
CHAMBERS GLOBAL PRACTICE GUIDES

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Nigeria: Law & Practice

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Law and Practice

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic laws establishing the authorities of the admiralty courts in Nigeria are the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “Constitution”), the Admiralty Jurisdiction Act (AJA) and the Federal High Court (FHC) Act, which vests the FHC with exclusive jurisdiction over first-instance maritime and shipping matters in Nigeria.

All appeals from the FHC (including shipping disputes) go to the Court of Appeal of Nigeria, and, thereafter, to the Supreme Court of Nigeria.

The common maritime claims filed in practice in Nigeria are proprietary and general maritime claims as defined by the AJA. Proprietary maritime claims relate to the ownership, possession or mortgage of a ship, a share in a ship or its freight, and the enforcement of a judicial decision made against a ship. General maritime claims include:

- claims for damage done or received by a ship;
- claims for crew wages;
- claims by a Master, shipper, charterer or agent in respect of disbursements on account of a ship;
- claims 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;
- claims for loss of or damage to goods carried by a ship;
- claims arising out of agreements relating to the carriage of goods or persons by a ship or

to the use or hire of a ship, whether by charterparty or otherwise;

- claims arising out of the acts or omissions of the owners or charterer of a ship;
- claims for loss of life, or for personal injury sustained in consequence of a defect in a ship or in its apparel or equipment;
- claims in respect of the construction of a ship (including such a claim relating to a vessel before it was launched);
- claims for the enforcement of, or claims arising out of, arbitral awards (including foreign awards in relation to a proprietary or general maritime claims);
- claims for insurance premiums, or for mutual insurance calls, in relation to a ship, or goods or cargoes carried by a ship; and
- claims for salvage, general average, pilotage, towage, port and harbour dues.

1.2 Port State Control

The Memorandum of Understanding on Port State Control for West and Central African Region (the “Abuja MoU”) applies to Nigeria, and the Nigerian Maritime Administration and Safety Agency (NIMASA), an executive agency of the Federal Ministry of Transportation, is Nigeria’s port state control agency.

The NIMASA’s general port state control powers and authorities, pursuant to the NIMASA Act 2007 (the “NIMASA Act”), the Merchant Shipping Act 2007 (MSA) (which domesticates several maritime conventions, such as the United Nations Convention on the Law of the Sea (UNCLOS)) and other relevant legislations, include powers to:

- board, inspect and search any vessel and to detain any vessel within the Nigerian maritime zone;

- demand the production of any licence, permit, record, certificate or any other document;
- expel any vessel which may endanger the safety of the Nigerian maritime zone; and
- enter ports, terminals and vessels to investigate matters related to maritime labour, ship safety and security.

In relation to marine casualties, the NIMASA is authorised and empowered to:

- provide search-and-rescue services;
- receive and remove wrecks;
- make enquiries as to shipwrecks, other casualties affecting ships, or as to charges of incompetence or misconduct on the part of seafarers in relation to those casualties;
- issue regulations relating to the prevention of the dumping of ship and shore-generated waste in Nigerian waters and governing the removal of wrecks which constitute navigation risks; and
- issue regulations governing the carriage of harmful substances by sea.

1.3 Domestic Legislation Applicable to Ship Registration

The registration of vessels under the Nigerian flag is primarily governed by the MSA. Other relevant legislations include the NIMASA Act and the Coastal and Inland Shipping (Cabotage) Act 2003 (the “Cabotage Act”).

The Nigerian Ship Registration Office (NSRO) (domiciled with the NIMASA and under the control of the Registrar of Ships) is responsible for the domestic registration of vessels in Nigeria.

1.4 Requirements for Ownership of Vessels

Under Section 18 (1) of the MSA, the registration of vessels under the Nigerian flag is limited

to vessels wholly owned by (i) Nigerian citizens, (ii) bodies corporate and partnerships established under and subject to Nigerian law and having their principal place of business in Nigeria, and (iii) such other persons as the Minister of Transportation (Minister) may, by regulations, prescribe. No regulation has been issued by the Minister so far in this regard.

Notwithstanding the foregoing, Section 19(6)–(9) of the MSA permits a foreign-owned vessel, which is bareboat-chartered for more than one year to a Nigerian citizen or a Nigerian body corporate or partnership to be registered under the Nigerian flag as a Nigerian ship for the duration of the bareboat charter. The aforesaid registration is, however, subject to the suspension of the foreign flag of the foreign-owned vessel in favour of the Nigerian flag registration for the duration of the bareboat charter.

