



**IMO**  
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# **MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (ENFORCEMENT AND COMPLIANCE) REGULATIONS 2014**

**A Legislation Drafting Project submitted in partial fulfillment of the  
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*Maritime Labour Certificate*

*Declaration of Maritime Labour Compliance*

***DEDICATION***

This piece of work is dedicated to the memory of my Late Father, Noah Tejumola Olabanji, who passed away while I was preparing to come to Malta. I could recollect your happiness when you learnt of my nomination and the approval of the Nigerian Ports Authority to sponsor me for this programme.

Your labour over me and my siblings will not be in vain. Thanks Dad.

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To my siblings Opeyemi, Eyitayo & Bose, Yinka & Blessing, Adebowale & Morolake, thank you all. My brother, Niyi Adekanye, God Bless you.

My sweet mother, Madam Funke Emily Olabanji, you will live long to enjoy the fruit of your labour. Thank you all.

## **EXPLANATORY NOTE**

### **MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (ENFORCEMENT AND COMPLIANCE) REGULATION 2014**

#### **1.0 INTRODUCTION**

The International Labour Organisation (ILO) was established in 1919, as part of the Treaty of Versailles that ended World War 1, to reflect the belief that universal and

lasting peace can be accomplished only if it is based on social justice. It became the first specialized agency of the United Nations in 1945. Since 1919, the ILO has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalised economy, international labour standards are an essential compliment in the international framework in ensuring that the growth of the global economy provides benefit to all.<sup>1</sup>

## **2.0 BACKGROUND**

The ILO has consistently lent itself to a process of continuous improvements in the welfare and social wellbeing of the seafarers. This is evident in the plethora of conventions and/ or multiparty treaties promoted by it, some of which are discussed below

*The National Seamen's Code Recommendation, 1920-* The recommendation encouraged Member States to include in their national laws the rights and obligations of seamen whether engaged on ships of their own or foreign countries with the aim of making the seamen aware of these rights and obligations and to facilitate the establishment of an International Seamen's Code.

*The Minimum Age (Sea) Convention of 1920* which came into force in 1976. The Convention was principally adopted to regulate the minimum age of seamen to be employed and outrightly prohibit the employment of children under the age of fourteen (14) as seafarers.

*The Continuity of Employment (Seafarers') Convention of 1976-* It entered into force in 1979. The Convention enjoined all States parties with maritime industry to ensure in its national policy, provisions for continuous or regular employment for qualified Seafarers', where it is practicable so as to provide steady supply of work force for shipowners. The Convention went further to encourage Member States to provide an assurance of minimum periods of employment, or minimum income, or monetary allowance to an extent depending on the economic and social situation of the State concerned. States were

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<sup>1</sup> ILO Publications. [http://www.ilo.org/global/standards/maritime-labour-convention/wcms\\_219665/lang-en/index.h.12/26/13.13.44](http://www.ilo.org/global/standards/maritime-labour-convention/wcms_219665/lang-en/index.h.12/26/13.13.44)

also to provide and maintain a register or list of Seafarers in order to regularize the employment of Seafarers’.

*The Merchant Shipping (Minimum Standards) Convention of 1976*, entered into force in 1981. Under the Convention, States undertook to have national laws or regulations laying down for ships registered in its territory:

- i. Safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board the ship;
- ii. Appropriate social security measures;
- iii. Shipboard conditions of employment and shipboard living arrangements.

More importantly, the Convention enjoined States to exercise effective jurisdiction or control over ships registered in their territory in respect of the standards stated above.

Furthermore, every Member State is to satisfy itself that measures for the effective control of other shipboard conditions of employment and living arrangements are agreed to through collective bargaining with representatives of both the Ship owners and Seafarers’ Associations.

The State is under an obligation to ensure that through its supervising authority and after consultations with relevant associations, adequate procedures are put in place for the engagement of seafarers.

Furthermore, the State must carry out investigations of complaints relating to the employment of seafarers on ship registered in its territory and also for investigation of complaints of foreign seafarers working on foreign registered ship. It must ensure that prompt reports of such complaints are conveyed to the competent authority of the country in which the ship is registered.

Under the Convention, the State is to ensure that the seafarers employed on its registered ships are duly qualified or trained for the duties they are engaged in. The State is also to verify compliance with the applicable labour convention through inspection of ships registered in its territory and to hold official inquiry into any serious marine casualty



involving ships registered with it, particularly those involving injury and/ or loss of life, and to make the report of such inquiry public.

Article 4 of the Convention, provides that a member State who has ratified the Convention, may, where a complaint is received or evidence that a foreign vessel which called at its port either for operational reasons or normal course of business is in violation of the standards sets by the Convention, prepare a report addressed to the Government of the flag State on the infraction or may take measures necessary especially where the violation constitute hazards to safety or health. Where such measure is taken, the nearest maritime, diplomatic or consular representatives of the flag State must be informed or better still be invited to witness the situation. The vessel must however not be delayed or detain unreasonably.

***Labour Inspection (Seafarers') Convention of 1996*** The Convention came into force on 22 April, 2000. It applies to all seagoing vessels, whether publicly or privately owned registered in the territory of a Member State. The State may through the national law or regulation determine ships that are sea-going but does not apply to vessels less than 500 gross tonnage and oil rigs and drilling platforms when not in navigation.<sup>2</sup>

The Convention in Article 1 defined certain key terms and offices such as the central coordinating authority to include, minister, government department, or public authority having power to issue and supervise the implementation of regulations in respect of seafarers' working and living conditions in respect of ships registered in the State; Inspectors to mean any civil servant or other public official with responsibility for inspecting any aspect of seafarers' working and living conditions, as well as any other person holding proper credentials performing an inspection for an institution or organization authorized by the central coordinating authorities; seafarers' working and living conditions to include the conditions such as those relating to the standards of maintenance and cleanliness of shipboard living and working areas, minimum age, articles of agreement, food and catering, sickness and injury benefits, social welfare and related matters, repatriation, terms and conditions which are subject to national laws and regulations and freedom of association as defined in the ILO Freedom of Association and Protection of the Right to organize Convention, 1948.

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<sup>2</sup> ILO Publications, <http://www.ilo.org>

It is necessary to set out the definition of these terms, in order to have a better understanding of the important responsibilities that is placed on States under this Convention. The States are expected to carry out Flag and Port State responsibilities which are highlighted hereunder;

- i. Article 2 of the Convention provides that Member State is to maintain a system of inspection of seafarers' working and living condition. Pursuant to this, the central coordinating authority is to coordinate inspection either wholly or partly concerned with seafarers' working and living conditions and also establish the principles to be observed. Clearly, it is the responsibility of the central coordinating authority to carry out the inspection of seafarers' working and living conditions, although it may out source this duty to another institution or organization. The list of such institutions or organization must be made public.
- ii. In accordance with article 3, all registered ships must be inspected at intervals not exceeding three (3) years and where possible annually, to verify that seafarers' working and living conditions onboard conform to national laws and regulations. Where there are complaints of non-compliance made against a vessel, an inspection must be carried out as soon as it is practicable. In case of structural changes in construction and accommodation, inspections must be conducted within three months of such changes.
- iii. Article 4 provides that the State is to ensure that a qualified inspector is appointed and article 5 assures the independence of the inspector from changes in government and improper external influences. This is geared towards ensuring fairness. An inspector armed with proper credentials is empowered to do the following:
  - (a) Board a ship registered in the State and any premises for inspection;
  - (b) Carry out any examination, test or inquiry considered necessary in order to satisfy themselves that the provisions of the law are being observed strictly;

- (c) Require that deficiencies noted are remedied;
- (d) Where there are grounds to believe that a deficiency constitute significant danger to seafarers' health and safety, PROHIBIT, subject to any right of appeal to a judicial or administrative authority, a ship from leaving port until necessary measures are taken.
- iv. Article 6 enjoins that ships should not be unreasonably delayed, as such may entitle the ship owner or operator to compensation subject to satisfactory proof of such unreasonableness.
- v. Pursuant to article 7, provisions are to made in national law or regulation for adequate penalties for violation and obstruction of inspectors whilst carrying out their function. Such penalties are to be effectively enforced. This should however be a last resort, as inspectors have the discretion to give warnings or advice instead of instituting or recommending proceedings. Records of inspection are to be kept and published annually.
- vi. The reports of inspection must be submitted to the central coordinating authority, a copy of which is delivered to the master of the vessel, another copy pasted on the notice board of the ship for the information of the seafarers.

From the above study of some of the Conventions promoted by the ILO, it is clear that welfare and well being of the seafarers' is germane to the growth of the shipping trade. The successive Conventions also indicate a progressive approach and improvements in the march towards achieving the desired goals of better labour conditions for seafarers.

Two of these Conventions (*Merchant Shipping Minimum Standards Convention of 1976 and Labour Inspection (Seafarers') Convention of 1996*) stand out. This is because of the unique provisions creating responsibilities beyond mere encouragement for States. The duties of States went beyond putting in place national laws and regulations but to carryout effective control through inspection and enforcement of sanctions for violation of the established standards.

