



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



MERCHANT SHIPPING (SEAFARER' RECRUITMENT AND PLACEMENT SERVICES) REGULATIONS 2014

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

Submitted By: ANTHONY PREYE PREGHAFI (NIGERIA)

Supervisor: MS. RAMAT J.A. JALLOH

Academic Year 2013/2014

Dedication

This work is dedicated to almighty God, for the grace, favour and goodness over my life. To the Nigerian Maritime Administration and Safety Agency (NIMASA) for the nomination and sponsorship to undertake this programme.

Acknowledgment

May I start by thanking the Almighty God for his grace, favour, protection and provision throughout this programme.

Special thanks to my supervisor, **Ramat J. A Jalloh**, for her patience, useful advice and guidance in mid-wifing this academic work; and also to the reviewer, **Elda Belja**, for her incisive criticisms and analytical depth that enriched this scholarship. Furthermore, I owe a lot of gratitude to **Professor David Attard**, **Dr. Norman Martinez Gutierrez**, the Institute librarian, **Verica Cole** and the entire IMO-IMLI family.

I would like to express my deep gratitude to my organization, the **Nigerian Maritime Administration and Safety Agency (NIMASA)** and in particular to bosses, the Director

General, **Mr. Patrick Ziakede Akpobolokemi, Dr. Pressy Jumbo, Mr. Felix Bob-Nabena** and other colleagues in the office for their understanding and support.

I am grateful to my dear wife, **Mrs. Beauty Preghafi** and my children for their prayers and support throughout my study.

I also recognize and appreciate the roles played by my brothers and friends, **Mr. James Obi, Mr John Obudah** and **Mr. Benedict Afezu**, in galvanizing me to achieve this feat.

TABLE OF CONTENTS

REGULATIONS ON SEAFARERS' RECRUITMENT AND PLACEMENT SERVICES

PART 1

AN EXPLANATORY NOTE

1.0 Introduction

2.0 Pre-MLC 2006 Era

3.0 Major features and salient provisions of the MLC 2006

3.1 The General Scope of Application of the Convention

3.2 Fundamental Rights and Principles of Seafarers

3.3 Seafarers' Employment and Social Rights

3.4 Special features

3.4.1 No favourable Treatment Clause

3.4.2 Concept of Tripartism

3.5 Specific Provisions

3.5.1 Minimum Requirements

3.5.2 Contents of Employment Agreement

3.5.3 Accommodation Facilities

3.5.4 Social Rights

3.5.5 Enforcement

4.0 The Significance of MLC 2006 to Nigeria

5.0 The need for Seafarers' Recruitment and Placement Services Regulations

5.1 Benefits of the Regulations to the Seafaring Community

6.0 Special Provisions of the Proposed Regulations

6.1 Competent Court of Jurisdiction

PART 2

1.0 Law making Process

2.0 A Bill for an Act to amend Part XII Section 215 and repeal of Parts IX to Part X of the Merchant Shipping Act

PART 3

Merchant Shipping (Seafarers' Recruitment and Placement Services) Regulations 2014

PART I

REGULATIONS ON SEAFARERS' RECRUITMENT AND PLACEMENT SERVICES

AN EXPLANATORY NOTE

1.0 Introduction

The methodology adopted in this explanatory note is to take a cursory look at the state of maritime labour regulations by the International Labour Organization (ILO)¹ prior to the Maritime Labour Convention (MLC)² 2006; analyze the salient provisions of the MLC, 2006 which made the Convention a sine qua non to Nigeria; and explain the need to have a well articulated regulations on seafarers' recruitment and placement services regime. The benefits such regulations to the seafaring community, some special provisions of the proposed regulations and the competent of jurisdiction are highlighted. Also spotlighted is the law making procedure and the consequential amendment bill of parliament.

2.0 Pre- MLC 2006 Era

The state of affairs of seafarers' rights is internationally guaranteed by the International Labour Organization (ILO), the Agency in charge of labour standards globally. The ILO, right from its inception, has accorded high premium to the protection of seafarers' rights in view of the global nature of the shipping industry. As early as on the 9th July, 1920 the ILO at a session in Genoa adopted the National Seamen's Code Recommendations which envisaged inter alia,

“In order that, as a result of the clear and systematic codification of the national law in each country, the seamen of the world, whether engaged on ships of their own or foreign

¹ The ILO, the first specialized Agency of the United Nation, devoted to 'advancing opportunities for women and men to obtain decent and productive work in the conditions of freedom, equity, security, and human dignity.' Cited in McConnell, Moira., etal, The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime, Martinus Nijhoff Publishers, Boston, 2011, p.13.

² MLC, 2006, An International Convention adopted on 23rd February, 2006 under the auspices of ILO and entered into force on 20th August, 2013. The Convention amongst other things provides decent working conditions for seafarers.

countries, may have a better comprehension of their rights and obligations , and in order that the task of establishing an International Seamen's Code may be advanced and facilitated, the International Labour Conference recommends that each Member of the International Labour Organization undertakes the embodiment in a seamen's code of its laws and regulations relating to seamen in their activities as such".³

During its eighty-six (86) years of existence, the ILO has adopted forty-one (41) maritime labour Conventions and about one hundred and forty five (145) other Conventions relating to social and labour rights and conditions.⁴ In 1976, the ILO adopted the Merchant Shipping (Minimum Standards) Convention (No.147), which brought together a number of key labour Conventions and established the concept of Port State Control, to wit, the inspection and possibly, detention of foreign ships coming into ports. It also included the concept of substantial equivalence. Suffice to say that Convention No.147 is an important precursor to the MLC, 2006 and is also included in a number of Port State Control Memorandum of Understandings as part of the inspection regime. Therefore, it would be reasonable to conclude that the seafarers' rights and obligations were ostensibly scattered in various Conventions and Recommendations.

3.0 Major Features and Salient Provisions of the MLC, 2006

The Maritime Labour Convention was adopted on the 23rd February, 2006, sequel to the 94th Session of the General Conference of the ILO meeting in Geneva, Switzerland.⁵ The Convention entered into force on the 20th August, 2013. Nigeria ratified and deposited the instrument of ratification at the ILO secretariat, Geneva on 18th June, 2013. As at 20th December, 2013, there are (Fifty-four) 54 ratifications, with Nicaragua depositing its instrument of ratification on the said date.⁶ The unanimity in which the Convention, dubbed, 'the seafarers bill of rights,' was adopted is unprecedented in the history of treaty making by the ILO; as there was a record vote of three hundred and fourteen (314) in favour of its adoption and none against.⁷

³McConnell, Moira; etal, op. cit., p. 16.

