THE SHIPPING LAW REVIEW

EIGHTH EDITION

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

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CONTENTS

PREFACE

The aim of the eighth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year. This year, we welcome Costa, Albino & Lasalvia Sociedade de Advogados as the new contributors of the chapter focusing on maritime law within Brazil. There are also two new jurisdictions in this edition – Israel (Harris & Co) and Mexico (Adame Gonzalez De Castilla Besil) – and Portugal makes a return, with Andrade Dias & Associados as the new contributors.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2019, the total value of annual world shipping

trade had reached more than US$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), swift recovery is anticipated. The pandemic truly brought to the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

Finally, mention should be made of the environmental regulation of the shipping industry, which has been gathering pace this year. At the International Maritime Organization's (IMO) Marine Environment Protection Committee, 72nd session (MEPC 72) in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement will now lead to some of the most significant regulatory changes in the industry in recent years, as well as much greater investment in the development of low-carbon and zero-carbon dioxide fuels. The IMO's agreed target is intended to pave the way for phasing out carbon emissions from the sector entirely. The IMO Initial Strategy, and the stricter sulphur limit of 0.5 per cent mass/mass introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies. Decarbonisation of the shipping industry is, and will remain, the most important and significant environmental challenge facing the industry in the coming years. Unprecedented investment and international cooperation will be required if the industry is to meet the IMO's targets on carbon emissions. The 'Shipping and the Environment' chapter delves further into these developments.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon
HFW
London
May 2021

Chapter 31

NIGERIA

Adedoyin Afun[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Nigeria continues to be the pivot of West Africa's shipping activities, owing to its strategic location on the coast. With an extensive natural maritime endowment base incorporating a coastline of more than 800 kilometres and an exclusive economic zone of more than 200 nautical miles,[2] the Nigerian 'blue economy'[3] is being harnessed, despite the decline in oil and gas revenues, as one of the key drivers of the nation's economic development.[4]

Nigeria is also blessed with a vast inland waterways resource estimated at nearly 3,000 kilometres and comprising more than 50 rivers, both large and small, that can support a vibrant intra-regional trade.[5] The country's population inspires large-scale importation of raw materials, luxury goods and other commodities, and large quantities of petroleum products owing to the lack of sufficient refining capacity in Nigeria.[6] Crude oil and natural gas continue to be exported in large quantities. Consequently, demand in shipping services has been on the increase, and the maritime industry, which plays an important part in the exploitation and distribution of Nigeria's oil and gas, takes second place as a contributor to the nation's economy after petroleum.

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1 Adedoyin Afun is a partner at Bloomfield LP.

2 By a combined reading of Sections 1 and 2 of the Exclusive Economic Zone Act 1978, Cap. E17 Laws of the Federation of Nigeria [LFN] 2004, the sovereign and exclusive rights in the Exclusive Economic Zone, which includes the sovereign and exclusive rights to the exploration and exploitation of the natural resources of the seabed, subsoil and superjacent waters of the area extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured is vested in the Federal Republic of Nigeria.

3 Andrew Hudson, 'Blue Economy: a sustainable ocean economic paradigm', United Nations Development Programme, (26 November 2018), www.undp.org/content/undp/en/home/blog/2018/blue-economy-sustainable-ocean-economic-paradigm.html (last accessed 10 April 2021); The Commonwealth, 'Blue Economy', http://thecommonwealth.org/blue-economy (last accessed 10 April 2021).

4 Wumi Iledare, 'Oil and the Future of Nigeria: Perspectives on Challenges and Strategic Actions for Sustainable Economic Growth and Development' (2007), *International Association for Energy Economics*, pp. 21 to 25; PwC, 'Nigeria: Looking beyond oil' (March 2016), Lagos Chamber of Commerce and Industry, pp. 1 to 32.

5 Eromosele Abiodun, 'Rescuing the Maritime Sector', *THISDAYLIVE* (2018), www.thisdaylive.com/index.php/2018/03/09/rescuing-the-maritime-sector/ (last accessed 10 April 2021).

6 A H Isa, S Hamisu, H S Lamin, M Z Ya'u and J S Olayande, 'The perspective of Nigeria's projected demand for petroleum products' (2013) 4(7) *Journal of Petroleum and Gas Engineering*, pp. 184 to 187.

Commercial shipping activities largely revolve around six active ports[7] and six petroleum export terminals.[8] The 2006 port reforms brought about a remarkable increase in the volume of cargo.[9] Consequently, the infrastructure and all other paraphernalia suitable for a standard port have been put in place, and continue to be upgraded to meet the demands brought about by the increase in cargo volume.

A decline in the total number of vessels berthed at Nigerian ports has been evident for a few years: 5,014 vessels in 2015, 4,373 vessels in 2016, 4,292 vessels in 2017, 4,009 vessels in 2018 and 1,045 vessels in the first three months of 2019.[10] In 2020, there was a further decline, largely as a result of the covid-19 pandemic.[11] In the first quarter of 2020, when the pandemic was in its infancy, the President of the Federal Republic of Nigeria issued docking restriction directives, which provided that any cargo ship that had been at sea for more than 14 days would not be allowed to dock in Nigerian ports until after the crew of the vessel had been tested by the port health authorities and confirmed covid-19-free.[12]

In 2020, Nigeria's total merchandise trade was valued at 32,420.7 billion naira (10.3 per cent less than the value recorded in 2019). The value of total imports in 2020 stood at 19,898 billion naira (17.3 per cent higher than in 2019), while total exports were valued at 12,522.7 billion naira (34.8 per cent less than in 2019). The annual merchandise trade deficit recorded for 2020 was 7,375.3 billion naira.[13]

Compared with other oil-producing nations, vessel tonnage is low, but in the three years preceding the covid-19 pandemic and pursuant to the implementation of several pieces of domestic legislation on shipping development, Nigeria-flagged vessels (largely oil tankers, oil rigs and liftboats, offshore support vessels, floating storage and offloading vessels, and floating production storage and offloading (FPSO) vessels) enjoyed significant growth, from 370 vessels with a total of almost 420,000 metric tonnes in 2016 (with a dip in 2017 to 307 registered vessels with a total of 415,638.03 metric tonnes)[14] to approximately 595 vessels and a total of approximately 711,987.95 metric tonnes in 2018, thanks to the registration of high-capacity index vessels such as the *Egina* FPSO and a crude oil tanker.[15] Nigerian vessel tonnage did not attain the expected level in 2020 because of the pandemic.

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7 In Lagos State – Apapa Port and Tin Can Island Port; in Rivers State – Port Harcourt Port and Onne Port; in Delta State and Cross River State – Warri Port and Calabar Port, respectively. Three other ports are under construction: Badagry, Lekki and Ibom.