Whilst the Minimum Standards Convention made provisions for the inspection of ships registered in its territory, the Labour Inspection (Seafarers) Convention provides that

such inspection should be carried out within an interval of three years and if practicable annually. This shows an improvement in ensuring effective control and compliance with the regulations and or requirements stipulated in the Convention.

Since 1920, the ILO has promoted the adoption of 41 maritime labour convention and related recommendations. The progressive efforts towards achieving globalization of regulations relating to maritime labour culminated in the adoption of the Maritime Labour Convention, 2006.

### **3.0. WHAT IS MARITIME LABOUR CONVENTION, 2006?**

The Maritime Labour Convention 2006 (MLC, 2006) was adopted on 23<sup>rd</sup> February, 2006 at the 10<sup>th</sup> Maritime Session and 94<sup>th</sup> Session of the International Labour Conference (ILC) of the ILO. The Convention elaborates comprehensive requirements/standards setting out rights and responsibilities as well as more technical minimum standards for working and hiring conditions for a diverse range of seafarers.<sup>3</sup>

The MLC, 2006 was adopted by the government, employer and workers representatives at the special Labour Conference referred to above. The Convention also referred to as the “Seafarers Bill of Rights” brings together in one place, international minimum standards that ensure decent work for the estimated more than 1.5 million seafarers around the world whose work is essential to international trade as well as to an increasingly important form of tourism and recreational activity.

Moreover, the MLC helps to provide a level playing field for shipowners operating under the flag of countries that have ratified it. This is to ensure that decent working conditions go hand in hand with fair competition.<sup>4</sup> The Convention came into force on the 20<sup>th</sup> August, 2013.

From 20 August, 2013, all commercially operated ships of 500 gross tonnages or over that fly the flag of any of the 30 countries that brought the MLC 2006, into force will, if they operate on international voyages, be required to carry, among other things, two

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<sup>3</sup> Moira L. McConnell, The Maritime Labour Convention 2006-Reflections on Challenges for Flag State Implementation, published in WMU Journal of Maritime Affairs.

<http://link.springer.com/article/10.1007%252Fs13437-011-0012-2>.

<sup>4</sup> ILO Publications, <http://www.ilo.org>

specific documents, to wit; Maritime Labour Certificate and Declaration of Maritime Labour Certificate.

The International Maritime Organization (IMO) describes the ratification of the MLC 2006 as an important milestone in the development of better working conditions for seafarers. It went on to state that “Alongside IMO’s main international treaties covering safety and security, prevention of pollution and training of seafarers, the MLC Convention represents the “Fourth Pillar” of maritime regulation covering international shipping, which transport more than 90 per cent of world trade, and on which we all rely”.<sup>5</sup>

It is necessary to explain some of the terms employed in the MLC, 2006 to enable a better understanding of the Convention.

- i. Competent authority- means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
- ii. Seafarer- means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;
- iii. Requirements of this Convention- refer to the requirements in the Articles and in the Regulations and Part A of the Code of the Convention.

The MLC is applicable to all issues relating to the welfare, rights and conditions of employment of seafarers working on all ships covered by the Convention. The scope of its application also extends to the obligations of States in ensuring that the measures to implement the requirement of the Conventions are provided in national laws or regulations. And those regulations are adequate for the intended purpose.

The structure of the MLC 2006 is divided into three but related parts. The articles, regulations and code. The articles and regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The articles and

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<sup>5</sup> IMO publication <http://www.imo.org>

regulations can only be changed by the conference in the framework of article 19 of the constitution of ILO.<sup>6</sup>

The Code contains the details for the implementation of the Regulations. It comprises of part A (mandatory standards) and part B (non-mandatory guidelines). The code can be amended through the simplified procedure set out in article XV of the Convention. The amendments shall however not depart from the general scope of the articles and regulations of the Convention.

The underlying purpose of the MLC 2006 is to:

- (a) Lay down, in its Articles and Regulations, a firm set of rights and principles;
- (b) Allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles;
- (c) Ensure, through title 5, that the rights and principles are properly complied with and enforced.

The Regulations contained in the MLC 2006, are generally divided into five areas and or titles which shall be discussed as follows:

### ***2.1 Minimum requirements for seafarers' to work on a ship. (Regulation 1.1)***

Under the regulation, no person below the minimum age shall be employed or engaged or work on a vessel. The minimum age set down is 16 years. The Convention prohibits any person below this age from being employed on a vessel.

The regulation in 1.1.2 prohibits night work for seafarers under the age of 18 years. The definition of night is to be determined by national law, but covers the period nine hours starting not later than midnight and ending not earlier than 5.00am. There are however exception to this rule, where the effective training of the seafarer will be impaired and that the work shall not pose any danger to the health of the seafarer. This is to be determined under national law and due consultation with the relevant shipowners and seafarers' association.

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<sup>6</sup> Article XIV of the MLC 2006.

**Regulation 1.2 Medical certificates-** This regulation deals with medical certificate. The purpose is to ensure that all seafarers are medically fit to perform their duties. Generally by virtue of this provision a seafarer would not be allowed to work on a ship except he is certified to be medically fit. The certification is to be done by a qualified medical practitioner. In case of only eye examination, by a professional in that field recognized by the competent authority. Under regulation 1.2.3 the requirement is without prejudice to the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978 as amended.<sup>7</sup> A certificate issued under the convention is acceptable if in compliance with regulation 1.2.

The medical certificate will attest to the satisfactory status of the seafarers hearing and sight capabilities and that the seafarer concerned is not suffering from any medical condition that may be aggravated by the service at sea or render him unfit and or to endanger the health of others on board.

The validity period of the medical certificate is two years except for a seafarer who is under 18 years, in which case maximum period of validity is one year. For certificates in respect of colour vision the validity period six years. In case of urgency, the competent authority may allow a seafarer to work without a valid medical certificate until he gets to the next port of call where he can be examined by a medical practitioner and a certificate is issued. This is however contingent on that the period allowed is not more than three months and he has an expired medical certificate. This is also applicable, where the medical certificate expires in the course of voyage. The medical certificate for seafarers operating on international voyages should ordinarily be in English language.

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<sup>7</sup> IMO Convention adopted in 7 July, 1978, entered into force 28 April, 1984. It's the first Convention to establish basic requirements on training, certification and Watchkeeping for seafarers on an International level. Previously standards of training, certification and Watchkeeping of officers and ratings were established by individual governments, usually without reference to practices in other countries. As a result standards and procedures varied widely, eventhough shipping is the most international of all industries. The convention prescribes minimum standards relating to training, certification and Watchkeeping for seafarers which countries are obliged to meet or exceed. <http://www.imo.org>

***Regulation 1.3 Training and qualifications-*** The purpose of the regulation is to ensure that seafarers are trained or qualified to carry out their duties on board ship. Seafarers shall not work on a ship unless they are trained or certified to be competent or qualified to perform their duties. (1.3.1). They are equally not allowed to work on a ship unless they have successfully complete training in safety on board ship. For the purpose of regulations 1.3.1 and 1.3.2, the training and certification obtained under the relevant IMO mandatory instrument such as the STCW is adequate.

***Regulation 1.4 Recruitment and placement-*** The provisions of the regulation relate to access to an efficient and well regulated seafarer recruitment and placement system.

Pursuant to the above, member States shall ensure that all seafarers have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.

Secondly, seafarer recruitment and placement services operating in the territory must conform to the code provided in the regulation. For seafarers working on vessels registered under the flag of the State but who operate under a recruitment and placement system of countries who are not parties to the MLC 2006, the Flag State must ensure that the recruitment and placement services are in conformity with the requirement of the MLC 2006.

## ***2.2 Title No. 2. Conditions of Employment***

Under this title of the Convention, there are regulations on eight topics which are;

- i. Regulation 2.1 –Seafarers’ Employment Agreements;
- ii. Regulation 2.2 – Wages;
- iii. Regulation 2.3 - Hours of work and hours of rest;
- iv. Regulations 2.4 -Entitlement to leave;
- v. Regulation 2.5 -Repatriation;
- vi. Regulation 2.6 – Seafarers’ compensation for the ship’s loss or foundering;



- vii. Regulation 2.7 – Manning; and
- viii. Regulation 2.8 – Career and skill development and opportunity for seafarers’ employment.

The purpose of these regulations is for the seafarers to have a fair employment agreement, ensure they are paid for their services, have well spelt out time of work and rest, have adequate leave with pay, repatriation ( which is to enable the seafarer return home, either at periodic intervals during the subsistence of his employment or on completion of a contract), compensation in case of ship loss or foundering (the compensation is for injury, loss, or unemployment arising from a ship’s loss or foundering) and the need for career and skill development and opportunity for seafarers’ employment.

It should be noted that there are some similarities with IMO/ILO Conventions particularly to provisions relating to hours of work, hours of rest and manning level. This does not actually poses any conflict, but compliments one another and also emphasizes the importance of same.<sup>8</sup>

### ***2.3 Title 3. Accommodation, Recreational Facilities, Food and Catering***

There are two regulations under this title, namely;

- i. Regulation 3.1 – Accommodation and recreational facilities; and
- ii. Regulation 3.2 – Food and catering.