⁴ Ibid

⁵ Preamble to the MLC 2006, [www.ilo.org/global/standards/maritime-labour-convention\(mcms_090250/lang..en/index.htm](http://www.ilo.org/global/standards/maritime-labour-convention(mcms_090250/lang..en/index.htm) (27/12/13)

⁶ www.ilo./dyn/normlex/en/f?p=1000114000nv (27/12/2013)

⁷ McConnell, Moira., etal, op. cit., p. 16.

The then Director General of ILO, Dr. Juan Somavia, in a speech, described the landmark development as “historic” and a way of achieving “fair globalization”.⁸ In a similar vein, the then Secretary General of the International Maritime Organization (IMO)⁹, Mr. Efthimios Mitropoulos, pointed out that the MLC, 2006 was designed to be ‘the fourth pillar’ of the international maritime regulatory regime, complimenting and completing the approach established in three core IMO Conventions,¹⁰ namely, the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS),¹¹ International Convention for the Prevention of Pollution from Ship, 1974 as amended (MARPOL),¹² and International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978¹³ as amended (STCW).

In highlighting the salient provisions of the MLC, 2006, references to the Convention constitute reference to the Regulations and the Code. This approach is in line with Article II (8) of the Convention.¹⁴ Generally, the Convention comprises three different but related parts: the Articles, the Regulations and Code. The Articles and Regulations set out the core rights and principles and basic obligations of members ratifying the Convention. The Code contains the details for the implementation of the Regulations. It comprises Part A, mandatory Standards and Part B non-mandatory Guidelines.

The Convention has three underlying purposes:

- I. To lay down, in its Articles and Regulations, a firm set of rights and principles;
- II. To allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles;
- III. To ensure, through the Title 5, that the rights and principles are properly complied with and enforced.

⁸ Ibid pp.16-17.

⁹ IMO- United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by sea.

¹⁰ McConnell, Moira., etal, op. cit., p. 18.

¹¹ International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS) was adopted in 1st November, 1974 and enter into force in 25th May, 1980. The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety.

¹² The International Convention for the Prevention of Pollution from Ships (MARPOL) was adopted on 2 November 1973 at IMO and covered pollution by oil, chemicals, and harmful substances in packaged form, sewage and garbage. The Protocol of 1978 relating to the 1973 International Convention for the Prevention of Pollution from Ships (1978 MARPOL Protocol) was adopted at a Conference on Tanker Safety and Pollution Prevention in February 1978 held in response to a spate of tanker accidents in 1976-1977.

¹³ The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended, sets the standards of competence for seafarers internationally.

¹⁴ Article ii (8) MLC, 2006.

3.1 The General Scope of Application of the Convention

The MLC, 2006 (unlike many earlier ILO or the IMO Conventions) is much broader in its application in that it does not have a general tonnage limit and does not contain exclusions for ships based on the nature of their voyage¹⁵. Under Article II, paragraphs 1(i) and 4, the MLC, 2006 applies to all ships, whether publicly or privately owned, that are ordinarily engaged in commercial activities. Subject to any national provisions to the contrary, the MLC, 2006 does not apply to:

- ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- Ships not ordinarily engaged in commercial activities;
- Ship engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks;
- Warships or naval auxiliaries.

3.2 Fundamental Rights and Principles of Seafarers

The Convention enshrined the fundamental rights and principle of seafarers which are:¹⁶

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labour;
- (c) The effective abolition of child labour; and
- (d) The elimination of discrimination in respect of employment and occupation.

3.3 Seafarer's Employment and Social Rights

The Convention also catalogued the seafarer's employment and social rights which are the beginning of the cascade of rights and obligations set out in the regulations and code¹⁷ when it provides:

1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.
2. Every seafarer has a right to fair terms of employment.

¹⁵ ILO HandBook- Guidance on Implementation of the MLC 2006, Model National Provisions, International Labour Organiation, Geneva, 2012, p. 4.

¹⁶ Article iii MLC, 2006.

¹⁷ McConnell, Moir., etal, op. cit., p. 208.

3. Every seafarer has a right to decent working and living conditions on board ship.
4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.
5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention.¹⁸

3.4 Special Features

3.4.1 No Favourable Treatment Clause

A unique feature of the Convention that is worth mentioning is the abolition of the favourable treatment clause. What this implies is that ships of non-contracting States would not be accorded different treatment but be subjected to the strict requirements of the Convention when it states that:

“Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.”¹⁹

3.4.2 Concept of Tripartism

The concept of tripartism²⁰ is another common feature of the MLC, 2006. This is an innovative approach to the situation of globalized workforces and employments. The structural pattern of the Convention strengthened national social dialogue by requiring consultations in most instances where national flexibility is exercised.²¹ The ILO, in taking any decision with regards to the Convention, is required to consult the contracting State, the Ship-owners' and Seafarers' Organizations.²² Where these organizations do not exist in a contracting State, the Convention makes it mandatory for such a State to consult with a body duly constituted of representatives of other Contracting States, Ship-owners' and Seafarers' Organizations established under the Convention before making any determination in respect of the MLC 2006.²³

¹⁸ Article IV MLC, 2006.

¹⁹ Article V (7) MLC, 2006.

²⁰ Tripartism- This concept is a unique feature of ILO decision making process where its social partners i.e representatives of the workers, labour employers and the representatives of government are consulted.

²¹ McConnell, Moira., etal, op. cit., Pp. 223-4.

²² Article I (8) MLC, 2006.

²³ Article vii MLC, 2006, Moira L. McConnell, Dominick Devlin etal, The Maritime Labour Convention, 2006, A Legal Primer to an Emerging International Regime. p.77.

3.5 Specific Provisions

3.5.1 Minimum Requirements

Issues relating to minimum requirements for seafarers to work on board ships are regulated in Title 1 of the MLC.²⁴ This involves matters regarding minimum age to work on board a ship, so as to avoid child labour; the requirement of medical certificate to ensure that the seafarers are fit to carry out their duties at sea and seafarers' minimum qualifications to work on board ships as required by STCW. Also importantly, the Convention ensures that seafarers have access to efficient and well-regulated seafarers' recruitment and placement system.

3.5.2 Contents of Employment Agreements

The Convention covers the nagging issue of conditions of employment of seafarers.²⁵ The seafarer should be given the opportunity to review and seek legal advice as to the terms and conditions of his employment before signing the agreement. The seafarer's employment agreement amongst others should contain his designation, the amount of wage, amount of annual leave, period of employment, health and social security benefits and his right to repatriation on the account of the ship-owner. Other provisions of the agreement are hours of work and rest, and entitlement to annual leave with pay.

