



IMO
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THE RECYCLING OF SHIPS LAW

**A LAW FOR THE INCORPORATION OF THE HONG KONG INTERNATIONAL
CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND
RECYCLING OF SHIPS, 2009 INTO THE LAWS OF GHANA AND TO PROVIDE
FOR THE EFFECTIVE IMPLEMENTATION THEREOF**

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

ACKNOWLEDGEMENT	i
EXPLANATORY NOTE	1
1.0 INTRODUCTION	1
1.1 Rationale for the Legislation drafting project	1
1.2 AN OVERVIEW OF SHIP RECYCLING	2
1.3 THE SHIP BREAKING PROCESS	4
1.4 IMPACT OF SHIP RECYCLING ON THE ENVIRONMENT AND PEOPLE	6
1.4.1 Introduction	6
1.4.2 Sources of Pollutants from ship recycling and their environmental and health impacts.	6
2. OVERVIEW OF THE HONG KONG CONVENTION	10
2.1 Brief History of the Hong Kong Convention	10
2.2 The “Green Passport” Concept	12
2.3 The Structural overview of the Hong Kong Convention.	13
3. THE NEED FOR A LAW ON SHIP RECYCLING IN GHANA.....	23
3.1 Ship Recycling in Ghana: An Emerging Threat	23
3.2 Importance of a Law on Ship Recycling to Ghana	25
4. THE SYSTEM OF INCORPORATION OF THE HONG KONG CONVEVTION INTO THE LAWS OF GHANA.....	27

5. AN OVERVIEW AND STRUCTURE OF THE DRAFT LEGISLATION.....	29
INSTRUMENT OF ACCESSION.....	32
THE RECYCLING OF SHIPS BILL, 2020	33

EXPLANATORY NOTE

1.0 INTRODUCTION

1.1 Rationale for the Legislation drafting project

The expansion of the two major Ports in Ghana, the Tema and Takoradi Ports respectively, represent two milestone moments in the development of Ghana as an African trade and investment hub. Ghana has long been on the path to establishing itself as a major centre in the global maritime network. The current infrastructure projects coupled the launch of the Africa Continental Free Trade Agreement (AfCFTA) have accelerated Ghana's Journey towards building a truly globally competitive maritime hub.¹

This means that Ghana will soon be able to accommodate the world's largest container ships. It also means that more ships will be calling on the ports of Ghana making Ghana a potential hub of ship recycling within the sub-region. Ship-Recycling offers the most environmentally sustainable way of disposing of old vessels, with virtually every part of the hull and machine complex being reused or recycled as scrap metal.²

Although the industry is beneficial from a life-cycle assessment point of view, over the years it has gravitated toward countries with low labour costs, weak regulations on occupational safety and limited environmental enforcement.³ The "global shift" in the industry to countries with comparatively weaker regulatory systems should be of particular concern to the regulatory authorities of Ghana especially Maritime Administrative bodies, as ships contain many hazards that can have significant detrimental effects on humans and the environment if not properly dealt with.

There is therefore the need to adopt a more proactive and pragmatic approach thus, enacting regulations that will deal with the challenges associated with ship recycling recognizing the experiences of the major leading ship-recycling countries like Bangladesh India, China and Turkey. Prevention it is said is better than cure.

The rationale for this project is to incorporate the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 into the Municipal laws of Ghana and to provide for the effective implementation thereof. This explanatory note will

¹ <www.africalive.net/aticle/ghanas-maritime-fututure.html> accessed 13 November 2020.

² Maria Sarraf, et al, 'Ship Breaking and Recycling Industry in Bangladesh and Pakistan', December 2010 World Bank Report No. 58275-SAS.

³ Ibid, 1.

make an overview of the Hong Kong Convention and will highlight on the reasons why the Republic of Ghana need to become a party to the convention and the implementation of same into its municipal laws as well as the system of incorporation and implementation into the laws of Ghana.

1.2 AN OVERVIEW OF SHIP RECYCLING

Sea going vessels or ships have a normal lifespan of about 30/40 years after which any repair or renovation becomes uneconomical. These ships are then retired and sold for scrap to commercial ship breakers. Until well into the 20th century, ship breaking used to be carried out in industrialized ports including those in USA and UK. Thereafter, the major centres of the ship breaking and recycling industry (SBRI) first moved from Europe and North America to East Asia and, since the 1980s, to South Asia. Since ship breaking involves highly labour intensive work, the SBRI has gravitated to countries with availability of low wage labour. In addition, weak occupational health and environment regulations, and little or no enforcement may also have been a contributory factor for the emergence of a large SBRI sector in South Asia. At present, the global centre of the ship breaking and recycling industry is in South Asia, specifically Bangladesh, India, and Pakistan. These three countries account for 70–80 percent of the international recycling market for ocean-going vessels, with China and Turkey covering most of the remaining market. Only about 5 percent of global volume is scrapped outside these five countries.⁴

Whether ship recycling, breaking, dismantling, or ship demolition, they are different terms used variously and interchangeably in the ship recycling industry. They all point to the activity of breaking an end of life ship into bits and pieces to recycle and reuse the materials derived from the ships for various purposes.

Presently, in the middle of 2013, the world is still reeling under an economic crisis. Similarly, in the year 2019 and 2020, the world economy has experienced a downturn due to the outbreak of the global pandemic (COVID-19). The ship recycling industry is closely related to shipping market cycles and during recessionary times, when freight rates are low and ship owners are short of cash, old and obsolete vessels sold to scrap dealers in the demolition market provides a source of cash to ship owners.⁵

⁴ Ibid, p1.

⁵ Jain K, Pruyun J, Hopman J, 'Critical Analysis of the Hong Kong International Convention on Ship Recycling' (2013) vol:7 No 10, International Journal of Environmental, Ecological, Geological and Mining Engineering

Although in general the average life span of a ship, considering economic, technical and regulatory limitations, is about 30 years; an economic crisis as stated earlier can shorten this considerably. A good example is the Batillus-Class Super Tanker built in France at the end of the 1970s. Four such ships were built of which three were scrapped within 10 years put in service due to long period of reduced oil demands that started in 1973 and lasted longer than expected. The current world fleet of ships above 500 gross tonnage (GT) is about 56,000 in number. This means on average around 1,800 ships of over 500 GT need to be recycled each year. This notwithstanding during an economic crisis, a far higher number of ships can be expected to be recycled.⁶

Ship recycling is a long-established practice for dealing with ships at the end of their commercial life and widely regarded on the best, that is, most practicable, option.⁷ It contributes to sustainable development because virtually every part of a ship's hull, machinery, equipment, fittings, and even furniture is recycled for re-use in many different sectors. This is especially the case in less developed countries where the recycling industry creates economic development for local and regional communities, generating large-scale direct employment as well as additional employment and economic activity from its associated industries including extensive trading in second-hand equipment and machinery.⁸

Ship recycling as the name suggests is a green activity supporting sustainable development as it reduces the need to use natural resources for steel making by recycling and reusing tons of unused, discarded steel in the form of an end of life (EOL) ship.⁹

Ship recycling can result in reusing up to 98% of a ship by weight, which in terms of recycling is well ahead of other industries such as automobile and aviation. Reusing and recycling materials and equipment to such a large extent by means of ship recycling must be considered an important activity that supports sustainable development and is believed to be the most eco-friendly way of disposing of ships at the end of their economic lives.¹⁰

https://www.researchgate.net/publication/258100055_Critical_Analysis_of_the_Hong_Kong_International_Convention accessed 14 November 2020.

⁶ Ibid.

⁷ Hong Kong International Convention for Safe and Environmentally Sound Recycling of Ships, 2009, (2013 edn) Forward (vii).

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

1.3 THE SHIP BREAKING PROCESS

The ship breaking process starts by first purchasing a scrap vessel. Usually, the owners of a ship breaking yards are kept abreast of the ships to be sold for scrap by brokers. All ships are sold by the ton at a price ranging from 110 to 150 dollars per ton depending on the market price. After purchasing the ship, it has to be dismantled as fast as possible to recover owner's investment. Once the ship is bought they are sailed to the demolition yards but before entering into the territorial waters, the ships are anchored in international water and the administrative works begin and the ships are made gas free and inspected thoroughly for presence of any radioactive heavy metal hazardous to environment. Once the administrative body signal green, the port Authorities issues permit for the ship to enter the territorial waters of the state. The ship is then set offshore by its Captain and waits for perfect time for beading. For a tanker, it is beached by its own power of propulsion at high tide and if it lies still on its flat bottom during low tide. But for a cargo this job is a bit difficult as it has a triangular shaped bottom. For this reason, tankers are moved to cutting zone easily whereas cargos are cut at offshore and the bits are moved to the shore in proper size with the help of winch having capacity of 30 tons to 60 tons. Cutters are generally oxyacetylene burners with a pressure of nearly 2000 Pascal.

Once the ship is moved to its exact position in cutting zone, it is observed by experts for removing all the oils in the ship. The oil is removed in a very careful manner so that it is not spilled into the water. Then the cutter men and their helpers start cutting the vessel into parts based on the structural design of the vessel. The large parts are dragged offshore with the help of motorized winch. The pieces are cut into smaller pieces on per company tradition.

Heavy equipment like boiler, motors, capstan stocking are carried to stack yards by moving crane for further processing. The valuable parts are then sold to local markets whether by tender call or in open market. The entire steps in SBRI are given in Fig 1 below. ¹¹

¹¹ Mosabbir Pasha, et al, 'Assessment of Ship Breaking and Recycling Industries in Bangladesh- An Effective Step Towards the achievement of Environmentally Sustainability' (ICAEBS 2012).

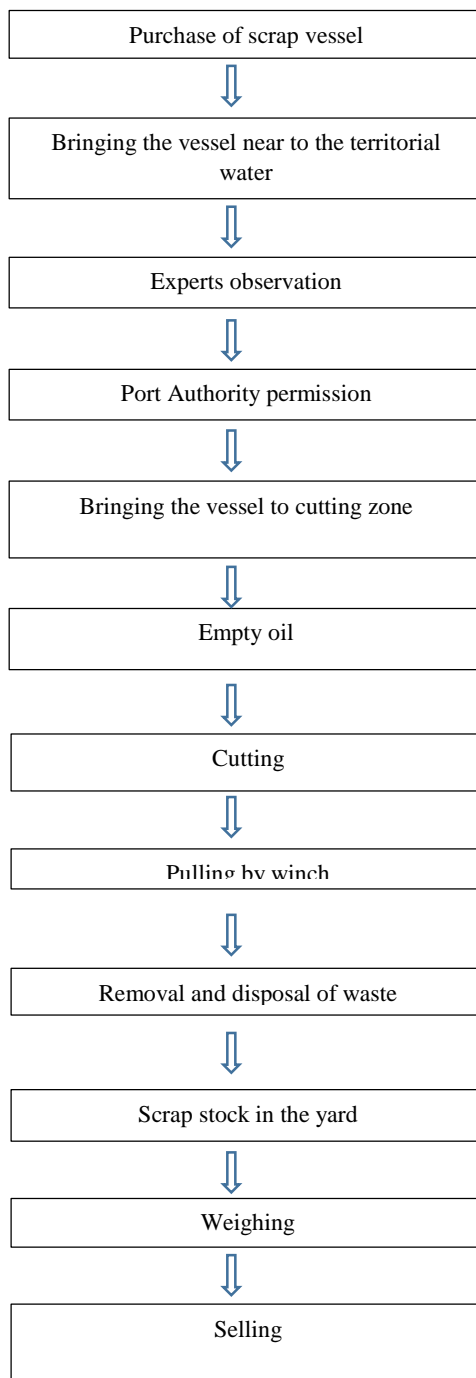


Fig 1. Flow chart process of ship breaking

1.4 IMPACT OF SHIP RECYCLING ON THE ENVIRONMENT AND PEOPLE

1.4.1 Introduction

While the principle of ship recycling is sound, the working practices and environmental standards in recycling facilities often leave much to be desired.¹² Ship recycling is seen as posing threats to environment, human health and safety due to unacceptable working practices and environmental standards in a number of ship recycling yards around the globe. Workers working in such yards are exposed to hazardous substances such as asbestos, polychlorinated biphenyls (PCBs), lead, mercury and their safety is often jeopardized as they work without proper protective equipment such as safety shoes, gloves, safety glasses, helmets .¹³

Recycling yards having no containment equipment and facilities to deal with large spill and hazardous waste are a threat to marine environment and ecology of the area the ships are dismantled. Hazardous substances generated during ship recycling if discharged into the atmosphere including sea, land and air causes pollution and irreparable damage to the environment.¹⁴

1.4.2 Sources of Pollutants from ship recycling and their environmental and health impacts.

The whole ship breaking process entails a series of risky task and it act as a depot of hazardous substances, which pose threats to the ambient environment and working people.¹⁵ Ship breaking is a challenging process, due to structural complexity of the ships and the environmental, safety and health issues involved.

