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LEGISLATION DRAFTING PROJECT

**SEAFARERS' PENSIONS ACT, 2002
NO.....OF 2002**

**A LEGISLATION TO INTRODUCE THE SEAFARERS' PENSIONS
CONVENTION, 1946 (No.71)**

**A LEGISLATION DRAFTING PROJECT SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
DEGREE OF MASTER OF LAWS (LL. M.) AT THE IMO-INTERNATIONAL
LAW INSTITUTE.
2001/2002**

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SEAFARERS' PENSIONS ACT, 2002

LEGISLATIVE DRAFTING ADVICE & EXPLANATORY NOTE

It has come to the notice of the Government of Sierra Leone that the Seafarers who served the Elder Demster Shipping Lines and other shipping lines since the early sixties are dying of destitution, hunger and deprivation. The classes of these seafarers have given up their best during their vibrant and energetic working days towards the development of the maritime industry in which trade boomed and the benefits shared by the nation. In a very significant way they contributed to the economic development of the State by foreign exchange earnings and payment of taxes. Government has further learnt that these retired seafarers have formed themselves into a very formidable group to secure their benefits from their former employers. These shipping lines have closed down years ago and it seems seafarers are at a loss to securing their benefits. The shipping line had an agent in the name of the Sierra Leone Shipping Agencies Ltd. who could not help the retired seafarers. The seafarers mounted pressure on the Government to help in this matter. The Government set up a commission of inquiry to look into the matter. The commission upon investigation found out that the seafarers had a legitimate claim in respect of pensions, sick pay and war zone risk allowances amongst others. Despite the findings of the commission, the seafarers can not lay hands on their employers. The shipping line cannot be traced and the agents have denied responsibility. So the seafarers are not in the position to secure their benefits as they do not have the means to do so financially. They needed help from the Government to secure their benefits from their employers amongst which were their pension.

Upon serious review of the case by the Maritime Administration of Sierra Leone, it was found out that there was no domestic law regarding pensions in Sierra Leone for which they would have held their employers and their agents liable. The Government therefore charged the Maritime Administration to carefully study the situation with a view to make recommendations to correct the anomaly. The Maritime

Administration set up in the year 2000 was charged with responsibility for the seafarers under paragraph (g) subsection (2) of section 10. Also under paragraph (p) subsection (2) of section 10 of the same ACT, the maritime Administration could give advice to the Government on Maritime matters. After the review they recommended that a law is urgently needed to safeguard the interest of the seafarers in respect of creating a pension scheme for them to avert the serious problem of destitution in the seafaring industry.

Consequent upon this fact the Law Officers' Department was advised to prepare and draft a bill in respect of a pension scheme for seafarers. As a Senior State Counsel in the Law Officers' Department I was instructed to prepare and draft the bill for onward transmission to Parliament for enactment. I drafted the bill entitled "SEAFARERS PENSIONS ACT, 2002. The object of this law was to establish a pension scheme for retired seafarers and all other matters connected to therewith. I took into consideration the SEAFARERS' PENSIONS CONVENTION, 1946 (No.71) which forms the basis of my draft together with all other local laws at my disposal. I made the following proposals in my draft based on the instructions received.

Part -1 deal with preliminary matters which talks about time of commencement of the Act and the interpretation of certain keywords in the Act.

In Part-11 the Scheme is established under subsection (1) of section3. It is a corporate entity having perpetual succession and capable of holding and disposing of property and can sue and be sued in its own name, and can perform all acts as bodies corporate may perform. Under section 4 of the Act, there is a provision for the common seal of the Scheme whereby the Scheme can empower its official to execute deeds or other documents on its behalf in and outside Sierra Leone the purpose of which is to enhance the business efficacy of the Scheme in a secured manner. The Scheme consists of the Board of the Scheme, the Director-General and other employees who manage the affairs of the Scheme. The Scheme has its own fund into which the contributions of the employees and workers, the Government, and other moneys of the Scheme are paid under section 6. These funds are used to pay the pensions claims, and to service the operations of the Scheme in terms of payments of salaries of workers and other costs. The Scheme

may invest part of the fund in lucrative business for generation of funds under section 7. The governing body of the Scheme is provided for under section 8 of the Act, consisting of representatives of Government, institutions and interest groups who constitute the controlling and supervisory organ of the Scheme. These are the policy makers of the Scheme. There is a Chairman who is the head of the board. He presides over board meetings having only a casting vote in the event of equality of vote. There are provisions covering the modus operandi of the board in respect of meetings, the procedures of meetings, the provision for a quorum, appointment of members, resignation and remunerations. The chairman is nominated by the President and approved by Parliament. This is to ensure probity and transparency in the affairs of the running of the Scheme. The administrative head of the Scheme is the Director-General of the Scheme provided for under section 12. He executes or implements the policy goals of the Scheme as laid down by the Board. He is also appointed by the President. He is assisted by a Deputy Director-General. Under section 13 of the Act is the provision for the appointment of the secretary of the Scheme. He shall be a legal adviser appointed by the Board this time, as an employee. As secretary, a legal adviser should help in dealing with legal matters and give appropriate advice

Part-III deals with the functions of the Scheme. The object for which the Scheme was set up is clearly outlined in section 15 wherein the Scheme makes provision for generating funds to meet its obligations. Some of the functions include advising the Minister on social security issues.