3.5.3 Accommodation Facilities

The Convention equally highlights the provision of some essential facilities such as accommodation, recreational facilities, food and catering on board the ship.²⁶ The cabins should be built to required specifications in SOLAS and fitted with air conditioners and heaters. There should be recreational facilities on board the ship for the comfort of the crew and passengers. Finally, ship-owners need to ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions.

3.5.4 Social Rights

²⁴ Title 1, Regulations and Codes MLC, 2006.

²⁵ Title 2, Regulations and Codes MLC, 2006.

²⁶ Title 3, Regulations and Codes MLC, 2006.

Furthermore, issues relating to health protection, medical care, welfare and social security protection are covered in the Convention.²⁷ The ship-owner is required to ensure that seafarers have access to prompt and adequate medical care whilst working on board. There must be trained medical personnel on board the ship. The medical access should be both ashore and on board at the account of the ship-owner. In the case of death of a seafarer, the ship owner would be responsible for the burial expenses. As a condition precedent for ratification of the Convention, the contracting State is required to provide at least three of the following social security benefit to the seafarer, to wit, medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on ship owners' liability under the Convention.

3.5.5 Enforcement

The Convention also entrenched a robust compliance and enforcement regimes.²⁸ A Member State is required to implement its obligations under the Convention by establishing an effective system of inspection and certification of maritime labour conditions. A Maritime Labour Certificate (MLC), complemented by a Declaration of Maritime Labour Compliance (DMLC) issued, shall constitute prima facie evidence that the ship has been duly inspected by the Member State whose flag it flies and that the requirements of the Convention relating to working and living conditions of the seafarers have been met and to a large extent certified. The competent authority may authorize recognized organizations to do the work of inspection and certification on its behalf. Furthermore, State Members are obliged to carry out Port State control activities as to ensure compliance with the Convention. There are also provisions relating to on board complaint procedures and marine casualties reporting process.

4.0 The Significance of MLC, 2006 to Nigeria

The MLC, 2006 has two primary purposes. It was set out to bring the system of protection contained in existing labour standards closer to the workers concerned, in a form consistent with the rapidly developing, globalized sector (ensuring “decent work”)

²⁷ Title 4, Regulations and Codes MLC, 2006.

²⁸ Title 5, Regulations and Codes MLC, 2006.

and to improve the applicability of the system so that shipowners and governments interested in providing decent conditions of work do not have to bear an unequal burden in ensuring protection (“level-playing field” - fair competition).²⁹

The Convention apparently is aimed at creating a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions.³⁰ Consequently, it consolidated about 70 existing maritime labour instruments (Conventions and Recommendations) adopted by the ILO since 1920.

The MLC, 2006 has a bold agenda aimed at creating changes at both the level of workplace and international practice. It was strategically designed to place minimum international labour and social standards for seafarers -the essential human element -on the same footing as increasingly effective international regulatory regime to ensure ship safety, security and protection of the marine environment from ship source pollution.³¹

Viewed from a wider international law and maritime law perspective, the MLC 2006 also constitutes a further elaboration of international maritime regulatory regime under the 1982 United Nations Convention on the Law of the Sea, as it pertains to conditions of ships voyaging on the High Seas and an approach to responding effectively to a globalized sector and better ensuring implementation and enforcement at the shipboard level/seafarer level.³² Furthermore, the MLC, 2006 is considered as filling the gap in the United Nations Convention on the Law of the Sea because the drafters of the latter failed to do more than peripherally address the ocean, particularly the High Seas, as a work place or site for human rights by giving the pivotal jurisdiction to the whims and caprices of flag States which had made nonsense of the genuine link concept.³³

5.0 The Need for Seafarers Recruitment and Placement Regulations

²⁹ ILO Maritime Labour Inspection Training Course Modules.

³⁰ MLC, 2006- Preamble.

³¹ McConnell, Moira; etal, op. cit., p. 4.

³² Ibid p. 6.

³³ Ibid pp.6-7, Article 91 and 94 United Nations Convention on Law of the Sea 1982.

The MLC, 2006 requires the development of a system (i.e. licensing or certification or other form of regulation) for regulating private services and also requires that specified matters be implemented in the form of laws and regulations or other measures, including at a minimum the followings:

- supervision and control of private seafarers' recruitment and placement services to ensure that they are operated in accordance with the provisions of the Convention;
- prohibit manning agents from using lists or other mechanisms ("blacklisting");
- seafarers must not be charged for use of these services;
- seafarers' recruitment and placement services must establish a system of protection by way of insurance or equivalent measures to compensate seafarers for monetary loss that they may incur as a result of the failure of the service or a shipowner;
- seafarers' recruitment and placement services must make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port;
- Public seafarers' recruitment and placement services, if any, should be operated in accordance with the Convention;
- there are also obligations for flag States with respect to shipowners that make use of seafarers' recruitment and placement services (Public or Private) based in countries that have not ratified the MLC, 2006;
- Flag States are required, during a ship inspection, in cases where a shipowner is using a Private seafarers' recruitment and placement service, to verify that it is regulated in accordance with the Convention;
- a Member State of ILO which has ratified the Convention shall require shipowners whose ships fly its flag and use seafarers' recruitment and placement services based in countries or territories, in which this Convention does not apply, to ensure, as far as practicable, that those services meet the requirements of the Convention.

5.1 Benefits of the Regulations

As one would glean from the above analysis of the provisions on seafarers' recruitment and placement in the MLC 2006, if properly implemented, its ability to address the myriad of maritime labour issues plaguing developing nations like Nigeria cannot be over emphasized. Nigeria, realizing the dearth of qualified and competent maritime labour force to maximize the potential benefits ushered by the 2003 Cabotage Act³⁴ and other related laws and in its desire to stem the rising sea of unemployment, has through the Nigerian Maritime Administration and safety Agency (NIMASA)³⁵ embarked on an aggressive and robust training of seafarers via the instrumentality of the Nigerian Seafarers Development Programme. Consequently, thousands of students have been sent for training to Egypt, India, the Philippines, Romania and the United Kingdom on all spheres of maritime labour services.³⁶

Considering the aging seafaring work force, coupled with the dearth of qualified and competent personnel to effectively and efficiently man the ever growing global fleet; in the next ten years, Nigeria will be a major supplier of seafarers to the global workforce. Sadly, there are no well articulated and coordinated Regulations on seafarers' recruitment and placement services in Nigeria, despite her ratification of the previous ILO Conventions in this area.

Seafarers presently do not have access to an efficient and well regulated recruitment and placement services. There are many reported cases of 'black listing' of seafarers in the industry. More importantly, the issue of some unscrupulous manning agencies exploiting seafarers by demanding huge sums of money to secure placement on board ships is still rife. These underscore the import of the regulations to Nigeria as a seafaring country.