Where a foreign-owned and bareboat-chartered vessel is to engage in cabotage operations within Nigerian waters, it is required to be registered under the Special Register for Cabotage (Bareboat-Chartered Vessel). Further to the Coastal and Inland Shipping Cabotage (Bareboat Registration) Regulations 2006, made pursuant to the Cabotage Act, eligibility for the Special Register for Cabotage (Bareboat-Chartered Vessel) requires (i) the vessel to be bareboat-chartered to Nigerian citizens and to be under the full control and management of Nigerian citizens or a company, wholly and beneficially owned by Nigerian citizens, where all the shares in the company are held by Nigerian citizens, free from any trust or obligation in favour of any person not a citizen of Nigeria, and (ii) the bareboat-charter period must be for five years and above.

By virtue of Section 34(1) of the NIMASA Act, small vessels, including fishing vessels, that are

wholly or partly owned by Nigerian citizens and foreigners who are resident in Nigeria are registrable under the Nigerian flag.

Whilst the MSA requires the Registrar of Ships to keep a register for ships that are under construction in Nigeria, only a fully constructed vessel can be registered under the Nigerian flag as a Nigerian ship.

1.5 Temporary Registration of Vessels

The MSA permits the issuance of Provisional Certificates of Registry for provisional registration of vessels under the Nigerian flag. Thereto, vessels that are (i) located in a foreign country and owned by persons eligible to register a vessel under the Nigerian flag, and (ii) to be registered under the Nigerian flag, are issued Provisional Certificates of Registry to sail the vessels to Nigeria. A Provisional Certificate of Registry is valid for six months or until arrival of the vessel at a Nigerian port, whichever is earlier.

In other circumstances, Provisional Certificates of Registry are issued to vessels that are within Nigerian waters, and owned by persons eligible to register a vessel under the Nigerian flag, but who have yet to fulfil the requirements for permanent registration and the issuance of a Certificate of Nigerian Registry.

Nigerian law does not permit dual registration of vessels. As such, where a vessel is registered under a foreign flag, (i) a deletion certificate, from the foreign flag, is required for temporary or permanent registration under the Nigerian flag; or (ii) a suspension certificate is required, from the foreign flag, for the duration of the bareboat charter, for the registration of a foreign bareboat-chartered vessel under the Nigerian flag.

1.6 Registration of Mortgages

The Registrar of Ships (in the NSRO) is responsible for the registration of mortgages on Nigerian-registered ships. Where the mortgagor is a Nigerian-registered company, the ship mortgage is also required to be registered with the Corporate Affairs Commission (CAC).

For the registration of a ship mortgage with the NSRO, the following documents are required:

- the NSRO's consent to a mortgage;
- a formal letter of application by the ship-owner or their authorised representative; in practice, the mortgagor would have granted a power of attorney to the mortgagee's solicitor to undertake the registration of the ship mortgage;
- a board resolution of owners, authorising the mortgage (corporate owners only);
- a duly signed and sealed NIMASA mortgage form, with stamp duty paid;
- an executed deed of mortgage, duly stamped;
- a copy of a Certificate of Registration of Mortgage, as issued by the CAC; and
- evidence of payment to the NIMASA of the prescribed fees for mortgage registration.

For registration of a ship mortgage with the CAC, the following documents are required:

- an executed deed of mortgage, duly stamped;
- a duly signed and sealed statutory Form CAC 9 (Particulars of Charge), with stamp duty paid;
- a board resolution of owners, authorising the ship mortgage; and
- evidence of payment to the CAC of the required statutory fees for mortgage registration.

1.7 Ship Ownership and Mortgages Registry

In Nigeria, the ship-ownership and mortgages registries are not available to the public.