Part IV- deals with the financial provisions and procedures of the Scheme. The keeping of good accounting records is a prerequisite of such an institution. Section 17 provides for such a duty. Under section 19 the Auditor-General audits the Scheme's account and makes his report to the Board for action. This is an appropriate mechanism for proper safeguard against financial impropriety. Under section 21 expenses relating to the running of the Scheme is a charge on the funds of the Scheme. And members shall each maintain an account to which shall be credited all contributions from or in respect of such each member under section 22 of the Act.

Part-V deals with the prescription of the Scheme defining the persons to whom this Act applies. Under section 23, there is a provision for a management person, the employer who shall be resident in Sierra Leone, representing the owners of the shipping business in all aspect of the business including receipt of service of process on behalf of the owner. This is to make sure that owners who are not in the jurisdiction meet their obligation through the management person who can be held for the obligation of the owner in all respects. These employers are members of the Scheme, so also are the workers employed by these management persons. They may be exempted by law. Workers under this Act are not prejudiced by this Act in favour of any other benefit that may accrue under any other law or facilities as provided by section 24.

Part-VI pertains to contributions and rates of payment. It provides for the means of payments of the contributions. It also deals with the means of payments and methods of payment of retirement benefits. Under section 25 it is the employer that is obliged to collect the contributions of the workers in addition to his own contributions for the workers and pays it to the fund of the Scheme. It is interesting to note that the employer is not entitled to recoup his own contribution from the workers, and any contributions which he actually collects is held by him in trust for the benefit of the Scheme. This provides for protection of the funds against impropriety by any person especially the employer who happen to be in possession of the funds of the Scheme. As a trustee he owes a greater responsibility to the Scheme for the moneys collected on its behalf. Under section 26 there is a penalty for non-payment of contributions within fifteen days after the end of each month. Provisions are made in respect of the modalities of how to execute this provision by the Director-General. Section 29 makes it an offence for non-registration of employees where an employer is liable on summary conviction to a fine not exceeding Le.5, 000, 000.00 or to imprisonment for a term not exceeding three months or both and thereafter to register the employees immediately. This is to get hold onto the number of employees at all times for accountability proposes. Section 30 provides for a social security clearance certificate issued by the Director-General as evidence of compliance by the employer with the provisions of this Act. In the absence of

this certificate the employer will find it difficult do certain things such as importing or exporting or clearing goods. This is to make sure that the employer complies with the Act. The offences are created under section 31 of this Act. If any person with intent to evade payment of any contribution or any other amount due from him, knowingly makes any false statement or representation, or reproduces or furnishes or causes to be produced or furnished any document or information which he knows to be false commits an offence. The offences focuses on deceits of persons with respect to the funds. For offences under section 31(1)(a), (b) or (c) the liability of a guilty person shall be a fine in the sum owed to the Scheme or imprisonment for a term not exceeding five years or both. For offences created under section 31(1) (d) or (e), the guilty person is liable on summary conviction to a fine not exceeding Le5, 000,000.00 or to imprisonment for a term not exceeding five years or both. Criminal proceedings are instituted by the Board under this Act to recover moneys owed as a fine as provided by section 32. Notwithstanding any other law, civil proceedings are instituted to recover contributions with interest or any monetary penalty payable by an action as a debt owing to the Scheme under section 33. In the event of an application for attachment of the property of the employer the Scheme enjoys the highest of ranking before all other debtors if any under section 34. And in section 35 contributions in transit to the Scheme or lying with the employer or accumulation to the credits of any member is incapable of being assigned or charged and not liable to attachment under any other law. This is a very good protective mechanism for the security of the funds of the Scheme

Part VII outlines the benefits and the conditions that qualify a retiree to enjoy such benefits. It also provides for the method of payment of the benefits to the retirees. Section 37 provides the benefits as old age pension and gratuity, retirement grant, survivors' grant and others. Old age pension is payable when a member attains the age of 60 years and has been credited with contributions for a minimum of one hundred and eighty months. For an early retirement a retiree can be paid reduced pension under section 39. Old age gratuity is a lump sum equal to twelve months of initial pension payable as gratuity on retirement to any retiree under this Act. Under section 41 a person who did not actually qualify but has contributed to the funds would receive the retirement

grant. And the survivors benefit is meant to relieve the dependants of the deceased retiree by monetary payment the method and manner of distribution provided for as well. A survivors' grant is payable in the event where the survivor was not qualified to receive any benefit but some form of contributions were made under section 43.

Part VIII makes provision for appeals from decision of the Scheme. The establishment of the Appellate Tribunal and its composition are provided for under section 45. The tribunal is independent of the Scheme for maintenance of fair play, equity and justice. The modalities of operations are provided for in section 48 and in section 48(2) a provision is made for further procedure by way of a Schedule in which the way the Tribunal should proceed is outlined. Section 51 provides for an appeal against the Scheme to lie with the High Court.

Part IX the miscellaneous provisions deals with the powers of the Minister and the regulations provisions under section 54 and 55 respectively. There is also a provision dealing with the appointment of the Scheme Inspectors who serves as the watchdog of the Scheme in respect of ensuring that employers comply with the provisions of this Act.

Finally there is a Schedule the reference of which came from section 48(2) in which the practice and procedure before the Tribunal is spelt out. This is the layout of the Act which forms the basis of the Scheme. It is hoped that if passed into law it will go a long way to address the plight of the retired Seafarers.

SIERRA LEONE

“SEAFARERS PENSIONS ACT, 2002”

Act No. of 2002

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SCHEDULE (section 48 (2))

Short title

SEAFARERS PENSIONS ACT, 2002.
ACT No.....Of 2002

Being an Act to establish the Seafarers Pensions Funds Scheme to provide retirement benefits for seafarers and to provide for other related matters.