Furthermore, the importance of having a well articulated seafarers' recruitment and placement Regulations to the Nigerian seafaring community cannot be overemphasized. There are statutory obligations stemming from MLC 2006, on employers of seafarers to exhaustively explain to the seafarer his rights and duties as contained in the Employment

³⁴ Coastal and Inland Shipping (Cabotage) Act, 2003. This law reserves the carriage of goods and passengers within Nigeria to only ships registered in Nigeria, owned and manned by Nigerians and built in Nigeria.

³⁵ Established by the Nigerian Maritime Administration and Safety Agency (NIMASA) Act, 2007. The Agency in charge of maritime administration in Nigeria, the focal point of IMO and ILO in respect of maritime labour issues.

³⁶ See NIMASA web site www.nimasa.gov.ng/press.php?id=1

Agreement before signing it. In addition, they are under an obligation to make available to the seafarer a copy of his Employment Agreement, clearly stating his financial entitlements, annual leave and other social security benefits. With the Convention, the seafarer now guaranteed working in a decent environment and has access to medical and recreational facilities.

The Convention also makes it mandatory to apprise the seafarer the procedure of channeling complaints both on board and ashore. In the final analyses, the seafarer would be a proud, happy and contented person. In most climes before the introduction of the MLC, these rights and privileges were rarely, if ever, availed to the ordinary seaman.

6.0 Special Provisions of the Proposed Regulations

In the proposed Regulations, there are provisions relating to the registration and inspections of seafarers employment business. Customarily, there are no public seafarers' recruitment agents in Nigeria; hence the Regulations would not cover that aspect. The extant practice in Nigeria is that a duly registered shipowner is permitted to recruit directly; hence the practice is maintained in the proposed Regulations. And as such, the shipowner would be subjected to the same responsibilities and obligations of a private recruitment agent. In the proposed Regulations, the seafarer employer is prohibited from charging seafarers seeking for employment. The employer is under an obligation to educate the seafarer with regards to his rights, keep records, make provision for his repatriation and generally to provide financial system of protection. A unique provision contained in the proposed Regulations is the requirement of an appellant to issue a pre-action notice before filing an appeal based on an act or omission by the Agency. In line with Nigerian style of drafting, the interpretation and citation sections are provided at the end of the Regulations. Furthermore, there are provisions as to the enforcement of the Regulations and punishment of defaulters.

6.1 Court of Competent Jurisdiction.

In the proposed Regulations, exclusive jurisdiction to hear and determine disputes arising from or pertaining to or in connection with the employment of seafarers is given to the National Industrial Court of Nigeria (NICN). It is pertinent to note that the issue of the jurisdiction of the NICN had an intriguing and chequered history in the judicial system of Nigeria. The Court was set up in 1976 by virtue of **the Trade Disputes Decree No. 7** and

later **Trade Disputes Act (TDA) 1990** as a superior court of record to settle trade union disputes.

It faced a lot of jurisdictional problems from inception; as it was not mentioned amongst the superior courts of record in **section 6 of the 1999 Constitution**.³⁷ Before the promulgation of the 1999 Constitution, the Supreme Court had held in the **Western Steel Works Ltd V Iron & Steelworkers Union of Nigeria**,³⁸ that the NICN is an inferior Court and as such could not grant declarative and injunctive orders. In **Kalango V Dokubo**,³⁹ the Court of Appeal held that for the NIC to have jurisdiction in inter and intra union disputes, such disputes had to also qualify as trade disputes and that jurisdiction is only conferred on Court by a section labeled 'jurisdiction'. Owing to these judgments, both NIC and the various High Courts were exercising concurrent jurisdiction on labour matters.

The then Military Government tried to clear the confusion occasioned by the Supreme Court decision in the **Western Steel case** by amending the Law.⁴⁰ The Decree made the NIC a superior court of record with exclusive jurisdiction over labour disputes and this fact was judicially acknowledged by the Supreme Court in the case of **Udoh V OHMB**.⁴¹

However, with the coming of civilian regime, the Federal and State High Courts resumed the exercise of concurrent jurisdiction. In **SGS Inspection Services Nigeria Ltd V Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN)**⁴² some mischievous lawyers disregarded the superior court status of NIC and directed the Federal High Court to judicial review of the decisions of the court.

This was the background until the **National Industrial Court Act of 2006** was passed by the National Assembly, according the NIC the superior court of record status and exclusive jurisdiction over labour matters. Surprisingly, the Supreme Court in the case of

³⁷ 1999 Constitution of the Federal Republic of Nigeria

³⁸ (1987) 1NWLR (Pt 49) 284

³⁹

⁴⁰ Trade Disputes (Amendment) Decree 47 of 1992

⁴¹ (1993) 7 NWLR (Pt.304) 139

⁴² (Unreported) CA/L/38/2008

NUEE V BPE⁴³ held that the exclusive jurisdiction conferred on the NIC by the NIC Act, 2006 was unconstitutional and that the High Court of the States and of the Federal Capital Territory had jurisdiction to entertain and hear labour matters under sections 272 and 257 respectively of the 1999 Constitution. This decision further aggravated the lingering issue of exclusive jurisdiction of the NIC.

It was against this backdrop that the 1999 Constitution was amended.⁴⁴ The National Industrial Court of Nigeria (NICN) was included amongst the superior courts of record in section 6 of the Constitution. Furthermore, section 254C of the Constitutions amongst others confers an exclusive jurisdiction on NICN which has finally lain to rest the vexing issue of the exclusive jurisdiction of the court. Therefore, the competent court of jurisdiction under the said Regulations made by the Minister is NICN.

PART 2

1.0 The Law making Process

It is against this backdrop that an amendment to the Act by substituting subsection (j) with the MLC, 2006 in the list of international Conventions mentioned in Section 215 of the Merchant Shipping Act, 2007 is highly recommended to enable the Honourable Minister of Transportation to make the requisite Regulations. By virtue of this amendment, Part IX and Part X, to wit, Section 90 to 201 of the Merchant Shipping Act, 2007 relating to maritime labour will be repealed. Customarily, this is accomplished by the Minister of Transportation presenting an Executive Bill titled Merchant Shipping Amendment Act to the National Assembly, proposing the above amendment to the Act. The bill becomes an Act of Parliament if two- third majorities in both Houses of the National Assembly to wit, the Senate and House of Representatives vote in favour of the amendment and the same becomes law when it is assented to by the President of the Federal Republic of Nigeria.