The two regulations are regarded to be amongst the most important provisions of the MLC 2006, for both the seafarers and shipowners, because of the attendant operational cost and design.<sup>9</sup> It is stated further that regulation 3.1 spells out in detail, the technical requirements such as the nature of the mattress on berths, berth diameters, floor space, locker sizes, and even the nature of flushing systems for toilets.<sup>10</sup> This is significant because of the nature of the seafarers’ work. The work place is also his home and the situation of the place has considerable effect on his well being. It is a consolidation of

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<sup>8</sup> STCW 1978 as amended. ILO Convention No. 180 (Seafarers Hours of work and the manning of ships Convention)

<sup>9</sup> Moira L. McConnell, Dominick Devlin, Cleopatra Doumbia-Henry The Maritime Labour Convention, 2006, Martinus Nijhoff Publishers, p 339.

<sup>10</sup> Ibid, 339

two existing conventions; Accommodation of Crews Convention (Revised), 1949 and the Accommodation of Crews (Supplementary Provisions) Convention, 1970.

The regulation is supported by detailed standards which are expected to be adhered to by shipowners and which forms part of the Flag State responsibilities contained in Title 5 of the MLC. This must be satisfied before the issuance of the maritime labour certificate (MLC) and declaration of maritime labour compliance (DMLC) certificates. It is also subject to inspection under the Ports State control obligations. The standard however provides for flexibility within each provision based on specified factors.

### ***Regulation 3.2 Food and Catering***

The regulation is mostly concerned with the provision of seafarers' food and water on board ship and the need to have trained seafarers preparing their foods. The purpose of the regulation is to ensure that seafarers' have access to good quality food and drinking water provided under hygienic conditions. The regulation is a consolidation and modernization of two previous conventions of the ILO, which are the Food and Catering (ship's crew) Convention of 1946 and the Certification of Ships' cooks Convention of 1946.

It should be noted that this regulation is also a matter that is subject to flag State inspection and certification on all ships and potential port State control as listed in Title 5 of the MLC 2006.

### ***2.4 Title. Health Protection, Medical Care, Welfare and Social Security Protection.***

There are five regulations with the related code of standards and guidelines on the topics provided for under the title 4. The topics are 4.1. Medical care on board ship and ashore, 4.2. Shipowners' liability, 4.3. Health and safety protection and accident prevention, 4.4. Access to shore-based welfare facilities and 4.5 Social security.

Regulation 4.1- The purpose of the regulation is to protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore. The obligation created here expects the Flag State to put in place measures to ensure protection of seafarers' health and that they have access to prompt and adequate medical care whilst

working on board the ship. This obligation also extends to when the seafarers' are ashore in cases requiring such necessary medical attention. This provision is also one of which gives rise to the duty of inspection under the Flag State responsibilities.

Regulation 4.2- The regulation imposes the obligation on States to ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment. The liability of the shipowner under the Convention relates to both the cost of care and the payment of wages during the periods of sickness. The regulation in Standard A4.2 places on the Flag State, the obligation to put in place measures to ensure that the shipowner provides material assistance and support to the seafarer with respect to financial consequences of sickness, injury and death which may occur whilst working on the ship.

Regulation 4.3 – The purpose of the regulation is to facilitate the environmental friendliness of the seafarers work environment and the promotion of occupational safety and health. This provision is closely linked with the regulations under Title 3, which are the provisions on accommodation, recreational facilities, food and catering. The provisions of regulation 4.3 forms part of the inspection criteria for the issuance of the DMLC certification.

Regulation 4.4 - Access to shore- based welfare facilities

The purpose is for Masters and other seafarers to have access to shore-based welfare facilities to secure their health and well being. Regulation 4.4 enjoins Member States to ensure that shipowners provide shore leave to seafarers and access to use the welfare facilities where such exists ashore. The welfare facilities should secure and make accessible and provide for welfare, cultural and entertainment needs. The Standards emphasize that no discrimination should be allowed in the use of the welfare facilities irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the Flag State of the ship on which they are employed to work.

#### ***Regulation 4.5 Social Security***

The purpose of the Regulation is to ensure that States take measures with a view to providing seafarers with access to social security protection. To this end, States are to

ensure that all seafarers and their dependants have access to social security protection, and this should be enacted into the national laws of the State. The social security obligation is however subject to the circumstances of each State.

The Standard further provides that at the time of ratification, the protection to be provided by each Member in accordance with Regulation 4.5, paragraph 1, shall include at least three of the nine branches provided in the Convention. In compliance with the Standard, Nigeria has specified the following branches of social security; medical care, sickness benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit and invalidity benefit.<sup>11</sup>

### ***2.5 Title 5. Compliance and Enforcement***

This part of the Convention is of paramount importance. This is because the success or otherwise of the intention and purpose of the Convention rests on the capacity and willingness of State actors to ensure and implement the provisions of the Convention. Title 5 is said to contain one of the most important developments in the ILO Convention,<sup>12</sup> with the introduction of the certification system for labour and social conditions. The Convention in this part clearly defines the role of three important actors in the maritime labour matters, namely, the seafarer, the State and shipowners. It provides a balance in the rights, duties and responsibilities of the actors with a view to securing the protection and advancement of seafarers. The provisions of Title 5 are akin to the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 and the Labour Inspection (Seafarers') Convention, 1996. With the ratification of the MLC 2006 by Nigeria and its entrance into force by the 18 June, 2014, the (6) six maritime Conventions including the above are considered ipso jure denounced.

Title 5 comprises of the general principles, regulations and the Standard codes and guidelines. The general principles stipulate that States have the responsibility to fully implement and enforce the principles and rights set out in the Articles of this Convention as well as the obligations provided in Titles 1 to 4. Secondly, States shall implement their responsibilities in line with the Code of Standards especially those in Part A of the Title

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<sup>11</sup> ILO Publications, <http://www.ilo.org>

<sup>12</sup> Ibid, p. 477.

5. Furthermore, the provisions of Title 5 shall be implemented in such a way that seafarers and shipowners will not be discriminated against and should be treated equally and allowed access to courts, tribunals or other dispute resolution mechanism.

The provisions of the Regulations are discussed as follows:

***Regulation 5.1- FLAG STATE RESPONSIBILITIES.***

The purpose of this Regulation is to ensure that each Member implements its responsibilities under the Convention with respect to ships that fly its flag.

To achieve the above stated purpose, the general principles of underlining these responsibilities are stated. Paragraph 1 restates the purpose provisions and the general responsibilities of States to ensure implementation of its obligations under the Convention in respect of ships that fly its flag. Paragraph 2 requires a flag State to establish an effective system for the inspection and certification of maritime labour conditions. Paragraph 3 establishes the principle that States are permitted to authorize public institutions and other organizations to carry out labour inspections on their behalf. It goes further to establish that irrespective of the delegation, the Flag State retains full responsibility for the inspection and certification of working and living conditions on board the ships that fly its flag. Paragraph 4 explains what is to be inspected and certified. It establishes the basic principle that the on-board documents required for ships, the MLC and DMLC certificates constitute prima facie evidence that the requirements of the Convention regarding working and living conditions of the seafarers have been met, to the extent certified.

The related Standard Code A5.1 stipulates that States shall establish clear objectives and standards covering the administrations of the inspection and certification systems, the procedures for the assessment and the status of those objectives and standards.

It is further required that every vessel that flies the flag of the State must have on board a copy of the Convention.

Regulation 5.1.2 –Authorization of Recognized Organization -Paragraph 3 of Regulation 5.1.1, makes provision for public institution or recognized organization, to which the flag

State can entrust the inspection or certification responsibilities under the system. Such recognized organization must, to the satisfaction of the competent authority, have the competency and independence required by the Standard code. In addition their scope of activities should not extend beyond what the competent authority can do under the Convention and which is now (the inspection or certification functions) entrusted to the recognized organization.

The competency and independence of the recognized organization will be considered satisfactory, where it has the necessary expertise in the relevant aspects of the Convention. This includes good knowledge of ship operations, the minimum requirements for seafarers' to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection.

Furthermore, the recognized organization will be examined as to its ability to maintain and update the expertise of its personnel, whether it has necessary knowledge of the requirement of the MLC, 2006 and relevant national laws and regulation and international instrument; if it is of appropriate size, structure, experience and capability which are commensurate with the type and degree of authorization.

The authorization given to the recognized organization empowers it to request the rectification of deficiencies noticed in seafarers working and living conditions and to carry out inspections in this regard, where requested by a port State.

The Member States are to monitor the activities of the recognized organizations, bring them up to date on provisions of the national laws, regulations, and international instruments applicable. A list of the recognized organizations and update on same should be made available to the ILO. It should be stressed that irrespective of the authorization and involvement of the recognized organizations, the Flag State remains responsible for the inspection and certification of the working and living conditions of the seafarers concerned.