A person who is not the owner of a vessel must apply formally to the NSRO to conduct a search on the status of registration of a ship or mortgage over a ship.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

Pursuant to Section 12 of the Constitution, every Convention is required to be domesticated via a law of the National Assembly before it can have force of law in Nigeria. Further to this, Section 336(1)(i) of the MSA domesticated the following international conventions which govern the liability of owners and interested parties for pollution by vessels:

- the International Convention for the Prevention of Pollution from Ships, 1973/1978 and the annexes thereto;
- the Convention Relating to Intervention on the High Seas in Cases of Threatened Oil Pollution Casualties, 1969;
- the International Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;
- the International Convention on Civil Liability for Oil Pollution Damage 1992;
- the Convention on Limitation of Liability for Maritime Claims, 1976 and the 1996 Protocol thereto (LLMC);
- the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and its Protocol of 1992;
- the Basel Convention on the Control of Transboundary Movements of Wastes and their Disposal, 1989; and
- any international agreement or convention relating to the prevention, reduction or control of pollution of the sea or other waters by matters from vessels, and civil liability and compensation for pollution damage from vessels, to which Nigeria is a party.

Other Nigerian laws relating to pollution are set out below:

- the Environmental Impact Assessment Act, Cap E12, LFN 2004;
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 as amended (Ratification and Enforcement) Act, Cap I30, LFN 2004;
- the National Environmental Standards and Regulations Enforcement Agency Act, 2007;
- the NIMASA Act;
- the Ship Generated Marine Waste Reception Facilities Regulations 2012;
- the Sewage Regulations 2012;
- the Sea Protection Levy Regulations 2012;
- the Oil Pollution Preparedness, Response and Co-operation Regulations 2012;
- the Convention Regulations 2012;
- the Sea Dumping Regulations 2012;
- the Dangerous or Noxious Substances Bulk Regulations 2012;
- the Liability and Compensation Regulations 2012;
- the Harmful Substances in Packaged Form Regulations 2012;
- the Anti-Fouling Regulations 2012;

- the Ballast Water Regulations 2012;
- the Prevention of Pollution by Garbage Regulations 2012; and
- the Prevention of Oil Pollution Regulations 2012.

In relation to wreck removal, the MSA (Part XXVI – Sections 361 to 368) is the primary domestic legislation that governs the liability of owners and interested parties for wreck removal in Nigeria. Particularly, Section 365 of the MSA places the responsibility for removal of any ship that becomes a wreck on her owners.

Nigeria is a signatory to the Nairobi International Convention on the Removal of Wrecks, 2007 (the “Nairobi Convention”). However, the Nairobi Convention does not have the force of law in Nigeria, as the National Assembly has yet to enact a legislation to domesticate the Nairobi Convention, as required by the Constitution.

2.2 International Conventions: Collision and Salvage

The MSA domesticated the following international conventions, which will impact upon the liability of owners and interested parties in the event of collision and salvage:

- the International Convention for the Safety of Life at Sea (SOLAS);
- the 1988 Protocol relating to SOLAS and Annexes I to V thereto;
- the Search and Rescue Convention, 1979; and
- the International Convention on Salvage, 1989.

The MSA, in Sections 338 to 344, provides for liability in collision cases; in particular, Section 345 provides that the damages recoverable by the claimant in a collision case shall be the resto-

ration of the claimant back to the same position as it would have been in had the collision not occurred. In relation to salvage, Sections 386 to 404 of the MSA provide for the remuneration of a salvor and protection of a salvor’s claim.

Other Nigerian laws on collision and salvage include:

- the Merchant Shipping (Collision) Rules, 2010, which are modelled after the Convention on International Regulations for Preventing Collisions at Sea, 1972 (COLREGS);
- the Merchant Shipping (Wrecks and Salvage) Rules, 2010;
- the AJA;
- the Admiralty Jurisdiction Procedure Rules, 2011 (AJPR);
- the Cabotage Act; and
- the NIMASA Act.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

The LLMC (and its 1996 Protocol) are applicable in Nigeria pursuant to Section 336(1)(f) of the MSA.

Parties who may limit their liability for maritime claims, under the MSA, are ship-owners (including the owners, charterers, managers and operators of a ship), salvors and their insurers.

The MSA provides for the following claims to be subject to limitation of liability:

- claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage

operations, and consequential loss resulting therefrom;

- claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- claims in respect of the removal, destruction or rendering harmless of the cargo of the ship;
- claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit their liability in accordance with the MSA, and further loss caused by those measures;
- claims in respect of floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof; and
- claims in respect of the raising, removal, destruction or rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board that ship.