Date of commencement

Enacted by the President and members of Parliament in this present Parliament assembled.

Part 1- PRELIMINARY

Commencement: 1. This Act shall come into operation on such date as the President shall fix by an order in a statutory instrument.

Interpretation. 2. In this Act, unless the context otherwise requires:

“Board” means the Board of Scheme referred to in section 8.

“Director-General” means the person appointed as such under section 12;

“earning” means all emoluments which are earned by a worker while on duty in accordance with the express or implied terms of the contract of employment or apprenticeship and which are paid or payable in cash to him at a fixed or determined intervals of time-

- (a) in respect of normal periods of work to be performed by the worker;
- (b) where payment is calculated in relation to set tasks, in respect of the number of tasks completed by the worker; or
- (c) where payment is calculated in relation to the volume of work done, in respect of the volume completed by the worker, and includes emoluments earned by him on leave, any cost of leaving or prescribed allowance but does not include gifts made by the employer, value of any food concession, house rent allowance, overtime allowance, travelling allowance, bonus, commission, or any other similar allowance payable to the worker;

“average monthly earnings” means, in relation to a member, the average earnings determined by reference to the earnings used for the calculation of contribution liability during the first five years in which that average is the highest;

“employer” means the management person, who shall be resident in Sierra Leone, having the control and authority over the affairs of the shipping business and such affairs being entrusted to him by the owner, representing the owner in all respect including the meeting of the owner’s responsibilities and accepting legal process on his behalf.

“Government” means the Government of the Republic of Sierra Leone;

“member” means any person-

- (a) who has accumulated rights under this Act; or
- (b) from whose earnings a contribution has been deducted for payment to the funds of the Scheme;

“Minister” means the Minister responsible for labour;

“Scheme” means the Seafarers Pensions Fund established by section 3;

“worker” means any seafarer who is employed for remuneration, being a permanent resident of Sierra Leone, as a crew of any ship the owners of which have a management person in Sierra Leone.

“Ship” includes any ship, vessel, tug, lighter, canoe or boat of any kind whatsoever whether mechanically propelled or otherwise or towed;

“ establishment” means any office or any place of any management person where workers are employed.

Part 11-ESTABLISHMENT OF SCHEME

Establishment Of Scheme 3. (1) There is hereby established a body to be known as the Seafarers Pensions Fund Scheme

- (2) The Scheme shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to this Act, of performing all acts as bodies corporate may by law perform.

Common seal Scheme 4. (1) The Scheme shall have a common seal, the use of which shall be authenticated by of the signatures of-

- (a) the Chairman or other members of the Board authorised by the Board either generally or specially for that purpose; and
- (b) the Director-General or other officers or employees of the Scheme authorised by the Board for that purpose.

(2) The Scheme may, by instrument in writing under its common seal, empower any person either generally or in respect of any specified matter as its attorney, to execute deeds on its behalf in and out of Sierra Leone; and every deed signed by such attorney on behalf of the Scheme and under his seal shall be binding on the Scheme and have the same effect as if it were under the common seal of the Scheme.

(3) Every document purporting to be an instrument executed or issued by or on behalf of the Scheme and to be-

- (a) sealed with the common seal of the Scheme authenticated in the manner stated in subsection (1); or
- (b) signed by the Director-General or by a member of the Board or other person authorised in accordance with subsection (2) to act for that purpose, shall be deemed to be so executed or issued until the contrary is shown.

Composition
of Scheme

5. The Scheme shall consist of-

- (a) the Board of Scheme;
- (b) the Director-General; and
- (c) such other persons as may be employed by the Scheme under this Act.

Funds of
Scheme

6. The Scheme shall have a fund into which shall be paid-

- (a) moneys appropriated by Parliament for the purposes of the Scheme;
- (b) the contributions of employers and workers required to be paid to the Scheme by this Act; and
- (c) moneys to which the Scheme is otherwise entitled.

Investment
of funds

7. (1) Subject to the approval of the Board, the Scheme may invest any part of the fund not immediately required to be expected to meet any of its obligations under this Act.

(2) The Board shall, in approving any investment, take into consideration the following:

- (a) the safety yield of the investment;
- (b) the liquidity of the Investment;
- (c) the need to maintain the real value spread of the investment;
- (d) the maintenance of the fund and diversification of the portfolio of the investment; and
- (e) the harmony of the investment with the public interest.

Board of
Scheme

8. (1) The governing body of the Scheme shall be a Board of Scheme which shall, subject to this Act, have the control and supervision of the Scheme.

(2) The Board shall consist of a Chairman and the following members:

- (a) one senior official each representing-
 - (i) the Ministry responsible for labour;
 - (ii) the ministry responsible for finance;
 - (iii) the ministry responsible for social welfare;
 - (iv) the Bank of Sierra Leone;
- (b) two persons each representing, the Sierra Leone Employers Federation and the Sierra Leone Labour Congress respectively;
- (c) one representative each of the following:-
 - (i) the Sierra Leone Seamen's Union;
 - (ii) the Civil Servants Association;(iii)the Social Security Pensioners Association; and
- (d) the Director-General.

(3) The Chairman shall be appointed by the President after consultation with the members specified in paragraphs (b) and (c) of subsection (2) and subject to the approval of Parliament, but no person shall be appointed to be Chairman unless

- (a) he has the requisite qualification and proven ability in business administration or management; and
- (b) he is not an employee of the Scheme.