***Regulation 5.1.3- Maritime Labour Certificate and Declaration of Maritime Labour Compliance***

The provisions of this Regulation apply to ships of 500 gross tonnage or over and involved in international voyages (voyages from a country to a port outside such a country) and ships of 500 gross tonnages or over, flying the flag of a member and operating from a port, or between ports, in another country.

The Regulation requires that the Flag State ensures, effectively, that vessels flying the flag of the State should have on board and maintain a maritime labour certificate, certifying that the working and living conditions of seafarers on the ships have been inspected and meet the requirements provided for in the national legislation or other measures implementing the applicable provisions (standard codes) of the Convention.

The working and living conditions of seafarers which must be inspected and approved by the Flag State before certifying a ship include: minimum age, medical certification, qualifications of seafarers' employment agreements, use of licensed or certified or regulated private recruitment and placement service, hours of work or rest, manning levels for the ship, accommodation, on board recreational facilities, food and catering, health and safety and accident prevention, on board medical care, on board complaints procedures and payment of wages.

The Flag States' competent authority and or recognized organizations engaged for this function, must ascertain through detailed inspection that ships flying its flag meet and continue to meet the standards of the MLC. The maritime labour certificate or its renewal will be the prima facie evidence of the inspection and compliance and a public record of these activities must be kept accordingly.

Complementarily, the Regulation requires that a declaration of maritime labour compliance certificate must be carried and maintained on all ships flying the flag of the State. This certificate will indicate the national requirements of the State implementing the Convention for working and living conditions for seafarers and set out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned. This requirement presupposes that the shipowner is conversant with the provisions of the Convention and the national laws of the State with regards to seafarers working and living condition aboard the ship.

#### ***Duration of the Maritime Labour Certificate***

The validity period of the maritime labour certificate is five years. However, the competent authority or duly authorized recognized organization shall, for the purpose of continuing compliance, carry out intermittent inspections to ensure compliance. Although the exact time is not stated, the Convention states that intermediate inspection should be carried out on the second or third anniversary of the validity period.

The Convention makes provision for the issuance of an interim certificate when the ship is new, the ship changes flag, or when a new owner assumes responsibility for the operation of a ship which is new to the shipowner. In these cases, the interim labour certificate shall not exceed six months. The depth of the inspection prior to the issuance of the interim certificate would be equal to that of a request for renewal of the certificate.

An interim labour certificate would only be issued on the satisfaction after due inspection that, as far as reasonable and practicable, (a) the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with the Convention (b) the Master is familiar with the requirements of the Convention and the responsibilities for implementation and (c) the relevant information has been submitted to the competent authority or recognized organization in order to produce the Declaration of Maritime Labour Compliance.

The interim certificate cannot be issued more than once, hence an inspection for the issuance of the maritime labour certificate must be carried out before the expiry of the interim certificate.

### ***The content of the Certificates***

The standard A5.1.3 (9) of Regulation stipulates that the Maritime Labour Certificate, the interim certificate and the Declaration of Maritime Labour Compliance should be drawn up in a form corresponding to the models given in Appendix A5-11 of the Convention. The Regulation further provides that the Declaration of Maritime Labour Compliance should be attached to the maritime labour certificate and would consist of two parts, namely;

Part 1 which will:



1. Identify the list containing all matters to be inspected in accordance with the Convention;
2. Identify the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements;
3. Refer to the ship type specific requirements under national legislation;
4. Record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article IV; and
5. Clearly indicate any exemption granted by the competent authority as provided in Title 3.

## Part 2

1. This Part, which is drawn up by the shipowner, would identify the measures adopted to ensure on-going compliance with the national requirements between inspections and the measures proposed to ensure continuous improvement.

The results of subsequent inspections and/or other verifications carried out with respect to the ship and the deficiencies noted and dates they were remedied should be recorded and inscribed or appended on the Declaration of Maritime Labour Compliance.

The Regulation requires that the valid originals of the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance must always be accompanied by an English translation; it must be posted on a conspicuous place on the ship which is accessible to all seafarers. A copy of the two documents must also be made available upon request to seafarers, Flag State inspectors, Port State Control officers, the seafarers and shipowners representatives.

## ***CEASURE AND WITHDRAWAL OF CERTIFICATE***

Standard A5.1.3 (14) - The maritime labour certificate, interim certificate or declaration of maritime labour compliance shall cease to be valid in any of the under listed circumstances or situation;

- i. If the relevant inspections are not completed within the periods specified under paragraph 2 of the standard. The paragraph 2 stipulates that maritime labour certificate shall be valid for a period not exceeding five years, but an intermediate inspections must be carried two or three years of the anniversary of the date of expiry according to the national laws or regulations of the State. It pre-supposes that where an intermediate inspection is not carried out or completed accordingly, the certificate shall cease to be valid’.
- ii. If the certificate is not endorsed in accordance with the paragraph 2 of the Standard.
- iii. When a ship changes flag.
- iv. When the shipowner ceases to assume the responsibility for the operation of a ship
- v. When substantial changes have been made to the structure or equipment covered in title 3.

In situations of 14 (iii) the Flag State would issue new certificate upon satisfaction that the ship is in compliance with the provisions of the Convention.

Under standard A5.1.3 (16). a maritime labour certificate may be withdrawn by the competent authority or the recognized organization duly authorized by the Flag State in this regard, if there is evidence that the ship concerned does not comply with the requirements of the Convention and any required corrective action has been ignored.

Paragraph (17) provides that in considering whether to withdraw the Certificate, the competent authority or recognized organization shall take into account the seriousness or frequency of the non- compliance or deficiencies.

#### ***Regulation 5.1.4 –Inspection and Enforcement***

The regulation is focused on the inspection process, flag State inspectors and certification system. The enforcement of the Convention's provisions by the Flag State is to be pursued through the establishment of an effective and coordinated system, which will be in a position to undertake regular inspections, provide efficient and detailed monitoring functions, and give effect to other control measures that may be required by the competent authority, in order to verify that its ships comply with the requirements of the Convention as implemented in the national laws and regulations of the State.

The standards under this Regulation expect States to put in place an inspection system for the inspection of seafarers' conditions aboard ships that fly its flag particularly to verify whether measures relating to the working and living conditions set out in declaration of maritime labour compliance are being complied with. The State is also required to appoint qualified inspectors and where it relies on recognized organization, to ensure the personnel carrying out the inspection are qualified to carry out the duties and are provided with the required legal authority to so act.

Furthermore, the inspectors must be adequately trained, have the competence, have clear terms of reference, powers, status and independence necessary to perform. The inspection must take place at the required intervals, not exceeding three years.

The main role of the inspectors according to Standard A5.1.4(7) is (a) to board a ship that flies the flag of a Member State and (b) carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed on board ships flying its flag.

They are to require that any deficiency is remedied and, where they have grounds to believe deficiencies constitute a serious breach of the requirements of the MLC, 2006 (including seafarers' rights), or represent a significant danger to seafarers safety, health, or security, to prohibit a ship from leaving port until necessary actions are taken. Whilst doing this, the inspectors must not unreasonably delay or detain a ship; as such unreasonable delay may entitle the shipowner to compensation upon proof by the complainant. Equally, adequate penalties and other corrective measures for breaches of the requirements of the Convention and for obstructing inspectors in the performance of their duties should be provided in the national laws and regulations.

This is however subject to any right of appeal to a judicial or administrative authority.

The inspectors shall have discretion to give advice instead of instituting or recommending proceedings where there is no clear breach of the Convention that poses danger to the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches. Prior to the commencement of the inspection, the inspectors should be clearly briefed on the scope and various circumstances under which it is to be carried out and the general method for its conduct. Therefore, inspectors should not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers' or other interested parties. To this end, inspectors should be prohibited from having direct or indirect contact in any operation which they are called upon to inspect and they must not reveal, even after leaving their service, any commercial secrets or confidential working processes or information of a personal nature, which may come to their knowledge in the course of their duties.

In addition to carrying out regular inspection, the flag State must take the necessary steps to investigate any complaints- which it considers to not be manifestly unfounded or the evidence received in relation to ships under its flag that do not conform to the requirements of the Convention or where there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance. The complaints may come from port State, the on board or onshore complaints mechanism, or labour supply State. Whenever acting on such complaints or evidence, the Flag State must ensure that action is taken to remedy all deficiencies found.

The authority for the inspectors to carry out inspection is to be provided on their credentials, which will include, powers; to board the ship subject to adequate notice to the master or whoever is in charge, request for log-books or any relevant documents, question master, seafarer or any other person including the shipowner or its representative, requesting posting of notices required under the law or Convention, to take or remove for the purpose of analysis samples of products, cargo, drinking

water, provisions, material and substances used or handled, (such samples taken must be properly recorded and in the presence of the shipowner or its representative and the seafarer should also be present during the removal), following an inspection to bring to the attention of the shipowner or its representatives, the operator of the ship or master deficiencies which may pose danger to the health and safety of those on board the ship, to alert the competent authority of any deficiencies or abuse which may not be covered by the national law or regulation and submit proposal to improve on the situation and to notify the competent authority of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribe by law.