Depending on their size and function, scrapped ships have an unloaded weight of between 5,000 and 40,000 tons (an average of 13, 000 +), 95% of which is steel, coated with between 10 and 100 tons of paint containing lead, cadmium, arsenic, zinc and chromium. Ships also contain a wide range of other hazardous wastes, sealants containing PCBs; up to 7.5 tons of

¹² Hong Kong International Convention for Safe and Environmentally Sound Recycling of Ships, 2009, (2013 edn) Forward (vii).

¹³ T. G. Puthucherril, 'From Ship Breaking to Sustainable Ship Recycling: evolution of a legal Regime' (2010) Leiden Bill Vol5, p.2 <<https://www.academia.edu/search?utf&=ship+recycling>> accessed 15 November 2020.

¹⁴ D. Dodds, 'Breaking up is hard to do: Environmental effects of ship breaking and possible solutions under India's Environmental Regime' (2007) Pacific McGeorge Global Business & Development Law Journal vol. 20 pp207 <<https://www.academia.edu/search?utf&=ship+recycling>> accessed 16 November 2020.

¹⁵ S.M. Yahya, et al, 'Environmental Impact Assessment of ship breaking and recycling Industries-A case study for Bangladesh' (2012) International Journal of Social and Human Science vol. 6 <<https://www.academia.edu/search?utf&=ship+recycling>> accessed on 16 November 2020.

various types of asbestos;¹⁶ several thousand litres of oil (engine oil, bilge oil, hydraulic and lubricant oils and grease). Tankers additionally hold up to 1000 cubic meters of residual oil. Most of these materials are defined as hazardous waste under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.¹⁷ Below are a brief description of the materials and their corresponding impact on the environment and working people.

A. Heavy Metals

Metals of concern associated with the ship-breaking industry are toxic heavy metals such as lead (Pb), mercury (Hg) and calcium (Ca). These are biologically non-essential metals than can cause harm to human health and ecological systems. Other metals in the breaking industry are iron (Fe) alloy (steel), aluminium (Al) and Zinc (Zn). The metals can be found in many products on board a vessel in varying quantities. Steel on the other hand is present in very large quantities, while mercury in most cases only occurs in very small amounts (in paints, batteries and instrumentation). Heavy metal affects primarily the peripheral nervous system and can cause impairment of hearing, vision, kidneys, heart and the reproductive system.

B. Bilge and Ballast Water

Bilge water consist of stagnant dirty water and other liquids, such as condensed steam, and valve and piping leaks, which are allow to drain lowest inner part of a ship's operating conditions. Bilge is typically port water or sea water that is intentionally pumped into and carried in tanks to adjust a ship's draft, buoyancy, trim and list to improve stability under various operating conditions. Bilge and ballast water may both contain metals which cannot be removed through treatment. Metals if ingested can cause various human health problems such as lead poisoning and cancer. Bilge water may contain toxic organics, such as solvents and Polychlorinated Biphenyls (PCBs), which can cause cancer and lead to other serious ailments, such as kidney and liver damage, anaemia and heart failure.

C. Asbestos

During ship scrapping activities, the removal and disposal of asbestos is a primary environmental concern as well as a health and safety concern for the workers. "Asbestos"

¹⁶ Ibid.

¹⁷ Ibid.

refers to a group of minerals that naturally are masses of long silky fibres. Asbestos is found on ships in many types of materials including but not limited to:

1. Bulkhead and pipe thermal insulation
2. Bulkhead fire shields/fire proofing
3. Uptake space insulation
4. Exhaust duct insulation
5. Electrical cable materials
6. Brake linings
7. Floor tiles and deck underlay
8. Steam water and vent flange gaskets
9. Adhesives and adhesive-like glues (example Mastics) and fillers
10. Sound damping
11. Moulded plastics products (example Switch handles, Clutch facings)
12. Sealing putty
13. Packing in shafts and valves
14. Packing in electrical bulkhead penetrations
15. Asbestos are chutes in circuit breaker
16. Pipe hanger inserts
17. Weld shop protectors and burn covers, blankets and any firefighting clothing or equipment.
18. Any other type of thermal insulating material.

Workers who repeatedly breathe in asbestos fibres with lengths greater than or equal to 5µm may develop a slow build-up of scar-like tissue in the lungs and in the membrane that surrounds the lungs. Thus scar-like tissue does not expand and contract like normal lung tissue and so breathing becomes difficult and hampers its ability to exchange gases. Blood flow to the lungs may also be decreased, and this causes the heart to enlarge. This disease is called asbestosis.

D. Poly Chlorinated Biphenyl Compounds (PCBs):

PCBs are found in solid and liquid forms. They are highly toxic and persistent pollutants. They are bio accumulate and get highly magnified in the fatty tissue, especially in higher trophic level of the food chain. Exposure to PCBs has been associated with a variety of

adverse health problems. PCBs has been linked to cancer, liver damage, reproductive impairments, immune system damage and behavioural and neurologic damage.

E. Polyvinyl Chloride (PVC):

Lots of equipment and materials in ships are made of PVC. PVC poses serious threats to environmental health at every state of its existence (production, use and disposal). At the end of its life, PVC waste creates intractable disposal problems because it is expensive and unsafe to burn. It releases hazardous chemicals into groundwater and air when buried, and is not easily cheaply recycled. PVC can have a negative impact on the environment and human health.

PVC has been known to cause Raynaud's syndrome, scleroderma, asthma, liver cancer, brain cancer, and risks of impaired human reproduction.

F. Paint and Preservative Coating

Paint and preservative coating can be found on both interior and exterior surface of a ship. Particularly on older ship, paint may be flammable or may contain toxic compounds, such as polychlorinated Biphenyls (PCBs), heavy metals (example lead, barium, cadmium, chromium and zinc) and pesticides. Chemicals and solvent used in shipping paint or coating emit Volatile Organic Compounds (VOCs) and hazardous air pollutants (HAPs) to the atmosphere. Other removal methods (example mechanical removal, abrasive blasting) generate dust, particulate matter and emissions containing lead and other containments. These pollutants are hazardous to human health, potentially causing acute and chronic toxic effects and possibly causing cancer.

G. Polycyclic Aromatic Hydrocarbon (PAHs)

PAHs are released during torch cutting and afterwards when paints continue to smoulder or when wastes are deliberately burned. Some PAHs have been shown to cause cancer in laboratory animals, and also humans following occupational exposure at high concentrations.

H. Oil

Oil is a highly volatile compound composed of mainly hydrocarbons sulphur containing compounds. Approximately 75% of constituents of oil are hydrocarbons. As a result of breaking of the ship, oil residues and other refuses are being spilled and mix with soil and water in the beach and fate of discharged oil in coastal water. Oil seeps into shallow or

confined waters; fish can be seriously affected and may even die. Fish eggs may not hatch or may be totally destroyed, especially when the depth of water is not so deep.

I. Ozone-depleting Substances.

Ozone-depleting substances are being phased out for uses on board, particularly for refrigeration and fire extinguishing, they are relatively simple to identify and to properly collect and store in an environmentally sound manner. However, ODS used as blowing agents in the formation of foam for insulation are structurally embedded in many ships, and the waste, which must be designated as hazardous, is voluminous. The proper management of the recycling or disposal of foam containing CFCs should be given priority in addition to the suitable collection and management of CFCs in refrigerant and fire extinguishing systems, many of these substances also have substantial global warming potential.¹⁸

2. OVERVIEW OF THE HONG KONG CONVENTION

2.1 Brief History of the Hong Kong Convention.

The issues of Ship Recycling were first brought to the attention of the IMO Marine Environmental Protection Committee (MEPC) in March 2000 during its 44th Session.¹⁹ Following this session a correspondence group was formed to collect the information about existing ship recycling practices and to give advice on the role of IMO on the issue of ship recycling.²⁰

Two years later in March 2002 during MEPC 47 it was agreed that the IMO has an important role to play in ship recycling, including developing measure for the preparation of a ship before recycling commences.²¹ Also, a coordinating role in recycling matters in relation to ILO and the Basel Convention was foreseen. Thus the MEPC agreed that IMO should develop recommendatory guidelines using the industry code of practice for ship recycling as a basis to be adopted by an assembly resolution. In July 2003, during MEPC 49, IMO approved draft guidelines on ship recycling for submission to the 23rd assembly for adoption. These guidelines were adopted in December 2003 as IMO Guidelines on ship recycling by

¹⁸ Ibid.

¹⁹ <www.imo.org/en/Ourwork/Environment/pages/ship-Recycling.aspx> accessed 30 November 2020.

²⁰ Ibid.

²¹ <www.imo.org/en/Googlesearch/searchPosts/Default.aspx?q=MEPC 47> accessed 20 November 2020.

the 23rd assembly of IMO by resolution A. 962 (23). These guidelines were subsequently amended by resolution A. 980 (24) in December 2005.²²

Subsequently, in 2005, MEPC 53 agreed that the prime concern of IMO should be to develop a new legal instrument to provide globally applicable ship recycling regulations for ships and ship recycling facilities.²³ Thus, in December 2005 the assembly 24 adopted Resolution A. 981 (24).²⁴ This resolution directed MEPC to develop a “new legally binding instrument on ship recycling” that would provide regulations for “the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling without compromising the safety and operational efficiency of ships, the operation of ship recycling facilities in a safe and environmentally sound manner, and the establishment of an appropriate enforcement mechanism for ship recycling, incorporating certification and requirements.”²⁵

Following the instructions of the assembly 24, MEPC 54 Convened a working group on ship recycling which developed the draft text which had been submitted by Norway. Thereafter numerous meetings were arranged over the period of three and a half years for further development of the draft text of the Convention.²⁶ Finally in May 2009 the International Conference on the Safe and Environmentally Sound Recycling of Ships took place at Hong Kong where the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of ships, 2009, along with six resolutions was adopted.²⁷

The Convention was open for signature at the IMO Headquarters from 1 September 2009 until 31 August 2010. Thereafter, it became open for accession. The Hong Kong Convention has not yet entered into force.²⁸

Several articles and regulations of the Hong Kong Convention make reference to guidelines to be developed by the organization. Correspondingly, the diplomatic conference adopted the Conference Resolution 4 inviting IMO to develop, as a matter of urgency 6 specific sets of guidelines, and other guidelines or circulars as may be identified by the MEPC, and to adopt

²² Ibid, Resolution A.980(24).