Thereafter, the Honourable Minister would approach the Office of the Attorney- General of the Federation to draft the Regulations and hold public hearings and consultations with the social partners, to wit, the Workers Representatives and Employers of

⁴³ (2010) 7 NWLR (Pt.1194) 538

⁴⁴ The Federal Republic of Nigeria (Third Alteration) Act, 2010.

Labour/Shipowner's Representatives and get their views duly reflected before formal gazette of the Regulations and publish same in the Official Gazette in exercise of the powers conferred on him by Section 216 (1) of the Merchant Shipping Act 2007 as amended, and makes the Merchant Shipping (Seafarers' Recruitment and Placement) Regulations 2014 contained here under applicable.

**A BILL FOR AN ACT TO AMEND PART XII SECTION 215 AND REPEAL
PARTS IX TO PART X OF THE MERCHANT SHIPPING ACT, 2007.**



**BE IT ENACTED BY THE NATIONAL ASSEMBLY OF THE FEDERAL
REPUBLIC OF NIGERIA AND BY THE AUTHORITY OF SAME AS
FOLLOWS:**

SHORT TITLE

1. This Act may be cited as Merchant Shipping Amendment and Repeal Act, 2013.

COMMENCEMENT

2. This Act shall enter into force on July 15, 2013.
3. Part XII Section 215 is amended to include the Maritime Labour Convention 2006.

REPEAL

4. Part IX to Part X, to wit, Section 90 to 201 of the Merchant Shipping Act, 2007 is hereby repealed.

I certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. 4, Laws of the Federation of Nigeria 1990, that this is a true copy of the Bill passed by both Houses of the National Assembly.

NASIRU IBRAHIM ARAB
Clerk to the National Assembly

10th day of July 2013

PART 3

MERCHANT SHIPPING (SEAFARERS RECRUITMENT AND PLACEMENT) REGULATIONS



ARRANGEMENT OF REGULATIONS

Regulations

PART 1 REGISTRATION AND INSPECTION

1. General restriction on manning agents and seafarer employer.
2. Application for registration.
3. Grant or refusal of registration.
4. Certificate of registration.

5. Annual inspection
6. Validity of Certificate of registration.
7. Application to renew Certificate.
8. Suspension of registration.
9. Revocation of registration.
10. Surrender of certificate registration.

PART 2
PROHIBITIONS AND RESTRICTIONS, AND OBLIGATIONS OWED BY,
MANNING AGENTS AND SEAFARERS EMPLOYERS

11. Prohibition on use of blacklists.
12. Exceptions to prohibition on use of blacklists.
13. Restriction on detrimental action relating to seafarers working elsewhere.
14. Information required from seafarers.
15. Seafarers' employment agreements.
16. Records.
17. Restriction on charging seafarers seeking employment.
18. Repatriation of seafarers.
19. Complaints.
20. Duty to provide financial system of protection.

PART 3
ENFORCEMENT

21. Appointment and powers of officers.

PART 4
APPEALS

22. Appeals.

PART 5
OFFENCES

23. Operation of seafarer recruitment and placement services when unregistered.
24. False or misleading statements and records.
25. Offences relating to certificates of registration.
26. Offences by bodies corporate and others.

PART 6
SUPPLEMENTAL AND FINAL

27. General provisions as to regulations.
28. Transitional provisions.

29. Interpretation.

30. Extent.

31. Citation.

SCHEDULE

Particulars to be included in a manning agent records relating to hirers.

Particulars to be included in a manning agent or seafarer' records relating to seafarers

MERCHANT SHIPPING ACT

(2007 No. 27)

Merchant Shipping (Seafarers Recruitment and Placement) Regulations, 2014

Commencement (20th January, 2014)

In exercise of the powers conferred upon me by Section 216 of the Merchant Shipping Act, 2007 as amended and all other powers enabling me in that behalf, I, Idris Abdullahi Umar, Minister of Transportation, hereby make the following Regulations.

PART 1 REGISTRATION AND INSPECTION

General Restriction on Manning Agent or Seafarer Employer.

1. Subject to the provisions of these Regulations, no manning agent or seafarer employer shall employ or introduce or supply a seafarer to a hirer or hold itself out as being capable of so doing unless it is registered by the Agency under these Regulations.

PART 2
PROHIBITIONS AND RESTRICTIONS, AND OBLIGATIONS OWED
BY, MANNING AGENTS AND SEAFARERS EMPLOYERS

Application for Registration.

2. (1) A manning agent or seafarer employer required to be registered under section 1 shall apply to the Agency for registration.

(2) All requests for application forms to be registered under subsection (1) by manning agent or seafarer employer shall be signed by either the chairman or managing director of the company, and shall be addressed to the Director General of NIMSA.

(3) The application form shall be obtained from the Agency on the payment of a prescribed fee.

(4) The duly completed form shall be accompanied by:

- I. Certified true copy of Memorandum of Association.
- II. Certified true copy of Article of Association.
- III. Certified true copy of Forms C02 and C07.
- IV. Paid up share capital of at least N 10,000,000.00
- V. Company profile and list of key staff and their CV.
- VI. Bank Guarantee/ Bond of N 10,000,000.00.
- VII. Tax Clearance Certificate.
- VIII. Certified true copy of current Financial Report with CAC (where applicable)
- IX. Evidence of registration with a Pension Fund Administrator (where applicable).
- X. Evidence of medical retainership with a reputable hospital.
- XI. Evidence of insurance policy against accident.

(5) On receipt of an application for registration and at any time thereafter, the Agency may by notice in writing require the applicant, or any person who is a director, manager, partner, or senior officer of the applicant, to provide such

additional information and documents as the Agency may reasonably require for the purpose of determining the application.

(6) An application under this section may be withdrawn by notice in writing to the Agency at any time before any decision is taken.

Grant or Refusal of Registration.

3. (1) On receipt by the Agency of an application under section 2, an officer appointed under section 21(1) or an approved inspector shall inspect the office, documents and records of the manning agent or seafarer employer for the purpose of ascertaining whether it complies with the requirements of these Regulations, following which the Agency shall –

(a) grant the application, or

(b) refuse the application,

and shall serve on the applicant notice in writing of the decision.

(2) The Agency may refuse an application for registration if -

(a) the application is not accompanied with the prescribed fee or the application is otherwise not made in accordance with the provisions of section 2, or;

(b) it appears to the Agency that any information, statement or document provided in support of the application is false, misleading, deceptive or inaccurate.

Certificate of Registration.

4. (1) On granting an application for registration of a manning agent or seafarer employer under section 3, the Agency shall issue to the applicant a certificate of registration in such form and containing such information as the Agency may determine.

(2) A manning agent or seafarer employer shall immediately deliver its Certificate of Registration to the Agency-

- (a) Whenever required to do so by the Agency, and
- (b) on the revocation, suspension or surrender of its registration.