8 Nigeria Business Info, 'The Nigerian Crude Oil & Gas Industry', https://web.archive.org/web/20060213013744; www.nigeriabusinessinfo.com/nigerian-oil.htm (last accessed 10 April 2021).

9 James Leigland and Gylfi Palsson, 'Port reform in Nigeria' , Grid Lines, World Bank (March 2007), www.infradev.org/Infradev/assets/10/documents/Gridline%20-%20Port%20Reform%20in%20Nigeria.pdf (last accessed 10 April 2021).

10 Source: Nigerian Port Authority – Number and Gross Registered Tonnage (GRT) of Vessels that entered all Nigerian Ports: 2007-2019, https://nigerianports.gov.ng/ports-statistics/ (last accessed 10 April 2021).

11 Other factors include the continued increase in the exchange rate of international currencies against the Nigerian naira and continued reduction in service boat operation because of the decline in international crude oil prices.

12 http://bloomfield-law.com/Publications/BLP_Briefing_COVID_19_Nigerian_Ports_and_Waters_remain_open_for_Business_06042020.pdf (last accessed 10 April 2021)

13 See https://www.proshareng.com/news/NIGERIA%20ECONOMY/Total-Trade-Higher-By-8.9Percent-in-Q4-2020--Lower-By-10.3Percent-in-FY-2020/56183 (last accessed 5 May 2021).

14 Nigeria's Maritime Industry Forecast: 2018–2019 as presented by the Nigerian Maritime Administration and Safety Agency [NIMASA].

15 Nigeria's Maritime Industry Forecast: 2019–2020 as presented by the NIMASA.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Although there has been a flurry of maritime legislation in Nigeria, the principal body of substantive shipping laws is contained in the Merchant Shipping Act 2007 (the MSA 2007), the Nigerian Maritime Administration and Safety Agency Act 2007 (the NIMASA Act), the Coastal and Inland Shipping (Cabotage) Act No. 5, 2003 (the Cabotage Act) and a raft of regulations (a number of which put into force, or are used to apply, international instruments on the construction and safety of ships, navigation, pollution and crew matters) and guidelines published pursuant to the foregoing legislation.

In addition, discrete legislation governs areas such as ports, carriage of goods by sea, wreck and salvage, pollution, the environment and marine resources. This legislation includes the Nigeria Ports Authority Act 2004,[16] the Carriage of Goods by Sea Act[17] and the United Nations Convention on Carriage of Goods by Sea (Ratification and Enforcement) Act 2005.

Generally, the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the Nigerian Constitution),[18] the Admiralty Jurisdiction Act (AJA)[19] and the Admiralty Jurisdiction Procedure Rules 2011 (AJPR) provide the framework for admiralty jurisdiction and court practice.

III FORUM AND JURISDICTION

i Courts

Pursuant to Section 251(1)(g) of the Constitution and Sections 1 and 2 of the AJA, the Federal High Court has exclusive jurisdiction over shipping and admiralty matters.

Notwithstanding the foregoing, Section 254(c)(1) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 conferred exclusive jurisdiction over all labour-related matters on the National Industrial Court, to the exclusion of all other courts of coordinate jurisdiction (i.e., the high court of each of the 36 states and the Federal Capital Territory and the Federal High Court). As such, the National Industrial Court has exclusive jurisdiction to deal with all shipping-related labour claims, such as unpaid wages, which the AJA defines as a maritime lien. However, the interpretation of this law has lead to different decisions by the courts. For example, in *Amarjeet Singh Bains & 6 Ors v. The Vessel MT SAM PURPOSE (Ex MT TAPTI)*,[20] a dispute concerning unpaid crew wages, the Federal High Court held that it had exclusive jurisdiction over this matter as it was a labour-related matter rooted in admiralty and as such the admiralty jurisdiction of the Federal High Court was properly activated. However, the Court of Appeal held that the National Industrial Court is the court with statutory jurisdiction over matters concerning unpaid crew wages despite not having the jurisdiction to enforce a maritime lien.[21]

16 Cap. N126, LFN 2004.

17 Cap. C2, LFN 2004.

18 Cap. C23, LFN 2004.

19 Cap. A5 LFN 2004.

20 *Suit No. FHC/L/CS/1365/2017 (Coram Faji J.) Unreported.*

21 *In Suit No. CA-LAG-VC-419-2020 - The Vessel MT SAM PURPOSE (EX. TAPTI) & Anor v. Amarjeet Singh Bains & 6 Ors (Unreported).*

Notably, Section 20 of the AJA in Paragraphs (a) to (h) stipulates that the Federal High Court can exercise jurisdiction over admiralty matters, notwithstanding any exclusive jurisdictional clauses contained in any agreement on such a matter, where the following circumstances exist:

a the place of performance, execution, delivery, act or default is or takes place in Nigeria;
b any of the parties resides or has resided in Nigeria;
c the payment under the agreement (implied or express) is made or is to be made in Nigeria;
d the plaintiff submits to the jurisdiction of the Nigerian court or the *rem* is within Nigerian jurisdiction;
e the government of a state of the federation is involved and the government or state submits to the jurisdiction of the court;
f some financial consideration is to be derived from the contract in Nigeria; or
g in the opinion of the court, the cause, matter or action is one that should be adjudicated in Nigeria.

Despite the foregoing, recent interpretations of Section 20 of the AJA suggest that any jurisdictional clause that seeks to oust a Nigerian court's jurisdiction in favour of a foreign court (and not an arbitration clause (Nigerian or foreign)) shall be considered null and void. However, only the jurisdictional aspects of the clause are affected, not the entire agreement. Section 10 of the AJA[22] clearly empowers the Federal High Court to recognise and enforce arbitration clauses in admiralty agreements.[23]

Furthermore, Section 18 of the AJA mandates that proceedings in a maritime claim or a claim on a maritime lien or other charge are to be commenced within any stipulated limitation period provided in the contract in respect of the claim. However, where there is no stipulated limitation period in an agreement or law, the proceedings must be commenced within three years of the cause of action arising.

Meanwhile, the MSA 2007 prohibits the commencement of any action for payment by a salvor more than two years after completion of salvage.[24] Collision claims can also not be commenced more than two years after accrual of the cause of action.

ii Arbitration and ADR

In general, commercial arbitration in Nigeria is governed by the Arbitration and Conciliation Act (ACA).[25] It primarily grants parties the freedom through arbitration agreements to determine the arbitral procedure to govern their dispute resolution. When parties do not

22 Section 10 of the Admiralty Jurisdiction Act [AJA] codifies Nigeria's obligations under Article II(1) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which provides that Nigeria and the other contracting states shall recognise an agreement in writing under which parties undertake to submit their disputes to arbitration. Article II(3) of the New York Convention provides that: 'The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.'