²³ Ibid, MEPC 53.

²⁴ Ibid, Resolution A. 981(24).

²⁵ IMO, “The development of the Hong Kong Convention”

<www.imo.org/Ourwork/Environment/ShipRecycling/Pages/Default.aspx >accessed 20 November 2020.

²⁶ Ibid.

²⁷ Ibid.

²⁸ <www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx >accessed 22 November 2020.

them as soon as practicable and in any case, before the entry-into-force of the Hong Kong Convention, with the view to facilitating its global and uniform application.²⁹

As instructed by the conference, the MEPC developed and adopted the six sets of guidelines identified in Conference Resolution 4. The first guidelines were adopted by MEPC 59 in July 2009 and subsequently amended by MEPC 62 in July 2011. The 2011 Guidelines for the development of the inventory of Hazardous Materials (resolution MEPC, 197 (62)).³⁰

Also adopted by MEPC 62 were the 2011 Guidelines for the development of ship recycling plan (resolution MEPC, 196 (62)). In March 2012, MEPC 63 adopted the 2012 Guidelines for safe and environmentally sound ship recycling (resolution MEPC 210 (63)) and 2012 guidelines for the authorization of ship recycling facilities (resolution MEPC. 211 (63)). The remaining two sets of guidelines were adopted by MEPC 64 in October 2012: the 2012 guidelines for the survey and certification of ships under the Hong Kong Convention (resolution MEPC 222 (64)) and the 2012 guidelines for the inspection of ships under the Hong Kong Convention (resolution MEPC. 223 (64)).³¹

The Convention is open for accession by any State. It will enter into force 24 months after the date on which 15 States, representing 40% of world merchant shipping gross tonnage have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary General. The Hong Kong Convention has not yet entered into force.³²

2.2 The “Green Passport” Concept

The “Green Passport” is a document concept that originated under the IMO’S guidelines on ship recycling. At the end of a ship’s useful life, almost all of its components will be recycled or reused. While this means ship building has the potential to be a “green” industry, it also means clear communication about any hazardous substances present in ship components is essential, since these components may be reused. The Green Passport originates from the Hong Kong Convention and regionally adopted law (example EU Ship Recycling Regulation).³³

²⁹ IMO Hong Kong Convention, 2013 edition.

³⁰ Ibid.

³¹ Ibid.

³² <www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx >accessed 22 November 2020.

³³ <www.help.assentCompliance.com/hc/en-us/articles/360047164134-Green-Passport-and-ship-Recycling> accessed 22 November 2020.

A green passport should thus contain an inventory of all the materials used in the construction of a ship that may be hazardous to human health. This passport will accompany a ship throughout its working life and will be updated to maintain its accuracy. Eventually, the passport will be delivered with the ship to the recycling yard.³⁴

2.3 The Structural overview of the Hong Kong Convention.

The text adopted by the Hong Kong Convention is classified into three main parts thus; articles, regulations and appendices. It has 21 articles which form the main legal mechanism. It has 25 regulations which are part of the annex and are divided into four chapters that is:

1. General provisions (Regulation 1-3)
2. Requirements for ships (Regulations 4-14)
3. Requirements for ships recycling (Regulation 15-230)
4. Reporting Requirements (Regulation 24-25)³⁵

These regulations thus, form the essential requirements and technical details of the convention.

In addition to the 21 articles and 25 regulations, the Hong Kong Convention has 7 appendices which are also part of the annex. These appendices contain a list of hazardous materials, forms and certificates related to the convention.³⁶ These appendices have no significant role in setting standards but they provide a common information base and a format for documentation that will assist in proper implementation of the convention's procedures.

Also separately are 6 non-mandatory guidelines which have been developed, providing clarification, interpretations and uniform procedures for technical issues arising from the provisions of the convention. These 6 non-mandatory guidelines include;

- i. 2011 Guidelines for the Development of the inventory of Hazardous Materials;
- ii. 2011 Guidelines for the Development of the Ship Recycling Plan;
- iii. 2012 Guidelines for Safe and Environmentally Sound Ship Recycling;
- iv. 2012 Guidelines for the Authorization of Ship Recycling Facilities;
- v. 2012 guidelines for the Survey and Certification of Ships under the Hong Kong Convention;

³⁴ Ibid.

³⁵ IMO Hong Kong Convention for The Safe and Environmentally Sound Recycling of Ships,2009 With the Guidelines for its implementation, (2013 Edition).

³⁶ Ibid.

vi. 2012 Guidelines for the Inspection of Ships under the Hong Kong Convention.³⁷

The Hong Kong Convention has provisions which are mandatory and contracting states have the obligation to adhere to those provisions. These provisions have the wording “shall” implying that, it is mandatory for contracting states to adhere to such provisions. These provisions include;

- Under Article 1 (1)³⁸ on general obligations, each party to the Convention shall undertake to give full and complete effect to the provisions of the Convention. Article 1 (2)³⁹ provides that no provision of this Convention shall be interpreted as preventing a party from taking individually or jointly more stringent measures consistent with International law with respect to safe and environmentally sound recycling of ships. Article 1 (3)⁴⁰ also provides that, parties shall endeavor to cooperate for the purpose of effective implementation of the convention.
- As to the scope of application of the Convention, Article 3 (1)⁴¹ on the application provides that unless expressly provided otherwise, the Convention shall apply to ships entitled to fly the flag of a party or operating under its authority and ship recycling facilities operating under the jurisdiction of a party. Much the same way article 3 (2)⁴² provides otherwise that the Convention shall not apply to any war ships, naval auxiliary or other ships owned or operated by a party. Article 3 (3)⁴³ of the convention shall not also apply to ships of less than 500 GT or ships operating throughout the life only in waters subject to the sovereignty or jurisdiction of the state whose flag the ship is entitled to fly. Lastly on the application provision article 3 (4)⁴⁴ is in respect to ships entitled to fly the flag of non-parties to the convention. Parties shall apply the requirements of the convention as may be necessary to ensure that no more favourable treatment is given to such ships.
- Article 4 of the Convention provides for controls related to ship recycling. Under Article 4 (1)⁴⁵ each party shall require that ships entitled to fly its flag or operating under its authority comply with the requirements set forth in this convention. Under

³⁷ Ibid.

³⁸ Ibid, article 1(1).

³⁹ Ibid, article 1(2).

⁴⁰ Ibid, article 1(3).

⁴¹ Ibid, article 3(1).

⁴² Ibid, article 3(2).

⁴³ Ibid, article 3(3).

⁴⁴ Ibid, article 3(4).

⁴⁵ Ibid, article 4(1).

Article 4(2)⁴⁶ each party shall require that ship recycling facilities under its jurisdiction comply with the requirements set forth in this Convention.

- For survey and certification of ships, articles 5⁴⁷ provides that each party shall ensure that ships flying its flag or operating under its authority and subject to survey and certification are surveyed and certified in accordance with the regulations in the annex.
- Under article 6⁴⁸ parties to the convention shall ensure that ship recycling, facilities that operate under its jurisdiction and that recycle ships to which this Convention applies, or ships treated similarly pursuant to article 3(4) of this Convention, are authorized in accordance with the regulations in the annex.
- Article 7⁴⁹ deals with exchange of information where parties to the Convention shall provide to the organization if requested information regards to this convention on which its decision for authorization was based. The information shall be exchanged in a swift and timely manner.
- Article 9⁵⁰ provides for the detection of violations and parties shall co-operate in the detection of violations and the enforcement of the provisions of the convention. Any violation of the requirement of the Convention shall be prohibited by national laws according to Article 10.
- Under article 11(1)⁵¹ all possible efforts shall be made to avoid a ship being unduly detained or delayed under article 8, 9 or 10 of this Convention. It also provides under article 11(2)⁵² that, when a ship is unduly detained or delayed under article 8, 9, or 10 of this Convention, it shall be entitled to compensation for any loss in damage suffered. It is important for each party to report to the organization and the organization shall disseminate as appropriate information on a list of ship recycling facilities, contact details, information of recognized organizations and nominated surveyors annual list of ships flying the flag of that party, and annual list of ships recycled within the jurisdiction of that party, information concerning violations of

⁴⁶ Ibid, article 4(2).

⁴⁷ Ibid, article 5.

⁴⁸ Ibid, article 6.

⁴⁹ Ibid, article 7.

⁵⁰ Ibid, article 9.

⁵¹ Ibid, article 11(1).

⁵² Ibid, article 11(2).

this Convention and actions taken towards ships and ship recycling facilities under the jurisdiction of that party. Article 12⁵³ (1-7) expressly provides for that.

- It is envisaged by the Convention that; disputes could arise between parties to the convention concerning the interpretation or application of the Convention. Article 14⁵⁴ provides for Dispute settlement and it states that parties shall settle disputes between them concerning the interpretation an application of this Convention by negotiation or any other peaceful means agreed upon by them, which may include enquiry, mediation conciliation, arbitration, judicial settlement, or resort to regional agencies or arrangements.

Besides the article, the convention is further supported by detailed requirements and more specific regulations defined in the annex. The annex to the Convention is divided into 4 chapter and there are 25 regulations under this annex.

Chapter 1 for instance deals with the general provisions. Regulation 2⁵⁵ under chapter 1 provides that, unless expressly provided otherwise, the design, construction, survey, certification, operation and recycling of ships shall be conducted in accordance with the provisions of the annex. Regulation 3⁵⁶ deals with relationship with other standards, recommendations and guidance and parties shall take measures to implement the requirements of the regulations of this annex, taking into account relevant and applicable standards, recommendations and guidance developed by the International Labour Organization and the relevant and applicable technical standards, recommendation and guidance developed under the Basel Convention on control of Trans Boundary Movements of Hazardous Wastes and their disposal.

Chapter 2 of the annex to the convention deals with the requirements for ships. It is divided into three parts: Part A (Design, Construction, Operation and maintenance of ships), Part B (Preparation for ship recycling) and Part C (Surveys and Certification). There are ten regulations under chapter 2 of this annex. Regulations 4⁵⁷ deals with controls of ships' hazardous materials and it provides as follows; in accordance with the requirements specified in appendix 1 to this convention each party:

⁵³ Ibid, article 12.

⁵⁴ Ibid, article 14.

⁵⁵ Ibid, regulation 2.

⁵⁶ Ibid, regulation 3.

⁵⁷ Ibid, regulation 4.

1. Shall prohibit and/or restrict the installation or use of hazardous materials listed in appendix 1 on ships entitled to fly its flag or operating under its authority; and
2. Shall prohibit and/or restrict the installation or use of such materials on ships, whilst in its ports, shipyards, ship repair yards or offshore terminals and shall take effective measures to ensure that such ships comply with those requirements.

Inventory of Hazardous Materials is captured under Regulation 5⁵⁸ of the convention. It provides that;

1. Each new ship shall have on board an inventory of Hazardous Materials. The inventory shall be verified by either the Administration or by any person or organization authorized by it taking into account guidelines including any threshold values and exemptions contained in those guidelines developed by the organization. The inventory of Hazardous Materials shall be specific to each ship and shall at least:
 - a. Identify as part I hazardous materials listed in appendices 1 and 2 of this Convention and contained in ship's structure or equipment, their location and approximate quantities and
 - b. Clarify that the ship complies with regulation 4
2. Existing ships shall comply as far as practicable with paragraph 1 not later than five years after the entry into force of this Convention, or before going for recycling if this is earlier, taking into account the guidelines developed by the organization and the organization's Harmonized system of survey and certification. The hazardous materials listed in appendix 1, at least, shall be identified when the inventory is developed. For existing ships, a plan shall be prepared describing the visual/sampling check by which the inventory of Hazardous Materials is developed, taking into account the guidelines developed by the organization.
3. Part I of the Inventory of Hazardous Materials shall be properly maintained and updated throughout the operational life of the ship, reflecting new installations containing hazardous materials listed in appendix 2 and relevant changes in ship structure and equipment, taking into account the guidelines developed by the organization.