(3) Except when required by or under subsection (2) to deliver its Certificate of Registration to the Agency, a manning agent or seafarer employer registered under these Regulations shall, at its principal place of business in Nigeria, at all times during ordinary business hours, make the Certificate of Registration available to an officer or approved inspector reasonably requesting to see it.

Annual Inspection.

5. (1) An officer or an approved inspector shall inspect a registered manning agent or seafarer employer each year for the purpose of ascertaining whether it continues to comply with the requirements of Part 2 of these Regulations.

(2) A manning agent or seafarer employer need not be inspected under subsection (1) if the Agency is satisfied that it has been audited within the preceding six months by an approved inspector, for the purpose of assessing its compliance with the requirements of these Regulations.

Validity of Certificate of Registration

6. The registration of a manning agent or seafarer employer shall remain effective, and the certificate issued under section 4 shall remain valid for one year from the date of issuance.

Application to Renew Certificate.

7. (1) The Agency may renew the certificate of a registered manning agent or seafarer employer on an application made to it under this section at any time within a three month period before the expiry of the certificate in question.

(2) An annual renewal fee, of such amount as may be prescribed by the Agency, shall be payable by the registered manning agent or seafarer employer.

(3) A registered manning agent or seafarer employer must inform the Agency of any change occurring to the information supplied to the Agency for the purposes of its application for registration under section 2.

(4) The Agency shall have the power to publish and delete from its website any duly registered manning agent or seafarer employer that fails or neglect to renew its certificate of registration three months after its expiration.

Suspension of Registration.

8. (1) The Agency may, by notice in writing served on a manning agent or seafarer employer, suspend its registration -

- (a) at the request of the manning agent or seafarer employer concerned, or
- (b) in any case in which it appears to the Agency that it has power, under the provisions of section 9, to revoke the registration.

(2) The suspension of a registration in pursuance of subsection (1) shall be -

- (a) for a period specified by the Agency,
- (b) until the occurrence of an event so specified, or
- (c) until any prohibition or requirements so specified are complied with to the satisfaction of the Agency.

(3) During the period of suspension of a registration in pursuance of subsection (1) the manning agent or seafarer employer shall not carry on, or hold itself out as carrying on, the recruitment and placement of seafarers.

(4) Where the Agency decides, otherwise than with the agreement of the manning agent or seafarer employer concerned, to suspend a registration, the Agency may serve upon it notice in writing of such decision.

Revocation of Registration.

9. (1) The Agency may revoke the registration held by a manning agent or seafarer employer if it appears to the Agency that -
- (a) the Agency has been provided with false, misleading, deceptive or inaccurate information for the purposes of any provision of, or made under, these Regulations-
 - (i) by or on behalf of the manning agent or seafarer employer, or
 - (ii) by or on behalf of the person who is a director, manager, partner, or senior officer of the a manning agent or seafarer employer in question, or
 - (b) the manning agent or seafarer employer in question has not complied with all the requirements of Part 2 of these Regulations, whether it so appears as a result of an annual inspection under section 5 or otherwise.
- (2) Where the Agency decides to revoke a registration, the Agency shall serve upon the manning agent or seafarer employer concerned notice in writing of the decision.
- (3) A decision of the Agency to revoke a registration shall not have effect until the end of the period within which, under Part 4 of these Regulations, an appeal is brought against the revocation and until the appeal is finally disposed of or withdrawn.

Surrender of Certificate of Registration.

10. Upon revocation, the manning agent or seafarer employer shall surrender its certificate of registration to the Agency.

PART 2 PROHIBITIONS, RESTRICTIONS AND OBLIGATIONS OWED BY MANNING AGENTS AND SEAFARERS EMPLOYERS

Prohibition on Use of Blacklists.

11. (1) Subject to section 12, no manning agent or seafarer employer shall compile, use, supply or sell a prohibited list.

(2) For the purposes of these Regulations a "**prohibited list**" is a list which contains details of seafarers and is compiled with a view to being used by manning agent or seafarer employer for the purposes of discrimination in relation to the recruitment or treatment of seafarers; and for the purposes of this section, "**seafarer**" includes a person who is currently, or has in the past, engaged in maritime work, whether or not he is currently seeking such work.

(3) For the purposes of these Regulations "**discrimination**" means treating a seafarer less favourably on grounds of trade union membership, trade union activities, or any other ground that is not related to that seafarer's qualifications, skills and experience.

Exceptions to Prohibition on Use of Blacklists.

12. A manning agent or seafarer employer does not contravene section 11 in the following cases.

- (a) Where a manning agent or seafarer employer supplies a prohibited list, but -
 - (i) does not know it is supplying a prohibited list, and
 - (ii) could not be reasonably expected to know that it is supplying a prohibited list.

- (b) Where a manning agent or seafarer employer compiles, uses or supplies a prohibited list, but -
 - (i) the sole purpose of so doing is to report to the Agency of an alleged contravention of section 11 or the possibility of such a contravention by another manning agent or seafarer employer.
 - (ii) no information in relation to a person whose details are included in the prohibited list is published without the consent of that person, and
 - (iii) in all the circumstances compiling, using or supplying the prohibited list is justified in the public interest.

- (c) Where a manning agent or seafarer employer uses or supplies a prohibited list –
- (i) for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings), or
 - (ii) for the purpose of giving or obtaining legal advice, where the use or supply is necessary in order to determine whether these Regulations have been, is being or will be complied with.

Restriction on Detrimental Action Relating to Seafarers Working elsewhere.

13. (1) A manning agent or seafarer employer shall not (whether by the inclusion of a term in a contract with a particular seafarer or otherwise) –
- (a) subject or threaten to subject a particular seafarer to any detriment on the ground that –
 - (i) the particular seafarer has terminated or given notice to terminate any contract between the seafarer and the manning agent or seafarer employer, or
 - (ii) in the case of a manning agent or seafarer employer, the particular seafarer has taken up or proposes to take up employment with any other person, or
 - (b) require the particular seafarer to notify the manning agent or seafarer employer, or any person with whom it is connected, of the identity of any future employer of the relevant seafarer.
- (2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of subsection (1)(a) –
- (a) the loss of any benefits to which the particular seafarer might have become entitled had he not terminated the contract,
 - (b) the recovery of losses incurred by a manning agent or seafarer employer as a result of the failure of the particular seafarer to perform work he has agreed to perform, or
 - (c) a requirement in a contract with the manning agent or seafarer employer for the seafarer to give a period of notice which is reasonable to terminate the contract.

(3) In this section, "**particular seafarer**" includes a person who is engaged in maritime work, whether or not he is currently seeking another work, but excludes, in the case of a manning agent, a seafarer who is or will be employed by the manning agent under a contract of service or apprenticeship.