(4) The members of the Board referred to in paragraphs (b) and (c) of subsection (2) shall, after being nominated by the relevant bodies, be appointed by the President, subject to the approval of Parliament.

Tenure of
Board
member

9. (1) The Chairman and members referred to in paragraphs (b) and (c) of subsection (2) of section 8 shall hold office for not more than two terms of three years each.

(2) The Chairman or a member of Board referred to in subsection (1) may resign his office by written notice to the President and may be removed from office by the President for inability to discharge the function of his office, whether arising from infirmity of mind or body or any other cause, or for misconduct.

(3) Any vacancy in the office of the Chairman or any member of the Board referred to in subsection (2), either by death, termination or otherwise, may be filled by the appointment in like manner of another person to serve for the unexpired term of the Chairman or member concerned.

Remuneration
and expenses
of Board
members

10. The chairman and other members of the Board, except the Director-General, shall be paid such remuneration and allowances as may be determined by the President and shall be reimbursed by the Scheme, with the approval of the Minister, for expenses incurred in connection with the discharge of their functions.

Meetings
of Board

11. (1) The Board shall hold its first meeting on such date and such place as the Minister, after consultation with the Board, shall determine and there after the Board shall meet at such time and place as its think fit, but the Board shall meet at least six times a year.
- (2) An extraordinary meeting of the Board may be held at the request in writing of the Chairman of the Board and shall be held at the written request of five members.
- (3) At any meeting at which he is present, the Chairman of the Board shall preside but in his absence the members of the Board present shall elect one of their number to preside.
- (4) The quorum at a meeting of the Board shall be eight, including the Chairman of Board and the Director-General.
- (5) Decisions of the Board shall be taken by a simple majority members of the Board present and voting, in the case of equality of votes, the Chairman of the Board or other member presiding shall have a casting vote.
- (6) The Board may co-opt any person to advice or otherwise assist it at any of its meetings but such person shall not vote on any matter for decision by the Board.
- (7) Any proposal circulated among the members and agreed in writing by a two-thirds majority of all members of the Board shall be of the same force or effect as a decision made at a properly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board: Provided that if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to the proposal.
- (8) Any member of the Board who has any interest in a company or undertaking with which the Scheme proposes to enter into a contract or who has any interest in any contract which the Scheme proposes to make, shall disclose in writing to the Board the nature of his interest and shall, unless the Board otherwise directs, be disqualified from participating in the deliberations of the Board on the contract and shall, in any case, be disqualified from voting in any decision of the Board on such contract; and any member who infringes this subsection shall be liable to be removed from the Board.

Appointment
of Director
-General

12. (1) The Scheme shall have a Director-General who shall be appointed by the President upon such terms and conditions as may be specified in his instrument of appointment.
- (2) A person shall not be appointed Director-General unless he possesses the relevant academic and professional qualifications.
- (3) Subject to this Act, the Director-General shall be responsible to the Board for
- (a) the administration of the Scheme;
 - (b) overseeing the work and discipline of the other officers and staff of the Scheme; and
 - (c) carrying out such other functions as the Board may direct.

(4) Where the Director-General is incapacitated from the performance of his functions, The Deputy Director-General shall act as Director-General for the duration of the incapacity.

(5) Subject to subsection (3), the Director-General may delegate to any employee of the Scheme any of his functions under this Act and may impose such conditions with respect to the exercise of such delegated functions as he may think fit.

(6) Nothing in subsection (5) shall be construed so as to absolve the Director-General from ultimate responsibility for anything done or omitted to be done by any person in pursuance of any delegation under that subsection.

Secretary
to Scheme

- 13.** (1) The Scheme shall have a secretary who shall be appointed by the Board subject to such terms and conditions as the Scheme shall determine.
- (2) The secretary shall be the legal adviser to the Scheme on all the activities of the Scheme and secretary to the Board, responsible for arranging the business and recording and keeping of the minutes of the meetings of the Board.
- (3) Subject to this Act, the secretary shall perform such other functions as the Board may direct or as the Director-General may delegate.

Deputy
Director-
General and
other staff

- 14.** (1) The Scheme shall also, subject to such terms and conditions as the Board may determine, have a deputy Director-General and an Internal Auditor and such other officers and staff, including the inspectors referred to in section 53, as it considers necessary for the efficient performance of its functions under this Act.
- (2) In making any appointment under subsection (1), the Scheme shall limit recruitment to positions for which there are vacancies, each with a job description and a continuing justification and based on a general policy
- (a) to recruit only persons with requisite formal qualifications, working experience, knowledge, skills and aptitude for the vacancy concerned;
 - (b) to recruit internally, if qualified candidates can be identified; and
 - (c) to ensure non-discrimination and equality of treatment for all applicants.

Part III-FUNCTIONS OF SCHEME

Functions of Schemes

- 15.** (1) The object for which the Scheme is established is to provide retirement and other benefits to meet the contingency needs of the worker and their dependants.
- (2) Without prejudice to the generality of subsection (1), it shall be the function of the Scheme
- (a) to set up and maintain a scheme for generating the funds to meet its obligations under subsection (1);
 - (b) to advise the Minister on desirable changes in the social security policy and its implementation; and
 - (c) to carry out such other activities as may appear to the Scheme to be incidental or conducive to the attainment of the object stated in subsection (1).