⁵⁸ Ibid, regulation 5.

4. Prior to recycling the inventory shall, in addition to the properly maintained and updated part I, incorporate part II for operationally generated wastes and part III for stores, and be verified by the Administration or by any person or organization authorized by it, taking into account the guidelines developed by the organization.

Part B of chapter 2 to the annex deals with the preparation for ship recycling. The general requirements are however spelt out under regulation 8. below;

Regulations 8⁵⁹ (General requirements);

Ships destined to be recycled shall;

1. Only be recycled at ship recycling facilities that are;
 - i. Authorized in accordance with this convention; and
 - ii. Fully authorized to undertake all the ship recycling which the ship recycling plan specifies to be conducted by the identified ship recycling facility (ies);
2. Conduct operations in the period prior to entering the ship recycling facility in order to minimize the amount of cargo residues, remaining fuel oil, and waste remaining on board;
3. In the case of a tanker, arrive at the ship recycling facility with cargo tanks and room (s) in a condition that is ready for certification as safe-for-entry or safe-for-hot-work, or both, according to national laws, regulations and policies of the party under whose jurisdiction the ship recycling facility operation;
4. Provide to the ship recycling facility all available information relating to the ship for the development of the ship recycling plan required by regulation 9;
5. Complete the inventory required by regulation 5; and
6. Be certified on ready for recycling by the Administration or organization recognized by it, prior to any recycling activity taking place.

Regulation 9⁶⁰ under part B of Chapter 2 to the annex of the convention deals with the ship recycling plan. The regulation provides that;

A Ship-specific ship recycling plan shall be developed by the ship recycling facility (ies) prior to any recycling of a ship, taking into account the guidelines developed by the

⁵⁹ Ibid, regulation 8.

⁶⁰ Ibid, regulation 9.

organization. However Regulation 9 (1-6)⁶¹ provides for further guidelines as to how the plan shall be developed.

The last part of chapter 2 to the annex is Part C which specifically deals with surveys and certification. Regulation 10⁶² which deals with surveys provides that, ships to which this convention applies shall be subject to the surveys under certain specifications which are provided under Regulation 10 (1-5)⁶³ of the Convention.

Regulation 11 (1-12)⁶⁴ of the Convention provides for guidelines for the issuance of certificate and endorsement of same on inventory of the Hazardous Materials by either the Administration or by any person or organization authorized by it.

The Convention provides for the requirements for ship recycling facilities under chapter 3 for instance provides for the requirement for controls on ship recycling facilities. Under regulation 15,⁶⁵ each party;

1. Shall establish legislation, regulations and standards that are necessary to ensure that ship recycling facilities are designed, constructed, and operated in a safe and environmentally sound manner in accordance with the regulations of this Convention.
2. Shall establish a mechanism for authorizing ship recycling facilities with appropriate conditions to ensure that such ship recycling facilities meet the requirements of the Convention.
3. Shall establish a mechanism for ensuring that ship recycling facilities comply with the requirements of this chapter including the establishment and effective use of inspection, monitoring and enforcement provisions, including powers of entry and sampling. Such a mechanism may include an audit scheme to be carried out by the competent authority (ies) or an organization organized by the party, taking into account guidelines developed by the organization, and the results of these audits should be communicated to the organization.
4. Shall designate one or more competent authorities and the single contact point to be used by the organization, parties to this Convention and other interested entities, for

⁶¹ Ibid, regulations 9(1-6).

⁶² Ibid, regulation 10.

⁶³ Ibid, regulation 10 (1-5).

⁶⁴ Ibid, regulations 11(1-12).

⁶⁵ Ibid, regulation 15.

matters related to ship recycling facilities operating within the jurisdiction of that party.

Under regulation 16, there is the requirement for authorization of ship recycling facilities. Regulation 16(1-6)⁶⁶ provides that ship recycling facilities which recycle ships to which this convention applies or ships treated similarly pursuant to article 3(4), shall be authorized by a party taking into account the guidelines developed by the organization. Appendix 5 of the convention set forth the form in which the authorization shall be drawn up.

There is a general requirement for ship recycling facilities authorized by parties. Regulation 17 for instance provides for such general provision.

Under Regulation 17;⁶⁷

1. Ship recycling facilities authorized by a party shall establish management systems, procedures and techniques which do not pose health risks to the works concerned or to the population in the vicinity of the ship recycling facility and which will prevent, reduce, minimize and to the extent practicable eliminate adverse effects on the environment caused by ship recycling, taking into account guidelines developed by the organization.
2. Ship recycling facilities authorized by a party shall, for ships to which this convention applies, or ships treated similarly pursuant to article 3(4):
 1. Only accept ships that;
 - a. Comply with this convention; or
 - b. Meet the requirements of this convention; and
 2. Only accept ships which they are authorized to recycle; and
 3. Have the documentation of its authorization available if such documentation is requested by a ship owner that is considering recycling a ship at that ship recycling facility.

Under Regulation 18,⁶⁸ there is a requirement for Parties to prepare ship recycling facility plan. The plan shall be adopted by the board or the appropriate governing body of the recycling company, and shall include:

⁶⁶ Ibid, regulation 16 (1-6).

⁶⁷ Ibid, regulation 17.

⁶⁸ Ibid, regulation 18.

1. A policy ensuring workers safety and the protection of human health and environment, including the establishment of objectives that lead to the minimization and elimination to the extent practicable of the adverse effects on human health and the environment caused by ship recycling.
2. A system for ensuring implementation of the requirement set out in this convention, the achievement of the goals set out in this convention, the achievement of the goals set out in the policy of the recycling company, and the continuous improvement of the procedures and standards used in the ship recycling procedures;
3. Identification of roles and responsibilities for employers and workers when conducting ship recycling operations;
4. A programme for providing appropriate information and training of workers for the safe and environmentally sound operation of the ship recycling facility.
5. An emergency preparedness and response plan;
6. A system for monitoring the performance for ship recycling;
7. A record-keeping system showing how ship recycling is carried out;
8. A system for reporting discharges, emissions incidents and accidents causing damage, or with the potential of causing damage, to workers, safety, human health and the environment; and
9. A system for reporting occupational diseases, accidents, injuries and other adverse effects on workers' safety and human health, taking into account guidelines developed by the organization.

For the prevention of adverse effects to human health and the Environment, the convention provides under Regulation 19⁶⁹ as follows;

Ship recycling facilities authorized by a party shall establish and utilize procedures to;

1. Prevent explosions, fires and other unsafe conditions by ensuring that safe-for-hot work conditions and procedures are established, maintained and monitored throughout ship recycling;
2. Prevent harm from dangerous atmospheres and other unsafe conditions by ensuring that safe-for-entry condition and procedures are established, maintained and monitored in ship spaces, including confined spaces and enclosed spaces, throughout ship recycling.

⁶⁹ Ibid, regulation 19.

3. Prevent other accidents, occupational diseases and injuries or other adverse effects on human health and the environment; and
4. Prevent spills or emissions throughout ship recycling which may cause harm to human and/ or the environment.

More importantly, the Convention makes provisions for the requirement for safe and environmentally sound management of hazardous materials. This regulation gives effect to the Green Passport” concept of ship recycling.

Regulation 20⁷⁰ therefore provides for the requirements for safe and environmentally sound management of hazardous materials. These requirements are provided in regulation 20(1-4). Regulation 20(1)⁷¹ for instance provides that; Ship recycling facilities authorized by a party shall ensure safe and environmentally sound removal of any hazardous materials contained in a ship certified in accordance with regulation 11 or 12.

The Convention also provides requirement for emergency preparedness and response plan to be established by ship recycling facilities authorized by parties. Regulation 21⁷² therefore provides that; “Ship recycling facilities authorized by a party shall establish and maintain an emergency preparedness and response plan. The plan shall be made having regard to the location and environment of the ship recycling facility, and shall take into account the size and nature of activities associated with each ship recycling operation.

The Convention as well underscores the need to provide for workers’ safety and training. Therefore Regulation 22⁷³ dealing with worker safety and training provides that: Ship recycling facilities authorized by a party shall provide for worker safety by measure including;

1. Ensuring the availability, maintenance and use of personal protective equipment and clothing needed for all ship recycling operators;
2. Ensuring that training programs are provided to enable workers to safely undertake all ship recycling operations they are tasked to do; and
3. Ensuring that all workers at the ship recycling facility have been provided with appropriate training and familiarization prior to performing any ship recycling operation.

⁷⁰ Ibid, regulation 20.

⁷¹ Ibid, regulation 20(1).

⁷² Ibid, regulation 21.

⁷³ Ibid, regulation 22.

The Convention in the last chapter, i.e. Chapter 4 provides for reporting requirements. Regulation 24 for instance makes provisions for the initial notification and requirements, while Regulations 25 provides for reporting upon completion.

Regulation 24(1)⁷⁴ for instance states that; a ship owner shall notify the Administrator in due time and in writing of the intention to recycle a ship in order to enable the Administrator to prepare for the surveying and certification required by this convention.

Regulation 25⁷⁵ provides that; when the partial or complete recycling of a ship is completed in accordance with the requirement of this convention a statement of completion shall be issued by the ship recycling facility and reported to its competent Authority (ies). This report must be complied on shown in Appendix 7.

3. THE NEED FOR A LAW ON SHIP RECYCLING IN GHANA

3.1 Ship Recycling in Ghana: An Emerging Threat

The Maritime industry in Ghana is fast developing and over the past decades, the sectors has seen an exponential growth with more ships calling at its two port, that is Tema and Takoradi harbours respectively. The expansion of the two major Ports in Ghana, the Tema and Takoradi Ports respectively represent two milestone moments in the development of Ghana as an African trade and investment hub. Ghana has long been on the path to establishing itself as a major centre in the global maritime network. The current infrastructure projects coupled the lunch of AfCFTA have accelerated Ghana's Journey towards building a truly globally competitive maritime hub.⁷⁶

This means that, Ghana will soon be able to accommodate the world's largest container ships. It also means that more ships will be calling on the ports of Ghana making Ghana a potential hub for ship recycling within the sub-region. There is therefore the need to adopt a more proactive and pragmatic approach thus, enacting regulations that will deal with the challenges associated with ship recycling reflecting on the experiences of the major leading ship-recycling countries like Bangladesh India, China and Turkey.

⁷⁴ Ibid, regulation 24(1).

⁷⁵ Ibid, regulation 25.

⁷⁶ <www.africalive.net/article/ghanas-maritime-fututure.html> accessed 13 November 2020.

Again, the recent discovery of oil and the exploration have attracted more oil tankers into the shores of Ghana. Despite these developments in the maritime sector in Ghana, the ship recycling industry in Ghana is still an emerging issue and hence not as active as the world leading ship recycling countries. However, in recent times there has been an upsurge in the number of steel companies in Ghana especially within the Tema industrial area strategically closer to the coastal zones. This has led to the increase in the demand of the raw materials that these steel company need that is the scrap metals from ships.⁷⁷ Because of this potential, Ghana will need a legal regime for regulating the activities of ship recycling.