A copy of the report in English or working language of the ship is delivered to the master of the vessel and another copy is pasted on the notice board of the ship.

***Regulation 5.1.5-On –board complaint procedures***

The introduction of the on-board and onshore procedures are based on the concept of a continuity of compliance awareness thereby giving seafarers a rather important role in its enforcement is quite innovative. The procedure which is required to be documented will provide salient information to flag or port States, which information may ordinarily not be visible during inspection. It is yet to be seen the extent the protection afforded will encourage seafarers' to give report which may in turn affect their contract of employment, when such reports implicates the shipowner.

The purpose of the procedure is to resolve complaints at the lowest level possible and to exhaust such on board remedies before a report is made to an external authority. The procedure will however not preclude a seafarer from seeking redress through whatever legal means; he or she may consider appropriate. The Flag State will in consultation with seafarers' and shipowners organizations develop a model for fair, expeditious and well documented on-board complaints handling procedures. The availability of these procedures should be communicated to seafarers' and to this end, they should be supplied with copies of the on-board complaints procedures applicable on the ship on which they are engaged or employed.

***Onshore complaint procedures.***

Like the on-board complaint procedure, port States are equally required to establish appropriate complaint handling procedures in order to facilitate a prompt and practical means of redress for seafarers on ships calling at its port who allege a breach of the requirements of the Convention. The complaints is to be treated like an information received from any person with interest in the safety of the ship, including an interest in safety or health hazards to seafarers' on board. Serious complaints which borders on the safety, health and well being of the people aboard the ship may necessitate a further inspection. If not, it may be treated via an on-board complaint procedure.

In the event that the investigation or inspection reveals a non-conformity that constitutes a clear hazard to the safety, health, or security of seafarers' or a serious or repeated breach of the requirement of the Convention, the Port State control must ensure that the ship did not proceed to sea until any such non-conformity has been rectified, or until a plan of action for their expeditious rectification has been agreed. Where the ship is prevented from sailing on these grounds, the flag State must be notified accordingly and the presence of a representative of the Flag State must be sought.

### ***Regulation 5.2 PORT STATE RESPONSIBILITIES***

The purpose of the regulation is to enable each Member State to implement its responsibilities under the Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships.

Article 5 of the MLC, 2006 establishes a responsibility for countries, when they act as port States, with respect to the inspection of foreign flag ships that enter their ports. This responsibility known more usually as port State control (PSC) is also the subject of a number of regional memoranda of understanding (PSC MOU) between countries with respect to inspection of ships, when they enter their ports, for compliance with international standards. Under the MLC, 2006 the responsibility for inspecting ships under PSC is permissive as ships "may be inspected", but there is also an obligation (under Article 5, Para. 7) to ensure that ships of countries that have not ratified the MLC, 2006 are not given more favorable treatment than ship of countries that have ratified the Convention or the country's own ships (which would, for example, be the case if foreign ships were not inspected at all).

PSC is a key part of the international regulatory system for ensuring ongoing compliance by ships while they are on international voyages and is an important example of international cooperation. As with the previous provisions, the MLC, 2006 was designed as much as possible to fit within the established system for such inspections, and in that respect there may already be a law or practice for other maritime conventions including ILO Convention No 147 (Labour Inspection (Seafarers') Convention) which is already covered by some PSC MOUs.

The provisions in Regulation 5.2.1 and Standard A5.2.1 do not address the legal form for implementation of the requirements; however Standard A5.2.1 requires the adoption of an “effective port State inspection and monitoring system”. The form for implementation that is chosen should be appropriate under the national legal system for authorizing activities of government departments or officials.

The ILO has provided guidelines for PSC officers carrying out inspections under the MLC 2006. These guidelines are intended to assist Governments when establishing the national systems under the MLC, 2006. The main requirements to be addressed are:

1. Every foreign ship calling, in its normal course of its business or for operational reasons, in a port may be subject of inspection by an authorized officer of the port State under an effective port State inspection and monitoring system, for the purpose of reviewing compliance with the requirements of the Convention relating to the working and living conditions of seafarers on the ship;
2. A valid maritime labour certificate and declaration of maritime labour compliance must be accepted as prima facie evidence of compliance. The inspection must then be limited to a review of the certificate and declaration, except in specific cases; a more detailed inspection may be carried out in the cases where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has clear grounds to believe that any deficiency constitute a serious breach of the requirements of the Convention.
3. The prescribed procedures must be followed where deficiencies or non-conformities are found, including the detention of the ship in port until

- rectification or acceptance by the authorized officers of a plan of action for rectification.
4. The more detailed inspection must, in principle, cover the 14 areas prescribed for PSC under Appendix A5-III of the MLC, 2006, except in the case of a complaint. The 14 areas prescribed for PSC are; minimum age, medical certification, qualifications of seafarers, seafarers' employment agreements, use of any licensed or certified or regulated private recruitment and placement service, hours of work or rest, manning levels for the ship, accommodation, on-board recreational facilities, food and catering, health and safety and accident prevention on board medical care, on board complaints procedures and payment of wages.
  5. All possible efforts must be made to avoid a ship being unduly detained or delayed and compensation must be paid for any loss or damage where a ship is found to be unduly detained or delayed.

### ***Regulation 5.3 LABOUR SUPPLYING RESPONSIBILITIES***

The purpose of the regulation is to ensure that each Member State implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers.

Regulation 5.1.3 provides obligations with respect to the enforcement of what are called the "labour-supplying responsibilities" of States as set out in Titles 1 to 4 of the MLC, 2006. It also implements Article V, paragraph 1 and 5. These responsibilities include the regulation of seafarer recruitment and placement services and the provision of social security.

The provisions under Regulation 5.3 and the Code do not specify the form of legal implementation and to a large extent effective implementation of the obligation in relevant provisions in Titles 1 to 4 would constitute implementation of this obligation, at least with respect to Regulation 4.5. However to the extent that it is directed to governmental agencies, the form should be mandatory under the national legal system. The main requirements are that:



1. The country must establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities, particularly those regarding the recruitment and placement of seafarers;
2. The country must also implement social responsibilities for seafarers that are its nationals or residents or are otherwise domiciled in its territory;
3. The country must report on its system for enforcing these obligations in its Article 22 report under the ILO Constitution

It is clear that the majority of the obligations under the MLC 2006 are directed to States in their capacity as Flag States. The States are to implement the provisions of the Convention through the national laws or other measures.

Nigeria ratified the MLC 2006 on the 18 June, 2013. What is left for Nigeria is the implementation of the provision of the Convention through its national law. It is proposed that the provisions of the Convention can be introduced into the Nigerian law by a regulation made under the hands of the Federal Minister responsible for Maritime Transport in Nigeria.

#### ***4.0 WHY DOES NIGERIA NEED TO IMPLEMENT THE MLC 2006 and INCORPORATE IT INTO OUR NATIONAL LAW AND REGULATIONS?***

The importance of the MLC 2006 to Nigeria cannot be over-emphasized. Nigeria, having ratified the Convention is bound by its provisions and this includes the implementation through our national laws and/ or regulations in order to be able to exercise its jurisdiction and carry out its flag State obligations.

Secondly and most importantly, it will enhance the working conditions of seafarers employed in the Nigerian flagged vessels, since shipowners would be required as a matter of statute to implement the provisions of the regulation. The popular saying is “health is wealth”. Therefore, where the health, safety and mental well being of the seafarers are adequately protected, the productivity will equally improve and would positively reflect in the GDP of the nation. Seafaring will become attractive and unemployment will in turn reduce.

Moreover, with the effective port and flag State inspection, seafarers are assured of due compliance to the requirement of conducive accommodation, recreation facilities for both mental and physical well-being, medical care and social security, repatriation where necessary and most of all security of employment.

With the above provisions, seafaring will become attractive to the teeming young men and women in Nigeria who would take up employment in the industry, thereby reducing the unemployment ratio. Closely related to this, is the emerging market for seafarers' recruitment agencies, which would look towards Nigeria for the supply of able seamen and women thereby engendering foreign direct investment into the nation's economy.

Furthermore, it is necessary to have the MLC regulations implemented in Nigeria to enable vessels flying its flag compete favourably in the international ship transport market. Since non-compliance may result in Ships flying its flag to be detained or subject to further detailed inspections in ports of other States. Where there are frequency of this, Nigeria may be labeled a "pariah", which would negatively affect its image and economy since vessel owners may refuse to patronize its registry.

It is not in doubt that implementing the enforcement and compliance obligations under the Convention will involve huge financial implications for the country; however the pivotal role maritime trade plays in the economic life of the nation should be the most important consideration for ensuring the implementation of the Convention.

#### ***5.0 THE PROCESS OF INCORPORATING THE MARITIME LABOUR CONVENTION, 2006 INTO NIGERIAN LAW.***

The Merchant Shipping Act, 2007 is the substantive law in Nigeria regulating issues relating to seafarers' conditions of service, flag State administration and port State control. This is done in conjunction with the Nigerian Maritime Administration and Safety Agency (NIMASA) Act Laws of the Federation of Nigeria 2007. This Act

establishes the Nigerian Maritime and Safety Agency which is the body that implements the Flag State Administration and Port State Control.<sup>13</sup>

The general power of the Minister to make regulations is provided for in section 435 of the Merchant Shipping Act (Laws of the Federation of Nigeria) 2007.