Annual report

- 16.** (1) The Board shall as soon as practicable, after the expiration of each financial year, but within six months thereafter, submit to the Minister an annual report dealing generally with the activities and operations of the Scheme within that financial year.
- (2) The Minister as soon as practicable after receiving the annual report of the board caused it to be laid before Parliament.
- (3) The Board shall also submit to the Minister such other reports on its affairs as the Minister may in writing request from time to time.

Part IV-FINANCIAL PROVISIONS

Accounts and other records

17. The Scheme shall keep proper books of accounts and proper records in relation thereto and such account, books and records shall, subject to the approval of the Auditor-General, be in accordance with the standard pension accounting practice.

18. The financial year of the Scheme shall be the same as the financial year of the Government.

Audit of accounts and other records

- 19.** (1) The books and accounts of the Scheme shall each year be audited by the Auditor-General or by an auditor appointed or authorised by the Auditor-General.
- (2) The Auditor-General may, in addition to any accounts audited under subsection (1), at any time audits the accounts and examine the records of the financial transactions of the Scheme and may draw attention of the Board to any irregularity discovered as a result of such audit.

- (3) The Scheme shall provide the Auditor-General or the auditor appointed or authorised by him with all necessary and appropriate facilities for the auditing of its accounts and records.
- (4) The Auditor-General may make copies of or take extracts from accounts, or other financial records of the Scheme.
- (5) The Auditor-General shall submit to the Board a report of the audit carried out by him.
- (6) The Board shall as soon as possible upon receiving the audit report, forward a copy to the Minister who shall include it in the annual report required to be laid before Parliament by section 16.

Exemption from tax

- 20** (1) The Scheme shall be exempted from stamp duty and such other taxes and duties as the President may determine.
- (2) Contributions to the Scheme shall be tax deductible.

Expenses of Scheme

21. All expenses relating to the administration of the Scheme under this Act shall be a charge on the funds of the Scheme in accordance with the standard pension accounting practice and shall be subject to the approval of the Board from year to year.

Member's account

22. The Board shall cause to be maintained for each member an account to which shall be credited all contributions from or in respect of such member.

PART-V PRESCRIPTION OF SCHEME

Persons covered by Scheme

- 23.** (1) This Scheme shall apply to-
- (a) every employer who shall be a management person resident in Sierra Leone, representing the owners in all issues appertaining to the employment of the worker, and shall receive the service of process on behalf of the owner; and
 - (b) every worker employed by that employer;
- (2) this Scheme shall not apply to any employer or worker exempted from its applications by any other law.

Existing pension scheme

24. (1) The existence of a pension, provident fund, or such similar facilities in respect of workers to whom this Act applies shall not exempt the employer of such workers from the provisions of this Act and the employer shall be responsible for deducting contributions from the earnings of the workers and paying them along with his own contributions to the Scheme at the rate prescribed by this Act.

(2) Notwithstanding the terms of any fund or facility referred to in subsection (1), it shall be lawful for the employer concerned to amend the written provisions of that fund or facility with prior approval of its governing body or in the absence of such approval, with the consent of the Board so as to adjust the benefits provided therein to enable the payment of the contributions payable under this Act.

PART VI- CONTRIBUTIONS

Rates of
contribution

25 (1) Every employer shall deduct from the earnings of every worker in the establishment immediately at the end of each month, a worker's contribution of an amount equal to 5% of the worker's earnings for that month irrespective of whether or not such earnings are actually paid to the worker.

(2) Every employer of an establishment shall pay for each month in respect of each worker, an employer's contribution of an equal amount to 10% of such worker's earnings for that month.

(3) The contributions referred to subsection (1) and (2) shall, within fifteen days after the end of each month, be paid to the Scheme.

(4) Notwithstanding any agreement or understanding to the contrary, an employer shall not be entitled-

- (a) to deduct or otherwise recover his own contribution from the worker's pay; or
- (b) to deduct the member's contribution for an earlier contribution period from the earnings in respect of a later period:

Provided that the employer shall be entitled to make such deductions if such failure to deduct the contribution was the result of an accidental mistake or a clerical error in which case the deductions shall be according to the written instructions of the Scheme.

(5) Where an employer deducts contributions from the remuneration of workers under this Act, the contributions shall be deemed to be held by such employer in trust for the purpose of this Act until they are paid to the Scheme.

Penalty for
non-payment
of contribution

- 26 (1) If any contribution is not paid within the period prescribed in section 25-
- (a) it shall attract an interest, equivalent to 90- day Treasury bill rate plus twenty per centum of that rate compounded on a monthly basis; and
 - (b) the Director-General shall-
 - (i) serve a demand note on the defaulting employer and if payment of the contribution and interest is not made within thirty days after the service of the demand note, a further ten per centum 90- day Treasury bill rate of the total outstanding shall be charged as penalty for each month of default; and

(ii) cause legal proceedings to be taken to collect or recover the contribution together with the interest and penalty and criminal proceedings to be instituted against the defaulting employer.

(2) The Director-General may, with the approval of the Board, remit wholly or partly, the penalty imposed under subparagraph (ii) of paragraph (b) of subsection (1).

Employment
by several
employers

27. Where a worker is concurrently employed by more than one employer, each employer shall be responsible only for his obligations under this Act in respect of the worker.

Employer not
to reduce
remuneration

28. No employer shall, by reason of his liability for any contribution to the scheme or for any other charges under this Act or regulations made there under reduce, whether directly or indirectly, the earnings or other emoluments of any member of the scheme

Non-
registration of
employees

29 (1) When an employer fails to register his employees-

- (a) he commits an offence and shall be liable on summary conviction to a fine not exceeding Le5,000,000.00 or to imprisonment for a term not exceeding three months or to both; and
- (b) there shall be immediate registration of all the employees concerned.