Although ship recycling or ship breaking is not very vibrant in Ghana compared to other states, the few scrapping which are carried out are done without any recourse to safety standard because there is no existing law regulating ship breaking in Ghana. The practice has been that, ship breaking contractors are issued with permits and licensed by the Ghana Maritime Authority before the commencement of the ship breaking. In addition, the GPHA issues permit through its safety department. There are no properly documented safety regulations for the industry. This raises the associated risks in the ship recycling industry that is fast emerging in Ghana. Currently, the laws that are supposed to be regulating the ship recycling industry are:

- Ghana Shipping Act 2003 (Art 645);
- Ghana Maritime Pollution Act (Act 932);
- Environmental Protection Act 1994 (Act 490);
- Hazardous and Electronic Waste Control Management Act 2016 (Act 917).

None of these laws above explicitly or directly deal with the subject matter of ship recycling. The Ghana Shipping Act 645 for instance in section 364 deals only with the breaking up and removal of wrecks. The Environmental Protection Act confers such powers on EPA for the enforcement of environmental regulations and environmental protection, while the Hazardous and Electronic Waste Control Management Act 490 regulates the disposal of electronic and electrical waste,

There are no ship recycling facilities in Ghana. However, the Ghana Maritime Authority currently has a policy in place for engaging and registering companies desirous of engaging in ship recycling activities. The said companies may apply to be registered with the Authority and certificates and permits issued to such companies to engage in ship breaking businesses.

⁷⁷ Interview with Deputy Director Maritime Security, SAR Ghana Maritime Authority, 25 November 2020.

There is no legal regime for the ship recycling industry in Ghana and the need to have a law for this industry.

3.2 Importance of a Law on Ship Recycling to Ghana

Ghana underscores the importance of Safe and Environmentally Sound Recycling of ships and therefore ratified the Hong Kong Convention on 28 November 2019 by depositing the instrument of accession with the Secretary –General.⁷⁸ Even though the Convention has not entered –into- force, some of the provisions in the regulations need to be taken into consideration in the regulation of the ship recycling activities in Ghana.

Ghana has no ship recycling facilities and the Convention has made provision in Chapter 3 regulation 15 and 16 for requirements for ship recycling facilities which need to be incorporated by Ghana as a starting point. All ship recycling activities are carried out along the beaches in the coastal areas and this causes risks to human health and safety, environmental degradation as most of the times, trees are cut to clear the grounds for recycling projects, soil erosion as a result of dragging scrapping metal on the beach soil, risk of air pollution and so on. A regulatory framework therefore for ship recycling facilities will ensure that ships are recycled at such facilities and not at the beaches and this will eventually prevent these health risk to human and environment and water pollution.

According to a World Bank report on ship breaking and recycling industry in Bangladesh and Pakistan 2010, “Although the industry is beneficial from a life-cycle assessment point of view, over the years it has gravitated towards countries with low labour cost, weak regulations on occupational safety and limited environmental enforcement. It further reports that the “global shift” in the industry to countries with comparatively weaker regulatory system is of particular concern as ship contain many hazards that can have significant detrimental effects on humans and the environment if not dealt with properly”.

Ghana is no exception to the conclusion of the 2010 World Bank report on ship breaking and recycling in Pakistan and Bangladesh. Currently, as already indicated there are no specific recycling domestic law in force. The Hong Kong Convention, even though not in force, has been ratified by Ghana. The supposedly conventions that relate to ship recycling in Ghana are International Convention for the Prevention of Pollution from Ships (MARPOL), Basel

⁷⁸ <www.cdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status-2020pdf >accessed 30 November 2020.

Convention on control of Trans-boundary movements of Hazardous waste, the Bamako Convention and UNCLOS.⁷⁹

The domestic legislation on ship recycling in Ghana is not extensive. The Ghana shipping act for instance only provides that a written permission of a receiver is required for the breaking up of a vessel prior to its removal from Ghana. The Environmental Protection Agency Act 1994 (Act 490) and the Maritime Pollution Act 2016 (Act 932) regulates the protection of the environment from various forms of pollution and the Hazardous and Electronic Waste Control and Management Act 2016 (Act 917) regulates the control, management and disposal of hazardous waste, electrical and electronic waste. Against the backdrop therefore, there is the need to have in place a specific municipal law dealing with ship recycling in Ghana.⁸⁰

The ship breaking industry is a source of employment creating both direct and indirect jobs. Unfortunately Ghana has a high unemployment rate, as at the year 2020, the unemployment rate in Ghana is approximately 4.51% of the total labor force⁸¹. The statistics shows the youth unemployment rate in Ghana from 1999 and 2020 was at 9.46%. The youth are the most required work force for the ship breaking industry. There is therefore the need to regulate industrial relations thus ensuring safe and sound working conditions for workers, in the ship breaking industry.⁸²

There are currently no ship recycling facilities in Ghana and the only method of ship breaking is the “beaching” method. These are often times carried out at the blind side of regulatory authorities. These activities cause serious health risks to the people living along the coastal areas as they are exposed to hazardous waste from the ship dismantling process causing environmental and health issues to both workers and the inhabitants. After cutting the ship, heavy steel from the ship are dragged along the beaches thereby affecting the soil causing erosion and environmental degradation. Most of the debris after dismantling is complete are left in the open which are a potential risk as most of debris contain toxic substances from ships. Regulation 15 of the Hong Kong Convention makes provision for the requirement for ship recycling facilities. When these provision are incorporated into the Ghana laws, it will become mandatory for every ship to be recycled at a facility as against the beaching method.

⁷⁹ Kimathi Partners Corporate Attorneys, ‘First Step Analysis-Shipping Law and Practice in Ghana’. <www.lexology.com/library/detail.aspx?g> accessed 30 November 2020.

⁸⁰ Ibid.

⁸¹< www.statista.com/statistics/808481/unemployment-rate-in-Ghana > accessed 30 November 2020.

⁸² Ibid.

The law will also provide penal provisions to serve as a deterrent to persons operating in the industry. There is the need to have regulations that would impose fines and other punishments to person who will violate the provisions in the law to serve as deterrent.

Apart from employment creation, the ship recycling industry also has an important economic benefit to the economies of the recycling countries for the recycling of steel, wood machinery and equipment that would otherwise have been imported. Noting that importation of goods has impact on the economy relative to the foreign exchange.

Regulation would ensure that proper records of companies and ship recycling facilities are kept so that the appropriate taxes are paid by such companies. This would ensure proper monitoring to ensure that Government gets the right taxes paid by the recycling companies and facilities to finance Government budgets for development.

4. THE SYSTEM OF INCORPORATION OF THE HONG KONG CONVEVTION INTO THE LAWS OF GHANA

Ghana maintains a dualist approach regarding the application of International treaties in the domestic domain. An International treaty once ratified does not automatically bind the domestic courts and the citizens until it is incorporated through an Act of Parliament.

Ship recycling is a potential source of marine pollution and therefore would require the collaboration of various agencies that perform similar functions in the protection of the marine environment from pollution. The Ghana Maritime Authority and the Environmental Protection Agency (EPA) both are mandated to ensure the protection of the marine environment from pollution. The Ghana Ports and Harbours Authority which is responsible for the management and administration of the ship and ports facilities have an important role to play in the ship recycling process. Therefore, to ensure an effective incorporation of the Convention into the domestic law of Ghana and the implementation of same, there is the need for collaboration of these institutions to avoid duplication of roles and to provide for uniform application of the law and acceptance by all the agencies when the law is passed by parliament. The draft law therefore provides under section 2 that, the Ghana Maritime Authority shall be the regulatory body and shall collaborate with the Environmental Protection Agency (EPA) and other recognised organisations.

The Maritime Administration, that is the Ghana Maritime Authority established by an Act of Parliament, the Ghana Maritime Authority Act 630 has among its object and functions, the responsibility to monitor, regulate and coordinate activities in the maritime industry and the responsibility to implement provisions of enactments on shipping. Section 2.2 (i) purposely states as part of its object and function to ensure collaboration with such other public agencies and institutions the prevention of marine source pollution, protection of the marine environment and response to marine environment incidents and to advise Government on maritime matters generally. Section 2.2 (j) provides that the Ghana Maritime Authority as the Maritime Administration shall pursue the ratification or accession and implementation of international maritime conventions in conjunction with the appropriate Ministry that is the Ministry of Transport.

The subject matter of ship-recycling involves the marine environment, health and safety issues and therefore there are existing environmental laws or Acts that confer powers on the designated Minister to make regulations regarding any matter that affects the marine environment. Section 25⁸³ of the Ghana Maritime Authority Act 2002(630) makes provisions for regulations and it states that;

The Minister may by legislative Instrument make regulations;

- (a) For the supervision of Flag state and port state responsibilities;
- (b) For the protection of the marine environment and response to marine environment incidents;
- (c) For the protection of marine source pollution; and
- (d) For generally carrying into effect the provisions of this Act.

From the following provisions that Act confers such delegated powers to the Minister to make regulations which bothers on marine environmental incidents. Ship -Recycling if not properly regulated can result in oil pollution as most of the ships dismantled are oil tankers, there the human safety and health element as ships contain hazardous substances that when people come into contact with exposes them to health problems, emission of carbon dioxide (CO₂) and other substances into the water and atmosphere can lead to global warming eventually causing sea levels to rise and so on. This calls for a legal regime to regulate the ship -recycling industry in Ghana.

⁸³ Ghana Maritime Authority Act, 2002 (Act 630).

The Ghana Shipping Act, 2003 (Act 645) confers general powers on the designated Minister to make regulations. Section 477(t)⁸⁴ of Act 645 provides that, the Minister may by legislative Instrument make Regulations generally for carrying out the provisions of this Act and may in particular make Regulations for the removal of obstructions or impediments to navigation in a port or harbour or approach to a port or harbour. It is important to note here that wrecked ships if allowed in the ports and harbours may impede or cause obstruction to navigation in the ports. It is therefore imperative to have a regime for ship recycling to that will vigorously regulate ship-recycling and to ensure that wrecks and obstacles are removed in a safe and environmentally sound manner to ensure safety of navigation in our ports.

The above existing laws as indicated though have provisions that confer certain powers on a Ministers to make regulation do not have any provision which explicitly deals with the subject matter of Ship-Recycling. Even though Ship-Recycling is a marine environmental issue, nevertheless, it is a broad subject and covers a wide spectrum of activities. Ghana has no Primary law regulating its emerging Ship –Recycling Industry and therefore instead of a subsidiary regulation, it will be appropriate to have a Primary law that will cover a broad spectrum of subject areas of Ship-Recycling such as controls of ships' hazardous materials, inventory of hazardous materials, ship recycling plan, survey and certification, ship-recycling facility plan and so on.

The Parent or Primary law like any subsidiary regulation will make provisions for stringent penal sanctions for offences or violations against the provisions in the nature of fines, imprisonment terms or both, that will serve as a deterrent and to ensure the effective implementation of the Convention. The Ship -Recycling Law will cover the broader spectrum of the industry and will make provisions that will confer powers to the designated Minister that is the Minister of Transport to make specific regulations on challenges and issues that may emerge from time to time.

5. AN OVERVIEW AND STRUCTURE OF THE DRAFT LEGISLATION

The Recycling of Ships Law comprise of Ten Chapters with Forty-One Sections.

Chapter One is the preliminary chapter and consist of one section which relate to the short title, commencement of proposed legislation and the scope of application.

⁸⁴ Ghana Shipping Act, 2003 (Act 645).

Chapter Two provides for the regulatory body and contains one section; Section 2 therefore provides that the regulatory body shall be the Ghana Maritime Authority who shall collaborate with the Environmental Protection Agency and other relevant agencies for the effective implementation of this legislation.

