the date that the advance payment became payable.</p>	<p><i>Claims for Relief and Payment for Abandonment at Sea.</i></p>

<p>(6)</p> <p>(7)</p>	<p>Any advance payments made, may be deducted from the financial assistance provided to the seafarer under the abandonment financial security.</p> <p>A security provider who decides that a seafarer is not entitled to receive financial assistance under the abandonment financial security but who has made an advance payment to the seafarer, may recover the advance payment from the seafarer as a civil debt.</p>	
<p>7.(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5)</p>	<p>A ship owner(s) financial security for compensation to the seafarer in cases of death or long term disability due to occupational injury or hazard occurring must satisfy the following conditions.</p> <p>The financial security must provide compensation if the ship owner(s) incur a liability, including a liability under a seafarer employment agreement in the event of death or long term disability of a seafarer who works on the ship due to occupational injury, illness or hazard.</p> <p>The financial security must be of an amount which the ship owner reasonably considers adequate to ensure that the ship owner will be able to meet any liabilities the ship owner may have to provide compensation in the event of death or long term disability of a seafarer(s).</p> <p>The financial security must provide that a direct claim may be made by the seafarer, its nominated representative, next of kin or designated beneficiary.</p> <p>The financial security must not restrict the seafarer’s, next of kin or designated beneficiary’s ability to enforce the right to make a direct claim.</p>	<p><i>Requirements for ship owner(s) to provide financial security for death or long term disability.</i></p>
<p>8.(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(5)</p>	<p>A ship owner(s) shall be liable to pay compensation to a seafarer or the estate of a seafarer, in the event of death or long term disability due to occupational injury, illness or hazard and where a direct claim is made.</p> <p>Once the financial security provider determines the full amount of compensation to be paid in respect of the claim, the financial security provider must pay the full amount to the claimant within 7days.</p> <p>where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship</p> <p>The financial security provider must make an interim payment if:</p> <p>(a) 14 days have elapsed since the date of the claim;</p> <p>(b) the financial security provider has not determined the full amount of compensation to be provided in respect of the claim; and</p> <p>(c) a beneficiary is suffering hardship.</p> <p>The amount of an interim payment to be paid to a beneficiary is:</p>	<p><i>Payment of Compensation for Death or Long Term Disability.</i></p>

	<p>(a) where an amount in respect of part of the claim has been determined and payment of that amount, in whole or part, is sufficient to alleviate the beneficiary’s hardship, that amount; or</p> <p>(b) where no amount in respect of part of the claim has been determined, or the amount which has been determined is not sufficient to alleviate the beneficiary’s hardship, the lower of—</p> <p style="padding-left: 40px;">(aa) such amount as would alleviate the beneficiary’s hardship; and</p> <p style="padding-left: 40px;">(bb) 60% of the likely total amount of compensation payable in respect of the claim as estimated by the financial security provider.</p> <p>(6) Where, in contravention of paragraph (5), a financial security provider does not make an interim payment, the financial security provider must pay to the beneficiary, interest on the amount of the unpaid interim payment at the rate of 20% per annum from the date that the interim payment became payable.</p> <p>(7) A financial security provider who makes an interim payment may deduct the amount of the interim payment from the full amount of compensation payable under paragraph (4).</p> <p>(8) A financial security provider may recover any proportion of an interim payment which exceeds the full amount of compensation payable in respect of a claim as a civil debt.</p> <p>(9) The seafarer shall receive payment without prejudice to other legal rights but such payment may be offset by the ship owner against any damages resulting from any other claim made by the seafarer against the ship owner and arising from the same incident.</p> <p>(10) There shall be no pressure or inducement on the seafarer, its nominated representative, next of kin or designated beneficiary to accept a payment less than the full amount of compensation.</p> <p>(11) The contractual compensation, if set out in the seafarer’s employment agreement and without prejudice to paragraph (3), shall be paid in full and without delay.</p>	
9.(1)	<p>A financial security provider shall issue to the ship owner a certificate or any other documentary evidence in respect of each ship to which it has provided financial security for:</p> <p>(a) abandonment; and</p> <p>(b) death or long term disability.</p> <p>(2) The financial security provider must ensure that each certificate as provided in paragraph 9(1)(a) and (b) are issued separately.</p> <p>(3) Such certificates issued by a financial security provider must contain information listed in:</p> <p>(a) schedule 1 for abandonment financial security; and</p> <p>(b) schedule 2 for death or long term disability.</p>	<p><i>Duty of Financial Security Provider(s) to Issue Certificate.</i></p>
10(1)	<p>All ships to which this regulation apply shall carry on board certificates or other documentary evidence of financial security issued by a financial security provider</p>	<p><i>Duty of ship owner(s)/master</i></p>