Prior to the making of the Regulation, there is the need to amend Sections 216 and 271<sup>14</sup> of the Merchant Shipping Act, 2007 to include the Maritime Labour Convention as part of Conventions applicable to Nigeria and on which the Minister would have powers to make regulations to bring into effect its provisions. Taking into consideration the position of the MLC, 2006 which has been described as the “fourth pillar” of maritime regulation

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<sup>13</sup> Section 2 of the Merchant Shipping Act Laws of the Federation of Nigeria 2007 provides “The Agency of Government established and responsible for Maritime Safety, Administration and Security shall be the implementing agency for this Act”.

<sup>14</sup> PART XII

#### *Safety of Life at Sea*

##### *General Provisions*

#### **216. Application of some related maritime safety Conventions and Protocols**

- As from the commencement of this Act, the following Conventions, Protocols and their amendments relating to maritime safety shall apply, that is-
- (a) International Convention for the Safety of Life at Sea, 1974 (SOLAS);
  - (b) Protocol relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto;
  - (c) International Convention on Standards of Training Certification and Watch Keeping of Seafarers, 1978 (STCW) as amended;
  - (d) International Convention on Maritime Search and Rescue, 1979 (SAR);
  - (e) International Labour Organisation Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932);
  - (f) International Convention on Maritime Satellite Organisation, 1976 (INMAR- SA T) and the Protocol thereto;
  - (g) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990;
  - (h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol thereto;
  - (i) International Convention on Salvage, 1989;
  - U) Placing of Seamen Convention, 1920;
  - (k) International Ship and Ports Facility Security (ISPS) Code; and
  - (l) International Convention for Safe Containers, 1972.

covering international shipping, it is explicit that the Convention should form a part of section 216 of the Merchant Shipping Act, 2007.

The process is for the relevant agency (Nigeria Maritime and Safety Agency) to draw up the proposed regulation and forward the same to the Minister of Transport, who would in turn send same to the Federal Ministry of Justice for vetting and approval.

The proposed regulation would subsequently be returned to the Minister of Transport for his signature and thereafter publication in the National Gazette. Thereupon, the Regulations become enforceable as a subsidiary legislation under the Merchant Shipping Act, 2007.

**Merchant Shipping (Amendment) Act 2014**

**AN ACT TO AMEND THE MERCHANT SHIPPING ACT 2007 TO MAKE PROVISIONS FOR THE IMPLEMENTATION OF MARITIME CONVENTIONS RELATING TO SAFETY AND LABOUR.**

Enacted by the National  
Assembly  
Of the Federal  
Republic of Nigeria.

1. Commencement

This Act shall come into force on such date as the Minister may appoint by notice.

2. The provisions of sections 216 and 217 of the Merchant Shipping Act, 2007 are amended by repealing the said sections 216 and 271 in their entirety and substitute with the following;

Section 216 International Maritime Conventions

International Maritime Convention means

- (a) Safety Convention
- (b) The load line Convention
- (c) The tonnage Measurement Convention
- (d) Any other Convention, agreement or treaty relating to-
  - (i) Shipping
  - (ii) Seamen (Maritime Labour)
  - (iii) Safety

Section 217 Implementation of Convention

1. The Minister may, in relation to any International Maritime Convention make such regulations for the purpose of implementing or enabling legal effect to be given to, the Convention in Nigeria as the Minister considers necessary or expedient.
2. Regulations under subsection 1 may include consequential amendments to any written law for the purpose specified in subsection 1.
3. Where the Minister is satisfied;
  - (a) that the government of any foreign country has ratified, acceded to or denounced any International Maritime Convention, or
  - (b) that any such Convention has been applied or has ceased to apply to any country

he may, by notice, make a declaration to that effect and the notice shall be received in any proceedings as evidence of the matter so declared.

This Act may be cited as the Merchant Shipping (Amendment) Act 2014.

**MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)**  
**(ENFORCEMENT AND COMPLIANCE) REGULATIONS, 2014**

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Explanatory Notes.

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**MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) 2006  
ENFORCEMENT AND COMPLIANCE REGULATIONS, 2014.**

The Minister, in exercise of the powers conferred by section 217 of the Merchant Shipping Act 2007, makes the following regulations-



## **PART 1- PRELIMINARY**

### 1. Citation.

(1) These regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Enforcement and Compliance) Regulations, 2014.

### 2. Interpretation.

In these regulations –

“Act” means the Merchant Shipping Act Laws of the Federation of Nigeria 2007

“Authority” means the Nigerian Maritime and Safety Agency;

“Authorized officer” means a person authorized by the Minister for the purposes of this regulation.

“Convention” means the Maritime Labour Convention 2006 adopted by the International Labour Organization at Geneva on the 23<sup>rd</sup> February, 2006 and ratified by The Nigerian Government.

“Declaration of Maritime Labour Compliance” means the document referred to under regulation 6;

“International voyage” means a voyage from a port in one country to a port in another country;

“Maritime labour certificate” means a certificate, evidencing proof that the ship meets the requirements of the Convention, referred to under regulation 6;

“Minister” means the Minister of Transport

“Passenger” means any person carried on board a ship except-

- (a) The master and seafarers or any other person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a child under one year of age;

“Passenger ship” means a ship carrying more than 12 passengers;

“Port” means a place for arriving, loading and unloading of ships and includes a harbor, piers jetty, and lighter terminals;

“Recognized Organization” means an organization authorized by the Authority to carry out maritime labour inspections and to issue maritime labour certificates to Nigerian registered ships;

“Seafarer” means a person, including the master, who is employed, engaged or works in any capacity on board a ship to which the Convention applies;

“Seafarers’ employment agreement” means the contract of employment and the article of agreement for seafarers referred to under regulation 15;

“Seafarer recruitment and placement service” means a person company, institution, agency or other organization, engaged in-

- (a) the recruitment of seafarers on behalf of shipowners; or
- (b) the placement of seafarers with shipowners;

“Shipowner” includes an organization or a person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship:

### ***3. Application.***

These Regulations apply to-

- (a) Nigerian registered ships engaged in commercial activities,
  - (i) 500 gross tonnage or over and engaged in international voyages;
  - (ii) 500 gross tonnage or over and operates from a port, or between ports, in a country other than Nigeria;
- (b) Except-
  - (i) Ships engaged in fishing;
  - (ii) Warships or naval ships; or
  - (iii) Any other ship as determined by the Minister.
- (c) Seafarer recruitment and placement services registered and licensed in Nigeria.

- (d) These Regulations also applies to a ship not covered by paragraphs 3(a) or (b) above, at the request of the shipowner to the Authority.

## **Part 2 –Flag State Responsibilities**

### **4. General Principles**

- (a) The Authority shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with regulations 5 and 7 of these Regulations on ships that fly the flag of Nigeria.
- (b) The Authority may, where appropriate in accordance with regulation 6 below, authorize public institutions or other organizations which it recognizes as competent and independent to carry out inspections or issues certificates or to do both.
- (c) The Authority shall establish clear objectives and standards covering the administration of the inspection and certification system referred to in paragraph (a) above, as well as adequate overall procedures for its assessment of the extent to which those objectives and standards are being attained.
- (d) Ships must have a copy of the Convention available on board.

### **5. *Authorization of Recognised Organisations***

- (a) The Authority may recognize public institutions or other organizations as competent and independent, for the purpose of carrying out inspections or certification of ships to determine compliance with the provisions of these Regulations.
- (b) Before recognizing an organization under paragraph (a) above, the Authority shall review the competency and independence of the organization concerned and determine whether the organization has demonstrated, to the extent necessary for carrying out the activities covered by the authorization conferred on it, that the organization:
- (i) has necessary knowledge of the requirements of the Convention as well as of applicable national laws and regulations and relevant international instruments; and has necessary expertise in the relevant aspects of the Convention and an appropriate knowledge of ship operations, including the minimum requirements for seafarers to work

facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection;

- (ii) is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization; the organization seeking recognition must demonstrate the technical, administrative and managerial competence and capacity to ensure the provision of timely service of satisfactory quality; in this respect, the Authority must determine whether the organization:
    - (1) has adequate technical, managerial and support staff;
    - (2) has sufficient qualified professional staff to provide the required service, representing an adequate geographical coverage;
    - (3) has proven ability to provide a timely service of satisfactory quality;
    - (4) is independent and accountable in its operations;
  - (iii) has the ability to maintain and update the expertise of its personnel; recognized organizations must develop a system for the qualification of staff employed by them as inspectors to ensure the timely updating of their knowledge and expertise.
- (c) The Authority shall conclude a written agreement with any organization that it recognizes for the purposes of an authorization. The agreement shall include the following elements:
- (i) Scope of application;
  - (ii) Purpose;
  - (iii) General conditions;
  - (iv) the execution of functions under authorization;
  - (v) legal basis of the functions under authorization;
  - (vi) reporting to the Authority;
  - (vii) specification of the authorization from the Authority to the recognized organization; and
  - (viii) the Authority's supervision of activities delegated to the recognized organization.
- (d) Any authorizations granted with respect to inspections must, as a minimum, empower the recognized organization to require the rectification of

deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard at the request of a port State.