(2) Contribution for the period for which an employer fails to register his employee shall be paid as arrears together with interest and penalty in accordance with section 26.

Social Security
clearance
certificate

30. (1) A valid social security clearance certificate, being evidence of compliance by an employer with provisions of this Act, shall be required of every employer by the appropriate authority or person in charge where the employer wishes to-

- (a) import, export or clear goods from a port, factory or warehouse in Sierra Leone;
- (b) tender or be considered for any contract with public institution;
- (c) register any document conferring title to any land;
- (d) obtain permit for the construction of any building;
- (e) leave the country ;
- (f) be paid or receive payment for any contract for goods or services;
- (g) obtain work permit for his foreign employees; and
- (h) renew a business registration .

(2) The social security clearance certificate shall be issued by the Board to the employer as evidence of compliance with provisions of this Act.

Offences.

- 31** (1) Any person who-
- (a) with intent to evade payment of any contribution or any other amount due from him, knowingly makes any false statement or representation, or produces or furnishes or caused to be produced or furnished any document or information which he knows to be false in a material particular;
 - (b) in order to benefit himself or some other person, knowingly makes any false statement or representation or produces or furnishes or causes to be produced or furnished, any document or information which he knows to be false in a material particular;
 - (c) wilfully misrepresents or fails to disclose any material fact or fails to pay to the Scheme within such periods as may be prescribed any amount which he is liable to pay under this Act or regulations made thereunder;
 - (d) wilfully obstructs or assaults any officer or servant of the Scheme in charge of his duties; or
 - (e) without reasonable excuse, proof of which shall be on him, fails to comply with any provision of this Act or regulations made thereunder, commits an offence and shall be liable on summary conviction-
 - (i) in respect of an offence under paragraph (a),(b), or (c) to a fine in a sum equivalent to any amount owed to the Scheme or to imprisonment for a term not exceeding five years or to both; and
 - (ii) in respect of an offence under paragraph (d) or (e), to a fine not exceeding le5,000,000.00 or to imprisonment, for a term not exceeding five years or to both.
- (2) Where the employee of the Scheme conspires or aids and abets any other person in the commission of any offence specified in subsection (1), such employee shall, on summary conviction, be liable to the same punishment as prescribed in that subsection.

Institution of
criminal
proceedings

- 32.** (1) Criminal proceedings under this Act may be instituted by the Board or any officer of the Scheme authorised by the Board.
- (2) The Court, when convicting any person of an offence under this Act, may, without prejudice to any civil remedy, order such person to pay to the Scheme the amount of any contribution together with any interest or penalty thereon, due from such person to the Scheme at the date of conviction and such money may be recovered in the same manner as a fine and shall be paid to the Scheme for the credit, where applicable, of the account of the member of the Scheme.

Civil proceedings

33. (1) Notwithstanding any other law, a contribution together with interest or any monetary penalty payable or imposed for failure to pay in time, may be recovered by an action as a debt owing to the Scheme at anytime within twelve years from the date when the contribution or penalty became due.

(2) Action for recovery of contribution and penalties under this section, may be instituted and conducted by an authorised officer of the Scheme.

Priority for payment of contributions

34. where

- (a) on the application by the Scheme any attachment is issued against the property of the employer in execution of an order against him and such property is seized or sold or otherwise realised in pursuance of such execution; or
- (b) on the application of a secured creditor, the property of the employer is sold; the proceedings of the sale or other realisation of such property shall not be distributed to any person entitled thereto until the Court ordering the sale or other realisation has made provision for the payment of any amount due by the employer under this Act before the date of such order.

Protection against attachment

35. Except as provided in section 38-

- (a) the accumulation to the credit of any member or contribution in transit to the Scheme or lying with the employer, shall be incapable of being assigned or charged and shall not be liable to attachment under any law or order of the court in respect of any debt or liability by the member, even in the event of his bankruptcy or insolvency;
- (b) any amount actually or potentially standing to a member's credit at the time of his death and payable to his dependants shall, before it is paid to the dependants, be free from attachment by process of law; and
- (c) accrued contributions payable to the Scheme shall be paid notwithstanding the bankruptcy or insolvency of the employer.

Protection for acts done in good faith

36. No suit or other legal proceeding shall lie against any member of the Board or any officer or employee of the Scheme in respect of anything which is done in good faith in pursuit of the object of this Act.

PART VII-BENEFITS AND QUALIFYING CONDITIONS

Classes of benefits

37 (1) The following benefits are payable under this Act:-

- (a) old age pension and old age gratuity;
- (b) retirement grant;
- (c) survivors' pension;

(d) survivors' grant,

(e) any other benefits to be prescribed by the Minister from time to time:

Provided that an actuarial study to determine the financial implications of such other benefits shall first be carried out and appropriate steps taken to resolve them.

(2) The Scheme shall not under any circumstance pay a member's benefit to any person or body of persons in settlement of any obligation except for a benefit specified under this Act.

Old age
pension

38. (1) An old age pension is payable when a member attains the age of 60 years and where the member has paid or been credited with contributions for a minimum of one hundred and eighty months.

(2) The amount of old age pension shall be calculated-

(a) in respect of the first one hundred and eighty months of contributions or credited or both, thirty per cent of the average monthly earnings of the member; and

(b) for every additional twelve months of contributions paid or credited or both, an additional two per cent of average monthly earnings of the member:

Provided that-

(i) the maximum pension payable shall be eighty per cent of the average monthly earnings of the member; and

(ii) the minimum pension shall be not less than fifty per cent of the minimum wage.