23 *Onward Enterprises Limited v. MV 'Matrix' & 2 Ors* (2010) 2 NWLR (Pt. 1179) 530 and *The Owners of The MV Lupex v. Nigerian Overseas Chartering and Shipping Limited* (2003) FWLR (Pt 270) 1428.

24 This time may, however, be extended by a court if the salvor has been unable to arrest the salvaged vessel.

25 Cap. A18, LFN 2004.

agree on the procedure to govern the dispute, the arbitrator will apply the procedural rules set out in the first schedule to the Arbitration Act, which are based on the UNCITRAL Arbitration Rules.[26] There are some other very active arbitral institutional bodies in Nigeria, with their own procedures, that entertain commercial disputes, including maritime and shipping disputes. Notable in this regard are the Chartered Institute of Arbitrators UK, Nigeria branch, the Lagos Court of Arbitration (which was established under the Lagos Court of Arbitration Law, No. 17, 2009) and the Lagos Regional Centre for International Arbitration (the formation of which is backed by federal legislation).[27]

Nigeria does not have any specific maritime arbitration procedure legislation. However, recourse is often made either to the Maritime Arbitrators Association of Nigeria (MAAN), a non-governmental body comprising maritime and commercial law practitioners, master mariners, surveyors, insurance brokers and other maritime practitioners, or to experienced arbitrators, who are committed to providing specialist arbitration services for the settlement of shipping disputes. The MAAN has developed arbitration rules for large-scale (US$15,000 and above) and small-scale (below US$15,000) maritime claims.

There has been a progressive effort to institutionalise the use of alternative dispute resolution (ADR), especially mediation, into the procedure of the judicial process in Nigeria. The first and most advanced of these is the Lagos Multi Door Court (LMDC). If parties fail to resolve their dispute through ADR, then the court would proceed to trial of the action. Matters resolved by mediation at the LMDC are entered as consent judgments of the Lagos State High Court and are enforceable.

iii Enforcement of foreign judgments and arbitral awards

The enforcement of foreign judgments in Nigeria is regulated by the Reciprocal Enforcement of Foreign Judgments Ordinance (REJ)[28] and the Foreign Judgment (Reciprocal Enforcement) Act (FJA).[29]

There has been intense intellectual polemics among text writers, commentators and legal practitioners as to which of these two statutes regulates the enforcement of foreign judgments in Nigeria. While the debate continued, there remained one common factor, namely the registration and enforcement of foreign judgments (including maritime judgments) be based on reciprocity.

The FJA provides for a one-year limitation period for the registration and enforcement of foreign judgments, and the REJ has a six-year limitation period.

The REJ, owing to its English origin, lists a number of Commonwealth countries in favour of which reciprocal status was granted for judgments of their superior courts. The FJA, on the other hand, empowers the Minister of Justice to make orders in respect of countries that the Minister is assured would grant reciprocal enforcement to Nigerian judgments before the provisions of the FJA would be applicable to the judgment of such countries. However, no such order has been made to date by the Minister. As such, the FJA remains inoperative, even though it was enacted well after the REJ. The fact that the FJA did not repeal the REJ further compounds the legal quagmire.

26 Arbitration and Conciliation Act, Section 15.

27 The Regional Centre for International Commercial Arbitration Act, Cap. R5, LFN 2004.

28 Cap. 175, Laws of the Federation of Nigeria and Lagos, 1958 (this Ordinance was enacted in 1922 as LN 8, 1922).

29 Originally enacted in 1960. Cited as Chapter C35, Laws of the Federation 2004.

Although there have been several court decisions suggesting that registration and enforcement of judgment should follow the provisions of the FJA, the Supreme Court has been consistent that the REJ is the applicable law, for the time being, for the registration and enforcement of judgments from the United Kingdom and other named Commonwealth countries (pursuant to Section 5) until the relevant orders are made by the Minister of Justice pursuant to the FJA.

In 2018, the foregoing was echoed in *Bronwen Energy Trading Ltd v. Crescent Africa (Ghana) Ltd*,[30] in which the Supreme Court relied on earlier decisions.[31]

The number of foreign judgments enforced has been low, not only as a result of the restricted number of countries that have been recognised by law to reciprocate enforcement of Nigerian judgment, but also because of the conditions contained in the REJ that may prevent a duly obtained judgment in any jurisdiction from being registered and enforced in Nigeria.[32]

Order 52 Rules 16 and 17 of the Federal High Court (Civil Procedure Rules) 2019 also govern the recognition and enforcement of arbitral awards at the Federal High Court, which has exclusive jurisdiction over admiralty matters.

Nigeria is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which was included as a schedule to the ACA. An arbitration award may be enforced pursuant to either Section 51 of the ACA (which allows recognition and enforcement of an award from any country) or Section 54 (which applies to recognition and enforcement of awards between Nigeria and any other contracting state to the New York Convention), pursuant to conditions stipulated thereunder.

The ACA does not specify a limitation period for the recognition and enforcement of an award. As such the question as to when time begins to run for the purpose of commencing the enforcement of an arbitral award has always been the subject of much debate. The foregoing stems from the conception of enforcement proceedings as an action instituted for the assertion of a right. If it is considered as such, then the six-year limitation period contained in the Limitation Act 1966 and the limitation laws of the different states of Nigeria (and the Federal Capital Territory, Abuja) for the institution of an action in a Nigerian court is therefore applicable.

In *Murmansk State Steamship Line v. Kano Oil Millers Limited*,[33] *City Engineering Nigeria Limited v. Federal Housing Authority*[34] and *Tulip (Nig) Ltd v. Noleggioe Transport Maritime SAS*,[35] the Supreme Court decided that the period of limitation runs from the date of the accrual of the original cause of action in the arbitral agreement, being the date on which the claimant acquires the right to institute an arbitral proceeding, and not from the date of the arbitral award.

The decision of the Supreme Court in *City Engineering v. Federal Housing Authority* is most unsatisfactory for the law does not command impossibility. Time cannot start to run

30 (2018) LPELR-43796(CA).

31 See *Macaulay v. RZB Austria* (2003) ALL NLR 393, *Marine & General Assurance Company Plc v. Overseas Union Insurance* (2006) 4 NWLR (Pt 971) 622 and *Grosvenor Casinos Ltd v. Halaoui* (2009) 10 NWLR (Pt 1149) 309.

32 Some of the other conditions include that the original court must have jurisdiction that the judgment was not obtained by fraud, that the judgment is not subject to appeal in another country or that the judgment is not contrary to public policy in Nigeria.

33 (1974) All NLR 89.