- (e) Recognized organizations must maintain records of the services performed by them such that they are able to demonstrate achievement of the required standards in the items covered by the services.
- (f) The Authority shall establish:
  - (i) a system to ensure the adequacy of work performed by recognized organizations, which includes information on all applicable national laws and regulations and relevant international instruments; and
  - (ii) procedures for communication with and oversight of such organizations that take into account the guidelines for the authorization of organizations acting on behalf of the Authority, adopted in the framework of the International Maritime Organization.
- (g) The Authority shall make appropriate arrangements to promote effective cooperation between public institutions and other organizations concerned with seafarers' shipboard working and living conditions.
- (h) The Authority shall provide the International Labour Office with a current list of any recognized organizations authorized to act on its behalf and shall keep the list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out.

***6. Declaration and Certificate. maritime labour certificate and declaration of maritime labour compliance***

- (a) Every ship to which this Regulation applies must carry and maintain a current valid maritime labour certificate issued to the ship by the Authority, or by a recognised organization duly authorized for this purpose, which shall complete the form for this certificate which is contained in schedule 1, and affix to the form their signature and the seal or stamp of the issuing authority.
- (b) A declaration of maritime labour compliance must be attached to the maritime labour certificate. The declaration consists of two parts:

- (i) Part I summarizes, in accordance with Standard A5.1.3, paragraph 10(a) of the Convention, the requirements of Nigeria laws or regulations or other measures implementing the requirements of the Convention regarding the working and living conditions of seafarers on ships; it is drawn up by the Authority using the form contained in schedule II
- (ii) Part II identifies the measures adopted by the shipowner to ensure ongoing compliance on the ship with the national requirements and the measures proposed to ensure that there is continuous improvement; it must be drawn up by the shipowner based on the form contained in schedule III and certified by the Authority or recognized organization duly authorized for this purpose; the following requirements apply:
  - (a) the measures drawn up by the shipowner, must, in particular, indicate the occasions on which ongoing compliance with particular national requirements will be verified, the persons responsible for verification, the records to be taken, as well as the procedures to be followed where non-compliance is noted;
  - (b) Part II may take a number of forms and may make reference to other more comprehensive documentation covering policies and procedures relating to other aspects of the maritime sector, for example documents required by the International Safety Management (ISM) Code or the information required by Regulation 4 of the SOLAS Convention, chapter XI-1 relating to the ship's continuous synopsis record;
  - (c) the measures to ensure ongoing compliance must include general international requirements for the ship owner and master to keep themselves informed of the latest advances in technology and scientific findings concerning workplace design, taking into account the inherent dangers of seafarers' work, and to inform the seafarers' representatives accordingly.
- (iii) A maritime labour certificate, complemented by a declaration of maritime labour compliance, constitutes prima facie evidence that the ship has been duly inspected and that the requirements of the

Convention relating to working and living conditions of the seafarers have been met to the extent so certified.

- (iv) The maritime labour certificate may be issued only where the Authority or a recognized organisation duly authorized for this purpose has ascertained through inspection, as provided for in part 3, that the ship concerned meets the standards of these Regulations.
- (v) The maritime labour certificate is issued for a period of five years or any shorter period that may be considered appropriate by the Authority or recognized organisation in a particular case.
- (vi) The validity of the maritime labour certificate is subject to an intermediate inspection by the Authority, or by a recognized organisation duly authorized for this purpose, to ensure continuing compliance. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it must take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate. The scope and depth of the intermediate inspection must equal to an inspection for renewal of the certificate. A certificate must be endorsed following satisfactory intermediate inspection.
- (vii) The maritime labour certificate may be renewed subject to a new inspection in accordance with paragraph 6 above to ascertain that the ship concerned continues to meet the standards of these Regulations. When the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate is valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate. When the renewal inspection is completed more than three months before expiry date of the existing maritime labour certificate, the new maritime labour certificate is valid for a period not exceeding five years starting from the date of completion of the renewal inspection.
- (viii) A maritime labour certificate may be issued on an interim basis:

- (a) to new ships on delivery;
  - (b) when a ship changes flag;
  - (c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.
- (ix) An interim maritime labour certificate may be issued for a period not exceeding six months by the Authority or a recognized organization duly authorized for this purpose following verification that:
- (a) the ship has been inspected, as far as reasonable and practicable, for the matters covered by the 14 items listed in the declaration of maritime labour compliance, taking into account verification of items under sub-paragraphs (b), (c) and (d) of this paragraph;
  - (b) the shipowner has demonstrated to the Authority or recognized organization that the ship has adequate procedures to comply with the standards of these Regulations;
  - (c) the master is familiar with the requirements of these Regulations and the responsibilities for implementation; and
  - (d) relevant information has been submitted to the Authority or recognized organization to produce a declaration of maritime labour compliance.
- (x) An inspection in accordance with paragraph (iv) above shall be carried out prior to expiry of the interim certificate to enable issue of the full-term maritime labour certificate. No further interim certificate may be issued following the initial six months. A declaration of maritime labour compliance need not be issued for the period of validity of the interim certificate.
- (xi) The results of all subsequent inspections or other verifications carried out with respect to the ship concerned and any significant deficiencies found during any such verification must be recorded, together with the date when the deficiencies were found to have been remedied. This record, accompanied by an English Language translation where it is not in English, must be appended to the declaration of maritime labour compliance or made available in some other way to seafarers, flag



State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.

- (xii) A current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English language translation where it is not in English, shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.
- (xiii) The requirement for an English language translation in paragraphs (xi) and (xii) does not apply in the case of a ship not engaged in an international voyage.
- (xiv) A maritime labour certificate, including an interim certificate where applicable, will cease to be valid in any of the following cases:
  - (a) If the relevant inspections are not completed within the periods specified under paragraph (vii) above;
  - (b) If the certificate is not endorsed in accordance with paragraph (vi) above;
  - (c) When a ship changes flag;
  - (d) When a shipowner ceases to assume the responsibility for the operation of a ship;
  - (e) When substantial changes have been made to the structure or equipment covered in part IV of the Convention.
- (xv) In the case referred to in (xiv) (c), (d) or (e), a new certificate may only be issued when the Authority or a recognized organization issuing the new certificate is fully satisfied that the ship is in compliance with the requirements set out above.
- (xvi) A maritime labour certificate shall be withdrawn by the Authority or a recognized organisation duly authorized for this purpose, if there is evidence that the ship is not in compliance with the requirements of these Regulations and any required corrective action has not been taken.

- (xvii) When considering whether a maritime labour certificate should be withdrawn in accordance with paragraph (xvi) the Authority or the recognized organization shall take into account the seriousness or frequency of the deficiencies.

### **Part 3 – Inspection and enforcement.**

#### **7. Inspection and Enforcement on Nigerian ships.**

- (a) The Authority shall maintain a system of inspection of the conditions for seafarers on ships that fly the flag of Nigeria including verification that the measures relating to working and living conditions as set out in the declaration of maritime labour compliance, where applicable, are being followed.
- (b) The Authority shall develop compliance and enforcement policy to ensure consistency and otherwise guide inspection and enforcement activities related to these Regulations. Copies of this policy shall be provided to all inspectors and relevant law-enforcement officials and shall be made available to the public and shipowners and seafarers.
- (c) Inspections shall take place at the intervals required under Part 3 of these Regulations where applicable. Intervals shall in no case exceed three years. Inspections of seafarer accommodation must be carried out when:
  - (i) A ship is registered or re- registered; or
  - (ii) The seafarer accommodation on a ship has been substantially altered
- (d) If the Authority receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies the flag of Nigeria does not conform to the requirements of these Regulations or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the Authority shall investigate the matter and ensure that action is taken to remedy any deficiencies found.
- (e) The Authority shall establish simple procedures to enable it to receive information in confidence concerning possible breaches of these Regulations presented by seafarers directly or by representatives of the seafarers, and permit inspectors to investigate such matters promptly, including:
  - (i) enabling masters, seafarers or representatives of the seafarers to request an inspection when they consider it necessary; and

- (ii) supplying technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the requirements of these Regulations and of bringing about a continual improvement in seafarers' on-board conditions.
- (f) The Authority shall appoint a sufficient number of qualified inspectors to fulfill the responsibilities in paragraph (a) above.
- (g) The Authority shall adopt adequate rules that are effectively enforce to guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.
- (h) Inspectors must not undertake duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors:
  - i. are prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and
  - ii. subject to appropriate sanctions or disciplinary measures, must not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.
- (i) The Authority shall have the resources necessary to fulfill their functions. In particular:
  - i. duly qualified technical experts and specialist may be called upon, as needed, to assist in the work of inspectors; and
  - ii. inspectors shall be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.
- (j) Inspectors must have qualifications and adequate training to perform their duties and where possible must have a maritime education or experience as a seafarer. They must have adequate knowledge of seafarers' working and living conditions and of English language and must be fully trained and

sufficient in numbers to secure the efficient discharge of their duties with due regard to:

- (i) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships subject to inspection and the number and complexity of the legal provisions to be enforced;
- (ii) the resources placed at the disposal of the inspectors; and
- (iii) the practical conditions under which inspections must be carried out in order to be effective.