The claims set out in bullet points four, five and seven above shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

The increased liability for maritime claims, as provided in the amendment to the 1996 Protocol which entered into force on 8 June 2015 (the “Protocol Amendment 2015”), is inapplicable in Nigeria because Sections 356 to 358 of the MSA expressly state the limits under the 1996 Protocol. As such, the MSA needs to be amended by the National Assembly before the Protocol Amendment 2015 (and any subsequent

amendment to the 1996 Protocol) is applicable in Nigeria.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Where an eligible party (as previously stated) anticipates that a claim is likely to be made against them by any other party under any maritime law, including the MSA, they may apply to the FHC to determine whether their liability(ies) may be limited under law and the extent of the liability.

The Admiralty Jurisdiction Procedure Rules (AJPR) provide that a limitation of liability proceeding shall be commenced through the filing of an originating summons at the registry of the FHC. An originating summons is expected to be accompanied by the following processes: (i) an affidavit setting out the facts relied upon, (ii) copies of all the exhibits to be relied upon, and (iii) 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 (i) the constitution of a limitation fund for the payment of claims in respect of which the applicant is entitled to limit their liability, and (ii) advertisement of its determination to allow anyone with a maritime claim against the vessel or any other parties previously named to apply to set aside, vary the court’s determination or lodge its interest.

The order for the constitution of the limitation fund would also specify the method of calculating the fund, which is usually based on the tonnage of the vessel and the applicable limit as prescribed in the MSA.

It is not required to provide a deposit in relation to a constituted limitation fund.

3. Cargo Claims

3.1 Bills of Lading

The international conventions regarding bills of lading which are enforceable in Nigeria are as follows:

- the Hague Rules (which were domesticated via the Carriage of Goods by Sea Act, Cap C2, LFN 2004 (COGSA)); and
- the Hamburg Rules (which were enacted into law by the United Nations Convention on Carriage of Goods by Sea (Ratification and Enforcement) Act 2005).

Both the Hague Rules and Hamburg Rules are applicable in Nigeria, as the National Assembly failed to repeal/denounce the Hague Rules, as required by Article 31 of the Hamburg Rules.

Nigeria is not a party to the Hague-Visby Rules, but it has ratified the Rotterdam Rules and would need to make them an Act of the National Assembly in order for the Rotterdam Rules to apply in Nigeria once they come into force.

3.2 Title to Sue on a Bill of Lading

Generally, only a party to a contract contained in a bill of lading can sue on it, that is, the carrier, shipper (consignor), consignee or the endorsee on the bill of lading.

A notifying party is not a party to a contract contained in a bill of lading and lacks the locus standi to sue or institute an action on the bill of lading, unless the party is also endorsed as an endorsee.

Notwithstanding the foregoing, Nigerian law recognises some notable exceptions to these rules, including the Brandt v Liverpool 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:

- takes delivery of the goods;
- pays freight or demurrage; or
- presents the bill of lading.

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Pursuant to Article 5 of the Hamburg Rules, a ship-owner who is the contractual or actual carrier is liable for loss resulting from damage to the goods, if the occurrence which caused the loss, damage or delay took place while the goods were in its charge, unless it can be proven that the ship-owner, its servants and agents took all measures that could reasonably be required to avoid the occurrence and the consequent damage to the goods. In the case of damage caused by fire, the ship-owner who is the contractual or actual carrier will be liable if it is proven that the fire arose from the fault or neglect of the ship-owner, its servants or its agents.

The provisions of the Hamburg Rules are not applicable to charterparties. However, where a bill of lading is issued pursuant to a charterparty, the provisions of the Hamburg Rules shall apply to that bill of lading if it governs the relations

between the carrier and the holder of the bill of lading who is not the charterer.

Pursuant to Article 6 of the Hamburg Rules, the liability of the carrier for loss resulting from damage to goods is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher. According to Article 26 of the Hamburg Rules, the unit of account is the Special Drawing Right, as defined by the International Monetary Fund converted into naira at the date of the judgment, unless otherwise agreed by the parties.

However, Section 354 of the MSA states that the limitation of liability will not apply where it is proved that the loss or damage resulted from the ship-owner's, or its servants' or agents', personal act or omission or the act or omission of their servants or agents acting within the scope of their employment, committed with the intent to cause that loss or damage or recklessly and with knowledge that such a loss would probably result.

There will be no difference in the liability of the ship-owner for cargo damage where it is the actual carrier or the contractual carrier. Article 2 of the Hamburg Rules states that the basis of liability and limitation of liability apply to both the contractual carrier and the actual carrier. Article 10 further states that, where the contractual carrier engages an actual carrier, the contractual carrier remains liable.