Information required from seafarers.

14. A manning agent or seafarer employer shall not employ or introduce or supply a seafarer to a hirer unless it has obtained confirmation –

- (a) of the identity and age of the seafarer,
- (b) that the seafarer has the experience, training, qualifications and any authorization or documents which the employer or hirer considers necessary, or which are required by law or by any professional body, to work in the position the hirer seeks to fill, and
- (c) that the seafarer is willing to work in the position which the employer or hirer seeks to fill.

Seafarers' Employment Agreements.

15. A manning agent or seafarer employer shall not employ or supply a seafarer to a hirer unless -

- (a) it is satisfied that the employment agreement under which the seafarer is to be engaged is in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of, or is applicable to, that employment agreement,
- (b) it has explained to the seafarer his rights and duties under the employment agreement under which he is to be engaged,
- (c) it gives the seafarer the opportunity to examine that employment agreement both before he signs it (including the opportunity to ask questions about its operation) and after he signs it, and
- (d) it gives the seafarer, free of charge, a copy of the employment agreement directly after he has signed it.

Records.

16. (1) Every manning agent or seafarer employer shall keep records which are sufficient to show whether the provisions of these Regulations are being complied with, including the particulars specified in the Schedule, in relation to every application received by the manning agent from a hirer or seafarer.

(2) The records mentioned in subsection (1) shall be kept for at least three years from the date of their creation and, in the case of the particulars specified in the Schedule, at least three years after the date on which the manning agent or seafarer employer last provides services in the course of its business as a manning agent or seafarer employer to the applicant to whom they relate.

(3) The records mentioned in subsection (1) may be kept by a manning agent or seafarer employer either at any premises it uses for or in connection with the carrying on of a manning agent or seafarer employer, or elsewhere, provided that if they are kept elsewhere they are readily accessible.

Restriction on Charging Seafarers Seeking Employment

17. (1) Subject to subsection (2), a manning agent or seafarer employer shall not demand or directly or indirectly receive from any seafarer any fee for employing or finding him maritime work or for seeking to find him maritime work.

(2) Subsection (1) shall not prevent a manning agent or seafarer employer from requiring a seafarer to bear the cost of obtaining –

- (a) a Seafarer Medical Certificate or its equivalent,
- (b) a Nigerian Seaman's Discharge Book or its equivalent, or
- (b) a passport or similar personal travel document (excluding any visa necessary for the employment).

Repatriation of Seafarers.

18. (1) A manning agent or seafarer employer shall not employ or supply a seafarer to a hirer unless it is satisfied that the owner of the ship on which the seafarer would be working under that supply has procedures in place of a type described in subsection (2).

(2) The procedures mentioned in subsection (1) are procedures to return the seafarer to one of the places described in subsection (3) if he is –

- (a) left behind in any place or country other than his country of residence, or
- (b) is taken to such a place or country on being shipwrecked.

(3) The places are –

- (a) in the case of a seafarer who is resident in the Nigeria,
- (b) in the case of a seafarer who is not resident in Nigeria, a place in the country in which he is resident being –
 - (i) if he joined the ship from which he was left behind or shipwrecked in that country, the place where he joined the ship, or
 - (ii) if he did not join the ship in that country, the place in that country at which he was engaged to join the ship, or
- (d) any other place which may be agreed between the seafarer and the ship owner.

Complaints.

19. (1) A manning agent or seafarer employer shall –

- (a) inform a seafarer of how he may make a complaint,
- (b) examine and respond to any such complaint within a reasonable period of time, and in any event within twenty-eight days, and
- (c) inform the Agency of –
 - (i) any complaint it receives under paragraph (a) within fourteen days of receiving the complaint, and
 - (ii) its response to that complaint, within seven days of making that response.

(2) In this section, "**seafarer**" includes a person who has been placed in maritime work by manning agent or seafarer employer.

Duty to Provide Financial System of Protection.

20. A manning agent or seafarer employer shall not employ or supply a seafarer to a hirer unless the manning agent or seafarer employer has established a system of protection, by way of insurance or an equivalent appropriate measure that has been approved by the Agency, to compensate the seafarer for monetary loss which he may incur as a result of –

- (a) a failure of the a manning agent or seafarer employer to meet its obligations to the seafarer, or
- (b) a failure of the shipowner under the Seafarer Employment Agreement to meet its obligations to the seafarer.

**PART 3
ENFORCEMENT**

Appointment and Powers of Officers.

21. (1) The Agency may appoint officers to -

- (a) conduct inspections , and
- (b) exercise the powers set out in subsections (4) and (5), for the purpose of assessing whether a registered manning agent or seafarer employer continues to comply with the requirements of these Regulations.

(2) An officer appointed under subsection (1) shall, if so required, produce an identification card or some duly authenticated document showing his authority so to act.

(3) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of these Regulations does not know that he is an officer so acting, he shall identify himself as such to that person.

(4) An officer may, at any reasonable time -

- (a) require the production by a relevant person of –
 - (i) any records required to be kept and preserved in accordance with section 16, and
 - (ii) any other documents that may be relevant to ascertaining whether an offence under these Regulations has been committed,

(b) inspect and examine those records and documents and to copy any material part of them,

(c) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of them, and

(d) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might be reasonably needed in order to establish whether these Regulations are being or have been complied with.

(5) An officer has power for the performance of his duties at all reasonable times to enter any relevant premises in order to exercise any power conferred on him by subsection (4).

(6) A statement made by a person in response to a requirement imposed by or under this section -

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except -

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for -

(A) an offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(B) perjury, or

(C) perverting the course of justice.

(7) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(8) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(9) A requirement imposed by or under this section shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(10) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence, and is liable on summary conviction to a fine not exceeding Three Hundred Thousand naira (300,000) or imprisonment for a term not exceeding three months or to both.

(11) In this section "**relevant person**" means any person whom an officer has reasonable cause to believe to be a person carrying on a manning agent or seafarer employer business, or a manning agent or employee of a manning agent or seafarer employer.

(12) In this section "**relevant premises**" means any premises which an officer has reasonable cause to believe to be —

(a) premises at which a manning agent or seafarer employer carries on business, or

(b) premises which a manning agent or seafarer employer uses in connection with that business.

PART 4 APPEALS

Appeals.

22. (1) A person aggrieved by any of the following decisions of the Agency—

(a) a decision to refuse to grant an application for registration,

(b) a decision to suspend registration, or

(c) a decision to evoked registration,

may appeal to the Court.