34 (1997) 9 NWLR (Pt 520) 224.

35 (2011) 4 NWLR (Pt 1237) 254.

before the making of an award. Second, an arbitration agreement constitutes two distinct contracts, namely the contract to submit a dispute to arbitration when one does occur, and second, the contract or agreement to comply with the terms of the award when made. It is therefore expected that the English position,[36] which the Supreme Court was urged to adopt in *City Engineering*, would be followed, namely that the making of an arbitral award gives rise to a new cause of action as soon as the unsuccessful party fails to comply with the terms of the award, and not from the date of accrual of the original cause of action giving rise to the submission.

Notwithstanding the preceding paragraph, an applicant wishing to enforce an arbitral award in Nigeria must also ensure that the arbitration proceedings are swiftly concluded so as not to be caught up by the applicable limitation period. As an alternative, as advised by Taslim Olawale Elias, then Chief Justice of Nigeria, in the *Murmansk* case, it may be prudent for an aggrieved party to institute an action in court following a breach of the contract containing the arbitration agreement. Upon an application by the other party, the matter may be stayed pending the outcome of arbitration.

IV SHIPPING CONTRACTS

i Shipbuilding

Nigeria does not undertake a significant amount of shipbuilding. Most new vessels are ordered from abroad but a few Nigerian shipyards build or assemble craft (barges, tugboats and riverboats) below 5,000 tonnes for use on inland waterways, in cabotage operations and for the lucrative support services to the oil and gas industry. The size and sophistication of the products of these shipyards are growing steadily and the Nigerian Maritime Administration and Safety Agency (NIMASA), in line with its statutory responsibility to facilitate the growth of local capacity in the construction of ships and other maritime infrastructure, is taking strategic steps towards shipbuilding, with much expectation hinged on the Ajaokuta steel mill in Kogi State and Aluminium Smelter Company in Ikot-Abasi, Akwa Ibom State, coming on stream.[37]

In January 2020, NIMASA announced the government's proposed plan to ban the importation of certain categories of foreign-built vessels from December 2022 (the Ban on Importation). In support of this proposal, it was also announced that the Central Bank of Nigeria would prohibit the provision of foreign exchange for the purchase and importation of vessels affected by the Ban on Importation, and the Nigerian Customs Services would stop the issuance of import waivers (i.e., temporary import permits) in respect of the banned vessels.

The Ban on Importation is one of a number of measures being proposed by NIMASA as part of a five-year strategic plan to end the cabotage waiver regime. The ultimate aim is to promote the building of vessels in Nigeria, which is one of the key objectives of the Coastal and Inland Shipping (Cabotage) Act 2003. NIMASA also expressed its intentions to partner with the Nigerian Content Development and Monitoring Board (NCDMB) in relation to joint ship building initiatives.[38]

36 As stated by Otton J in *Agromet Motoimport Ltd v. Maulden Engineering Co (Beds) Ltd* (1985) 2 All ER 436.

37 Anna Okon, 'NIMASA to end 16-year cabotage waivers regime', *The Punch* (11 April 2019), https://punchng.com/nimasa-to-end-16-year-cabotage-waivers-regime/ (last accessed 10 April 2021).

38 Bloomfield LP published a briefing on the Ban on Importation – see http://bloomfield-law.com/Publications/Nigeria's_Proposed_Ban_on_Importation_of_Foreign_Built_Vessels_07022020.pdf.

There is no statutory regime governing shipbuilding, and the rights and obligations of the parties are circumscribed by the terms of the contract and the principles of English common law of contract. The structure of most shipbuilding contracts mirrors the standard provisions as adopted elsewhere – that is, the shipyard undertakes to construct the vessel to specification and to deliver and pass title following completion of sea trials coupled with post-delivery warranties. The purchaser undertakes to pay for the construction of the vessel in instalments against the completion of specified milestones and to accept delivery and title.

ii Contract of carriage

Ship and cargo owners with an interest in Nigeria may be confronted by a unique question in their quest for due diligence: in the event of damage or loss to cargo, which liability regime applies? The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules) and the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) are concurrently in force in Nigeria. The Hague Rules are one of the statutes inherited from the time of British rule and they apply pursuant to the provisions of the Carriage of Goods by Sea Act 2004 (COGSA). Conversely, the Hamburg Rules were domesticated in Nigeria as a National Assembly Act (as required by Section 12 of the Constitution) via the UN Convention on the Carriage of Goods by Sea (Ratification and Enforcement) Act 2005.

The COGSA expressly states that the Hague Rules apply in respect of outward carriage of goods from ports in Nigeria to ports outside Nigeria, or other ports within Nigeria. Consequently, the choice of law clauses of most bills of lading in respect of shipments to Nigeria, providing for reliance on the terms of the Hague Rules, have been upheld.

The UN Convention on the Carriage of Goods by Sea (Ratification and Enforcement) Act 2005, which introduced the Hamburg Rules as a schedule, failed to expressly repeal and denounce the Hague Rules, as required by Article 15 of the Hague Rules. It is arguable, therefore, that the Hague Rules and the Hamburg Rules currently apply in Nigeria.

Notwithstanding the foregoing, it is the author's view that the Hamburg Rules, by virtue of the UN Convention on the Carriage of Goods by Sea (Ratification and Enforcement) Act 2005, applies in Nigeria by force of law to all carriage of goods by sea (inwards and outwards) to the exclusion of any other international convention, including the Hague Rules.

Nigeria is not a party to the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules) but it signed the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules) and would need to make the same an Act of the National Assembly for the Rotterdam Rules to apply in Nigeria once the Act comes into force.

iii Cargo claims

Cargo disputes may arise as a result of loss or damage during carriage or in port during discharge. The right to sue with regard to cargo claims was originally contained in the Bill of Lading Act 1855 (the 1855 Act), being a pre-1900 United Kingdom statute of general application in Nigeria. By virtue of the 1855 Act, only the consignor, consignee and endorsee have privity and right to sue, often referred to as *locus standi*.[39]

The essential features of the 1855 Act were imported into the Merchant Shipping Act 2004 (the MSA 2004), in Section 375. Regrettably, when the MSA 2004 was repealed by the MSA 2007, this Section was not preserved. As such, there is now a lacuna regarding applicable legislation detailing the right of suit principle in Nigeria, the cases that provide judicial precedent notwithstanding.[40] At best, it remains applicable as a common law principle of contract in Nigeria.

There are some notable exceptions to these rules as have been recognised, including the *Brandt v. Liverpool*[41] doctrine, whereby the holder of the bill of lading can maintain an action at common law where the court is able to infer or imply a contract on the bill of lading terms between the holder and the carrier in circumstances where the holder:

a takes delivery of the goods;
b pays freight or demurrage; or
c presents the bill of lading.