Voluntary or
early
retirement
benefits

39. (1) A reduced pension upon early or voluntary retirement is payable on or after the member attains 55 years but before he is 60 years, based on the pension calculated in section 38, but reduced by an amount to be prescribed in regulations for each year below 60 years.

(2) In order to qualify for a reduced pension, the member must have contributed for or earned credits to an aggregate minimum of one hundred and eighty months or both.

Old age
gratuity

40. A lump sum equal to twelve months of initial pension is payable as gratuity on retirement of each person entitled to a pension under section 38 or 39.

Retirement
grant

41. There shall be paid to a member who has attained the age of 55 but who has paid insufficient contributions to qualify for pension under section 39, a retirement grant equal to 1.5 per cent of his average monthly earnings for every twelve months of paid contributions.

Survivors'
benefits

42. (1) On the death of a member, survivors' benefits in the form of pensions shall be payable to the widow or widower and dependent children of that deceased person if such person-
- (a) was in receipt of old age pension at the time of death, or
 - (b) would have been entitled to an old age pension at the time of death, or
 - (c) has contributed for a minimum of sixty months of which twelve months' contribution had been paid in the thirty six months preceding his death at the time of his death.
- (2) The aggregate of survivors' pensions payable shall be limited to one hundred per cent of any old age pension payable to the deceased at the time of death.
- (3) The widow or widower of the deceased member shall be entitled to 40% of the survivors' benefit until death or, in the case of a widow, until she begins to live with a man as a wife; and dependent children shall be entitled to 60% of the benefit until death, but the entitlement shall cease in respect of a child who attains the age of 18 years or 23 years while enrolled in full time education. Provided that-
- (a) the entitlement of a widow or widower shall remain 40% whether or not there are any dependent children; and
 - (b) a wife of a polygamous marriage or a marriage under common law of three years' standing shall be entitled to share equally with the other wives of the deceased in the 40% share reserved for a widow under subsection (3).
- (4) A dependent child who is an invalid shall be entitled to a survivors' benefit until death.
- (5) If the deceased member has no widow or widower, the whole of the survivors' benefit shall be paid to the dependent children to whom shall be reallocated the share of any of them who ceases to be regarded as a dependent child: Provided that a single child shall not be paid more than 60% of the benefit whether in respect of one deceased parent or both.
- (6) If a deceased member has no widow or widower and no dependent child, a lump sum equivalent to twelve months' survivors' pension shall be paid to any surviving parent who is either on pension or in employment; and a lump sum equivalent to twenty four months' survivors' pension shall be paid where the surviving parent is not on pension or in employment.
- (7) In this section, "dependent children" includes every child wholly or mainly maintained by the deceased.

Survivors' grant

43. (1) If the conditions for entitlement to a survivors' benefit under subsection (1) of section 42 are not satisfied and no dependent of the deceased is entitled to a pension, a survivors' grant shall be payable to the dependents of the deceased in an amount equivalent to 1.5 times the average monthly earnings of the deceased for every twelve months of contributions paid by the deceased.
- (2) Subsections (3) to (7) of section 42 shall, with the necessary modifications, apply to the distribution of the survivors' grants payable under subsection (1).

Actuarial review

44. (1) The scheme shall be valued by an actuary every three years during the first ten years of the scheme and shall be valued every five years thereafter.
- (2) Benefits payment shall be tied to the level of earnings and other payments to the scheme and indexation shall be in accordance with increases in the incomes as reflected in the fund of the Scheme.

Part VIII-APPEALS FROM DECISIONS OF SCHEME

Appellate Tribunal

45. (1) There is hereby established a body to be known as the "the Seafarers Pensions Appellate Tribunal", hereinafter referred to as "the TRIBUNAL".
- (2) The TRIBUNAL shall consist of not more than seven persons, including at least, one legal practitioner, all of whom shall be appointed by the President.
- (3) Members of the TRIBUNAL shall hold office for one term of three years and shall be eligible for reappointment.
- (4) Members of the TRIBUNAL shall receive such remuneration as the Board may determine.
- (5) The TRIBUNAL shall appoint one of its members who is a legal practitioner to be the chairman.
- (6) No action, suit, prosecution or any other proceeding may be brought or instituted personally against a person who is or was a member of the TRIBUNAL in respect of any act done or omitted to be done in good faith in the discharge of any function under this Act.

(7) A member of the TRIBUNAL who has a material, pecuniary or other interest which may conflict with the proper performance of the member's functions shall disclose that interest and shall not take part in any hearing of the TRIBUNAL which may conflict with such interest unless both parties to the proceedings agree on the member taking part in the hearing.

Secretary to
the
TRIBUNAL

46. (1) The TRIBUNAL shall have a secretary appointed by the chairman from among the members of the TRIBUNAL.

TRIBUNAL to
hear appeals

47. (1) The TRIBUNAL shall hear and determine appeals against the decisions of the Scheme on-

- (a) entitlements to the payment of benefits; and
- (b) the amount of benefit payable.

(2) An appeal shall be heard by not less than three members of the TRIBUNAL who shall be nominated by the chairman of the TRIBUNAL.

(3) The chairman of the TRIBUNAL shall preside or shall nominate a member of the TRIBUNAL to preside over any hearing.