Chapter Three makes provision for the requirement for ships and contains six sections; Section 3 provides that, the chapter on “Requirements for ships”; Section 4 deals with control of hazardous materials; Section 5 covers surveys of ships; Section 6 deals with the issuance of certificate on inventory of hazardous materials; Section 7 provides for the validity of certificate; and Section 8 lays down the process for suspension or cancellation of the certificate on inventory of Hazardous materials.

Chapter Four will relate to Ship Recycling facility and contains five sections; Section 9 deals with the authorisation of ship recycling facility; Section 10 lays down the process for authorization of ship recycling facility; Section 11 lays down the process for suspension or cancellation of authorization of ship recycling facility; Section 12 deals with emergency preparedness and response; and Section 13 deals with workers’ safety, training and insurance.

Chapter Five relates to the process of Recycling of Ship and contains seven sections; Section 14 lays down the process for issue of Ready for Recycling Certificate and its validity. Section 15 prescribes the requirements of a ship recycling plan; Section 16 prescribes the general requirements; Section 17 provides certain obligations on the part of owner of a ship; Section 18 lays down the process for grant of permission for recycling of a ship; Section 19 deals with safe and environmentally management of hazardous materials; and Section 20 prescribes certain obligations on the part of ship recycler for taking measures for protection of environment.

Chapter Six provides for the reporting requirements and contains two sections; Section 21 provides that, statement of completion shall be issued after a ship has been recycled in accordance with the provisions of this legislation; While Section 22 provides for the submission of reports by the Authority to the Minister. There is an appeals procedure against a decision of the Authority in section 23 of Chapter seven.

Chapter Eight relates to the Powers and Functions of the Authority and contains four sections; Section 24 empowers the Authority to search and seize records; Section 25 empowers the Authority or any recognized to inspect, dismiss, exclude and detain a ship;

Section 26 deals with the power to exempt; and Section 27 empowers the Minister to specify any category of ships to which the provisions of this legislation will not apply.

For the effective implementation of this legislation, Chapter Nine provides for the offences, penalties and compensations; Therefore Section 28 prescribes the penalties for the contravention of the provisions of this legislation ; Section 29 prescribes the penalties for contravention of the provisions of this legislation, for which no specific punishment has been provided under this legislation; Section 30 prescribes the punishment for other offences; Section 31 prescribes the offences by companies ; Section 32 provides that, offence under this legislation will be non-cognizable, bailable and compoundable. Section 33 provides that, a court will take cognizance of any offence under this legislation only on a complaint by the Minister, the Authority or recognized body. Section 34 provides the amount payable by owner, master or agent; Section 35 specifies the place and jurisdiction of the Court; and Section 36 provides for payment of compensation.

The final chapter, chapter Ten provides for miscellaneous and contains five sections; Section 37 deals with acts not in derogation of any law; Section 38 deals with the power of the Minister to make rules; Section 39 further provides that, the Minister may by legislative instrument subject to approval by Parliament make regulations for carrying out the provisions of this legislation. Section 40 deals with the protection of actions taken in good faith; Section 41 relates to interpretation and provides for the interpretation of various expressions used in the proposed legislation.

THE REPUBLIC OF GHANA



INSTRUMENT OF ACCESSION

BY GHANA,

WHEREAS the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the Hong Kong Convention) was adopted by a diplomatic Conference in Hong Kong, China on 15 May 2009,

AND WHEREAS the Republic of Ghana, being a State entitled to become a party to the Hong Kong Convention by virtue of Article 16(3) thereof,

NOW THEREFORE the Government of the Republic of Ghana having considered and approved the said Hong Kong Convention, hereby formally declares its accession to same.

IN WITNESS WHEREOF I,Minister for Foreign Affairs of the Government of Ghana have signed this Instrument of Accession and affixed the official seal.

DONE at Accra, this..... day of..... two thousand and twenty-one.

SEAL

(SIGNED)

[Minister for Foreign Affairs]

THE RECYCLING OF SHIPS BILL, 2020

ARRANGEMENT OF SECTIONS

CHAPTER ONE

PRELIMINARY

SECTIONS

1. Short title, commencement and application.

CHAPTER TWO

REGULATORY AUTHORITY

2. Regulatory body and recognized Organization

CHAPTER THREE

REQUIREMENTS FOR SHIPS

3. Non-application of provisions of this Chapter
4. Controls on hazardous materials.
5. Surveys
6. Certificate on inventory of hazardous materials.
7. Validity of certificate
8. Suspension or cancellation of certificate

CHAPTER FOUR

SHIP RECYCLING FACILITY

9. Authorization of ship recycling facility.
10. Ship recycling facility management plan and procedure for authorization of ship recycling facility.
11. Suspension or cancellation of authorization.
12. Emergency preparedness and response.
13. Workers safety, training and insurance.

CHAPTER FIVE
PROCESS OF RECYCLING OF SHIPS

SECTIONS

14. Ready for recycling certificate
15. Ship recycling plan.
16. General requirements
17. Obligations on part of ship owner.
18. Procedure for grant of permission for ship recycling
19. Safe and environmentally sound management of hazardous materials.
20. Obligation on Ship Recycler to take measures for protection of environment.

CHAPTER SIX
REPORTING REQUIREMENTS

21. Statement of completion
22. Reports to Authority

CHAPTER SEVEN
APPEALS

23. Appeal against decision of Authority.

CHAPTER EIGHT
POWERS AND FUNCTIONS OF THE AUTHORITY

24. Powers to search and seize records, etc.
25. Power to inspect, dismiss, exclude or detain a ship.
26. Power to exempt
27. Act not to apply to certain ships.

CHAPTER NINE

OFFENCES, PENALTIES AND COMPENSATION

28. Penalty for contravention of provisions of Act or rules or regulations.
29. Penalty for contravention of provisions of this Act or rules or regulations for which no specific punishment is provided.
30. Punishment for other offences.
31. Offences by companies
32. Offences to be non-cognizable, bailable and compoundable.
33. Cognizance of offences
34. Amount payable by owner, master or agent.
35. Place of trial and jurisdiction of court.
36. Compensation.

CHAPTER TEN

MISCELLANEOUS

37. Act not in derogation of any other law.
38. Power to make rules.
39. Power to make regulations.
40. Protection of action taken in good faith.
41. Interpretation.

THE RECYCLING OF SHIPS BILL, 2020

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to provide for the regulation of recycling of ships by setting certain standards and laying down the statutory mechanism for enforcement of such standards and for matters connected therewith or incidental thereto.

WHEREAS, the International Maritime Organization adopted the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 which ensures that ships, when being recycled after the end of their operational lives, do not pose any unnecessary risk to the environment and to human health and safety;

AND WHEREAS, the said Convention was developed with inputs from International Maritime Organization Member States, Non-Governmental Organizations and in co-operation with the International Labour Organization and the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989;

AND WHEREAS, the Hong Kong Convention lays down the aspects relating to design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling, without compromising the safety and operational efficiency of ships and the establishment of an appropriate enforcement for recycling of ships;

AND WHEREAS, the said Convention contains the provisions which are not covered by any law in Ghana;

AND WHEREAS, the said Convention lays down the multilateral framework to be followed internationally by countries which become a party to it;

AND WHEREAS, it is considered expedient to accede to the aforesaid Convention now and to have an appropriate legislation on issues relating to the recycling of ships.

BE it enacted by Parliament in the Sixty Third Year of the Republic of Ghana as follows: -

CHAPTER ONE

PRELIMINARY

Short Title, Commencement and Scope of Application

1. (1) This Act may be called the Recycling of Ships Acts, 2020.
(2) It shall come into force on such date that Parliament duly enacts it and the President gives his assent.

(3) Unless otherwise expressly provided, the provisions of this Act shall apply to –
 - (a) any existing ship which is registered in Ghana wherever it may be;
 - (b) any new ship which is required to be registered in Ghana, wherever it may be;
 - (c) ships, other than those referred to in clauses (a) and (b), that enter a port, shipyard or off shore terminal or a place in Ghana or within the Exclusive Economic Zone or territorial waters of Ghana or any marine areas adjacent thereto over which Ghana has or may have, exclusive jurisdiction with respect to control of pollution under the provisions of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones (Delimitation) Act, 1986, or any other law for the time being in force;
 - (d) any warship, naval auxiliary or other ship owned or operated by an Administration and used on Government non-commercial service, and which is destined for recycling in a ship recycling facility operating in or within the territorial jurisdiction of Ghana; and
 - (e) ship recycling facilities operating in Ghana or within any area falling under the exclusive territorial jurisdiction of Ghana.

CHAPTER TWO

REGULATORY BODY

Regulatory Body and Recognized Agency

2. (1) The Authority shall be the regulatory body of this Act.
(2) For the purposes of subsection (1), the Ghana Maritime Authority shall collaborate with the Environmental Protection Agency and other recognized organization.

CHAPTER THREE

REQUIREMENT FOR SHIPS

Non Application of Provisions of this Chapter

3. Nothing contained in this Chapter shall apply to-
- (a) any warship, naval auxiliary or other ships owned or operated by the Government and used for Government non-commercial purpose;
 - (b) ships of less than five hundred gross tonnages:
- Provided that the Ministry may notify appropriate measures, not impairing operations or operational capabilities of such ships to ensure, as far as practicable, that such ships act in a manner consistent with the provisions of this Act.

Control of Hazardous Materials

4. (1) No ship shall install or use such prohibited hazardous materials as may be notified by the Ministry:

Provided that the Ministry may, by notification and for the reasons specified therein, exempt certain class or category of ships from the provisions of sub-section (1).

(2) Every ship shall comply with such restrictions and conditions, as may be prescribed.

Surveys

5. (1) The Authority or such person or organizations, as the Ministry may by notification authorize, shall carry out the following surveys of the ships;
- (a) an initial survey before the issue of certificate on inventory of hazardous materials, so as to verify such requirements as may be prescribed;
 - (b) a renewal survey at intervals not exceeding five years as may be prescribed;
 - (c) an additional survey either general or partial, at the request of the ship owner after a change, replacement or significant repair of the structure, equipment, systems, fittings, arrangements or material;

(d) a final survey prior to the ship being taken out of service and before the recycling of the ship so as to verify such requirements as may be prescribed; and

(e) such other surveys as may be prescribed.

(2) The survey shall be conducted and a certificate to this effect shall be issued in accordance with the provisions of this Act and the rules or regulations made thereunder.

Certificate on Inventory of Hazardous Materials

6. (1) The owner of every new ship shall make an application to the Authority for a certificate on inventory of hazardous materials for the purpose of this Act and such certificate shall be specific to each ship:

Provided that the existing ship on the date of commencement of this Act and for which the certificate on inventory of hazardous materials had not been issued, the owner of such ship shall make an application to the Authority within a period of five years from the date of commencement of this Act:

Provided further that a certificate on inventory of hazardous materials issued by any Administration shall be valid for the purpose of this Act.

(2) The terms and conditions, the format and the manner for granting the certificate on inventory of hazardous materials shall be such as may be prescribed.

(3) The certificate on inventory of hazardous materials shall be properly maintained and updated throughout the operational life of the ship, reflecting the new installations containing hazardous materials and relevant changes in the ship structure and equipment.

Explanation – For the purpose of this sub-section, the expression “new installation” includes systems, equipment, insulation or other material installed on a ship after the date of coming into force of this Act.

(4) The certificate on inventory of hazardous materials shall be endorsed by the Authority after successful completion of an additional survey conducted in accordance with clause (c) of sub-section (1) of section 5.

Explanation- For the purpose of this section, the expressions-

(i) “existing ship” means a ship which is not a new ship;

(ii) “new ship” means a ship –

(a) for which the building contract is placed on or after the date of coming into force of this Act; or

(b) other than the ship referred to in sub-section (a), the keel of which is laid or which is at a similar stage of construction after six months from the date of coming into force of this Act; or

(c) which is to be delivered after thirty months from the date of coming and which is intended to be registered in Ghana.