(k) Inspectors, with proper credentials acting in accordance with the policy referred to in paragraph (b) above have the following powers:

- (i) to board a ship that flies the flag of Nigeria freely without previous notice; when commencing the ship inspection, inspectors must provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives;
- (ii) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed, including the following:
  - (1) to question the master, seafarer or any other person, including the shipowner or the shipowners representative, on any matter concerning the application of the requirements under laws and regulations, in the presence of any witness that the person may have requested;
  - (2) to require the production of any books, log books, registers, certificates or other documents or information directly related to matters subject to inspection, in order to verify compliance;
  - (3) to enforce the posting of notices as required;
  - (4) to take or remove, for the purpose of analysis, samples of products, cargo, drinking water, provisions, materials and substances used or handled; when a sample is being taken or removed, the shipowner or the shipowners' representatives, and where appropriate a seafarer, must be notified or must be present at the time the sample is taken or removed and the quantity of such a sample must be properly recorded by the inspector.

- (iii) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of these Regulations, or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.
- (l) Inspectors should also at a minimum have the power:
- (i) following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master, deficiencies which may affect the health and safety of those on board ship;
  - (ii) to alert the Authority and, if applicable, the recognized organisation to any deficiency or abuse not specifically covered by existing laws or regulations and submit proposals to them for the improvement of the laws or regulations; and
  - (iii) to notify the Authority of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by laws and regulations
- (m) Inspectors have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of these Regulations that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.
- (n) Inspectors must treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such grievance or complaint.
- (o) Inspectors must submit a report of each inspection to the Authority. One copy of the report in English or in the working language of the ship must be provided to the master of the ship and another copy must be posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.
- (p) The Authority shall maintain records of inspections of the conditions for seafarers on ships of Nigeria.

- (q) The annual report on inspection activities will be published within a reasonable time, not exceeding six months after the end of the year. It will contain the following information:
- (i) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into effect during the year;
  - (ii) details of the organization of the system of inspection;
  - (iii) statistics of ships or other premises subject to inspection and of ships and other premises actually inspected;
  - (iv) statistics on all seafarers subject to the laws and regulations of Nigeria
  - (v) statistics and information on violations of legislation, penalties imposed and cases of detention of ships;
  - (vi) statistics on reported occupational injuries and diseases affecting seafarers.
- (r) In the case of an investigation pursuant to a major incident, the report must be submitted to the Authority as soon as practicable, but not later than one month following the conclusion of the investigation.
- (s) When an inspection is conducted or when measures are taken, all reasonable efforts must be made to avoid a ship being unreasonably detained or delayed.
- (t) Compensation shall be payable in accordance with the law of Nigeria for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case is on the complainant.
- (u) A fine of N100,000 and other corrective measures apply
- (i) for breaches of the requirements of these Regulations; and
  - (ii) for obstructing inspectors in the performance of their duties.
- (v) Any action taken in pursuant of paragraph (k) above is subject to a right of appeal to a judicial or administrative authority.

#### **Part 4 Complaints' Procedure**

##### **8. *On-board complaints procedures for Nigerian ships.***

- (a) A shipowner shall ensure that on board complaint procedures, that may be used by seafarers to lodge complaints relating to any matter that is alleged to

constitute a breach of the requirements of the Convention, is kept, at all times, on board the ship.

- (b) A seafarer shall be provided with a copy of the on board complaint procedures and a copy of their seafarer's employment agreement.
- (c) A seafarer may report a complaint to the master and, where they consider it necessary, to the appropriate external authority.
- (d) The on board complaint procedures referred under paragraph (1) shall include-
  - (i) the seafarer's right to representation;
  - (ii) safeguards against victimization of the seafarer;
  - (iii) contact information for the Authority in Nigeria and, where different, in the seafarers' country of residence, and
  - (iv) the name of a person on board the ship who may provide seafarers with confidential and impartial advice and assist the seafarer with the on board complaint procedures.
- (e) A seafarer's right to legal remedies or alternative dispute resolution shall not be prejudiced by on board complaint procedures.
- (f) A person who contravenes the provisions of this regulation commits an offence and is liable on summary conviction to a fine not exceeding N200,000.00 (Two Hundred Thousand Naira) only.

**9. *Onshore seafarer complaint-handling procedures.***

- (a) A seafarer on a ship calling at a port in Nigeria who alleges a breach of the requirements of the Convention, including seafarers' rights, may report such breach in the manner contained in the guidelines issued by the Authority to that effect.
- (b) A seafarer who alleges a breach of the requirements of the Convention, including seafarers' rights, and the ship is not in Nigeria may report such breach to an authorized officer in the port at which the ship has called.
- (c) An authorized officer, investigating a complaint made under paragraphs (1) and (2) shall give the master, the shipowner and any other person involved in the complaint, an opportunity to be heard.
- (d) An authorized officer shall ensure that complaints made by seafarers' are kept confidential.

## ***10. Marine Casualties.***

Pursuant to section 241 of the Act, the Authority shall hold an inquiry into any serious marine casualty, resulting in injury or loss of life, which involves a ship that flies the flag of Nigeria.

## **Part 5 Port State Responsibilities**

### **11. Inspection in Ports**

- (a) Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of Nigeria may be subject to an inspection, carried out by authorized officers, to review compliance with the requirements of the Convention including seafarers' rights relating to the working and living conditions of seafarers on the ship.
- (b) A valid maritime labour certificate and declaration of maritime labour compliance shall be accepted as prima facie evidence of compliance with the requirements of the Convention including seafarers' rights. Accordingly, inspection in ports shall, except in the circumstances specified below in paragraph (d), be limited to a review of the certificate and declaration.
- (c) The Authority shall establish an effective port state inspection and monitoring system to help ensure that the working and living conditions for seafarers on foreign ships entering a port of Nigeria meet the requirements of the Convention including seafarers' rights. In particular the Authority shall develop an inspection policy for authorized officers carrying out inspections under paragraph (a). the objective of the policy must be to ensure consistency and to otherwise guide inspection and enforcement activities related to the requirements of the Convention (including seafarers' rights) and must provide authorized officers with guidance, as to the kinds of circumstances justifying detention of a ship under paragraph (I) below. Copies of this policy must be provided to all authorized officers and must be available to the public and to shipowners and seafarers.



- (d) Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that:
- (i) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by the Convention or are otherwise invalid; or
  - (ii) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention; or
  - (iii) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the Convention; or
  - (iv) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of the Convention; a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a serious breach of the requirements of the Convention (including seafarers' rights).
- (e) Where a more detailed inspection is carried out on a foreign ship in the circumstances set out in paragraph d (i) (ii) or (iii), it shall in principle cover the matters listed in Appendix A5-III of the Convention, which correspond to the 14 items listed in the declaration of maritime labour compliance.
- (f) In the case of a complaint under paragraph d(iv), the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph d(ii). For the purpose of paragraph d(iv), complaint means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person

with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

- (g) Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of the Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph d(iv), the authorized officer shall bring the deficiencies to the attention of the seafarers' and shipowners' organizations and may:
  - (I) notify a representative of the flag State;
  - (II) provide the relevant authorities of the next port of call with the relevant information.
- (h) A copy of the officer's report, which must be accompanied by any reply received from the relevant authorities of the flag State within the prescribed deadline, may be transmitted to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures.
- (i) Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of the Convention and:
  - (i) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
  - (ii) the non-conformity constitutes a serious or repeated breach of the requirements of the Convention (including seafarers' rights); the authorized officer shall take steps to ensure that the ship does not proceed to sea until any non-conformities that fall within the scope of sub-paragraph (i) or (ii) of this paragraph have been rectified, or until the authorized officer accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented

in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within prescribed deadline. The authorized officer shall also inform forthwith the shipowners' and seafarers' organizations.

- (j) All possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is found to be unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.

#### **EXPLANATORY NOTES.**

These Regulations implement Title 5 of the Maritime Labour Convention, 2006. They apply to Nigerian Ships on international voyages wherever they may be and to other ships on international voyages in Nigerian Ports.

The Regulations require Nigerian Ships over 500 gross tonnage to be inspected for the purpose of issuing a Maritime Labour Certificate and further requires ships that are non Nigerian ships to carry on board the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance.

The Regulations are made as a subsidiary legislation to the Merchant Shipping Act, Laws of the Federation of Nigeria and has followed the drafting style applicable in Nigeria.

Made this.....day of.....2014.

**Honourable Minister of Transport**

**Federal Republic of Nigeria.**