The lack of capacity of a notified party to sue on a bill of lading was underscored by the Supreme Court in *Pacers Multi-Dynamic Ltd v. MV Dancing Sisters & Anor*.[42] However, when the bill of lading is endorsed to the person named as the 'notify party', the Supreme Court held in *Basinco Motors Limited v. Woermann-Line and Anor*[43] that the action would be maintainable because property in the goods would have passed to the notify party, whose position changes to that of an endorsee.[44]

iv Limitation of liability

Under Nigerian law, not all claims against a shipowner are susceptible to limitation of liability. As a signatory to the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) (which replaced the 1957 International Convention Relating to the Limitation of Owners of Seagoing Ships) and the Protocol to amend the LLMC Convention 1996 (the 1996 LLMC Protocol),[45] Nigeria domesticated the Convention and the 1996 LLMC Protocol in its laws through the provisions of Section 335(1)(f) of the MSA 2007.

39 This principle is well illustrated in the cases of *Fasasai Adesanya v. Leigh Hoegh and Co* (1968) 1 All NLR, p. 325 and *Nigerbrass Shipping Line Limited v. Aluminium Extrusion Industries* (1994) 4 NWLR Pt. 341, 733.

40 See footnote 39 and *Kaycee (Nig) Ltd v. Propmt Shipping Corp*. No. 3 – NSC Vol. 2 p. 431.

41 [1924] 1 KB 575.

42 (2012) LPELR-7848(SC).

43 (2009) 13 NWLR (Pt 1157), p. 149.

44 L Chidi Ilogu SAN, *Foundation of Carriage of Goods by Sea – The Nigerian Perspective* (2016) at pp. 199 to 206.

45 Entered into force on 1 December 1986 and 13 May 2004, respectively.

The LLMC Convention 1976 and the 1996 LLMC Protocol formed the basis of the limitation of liability for maritime claims as stated in Sections 351 to 359 of the MSA 2007, which set out the circumstances in which shipowners (including the owners, charterers, managers and operators of a ship), salvors and their insurers may limit their liability for maritime claims, as well as the computation for that limitation.

Section 352(1), Paragraphs (a) to (g) of the MSA 2007 state the types of claims that are subject to limitation, while Section 353, Paragraphs (a) to (e) list the claims that may not be subject to limitation, such as claims for salvage or contribution in general average, oil pollution liability and claims in respect of nuclear damage.

The following underlined provision of Section 356(1) of the MSA 2007 creates room for discussion as to whether or not there is a lacuna in the determination of the general limits of liability:

> *The limits of liability for claims other than those mentioned in this Act, arising on any distinct occasion, shall be calculated as follows:*

One interpretation of this would be that the maritime claims subject to limitation under Section 352 of MSA 2007 would not be subject to the limits stated in Section 356(1). If so, how would the limit of such claims be calculated? On the other hand, the above provision of the MSA 2007 could mean that the general limits of liability for claims, other than claims for which specific limitations have been provided in the MSA 2007 (such as passenger claims under Section 57), shall be calculated as provided.

The above provision of the MSA 2007 is clearly a case of inelegant drafting as the words 'other than those mentioned in this Act' create room for ambiguity as to what specific cases the limitation of liability provisions are applicable. The author concurs with the first interpretation. Pending judicial interpretation of this provision, there are calls for a revision of the MSA 2007 to address this ambiguity as well as other salient issues highlighted herein.

The entry into force of the amendment to the limit of liability in the 1996 LLMC Protocol on 8 June 2015 (the Protocol Amendment 2015)[46] presupposes an increase in liability for the relevant maritime claims. This may not be the case in Nigeria as it is arguable that the Protocol Amendment 2015 does not automatically apply in Nigeria, pursuant to Section 335(1)(f) of the MSA 2007, as the Constitution requires every convention to be domesticated via an Act of the National Assembly before it can have force of law in Nigeria. The matter is further compounded by the fact that the MSA 2007 states expressly, in Sections 356 to 359, the limits provided for in the 1996 LLMC Protocol.

It is imperative, therefore, that the MSA 2007 be amended to accommodate amendments to the 1996 LLMC Protocol (including the Protocol Amendment 2015) and how the amendments would be incorporated into the express thresholds of limitation of liability as set out in the MSA 2007 to enable Nigerians to benefit from these developments in line with international best practice.

Order 15, Rule 1(4) of the AJPR provides that a limitation of liability proceedings shall be commenced through the filing of an originating summons at the registry of the Federal

46 Thirty-six months after it was adopted by the Legal Committee of the International Maritime Organization, when the Committee met for its 99th session in London.

High Court. An originating summons is expected to be accompanied by (1) an affidavit setting out the facts relied upon, (2) copies of all the exhibits to be relied upon, and (3) a written address.

An action for limitation is commenced as an admiralty action *in personam* against at least one of the (possible) claimants in a maritime claim (as a defendant), who must be served before the case may be set down for hearing or determination given in default of appearance. After determination of the applicant's entitlement to a limitation of its liability, the court may order advertisement of its determination to allow anyone with a maritime claim against the vessel or such other parties named above to apply to set aside, vary the court's determination or lodge its interest.

V REMEDIES

i Ship arrest

The AJA and the AJPR govern admiralty matters. A party seeking to arrest a ship in Nigeria must satisfy the court that its claim qualifies as a 'maritime claim' as defined in Section 2 of the AJA. This generally means that it must be a proprietary maritime claim or a general maritime claim.

A proprietary maritime claim[47] includes a claim relating to the possession of a ship, title to or ownership of a ship or a share in a ship, mortgage of or a share in a ship, mortgage of a ship's freight or claims between co-owners of a ship relating to the possession, ownership, operation or earning of a ship. A claim for the satisfaction or enforcement of a judgment given by a court (including a court of a foreign country) against a ship or other properties in an admiralty proceeding *in rem* is also a proprietary maritime claim.

Section 2(3) of the AJA states the claims that fall under a general maritime claim, which include, but are not limited to, claims:

a for damage done or received by a ship (whether by collision or otherwise);
b in respect of goods, materials or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance;
c for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship; and
d arising out of an act or omission of the owners or characters of a ship.