Validity of Certificate

7. The certificate referred to in sub-section (1) of section 6 shall be issued or renewed for such period, not exceeding five years, as may be prescribed:

Provided that where validity of certificate on inventory of hazardous material expires at a time when a ship is not in the port in which it is to be surveyed, the Administration may extend the period of validity of such certificate and this extension shall be granted only –

(a) For the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed; or

(b) in cases where it appears proper and reasonable to the Administration to do so:

Provided further that no certificate shall be extended for a period longer than three

months and a ship to which an extension is granted shall not, on its arrival on the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having the certificate renewed.

Suspension or Cancellation of Certificate

8. The certificate on inventory of hazardous materials shall be liable to be suspended or cancelled by the Authority in any of the following cases, namely: -
- (i) if the ship, *prima facie*, does not comply with the particulars of the certificate;
 - (ii) where the inventory of hazardous materials is not properly maintained and updated with such changes in the ship structure and equipment as may be prescribed;
 - (iii) in case of transfer of the ship to the flag of another State;
 - (iv) if the survey specified by the Administration is not completed within the period specified in section 5; or
 - (v) if endorsement of certificate does not disclose, -
 - (a) conduct of an additional survey as required under section 5; or
 - (b) extension of the validity of the certificate required under section 7:

Provided that no certificate under this section shall be suspended or cancelled unless the owner of the ship has been given an opportunity of being heard.

CHAPTER FOUR SHIP RECYCLING FACILITY

Authorization of Ship Recycling Facility

9. No Ship Recycler shall recycle a ship, unless the ship recycling facility is authorized as per the procedure laid down in section 10.

Ship Recycling Management Plan and Procedure for Authorization of Ship Recycling Facility

10. (1) A Ship Recycler seeking a certificate of authorization for ship recycling facility from the Authority or an organization recognized by it, shall prepare a ship recycling facility management plan as specified by the regulations and submit an application to the Authority.
- (2) Every application for authorization under sub-section (1), shall be made to the Authority in such form and manner and accompanied by such fee as may be prescribed.

(3) Every ship recycling facility engaged in recycling of ships, immediately before the commencement of this Act, shall apply for authorization within sixty days from the date of such commencement.

(4) Subject to the provisions of sub-section (3), every ship recycling facility engaged in recycling of ships, immediately before the commencement of this Act shall cease to conduct any such recycling on the expiry of six months from the date of commencement of this Act unless such ship recycling facility has applied for authorization and is so authorized or till such application is disposed of, whichever is earlier.

(5) No Ship recycling facility shall be authorized under this Act unless the Authority is satisfied that such facility maintains such equipment and standards as may be specified by the regulations.

(6) The Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules and the regulations made thereunder, grant a certificate of authorization in such format as may be specified by the regulations.

(7) If, after an enquiry and after giving to the applicant an opportunity of being heard, the Authority is satisfied that the applicant has not complied with the requirements of this Act, or the rules or regulations made thereunder, it shall, for reasons to be recorded in writing, reject the application for authorization.

(8) Every certificate of authorization for ship recycling facility shall be valid for such period not exceeding five years as may be specified by the regulations.

(9) Every certificate of authorization shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

(10) The Authority shall undertake an annual audit of every ship recycling facility to satisfy compliance with the requirements of this Act, the rules and regulations made thereunder and forward such audit report to the Minister.

Suspension and Cancellation of Authorization

11. (1) The Authority may, whenever it considers necessary, for the reasons to be recorded in writing, conduct an enquiry or inspection of a ship recycling facility and

issue a notice to the Ship Recycler to show cause as to why the authorization of this ship recycling facility should not be suspended or cancelled for the reasons mentioned in the notice.

(2) The manner of enquiry or inspection by the Authority shall be such as may be specified by the regulations.

(3) If the Authority is satisfied that there has been a breach of the provisions of this Act or the rules or the regulations made thereunder, it may, without prejudice to any criminal action that it may take against such Ship Recycler, suspend or cancel the authorization of his ship recycling facility:

Provided that no such authorization shall be suspended or cancelled without giving an opportunity of being heard in the matter to the Ship Recycler.

(4) Notwithstanding anything contained in sub-sections (1) and (2), if the Authority is of the opinion that it is necessary or expedient so to do in public interest, it may, for reasons to be recorded in writing, suspend or cancel the authorization of any ship recycling facility without issuing any notice referred to in sub-section (1).

Emergency Preparedness and Response

12. Every Ship Recycler shall maintain adequate measures for emergency preparedness and response in accordance with the provisions of the Factories, Offices and Shops Act, 1970 in his ship recycling facility.

Workers Safety, Training and Insurance

13. (1) Every Ship Recycler shall provide adequate measures for safety, health, training and welfare of workers in his ship recycling facility and for this purpose, the provisions of the Factories, Offices and Shops Act, 1970 shall apply.

(2) Every Ship Recycler shall provide an individual or comprehensive insurance coverage for the regular and temporary workers in such manner as may be prescribed.

CHAPTER FIVE
PROCESS OF RECYCLING OF SHIP

Ready for Recycling Certificate

14. (1) The owner of a ship who intends to recycle his ship shall make an application to the Authority for a ready for recycling certificate in such form, manner and accompanied by such fees as may be specified by the regulations or the Administration concerned as per the procedure determined by such Administration.

(2) A ready for recycling certificate referred to in sub-section (1) may be issued after successful completion of a survey and shall be valid for a period of three months from the date of issue:

Provided that the period of validity may be extended by the Authority for such reasons as may be specified by the regulations or the Administration concerned as per the reasons determined by such Administration.

(3) A ready for recycling certificate shall cease to be valid, if the condition of the ship does not correspond with the particulars of the certificate.

Ship Recycling Plan

15. (1) No Ship Recycler shall recycle any ship without a ship recycling plan prepared in accordance with the guidelines issued under sub-section (2) and approved by the Authority.

(2) The Authority may specify the guidelines for the preparation of a ship recycling plan for different categories of ships:

Provided that the Authority may, after hearing the Ship Recycler, refuse to approve the ship recycling plan if it has reasons to believe that the plan does not comply with the guidelines specified by the Authority.

(3) Where the Authority fails to convey its decision regarding approval of the ship recycling plan within fifteen days of its submission, the plan shall be deemed to have been approved.

General Requirement

16. (1) No ship shall be recycled without the written permission or, as the case may be, the deemed permission of the Authority obtained in such manner as may be specified by the regulations.

(2) Any ship registered in Ghana and intended to be recycled outside the territory of Ghana shall be recycled only at a ship recycling facility duly authorized by such manner as may be specified by the regulations.

Obligations on Part of Ship Owner

17. (1) The owner of a ship which is intended to be recycled within the territory of Ghana shall-

(i) give an advance intimation to the Authority and the Port about the date of arrival, in such manner as may be prescribed;

(ii) clear all port dues, if any, upon arriving at the port and submit the documents as specified in the regulations; and

(iii) keep the ship clear of cargo residues and shall minimise any remaining fuel oil and wastes on board.

(2) The owner of a tanker which is intended to be recycled within the territory of Ghana shall fulfil such conditions for safe-for-entry or safe-for-hot work or both, as specified by the regulations.

Procedure for Grant of Permission for Ship Recycling

18. (1) The Authority shall grant permission for recycling only after physical inspection of the ship and for this purpose it may requisition the services of representatives of such agencies as may be prescribed.

(2) Where the authority fails to convey its decision regarding grant of permission within fifteen days of receipt of application, the permission shall be deemed to have been granted.

(3) The authority may deny permission for recycling for reasons to be Recorded with writing after affording an opportunity of being heard to the ship owner.

(4) The ship recycler, on receipt of a copy of permission to recycle the ship, shall issue a statement of acceptance to the ship owner under intimation to the authority in such form and manner as may be specified by the regulations and thereafter the ship owner may get the ship de-registered.

Safe and Environmentally Sound Management of Hazardous Materials

19. Every Ship Recycler, shall; -

(a) ensure safe and environmentally sound removal and management of hazardous materials from a ship; and

(b) comply with such requirements related to basic infrastructure facilities including those related to environmentally safe disposal or management of wastes and hazardous materials, in such a manner as may be specified by the regulations.

Obligation on Ship Recycler to Take measures for Protection of Environment

20.(1) Every ship recycler shall –

(i) ensure that there is no damage caused to the environment in any form due to the recycling activities at the ship recycling facility; and

(ii) Take necessary measures for protection of the environment.

(2) In case of oil spill in the facility, the ship recycler shall be served a notice by the Authority to take remedial action in such manner as may be specified by the regulations.

(3) For contravention of the provisions of this section, the ship recycler shall be liable to pay such environmental damages and clean-up operation compensation in such manner as may be prescribed.

CHAPTER SIX

REPORTING REQUIREMENTS

Statement of Completion

21. When a ship is recycled in accordance with the provisions of this Act, a statement of completion containing such particulars as may be specified by the regulations shall be submitted by the ship recycler to the Authority.

Report to Authority

22. The Authority shall give report to the Minister, from time to time which shall include information comprising the list of approved facilities, list of ships which have not complied with the provision of this Act and action taken on such ships and lists of ships recycled, as may be required by the Authority.

CHAPTER SEVEN

APPEALS

Appeal against Decision of Authority

23. (1) Any person who is aggrieved by any decision made by the Authority or the authorized surveyor or recognized organization may file an appeal to the Authority within a period of thirty days from the date of receipt of such decision in such manner as may be prescribed.

Provided that in respect of matters, under any law for the time being in force for which an appellate provision exists, in such law, then the appellant shall file the appeal to the Authority specified in such law.

(2) The appeal filed under sub-section (1) shall be disposed in such manner as may be prescribed.

CHAPTER EIGHT

POWERS AND FUNCTIONS OF THE AUTHORITY

Power to Search and Seize Records

24. (1) If the Authority or any recognized organization has reason to believe that an offence under this Act has been or is being committed at any ship recycling facility, such Authority or recognized organization may subject to the rules and regulations made under this Act, enter and search at all reasonable times with such assistance, if any as such Authority or authorized person considers necessary, such ship recycling facility and examine any record, register, document, equipment or any other material object found therein and seize the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this act.

(2) The provisions of the Criminal and Other Offences (Procedure) Act 1960 relating to searches and seizures shall so far as may be, apply to every search or seizure made under this act.

Power to Inspect, Dismiss, Exclude or Detain a Ship

25. (1) The Authority or administration or any surveyor authorized by it, may inspect ship at a reasonable time, while at any port or within Ghanaian waters.

Provided that any such inspection shall be only for the purpose of verifying that there is on board either a certificate on inventory of hazardous materials or a ready for recycling certificate.

(2) The Authority may dismiss, exclude or detain the ship from its ports or within Ghanaian waters in case of; -

(a) Failure to carry a valid certificate on inventory of hazardous materials or a valid ready for recycling certificate or both, as applicable; or

(b) Non-compliance with the control measures for hazardous materials notified by the Ministry.

(3) A ship detained under sub-section (2) shall remain under detention till such time until the non-compliance is rectified or till such time until permission is granted by the Authority

for such detained ship to proceed to any appropriate repair yard or port, without danger to the ship, environment or persons on-board.

4. Any commissioned officer of the Ghana Navy or any port officer, pilot, harbour master, may detain the ship, the detention of which is authorized or ordered to be detained under this Act.