Administration
and procedure
of hearing

48 (1) The times and places of the sittings of the TRIBUNAL shall be specified by the chairman, to secure a reasonable opportunity for appellants to appear before the TRIBUNAL with as little inconvenience and expense as is practicable.

(2) The proceedings of the TRIBUNAL shall be conducted in accordance with the Schedule and such further rules of practice and procedure as the chairman may specify.

(3) In carrying out its functions under this Act, the TRIBUNAL shall have the powers of the High Court in respect of the summoning of witnesses and contempt.

Hearings and
decision

49 (1) Proceedings of the TRIBUNAL shall be in public unless the chairman directs otherwise.

(2) In all proceedings before the TRIBUNAL, the appellant and the Scheme may be represented by a legal practitioner or other relevant professional person.

(3) A decision on an appeal shall be made as quickly as practicable and notified to the parties in writing.

(4) A decision of the TRIBUNAL shall be by simple majority and in the event of equality of votes the chairman or other person presiding shall have a casting vote.

(5) The written decision of the TRIBUNAL including its findings of fact shall be signed by the chairman or other member of the TRIBUNAL presiding over the hearing.

(6) Decision of the TRIBUNAL and evidence received by it, including a transcript of the report of the hearings, shall be open to the inspection of the public.

(7) The TRIBUNAL may provide for the publication of its decisions in such form and manner as may be adapted for public information and use and such authorised publication shall be evidence of the decisions of the TRIBUNAL in all courts without any further proof of authentication.

Appeals to
TRIBUNAL

50. (1) Any person dissatisfied with any decision of the Scheme may within thirty days of being served with notice of the decision file a notice of appeal with the SPAT and shall serve a copy of the notice of appeal on the Scheme.

(2) The secretary shall give not less than fifteen days' notice to the parties before the date fixed for hearing of the appeal.

(3) In deciding an appeal, the TRIBUNAL may make an order –
(a) affirming or varying the decision under appeal; or
(b) remitting the matter for reconsideration by the Scheme in accordance with the direction or recommendations of the TRIBUNAL.

(4) An order made under subsection (3) may be based on the TRIBUNAL'S conclusions regarding a question of fact or law relevant to the decision and state what those conclusions are.

Appeal to
High Court

51. A party to a proceeding before the TRIBUNAL who is dissatisfied with a decision of the TRIBUNAL may within sixty days of the decision appeal to the High Court.

Part IX-MISCELLANEOUS PROVISIONS.

Registration of
dependents to
receive
benefits

52. (1) Every person who is required or entitled to become a member of the scheme shall upon registration furnish to the employer particulars concerning himself and his dependants for the receipt of benefits on his death.

(2) The employer shall, enter the particulars in the prescribed form and, on obtaining

thereon the signature and thumb impression of the person concerned, forward it to the Scheme.

(3) Where payment of benefits has been made to a person validly nominated under this section, no other person shall have any other claim against the Scheme.

Functions of
Scheme
Inspectors

53 (1) If any inspector of the Scheme appointed under this Act has reasonable cause to believe that there are workers on any premises or establishment, he may on production of his identity card as an employee of the Scheme, enter at all reasonable times on the premises or place and make any examination and inquiry necessary to obtain information for the purposes of this Act.

(2) In the performance of his duties under this section, an inspector may require the production of documents relating to appointment, attendances, remuneration of workers and contributions or liability of employers to contribute to the scheme, for inspection by him on the premises or place and to take copies thereof or extracts there from.

(3) Where an establishment has discontinued its work or has been closed down or has no premises, the inspector may require the production of the documents relating to past transactions at a reasonable place and time, including his own office or the office of any other establishment and the previous employer or any other person having custody of such documents shall produce them as required by the inspector.

(4) Where it becomes necessary for an inspector to visit such premises or place as has been declared by a competent authority as a security area or the admission to which is restricted, the inspector shall not enter such premises or area without obtaining prior permission of the officer in charge thereof.

Minister's
power of
direction

54. The Minister may in writing give directions of a general policy nature to the Scheme and the Scheme shall comply with such directions.

Regulations

55. The Minister may by statutory instrument make regulations for the purpose of carrying out the provisions of this Act.

SCHEDULE (section 48 (2))

PRACTICE AND PROCEDURE BEFORE TRIBUNAL

1. Where the appellant is not represented by a legal practitioner, and the onus of proof is on him, the chairman may ask the Scheme or its representative to open proceedings with a concise summary of the points at issue.

2. Where the appellant is represented and the onus of proof is on him, the proceeding

shall normally take the following order-

- (a) the appellant's representative opens the case for the appellant;
- (b) the appellant may be examined under oath, cross-examined and re-examined ;
- (c) the appellant's witnesses may in turn each be examined under oath, cross-examined and re-examined;
- (d) the appellant's representative summarises the appellant's case;
- (e) the Scheme's representative opens the case of the Scheme;
- (f) the witnesses of the Scheme may in turn each be examined, cross-examined, and re-examined ;
- (g) the case of the Scheme is summarised; and
- (h) the appellant's representative replies.

3 The order of proceeding contained in paragraph 2 may be amended as the parties to the hearing agree or the chairman decides, and any variation in the order of proceeding will not of itself invalidate the decision of the TRIBUNAL.

4. The TRIBUNAL may decide any appeal in the absence of the appellant and his representative but where it is satisfied that an appellant's absence is due to sickness or other reasonable cause, the TRIBUNAL may permit the postponement of the hearing for a period not exceeding three months.

Passed in Parliament this -----day of-----, in the year of our Lord two thousand and two.