The AJA stipulates that an action *in rem* can be brought only if there is a proprietary maritime claim or if, in the case of a general maritime claim, the action can be brought *in personam* against the proprietor of the vessel in question. Consequently, whenever there is a general maritime claim, an action *in rem* can be brought before the court only if, at the time of commencing the action, the person against whom an action *in personam* may have been brought (referred to as the 'relevant person') is the owner of the vessel in question, the owner of a sister vessel or the demise (bareboat) charterer of the vessel in question.[48]

In addition to the foregoing, an action *in rem* may be commenced against a ship if there is a maritime lien or other charge on that ship.[49]

47 AJA, Section 2(2).
48 ibid., Section 5(4).
49 ibid., Section 5(3).

An application for the arrest of a vessel is brought via an *ex parte* application (if the vessel is within Nigerian territorial waters[50] or expected to arrive there within three days) disclosing a strong *prima facie* case for the arrest order. This application must be supported by an affidavit deposed to by the applicant, its counsel or its agent. The applicant is required to provide the following with the *ex parte* application:

a an undertaking to indemnify the ship against wrongful arrest; and

b an undertaking to indemnify the Admiralty Marshal in respect of any expenses incurred in effecting the arrest.

The applicant is also required to pay, fortnightly, the Admiralty Marshal's minimum cost of 100,000 naira for maintaining the vessel under arrest.

ii Court orders for sale of a vessel

A court of competent jurisdiction can order a ship under arrest in proceedings within its jurisdiction to be valued and sold on application by an interested party before or after final judgment.[51] The application can be made only if the vessel has been under arrest for six months and the owner has failed to provide security for her release or the vessel is depreciating in value. When a sale is ordered by the court, a valuation of the ship is carried out, after which an advert is published in two national newspapers. The sale is conducted by the Admiralty Marshal within 21 days of the newspaper advertisements appearing. The proceeds of the sale are paid into court and the Admiralty Marshal files an account of sale and vouchers of the account.

VI REGULATION

i Safety

NIMASA, pursuant to the NIMASA Act, the MSA 2007, the Cabotage Act and other related legislation, is empowered, *inter alia*, to regulate maritime safety, security, marine pollution and maritime labour.

Section 20 of the NIMASA Act empowers the Agency to establish the procedure for the implementation of international maritime conventions of the International Maritime Organization (IMO), the International Labour Organization (ILO) and other conventions on maritime safety and security to which the government of Nigeria is a party, especially by making regulations in respect of any implemented convention.

Some of the maritime safety conventions that have been implemented and their corresponding regulations (where applicable), pursuant to Section 215 of the MSA 2007, are:

a the International Convention for the Safety of Life at Sea 1974 (SOLAS);

b the 1988 Protocol relating to SOLAS and Annexes I to V thereto;

c the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention); and

d the ILO Convention Concerning the Protection Against Accidents of Workers Employed in Loading or Unloading Ships (the Dockers Convention).

50 According to the Territorial Waters Act, Cap. T5, LFN 2004, the territorial waters of Nigeria extend to 12 nautical miles off the coast, measured from the low-water mark, or of the seaward limits of inland waters.

51 Admiralty Jurisdiction Procedure Rules 2011 [AJPR], Rule 1, Order 16.

In 2019, the long-awaited Suppression of Piracy and Other Maritime Offences Act was enacted. By so doing, relevant provisions of certain international conventions (on safety, piracy and armed robbery at sea, etc.)[52] that Nigeria had ratified but had yet to domesticate, were given effect under Nigerian law.

ii Port state control

NIMASA is the authority tasked with undertaking port state control (PSC) duties. Nigeria facilitated the development of the Memorandum of Understanding on Port State Control for West and Central African Region 1999 (the Abuja MOU) on PSC; 16 states have signed the MOU, 11 of which have deposited an instrument of ratification with the Secretariat of the Abuja MOU. In 2019, the Abuja MOU, with the aim of continually developing a unified system of PSC inspection procedure for the region, held its 10th Port State Control Committee Meeting in the Republic of Gabon.

Although vessel inspection under PSC is relatively low when compared to vessel traffic, Nigeria is one of the leading nations in Africa, having inspected more than 821 ships in 2019 and detaining 17.[53] Further, Nigeria was one of the countries with the highest positive performance indicators in the 2020/2021 Shipping Industry Flag State Performance Table prepared by the International Chamber of Shipping.

Continuous efforts are being made to train PSC monitors, inspectors, surveyors and other key officials. This is germane to Nigeria's quest to have port facilities that are on a par with those in the developed world. The idea of making Nigeria a hub in port operations cannot be removed from an effective PSC in the country and other Member States of the Abuja MOU.

iii Registration and classification

The Nigerian Ship Registry (NSR) is domiciled with NIMASA and, ordinarily, only Nigerian citizens or bodies corporate, or partnerships subject to Nigerian law and having their principal place of business in Nigeria, can register their interests in a vessel under the Nigerian flag. There is no provision for dual registration, as a vessel may fly the flag of only one country. Consequently, there is a requirement for vessels already registered under a foreign flag to deregister their current port or state registries in order to be registrable in Nigeria. However, the NSR permits provisional registration of a vessel for six months to allow it sail into Nigeria with the Nigerian flag before completing a full registration on arrival.

The NSR is equally responsible for maintaining the Cabotage Register for vessels eligible to participate in the Nigerian cabotage trade. Additionally, in April 2019, NIMASA set a five-year period for the cessation of the nation's cabotage waiver regime (implemented pursuant to the provisions of the Cabotage Act, which came into force in 2003) that has given, *inter alia*, an advantage to foreign-flagged vessels and foreign-owned vessels, as well as foreign crew, to operate in Nigerian cabotage. This move by NIMASA is quite commendable and in consonance with the spirit and letters of the Cabotage Act, which primarily aims to reserve commercial transport of goods and services within Nigerian coastal and inland waters to only those vessels built, owned and operated by Nigerians. NIMASA has commenced the

52 This includes the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation 1988 (SUA) (and its protocols).

53 http://www.abujamou.org/index.php?pid=jfjygkghjstat19 (last accessed 5 May 2020).

termination of the cabotage waiver regime with the stoppage of manning waivers (with the exceptions of captains and chief engineers), while the final phase of the termination is expected to end in three years. The move by NIMASA to end cabotage waivers for foreign-owned vessels was a welcome relief to the indigenous operators as well as other domestic stakeholders, who have long been greatly concerned that cabotage waivers had become the norm rather than an exception. It is believed that the demise of the waiver regime, if properly effected, would allow cabotage to flourish for Nigerians who would be better positioned to reap the benefits of coastal trade in Nigerian waters.[54]

As part of the requirements for Nigerian ship registration, an applicant is required to provide a current certificate from an approved international classification society. In this regard, NIMASA has established collaborative links with the following leading classification societies by signing memoranda of understanding with them and has issued marine notices to this effect: American Bureau of Shipping, Bureau Veritas, Det Norske Veritas, Lloyd's Register, the International Naval Survey Bureau and the International Register of Shipping.

iv Environmental regulation

NIMASA's Marine Environment Management Department (MEMD) is statutorily responsible for ensuring a clean marine environment through the implementation of all relevant IMO conventions. The MEMD draws its statutory powers from Part XXIII Section 335 of the MSA 2007 and Sections 22(2) and 23(9)(b) of the NIMASA Act.