Power to Exempt

26. (1) Notwithstanding anything contained in this Act, the Minister may, by order in writing and upon such conditions if any as it may think fit to impose, exempt any vessel or any class thereof, ship recycling facility or ship Recycler from any specified requirement contained in or prescribed in pursuance of this Act or dispense with the observance of any such requirement, if it is satisfied that the requirement has been substantially complied with or that compliance with the requirement is or ought to be dispensed within the circumstances of the case.

(2) Where an exemption granted under sub-section (1) is subject to any condition, a breach of any of those conditions shall, without prejudice to any other remedy be deemed to be an offence under this Act.

Act not to apply to certain Ships

27. The provisions of this Act shall not apply to such category of Ghanaian ships as the Ministry may from time to time by notification specify.

Provided that such ships shall be required to act in such manner as may be prescribed.

CHAPTER NINE

OFFENCES, PENALTIES AND COMPENSATIONS

Penalty for Contravention of Provision of Act or Rules or Regulations

28. (1) Whoever installs or uses any prohibited hazardous material in a ship in contravention of the provision of this Act or rules or regulations made thereunder shall be liable on summary conviction to a fine of not less than three thousand penalty units or to a term of imprisonment of not more than three months or to both;

(2) Whoever contravenes the provision of section 10 shall be punishable with imprisonment for a term which may extend one year or with fine which may extend to four thousand penalty units or with both;

(3) Whoever contravenes the provision of sub-section (i) of section 15 shall be punishable for a term which may extend to one year or with fine which may extend to four thousand penalty units or with both.

(4) Whoever contravenes the provision of sub-section (i) of section 16 shall be punishable for a term which may extend to one year or with fine which may extend to four thousand penalty units or with both.

(5) Whoever fails to ensure safe and environmentally sound removal and management of any hazardous material from a ship in accordance with the regulations shall be punishable for a term which may extend to one year or with fine which may extend to four thousand penalty units or with both.

(6) Whoever fails to respond to the notice issued for oil spill under sub-section (2) of section 20 shall be punishable; -

(i) With a fine which may extend to one thousand penalty units in case of non-response within twelve hours of issuance of first notice;

(ii) With a fine which may extend to one thousand five hundred penalty units in case of non-response within twenty – four hours of issuance of second notice;

(iii) With an imprisonment which may extend to three months and with a fine which may extend to three thousand penalty units in case of non-response beyond twenty-four hours of issue of third notice.

Penalty for contravention of provisions of this Act or rules or regulations for which no specific punishment is provided

29. Whoever contravenes any of the provisions of this Act or any rules and regulations made hereunder for which no specific punishment has been provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine,

which may extend to three thousand penalty units or with both and in the case of a continuing contravention, with an additional fine which may extend to five thousand penalty units for every day during which such contravention continues after the conviction for the first such contravention .

Punishment for other Offences

30. (1) If any ship after detention or after service of any notice or order for such detention, proceeds to sea before it is released by the Authority the owner or master of the ship shall be guilty of an offence under this Act.

(2) Whoever restrains or detains or forcibly takes to sea, any person authorized under this Act to detain or survey the ship, on the execution of his duty, the owner, master or agent of such ship shall each be liable to pay all expenses of, and incidental to such person being so taken to sea and shall also be guilty of an offence under this Act.

Offences by Companies

31. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offense

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offense and shall be liable to be proceeded against and punished accordingly.

Explanation – for the purpose of this section

- (a) “Company” means any, body corporate and includes a co-operative society, firm or other association of individuals; and
- (b) “director” means a whole time director in the company and in relation to a firm means a partner of the firm.

Offences to be non-cognizable, bailable and compoundable

32. Notwithstanding anything contained in the Criminal and Other Offences Procedure Act, 1960, every offence under this Act shall be non-cognizable, bailable and compoundable.

Cognizance of Offences

33. No Court shall take cognizance of an offence under this Act except on a complaint made by; –

- (a) the Minister;
- (b) The Authority or an officer authorized on its behalf; or
- (c) Any recognized organization.

Amount Payable by owner, master, or agent

34. When an owner or master or agent is convicted to an offence under sub-section (2) of section 30 the amount payable on account of expenses by such owner or master or agent shall be determined and recovered in such manner as may be prescribed.

Place of trial and Jurisdiction of Court

35. Any person committing any offence under this Act or any rules made hereunder may be tried for such offences in any place in which he may be found or in any Court which the Minister may, by notification, direct in this behalf, or in any Court in which he might be tried under any other law for time being in force.

Compensation

36. (1) Where a ship is unduly detained or delayed as a result of an inspection or investigation without any reasonable cause, then, such ship shall be entitled to compensation for any loss of damage suffered thereby.

(2) The rate of compensation referred to in sub-section (1), the method of calculation and the manner of payment of such compensation shall be such as may be prescribed.

(3) For the purpose of adjudging compensation under this section, the Minister may, by notification, nominate an officer of the Ministry not below the rank of a Director of the Ministry to be an adjudicating Officer for holding an inquiry in the prescribed manner, after giving any person concerned an opportunity of being heard.

CHAPTER TEN MISCELLANEOUS

Act not in derogation of any other law

37. The provision of this Act shall be in addition to and not in derogation of any other law for the time being in force.

Power to make Rules

38. (1) The Minister may make rules to carry out the provision of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- a. the restrictions and conditions imposed on installation on use of any hazardous material, to be complied by every ship under sub-section (2) of section 4;
- b. the requirements to be verified for the survey of ships under sub-section (a), (b) and (d) of sub-section (1) of section 5;
- c. the other requirements to be verified for the survey of ships under sub-section (e) of sub-section (1) of section 5;
- d. the terms and conditions, validity the format and manner for granting the certificate on inventory of hazardous material under sub-section (2) of section 6 and section 7;
- e. the changes in ship structures and equipment under sub-section (ii) of section 8;
- f. the form, fees and the manner of making the application for authorization of ship recycling facility under sub-section (2) of section 1;
- g. The manner, period and fees for renewal of certificate of authorization under sub-section (9) of section 10;

- h. The manner of providing individual or comprehensive insurance coverage for the regular and temporary workers under sub-section (2) of section 13;
- i. The manner of advance intimation about the arrival of ship under sub-section (1) of section 17;
- j. Requisition of the services of representatives of agencies for grant of permission under sub-section (1) of section 18;
- k. The liability of the ship recycler for environmental damages under sub-section (3) of section 20;
- l. The manner of filing an appeal against the orders of the Authority and the manner of disposal of such appeal under section 23;
- m. The manner in which the ships are required to act for non-application of the provisions of the act under the proviso to section 27;
- n. The manner of determination and recovery of amount payable under section 34;
- o. The rate of compensation, method of calculation and the manner of compensation entitled by a ship under sub-section (2) section 36;
- p. The manner of holding an inquiry for the purpose of payment of compensation under sub-section (3) of section 36; and
- q. Any other matter which is to be or may be prescribed or in respect of which provision is to be made by rules.

Power to make Regulations

39. (1) The Minister may by legislative instrument in consultation with the board of the Authority make Regulations for the effective implementation of this Act.

(2) Without prejudice to subsection (1), Regulations may be made prescribing matters relating to; -

- a. The requirements relating to ship recycling facility under section 9;
- b. The manner of preparation of ship recycling facility management plan under sub-section (1) of section 10;
- c. The equipment and other standards to be maintained by the ship recycler under sub-section (1) of section 10;
- d. The form in which a certificate of authorization shall be issued under sub-section (6) of section 10;

- e. The period of validity of certificate of authorization for ship recycling facility under sub-section (8) of section 10;
- f. The manner of enquiry or inspection by the Authority under sub-section (2) of section 10;
- g. The manner of making an application to the Authority for a ready for recycling certificate under sub section (1) of section 14;
- h. The manner and format for issuing of the ready for recycling certificate under sub-section (2) of section 14;
- i. The manner of obtaining the written permission of the Authority under sub-section (1) of section 16;
- j. The Authority to authorize the ship recycling facility under sub-section (2) of section 16;
- k. The conditions for safe –for-entry or safe-for-hot work or both under sub-section (2) of section 17;
- l. The form and manner of issue of statement of acceptance by the ship recycler under sub-section (4) of section 18;
- m. The requirements relating to removal and management of hazardous materials and basic infrastructure to be complied with by the ship recycler under sub-section (b) of section 19;
- n. The manner of serving of notice by the Authority of a ship Recycler in case of oil spill under sub-section (2) of section 20;
- o. The manner of submission of statement of completion by the ship recycler under section 23; and
- p. Any other matter which is required to be or may be, specified by regulations.

Protection of actions taken in good faith

40. No suit, prosecution or other legal proceeding shall lie against the Authority or the Minister or any authorized person or recognized organization to act in this behalf for anything done in good faith or intended to be done in pursuance of the provision of this act.

Interpretation

41.(1) In this Act, unless the context otherwise requires, -

“**Administration**” means the Government of the country whose flag the ship is entitled to fly, or under whose authority it is operating;

“**Authority**” means the Ghana Maritime Authority established under section 1 of the Ghana Maritime Authority Act 2002 (Act 630);

“**Authorized person**” means any person required to perform any official duties for purposes of giving effect to this Act;

“**Certificate of authorization of ship recycling of facility**” means the certificate referred to in sub-section (6) of section 10;

“**Certificate on inventory of hazardous materials**” means the certificate referred to in section 6;

“**Hazardous material**” means any material or substance, which is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment;

“**Notification**” means a notification published in the Official Gazette and the expressions “notify” or “notified” shall be constructed accordingly;

“**Prescribed**” means prescribed by rules made under this Act;

“**Ready for recycling certificate**” means the certificate referred to in section 14;

“**Recognized organization**” means an organization duly appointed by the Authority to carry out surveys and inspections on behalf of the Authority;

“**Regulation**” means the regulations made by the Authority under this Act;

“**Ship**” means a vessel and floating structure of any type whatsoever operating or having operated in the marine environment and includes submersibles, floating craft, floating platforms, self-elevating platforms, the floating storage units, and the like;

“**Ship owner**” means –

- (i) a person or an association of persons or body of individuals or a company registered as the owner of the ship;
- (ii) any organization or a person such as the Manager or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the owner of the ship;
- (iii) a company, which is registered as operator and is operating a ship owned by the Government; or

(iv) a person or an association of persons or company owning the ship for a limited period pending who has assumed the responsibility for operation of the ship recycling facility and who has agreed to take over all duties and responsibilities imposed by or under this Act;

“Ship Recycler” means the owner of the ship recycling facility or any other organization or person who has assumed the responsibility for operation of the ship recycling facility and who has agreed to take over all duties and responsibilities imposed by or under this Act;

“Ship recycling” means the activity of dismantling of a ship at a ship recycling facility in order to recover components and materials for reprocessing and reuse, while taking care of hazardous and other materials and includes associated operations such as storage, treatment of components and materials on site, but not their further processing or disposal in separate facilities.

“Ship recycling facility” means a defined area that is a site, yard or facility used for the recycling of ships and meets such requirements as may be specified by the regulations.

“Ship recycling plan” means a plan specific to a ship developed by the ship recycling facility to recycle such a ship in safe and environmentally sound manner;

“Statement of acceptance” means a statement of acceptance referred to in sub-section (4) of section 18;

“Statement of completion” means a statement of completion referred to in section 21;

“Surveyor” means a Surveyor as defined under section 481 of the Merchant Shipping Act, 2003 (Act 645) or any other person or body of persons as may be notified by the Authority;

“Worker” means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any ship recycling, or in cleaning any part of the machinery or premises used for ship recycling, or in any other kind of work incidental to, or connected with, the ship recycling, or the subject of the ship recycling but does not include any member of the armed forces of the Union.