	<p>in relation to the:</p> <p>(a) compensation of seafarers in cases of death and long term disability; and (b) abandonment of seafarers at sea are carried on board at all times.</p> <p>(2) Where more than one financial security provider provides cover, the certificate or any other documentary evidence provided by each provider as stated in paragraph 10(1) shall be carried on board at all times.</p> <p>(3) The ship owner must ensure that all certificate(s) or any other documentary evidence provided for in paragraph 10(1) and (2), if it is not in English, has with it an English translation.</p> <p>(4) The ship owner and the master of a ship must ensure that a copy of the certificates or documentary evidence issued by the security provider as provided in paragraph 9(1-3) in relation to the ship, along with any English translation, is displayed in a conspicuous place on board the ship.</p>	<p><i>s to carry and display certificates or any other documentary evidence of financial security.</i></p>
<p>11(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p>	<p>The termination or cancellation of any of the financial security system provided for in paragraph 9(1) - (3) by a financial security provider is effective only if at least 30 days' prior notice is given to the authorised Agency.</p> <p>A notice given in accordance with paragraph 11 (1) shall:</p> <p>(a) be in writing; and (b) include sufficient information on reasons for termination.</p> <p>(a) A financial security provider who terminates or cancels a financial security system before the end of its validity must give notice in writing to that effect to the authorised Agency. (b) A notice under paragraph (3) must include with it a copy of the certificate(s) or any other documentary evidence.</p> <p>Ship owner(s) must as soon as practicably notify in writing any seafarer(s) whose financial security system has been terminated or cancelled by its financial security provider.</p>	<p><i>Termination of a financial security system.</i></p>
<p>12(1)</p> <p>(2)</p> <p>(3)</p>	<p>Where a ship owner is found to have contravened any of the provisions of this regulation, the authorised Agency may:</p> <p>(a) issue a warning to the owner or master; (b) detain the vessel until it is made to comply with the requirements of this regulation or rendered safe as required.</p> <p>The ship owner(s) and master of a ship to which this regulation applies, have a duty to ensure that the ship complies with the provisions of this regulations and are jointly and severally liable in relation to any breach.</p> <p>Any other person or company who breaches any requirement under this regulation or fails to comply with any notice or order given by the authorised Agency shall be liable on conviction to a fine of not less than Five Million Naira.</p>	<p><i>Offences and penalties.</i></p>
<p>13(1)</p>	<p>In this Regulations, unless the context otherwise requires:</p>	<p><i>Interpretation.</i></p>

<p>“authorised agency” means Nigerian Maritime Administration and Safety Agency;</p> <p>“beneficiary” means the seafarer in respect of whom the direct claim is made; or if the seafarer is deceased, a person entitled to receive a payment out of the seafarer’s estate;</p> <p>“claim for relief” means a claim under the abandonment financial security for financial assistance to repatriate the seafarer;</p> <p>“direct claim” means a claim for compensation submitted directly to a financial security provider;</p> <p>“financial security system” means a contract of insurance or other form of security which provides financial assurance and compensation where the ship owner(s) incurs liability including a liability under a seafarer employment agreement;</p> <p>“seafarer” means</p> <p>(a) a seafarer who works, or has worked, on a ship; or</p> <p>(b) where a seafarer who worked on the ship is deceased, the seafarer’s nominated representative, next of kin or designated beneficiary in the event of death or long term disability of the seafarer due to occupational injury, illness or hazard;</p> <p>“ship owner(s)” means a operator, charter, registered owner and any one acting in capacity of the owner.</p>	
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SCHEDULE 1

Information to be Included in the Certificate or other Documentary Evidence of Financial Security for Abandonment of Seafarers

- 1) The name of the ship to which the ship owners' liability financial security relates.
- 2) The port of registry of the ship.
- 3) The call sign of the ship.
- 4) The International Maritime Organisation number of the ship.
- 5) The name and address of the financial security provider.
- 6) The contact details of the person at the financial security provider responsible for handling claims made by seafarers.
- 7) The name of the ship owner(s).
- 8) The period of validity of the ship owner(s) liability financial security.
- 9) A declaration from the financial security provider that the ship owner(s) liability financial security meets the requirements of standard.
- 10) Seal or stamp of the financial security provider.

SCHEDULE 2

Information to be Included in the Certificate or other Documentary Evidence of Financial Security for Death or Long Term Disability

1. The name of the ship to which the abandonment financial security relates.
2. The port of registry of the ship.
3. The call sign of the ship.
4. The International Maritime Organisation number of the ship.
5. The name and address of the security provider(s).
6. The contact details of the person(s) at the security provider(s) office responsible for handling seafarers' claims for relief.
7. The name of the ship owner(s).
8. The period of validity of the abandonment financial security.
9. A declaration from the security provider(s) that the financial security for abandonment of seafarers' meets the requirements of standard A2.5.2 of the MLC and this regulation.
10. Seal or stamp of the financial security provider.

MADE AT ABUJA THIS DAY OF 2018.

CHIBUIKE ROTIMI AMAECHI
Honourable Minister of Transportation