The functions of the MEMD are generally derived from the IMO conventions relating to the protection of the marine environment against pollution and any other related conventions adopted by the IMO from time to time. Broadly, the MEMD implements and enforces compliance to the IMO conventions for protecting and preserving the marine environment and resources, including the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention) and its 1996 Protocol, the Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (the Ballast Water Management Convention) and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (the Intervention Convention).

v Collisions, salvage and wrecks

The MSA 2007 contains various provisions in respect of collisions, salvage and wrecks. The Act mandates the observance of the Merchant Shipping (Collision) Rules 2010 (the Collision Regulations), which are significantly modelled after the International Regulations for Preventing Collisions at Sea 1972 (COLREGs) and provide practical guides for ships' conduct, *inter alia*, in anticipation and prevention of, or in reaction to, a collision. The Collision Regulations further provide for the rights of NIMASA-approved inspectors to inspect ships for the purpose of enforcing the Regulations, as well as for the duty of a ship master (to other ships and occupants of ships with which they collide) to report collisions.

Pursuant to Section 387 of the MSA 2007, the International Convention on Salvage 1989 (the 1989 Salvage Convention) forms the basis of Nigeria's salvage regime set out in

54 Anna Okon, 'NIMASA to end 16-year cabotage waivers regime', *The Punch* (11 April 2019), https://punchng.com/nimasa-to-end-16-year-cabotage-waivers-regime/ (last accessed 10 April 2021).

Part XXVII of the MSA 2007. The Act also provides for the Merchant Shipping (Wrecks and Salvage) Regulations 2010, which essentially set out the procedure for investigating wrecks and salvage.

Whereas the Cabotage Act provides that only vessels that are wholly owned and wholly manned by Nigerian citizens, as well as being built and registered in Nigeria, are entitled to engage in domestic coastal carriage of cargo and passengers within Nigerian waters, Section 8 of the Act permits foreign vessels engaged in salvage operations, as determined by the Minister of Transportation to be beyond the capacity of Nigerian-owned and operated salvage vessels and companies, to operate in Nigerian waters. The foregoing requirement for ministerial determination, however, shall not apply to any foreign vessel engaged in salvage operations for the purpose of rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian waters.

According to the MSA 2007, the responsibility for removal of any ship that becomes a wreck is placed on the shipowner.[55] However, this is difficult to implement as most shipowners are usually insolvent at that stage. The MSA 2007 further provides for the Receiver of Wrecks to take possession, raise, remove or destroy the whole or any part of the vessel. It is an offence for any person other than the Receiver of Wrecks (or the shipowner) to carry out any of the aforementioned without the written permission of the Receiver. Also, in a manner it thinks fit, the Receiver may sell any part so raised or removed and any property recovered in the exercise of its powers.

Despite the foregoing provisions, the Receiver of Wrecks, owing to the paucity of funds and administrative bottlenecks, has been unable to efficiently remove identified hazardous wrecks when shipowners have failed to do so. This is further compounded by several claims from alleged shipowners when the Receiver seeks to exercise its power of sale to raise the required funds or remove the wrecks after the shipowners have failed to remove them within the time limit set by the Receiver. It is expected that the Receiver of Wrecks and NIMASA would put in place the framework for a mutually beneficial relationship with recyclers, with whom the Receiver can partner to remove and efficiently dispose of wrecks.

Nigeria is a signatory to the Nairobi International Convention on the Removal of Wrecks 2007 (the Nairobi WRC 2007). However, the Nairobi WRC 2007 does not have the force of law in Nigeria, as it is yet to be ratified and enacted as legislation or a law of the National Assembly, as required by Section 12 of the Constitution.

vi Passengers' rights

The Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention), and its Protocol of 1990, is applicable in Nigeria pursuant to Section 215 of the MSA 2007. To date no regulations have been made pursuant to the Athens Convention and its Protocol.

Sections 340 and 341 of the MSA 2007 provide that passengers may claim for loss of life or injury and nothing shall deprive any person who has claimed against the right of defence or the right to limit liability where it exists; and where the proportion of damages recovered from a ship exceeds the proportion of its fault where two or more ships are involved, the ship

55 See Merchant Shipping Act 2007 [MSA 2007], Sections 360 to 385 and 398.

from which the excess damages was recovered may recover the excess amount from the owners of the other ships involved to the extent of their faults. There is, however, very minimal organised international carriage of passengers by seagoing vessels into and from Nigeria.

Actions in relation to passenger claims under the MSA 2007 must be brought to court within two years of the date on which the loss or injury was caused.

vii Seafarers' rights

Several conventions on seafarers' rights have been implemented pursuant to Section 215 of the MSA 2007. These include rights regarding:

a employment contracts (and the obligations of employers), including wages, leave benefits and discharge from service; and

b general welfare, health and accommodation.

Some MSA 2007 regulations regarding seafarers' rights pursuant to international conventions have already been implemented in Nigeria. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the STCW Convention) was domesticated through the rule-making authority of the Minister[56] by way of subsidiary legislation in the Merchant Shipping (Medical Examination of Seafarers) Regulations 2001 and the Merchant Shipping (Safe Manning, Hours of Watchkeeping) Regulations 2001.[57]

Other conventions domesticated by the MSA 2007 are the ILO Convention (No. 32 of 1932) on Protection Against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932) and the Placing of Seamen Convention 1920.

In June 2013, Nigeria deposited an instrument of ratification for the Maritime Labour Convention 2006 (MLC) at the ILO Secretariat in Geneva. However, Nigeria is yet to domesticate the MLC, which was adopted by the International Labour Conference of the ILO in February 2006.

The AJA provides seafarers and masters with the right (as general maritime claims and maritime liens) to bring an action (including the arrest of a ship) against a shipowner for unpaid wages. However, the Court of Appeal, per its 2020 decision in the *MT SAM PURPOSE* case,[58] states that pursuant to Section 254(c)(1) of the Constitution of the Federal Republic of Nigeria (Third Alteration) 1999, the National Industrial Court is the appropriate court to deal with an action for unpaid crew wages.

56 Section 408 of the MSA 2007 empowered the Minister to make regulations for the general carrying into effect of the Act.

57 Regulations 3 and 4 place duties on masters of Nigerian ships to ensure, insofar as is reasonably practicable, that a seafarer on board a ship does not work more hours than is safe in relation to the safety of the ship and performance of the seafarer's duties. Section 5 places the duty on both masters and seafarers, insofar as is reasonably practicable, to ensure that they are properly rested before commencing duty on a ship and that they obtain adequate rest during periods when off duty.