(2) The grounds of an appeal under this section are that —

(a) the decision was ultra vires or there was an error of law,

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted —

(a) in line with the provisions of Section 53 of the Nigerian Maritime Administration and Safety Agency Act, 2007, and

(b) by summons served on the Agency stating the grounds and material facts on which the appellant relies.

(4) On an appeal under this section the Court may —

- (a) set the decision of the Agency aside and, if the Court considers it appropriate to do so, remit the matter to the Agency with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

PART 5 OFFENCES

Operation of Seafarers Recruitment and Placement Services when Unregistered.

23. (1) It is an offence for a manning agent or seafarer employer to employ or introduce or supply a seafarer to a hirer, or to hold itself out as being capable of employing or introducing or supplying a seafarer to a hirer, if at the time of the employing or introducing or supplying or holding itself out, that manning agent or seafarer employer was not registered under these Regulations.

(2) A manning agent or seafarer employer guilty of an offence under subsection (1) is liable –

- (a) on summary conviction, to a fine not less than 500,000 five hundred thousand naira, or
- (b) to a term of imprisonment of not less than six months,
- (c) to both (a) and (b) of this subsection.

False or Misleading Statements, Records

24. (1) A person who -

- (a) in connection with an application for registration under these Regulations;
- (b) in purported compliance with a requirement imposed by or under any provision of these Regulations; or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Agency for the purpose of exercising its functions conferred by or under these Regulations -
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
 - (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular;

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular; is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable -

(a) on summary conviction, to a fine not exceeding 500,000 five hundred thousand naira ,
or

(b) to a term of imprisonment not exceeding six months, or

(c) to both (a) and (b) of this subsection.

Offences Relating to Certificates of Registration.

25. (1) It is an offence for a manning agent or seafarer employer to fail to deliver a certificate of registration to the Agency when required to do so under section 4(2).

(2) It is an offence for a manning agent or seafarer employer to fail to make a certificate of registration available to a person reasonably requesting to see it in the circumstances set out in section 4(3).

(3) It is a defence for a manning agent or seafarer employer charged with an offence under this section to show that the certificate in question is not, and was not at the relevant time, in its possession or control.

(4) A manning agent or seafarer employer which is convicted of an offence under this section is liable on summary conviction to same penalty set out in section 24 (2).

Offences By Bodies Corporate

26. (1) If the offences created in these Regulations are committed by a body corporate and same is proved -

(a) to have been committed with the consent or connivance of an officer of the body, or

(b) to be attributable to any neglect on the part of such an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) an "**officer**", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where an offence is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) in the case of a partnership, any partner,

(b) in the case of any other unincorporated body, any officer of that body who is bound to fulfill any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

(c) any person purporting to act in such a capacity, he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(5) Where an offence under this Regulation is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(6) A fine imposed on an unincorporated body on its conviction of an offence under this Regulation shall be paid from the funds of that body.

PART 6 SUPPLEMENTAL AND FINAL

General Provisions as to Regulations.

27. (1) Rules under these Regulations -

(a) shall be amended or repealed by subsequent regulations,

(b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the minister to be necessary or expedient, and

(c) the minister shall after consultations with the requisite stakeholders and the Labour ministry amends or repeals any provision where necessary by way of official gazette to be published.

Transitional Provisions.

28. (1) In this section, "**the transitional period**" means the period of three months beginning on the day these Regulations come into force, and "**ongoing supply**" means the continuous employment or supply by a manning agent or seafarer employer of a particular seafarer to a particular hirer to fill a particular position, which continuous supply commenced before the day on which these Regulations come into force and continues after that date.

(2) Subject to the provisions of this section, these Regulations apply in respect of existing employment agreements with effect from the date on which it comes into force.

(3) Sections 13, 15 and 17 shall not apply during the transitional period in respect of any employment agreement in force at the start of the transitional period.

(4) In sections 14, 15 and 20, references to "**supply**" shall not include an ongoing supply during the transitional period.

Interpretation.

30. (1) In these Regulations, unless the context otherwise requires –

“**Agency**” means the Nigerian Maritime Administration and Safety Agency (NIMASA);

"**Approved inspector**" means a person, body or organization approved for the purposes of these Regulations by the Agency,

“**Court**” means the National Industrial Court of Nigeria,

"**Hirer**" means a person to whom a manning agent employs or introduces or supplies or holds itself out as being capable of employing or introducing or supplying a seafarer for the purpose of that seafarer undertaking maritime work

“**Manning agent**” in these Regulations includes crewing agent, operator and manager, who employs or supplies seafarers as an agent or independent contractor,

"**Maritime work**" means work, employment or engagement that is on board, or ordinarily on board, a seagoing ship,

“**Minister**” means the minister in charge of water transportation,

"**Seafarer**" means a person who is seeking maritime work,

“**Seafarer employer**” means a shipowner who is authorized in these Regulations to directly employ seafarer to crew his ships only, and

"Seagoing ship" means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.

Citation.

31. These Regulations may be cited as Merchant Shipping (Seafarers' Recruitment and Placement Services) Regulation, 2014.

SCHEDULE

Section 16.

Particulars to be included in a manning agent records relating to hirers

1. Date application received
2. Hirer's name and address, and location of employment if different
3. Details of the position(s) the hirer seeks to fill
4. Duration or likely duration of work
5. Experience, training, ability, qualifications and authorization required by the hirer, by law, or by any professional body; and any other conditions attaching to the position(s) the hirer seeks to fill
6. The terms offered in respect of the position(s) the hirer seeks to fill
7. Copy of the terms between the manning agent or seafarer employer and the hirer, and any document recording any variation thereto
8. Names of seafarers introduced or supplied
9. Details of each resulting engagement and date from which it takes effect
10. Dates of requests by the manning agent or seafarer employer for fees or other payment from the hirer and of receipt of such fees or other payments, and copies of statements or invoices

Particulars to be included in a manning agents' or seafarer employer's records relating to seafarers

1. Date application received
2. Seafarer's name, address and date of birth
3. Any terms which apply or will apply between the manning agent or seafarer employer and the seafarer, and any document recording any variation thereto

4. Details of the seafarer's training, experience, qualifications, and any authorisation to undertake particular work, and copies of any documentary evidence of the same obtained by the manning agent or seafarer employer
5. Details of any requirements specified by the seafarer in relation to taking up employment
6. Names of hirers to whom the seafarer is introduced or supplied
7. Details of any resulting engagement and date from which it takes effect
8. Copy of any contract between the seafarer and any hirer entered into by the agency on the seafarer's behalf
9. Date application withdrawn or contract terminated (where applicable)

MADE at Abuja this 20th day of January, 2014.

IDRIS ABDULLAHI UMAR

Honourable Minister of Transportation