58 Pending consideration of this issue by the Supreme Court or amendment of the Constitution, this remains the position of the law in Nigeria.

VII OUTLOOK

The outlook for the Nigerian economy is rather unpredictable at this time. Based on available data following the recession in 2017, the pace of growth picked up in 2018, and this upward trajectory continued in 2019, albeit at a reduced pace owing to expected delays following the successful 2019 general elections and the inauguration of the new government. There was a promising start to 2020 thanks to the government's intention to disburse more than US$200 million from the cabotage vessel financing fund (CVFF) set up pursuant to the Cabotage Act for ship acquisitions. However, the unexpected outbreak of the covid-19 pandemic has brought about increased ambiguity for the global shipping industry and the promising 2020 projections for Nigeria, as set out in the Maritime Industry Forecast for 2019–2020, were not attained and the CVFF is yet to be disbursed.

Maritime bills before the current National Assembly (some of which were reintroduced) include the Nigerian Maritime Zones Act (Repeal and Re-enactment) Bill 2019, the Maritime Security Agency (Establishment) Bill 2019, the National Inland Waterways Authority Amendment Bill, the Ports and Harbour Bill, the National Shipping Policy Act Amendment Bill and the Nigerian Ports Authority Act Amendment Bill 2019.

The development of new greenfield ports, with a view to reducing congestion at existing ports and to meet global shipping trends, continues. The estimated completion date of the Lekki Deep Sea Port is in 2022. Other greenfield port projects include the Ibom Deep Sea Ports, the Badagry Deep Sea Port and the Benin River Port. In respect of Ibom Deep Sea Ports, the Bollore–Power China consortium was selected as the preferred bidder for the concession of the port under a public-private partnership arrangement between the Federal Ministry of Transportation, Akwa Ibom State and the Nigeria Ports Authority. Construction had been expected to commence in 2020 but was stalled because of the covid-19 pandemic. Nonetheless, indications are that construction will start in 2021 following the advertisement of a Request for Qualification by reputable private sector port operators in partnership with the Akwa Ibom State government and the federal government.

On 17 February 2021, the Minister of Transportation indicated the government's plans to construct the Bonny Deep Sea Port (stating that the government is trying to acquire land to commence construction) and the Warri Deep Sea Port.[59]

In March 2021, the National Inland Waterways Authority revealed plans to move containers from the sea ports in Lagos State to the Onitsha River Port in an attempt to decongest the Lagos ports and to make the Onitsha River Port functional. The arrangement is scheduled to commence with the movement of 1,000 containers using barges.[60]

In line with the synergy between NIMASA and the NCDMB, identified categories of vessels (tugboats, security patrol vessels and crew boats, among others) with high demand in the Nigerian offshore industry (and with a projected contract value of approximately US$1.6 billion over the next four years) continue to be financed with the NCDMB local

59 Chike Olisah, 'FG states why importers mostly use Lagos ports, to construct 3 new deep seaports', *Nairametrics* (17 February 2021), https://nairametrics.com/2021/02/17/fg-states-why-importers-mostly-use-lagos-ports-to-construct-3-new-deep-seaports/ (last accessed 10 April, 2021).

60 Michael Ndu-Okeke, 'Onitsha River Port set to receive 1000 containers from Lagos next week', *Nairametrics* (5 March 2021) https://nairametrics.com/2021/03/05/%E2%80%AFonitsha-river-port-set-to-receive-1000-containers-from-lagos-next-week/ (last accessed 10 April 2021).

content fund. Similarly, the manpower framework for critical skills required in the maritime industry, as developed by NIMASA, continues to gain ground and would increase Nigerian maritime labour participation in the maritime industry.

With the Nigeria LNG Limited Train 7 expansion project,[61] which will be carried out mainly by Nigerian companies (similar to how the *Egina* FPSO was primarily constructed and integrated in Nigeria), a great deal of value is expected to be added to the offshore industry in 2021 (financing for the project was procured in 2020 despite the covid-19 pandemic),[62] considering the project's estimated ability to attract US$10 billion into Nigeria's economy and the above-mentioned synergy between NIMASA and the NCDMB for the development of local content in the offshore industry.

The Process Manual on Port Operations was launched in December 2020 by the Vice President of Nigeria. The Manual outlines the implementation chain and provides clarity on the time required for each process. It is expected to ensure predictability, promote efficiency and accountability, reduce corruption in the port processes, eliminate bureaucratic bottlenecks faced by port users and reduce the opportunity for illegal demands in the ports.[63]

61 The project aims to increase Nigeria LNG Limited's production capacity from 22 metric tonnes of liquified natural gas per annum to more than 30 million tonnes per year by upgrading Trains 1 to 6 and adding Train 7 and associated infrastructure.

62 https://www.vanguardngr.com/2021/03/lng-train-7-to-attract-10bn-into-nations-economy-nlng/ (last accessed 10 April 2021).

63 A downloadable copy of the Port Process Manual can be accessed at https://nigerianports.gov.ng/wp-content/uploads/2021/03/Port-Process-Manual-2020.pdf.

Appendix 1

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Adedoyin Afun is a partner and chair of Bloomfield LP's acclaimed shipping and oil services practice group. He holds an LLB (Hons) from Nigeria's premier university, the University of Ibadan and an LLM (international commercial and maritime law) from Swansea University, Wales, and is qualified to practise in Nigeria and England and Wales.

Adedoyin has advised extensively on the structure and implementation of complex, multimillion-dollar shipping transactions, oil and gas-related projects, matters involving cross-border joint ventures (to take advantage of the Nigerian Oil and Gas Industry Content Development Act and the Nigerian Cabotage Act), ship and aircraft finance and lease, registration of ship and aircraft mortgages and interests, port concessions, corporate restructuring, maritime claims and casualties – litigation, arbitration and mediation, regulatory compliance and other wider-ranging issues within the Nigerian aviation, logistics, shipping and oil services industries.

He has authored and presented papers on maritime law and practice in local and international publications and forums. He has also been recognised in the shipping and transport rankings of international directories such as *Who's Who Legal* and *The Legal 500*. Adedoyin also has considerable experience in aviation and logistics, asset management and private equity, corporate finance, commercial litigation and arbitration, and project and asset financing.

Who's Who Legal says: 'Adedoyin Afun is one of the foremost shipping lawyers in the Nigerian market and enjoys a stellar reputation for his work on transactions, financings and insurance matters across the sector'. *Who's Who Legal* also recognises him as a 'national leader' and 'global leader' in shipping. *The Legal 500* (2018–2021) lists Adedoyin as a leading individual in its commercial, corporate and M&A rankings for Nigeria.

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