3.4 Misdeclaration of Cargo

The carrier may maintain a claim against the shipper for misdeclaration of dangerous goods. Section 323 of the MSA requires a shipper to mark dangerous goods distinctly, with details

of the nature of the goods on the outside of the outermost package containing the goods, and the shipper must first give written notice of the nature of the goods, and of the name and address of the sender, to the Master or owner of the ship.

Additionally, Article 13 of the Hamburg Rules provides that the shipper must inform the carrier of the dangerous character of the goods and, if necessary, of the precautions to be taken and, where the shipper fails to do so, the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of those goods; the goods may at any time be unloaded and destroyed without payment of compensation. Article 17 of the Hamburg Rules also provides that a shipper is liable to indemnify the carrier against the loss resulting from inaccuracies stated in the bill of lading.

Article IV (6) of the COGSA also states that the shipper shall be liable to the carrier for any damages and expenses directly or indirectly arising out of the shipment of inflammable, explosive or dangerous goods, where the shipper fails to notify the carrier of the nature of the goods.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

As previously stated, both the Hamburg Rules and Hague Rules are in force in Nigeria and, as such, the limitation periods indicated in each of these conventions is applicable in Nigeria.

Under the Hague Rules, the time bar for the institution of claims for loss of or damage to goods is one year from the date on which the goods were delivered or, in the case of lost goods, one year from the date the goods should have been delivered provided that a written notice of loss or damage was given to the carrier or their agent

at the port of discharge before or at the time of the delivery of the goods, or, in the case of lost goods, within three days.

In relation to the Hamburg Rules, the limitation period is two years from the date the goods were delivered or from the last day on which the goods should have been delivered. Notwithstanding the foregoing, the Hamburg Rules entitle the person against whom the claim is made to extend the limitation period by making a declaration in writing.

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

There is no international convention in force in relation to the arrest of vessels in Nigeria.

The AJA, MSA and AJPR are the domestic legislations which cover ship arrests in Nigeria.

4.2 Maritime Liens

Section 5(3) of the AJA defines maritime liens as a lien for:

- salvage;
- damage done by a ship;
- the wages of the Master or a member of the crew of a ship; or
- the Master's disbursements.

In addition to these definitions, Section 66 of the MSA (as inspired by the Maritime Liens and Mortgages Convention, 1993, to which Nigeria acceded but which it has yet to domesticate in accordance with the Constitution) expanded the definition of maritime liens to the following claims:

- loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the relevant ship;
- salvage, wreck removal and contribution in general average; or
- ports, canal and other waterways, dues and pilotage dues.

The AJA distinguishes between maritime claims (ie, proprietary and general maritime claims, as previously explained) and maritime liens. Proprietary maritime claims and maritime liens are vested with in rem rights against a vessel.

Notwithstanding the foregoing, a vessel may be arrested in relation to a general maritime claim where the claim arises in connection with a ship and the person who would be liable on the claim in an action in personam (the "Relevant Person") is, at the time the action is filed: (i) the owner, in respect of all the shares in the offending ship, or its bareboat charterer; or (ii) the owner, in respect of all the shares, in any other ship (sister ship).

4.3 Liability in Personam for Owners or Demise Charterers

In relation to a proprietary maritime claim or a maritime lien, it is not required for the owner or demise charterer to be liable in personam before a vessel can be arrested.

For a general maritime claim, the Relevant Person (ie, the owner or demise charterer) needs to be liable in personam before a vessel or its sister vessel can be arrested.

4.4 Unpaid Bunkers

Pursuant to Section 2(3)(k) of the AJA, a claim for unpaid bunkers amounts to a general maritime claim for goods, materials or services supplied to a ship for its operation and maintenance. As such, the supplied vessel may be arrested if the

Relevant Person (who ordered the unpaid bunkers) wholly owns all the shares in the supplied vessel, or is the demised charterer of the supplied vessel, at the time the arrest is filed. Also, any other vessel, which is wholly owned by the Relevant Person (in respect of all the shares) at the time the arrest is filed, may be arrested in relation to the claim for unpaid bunkers supplied to another vessel.

Where the Relevant Person (who ordered the unpaid bunkers) is the time-charterer, the bunker supplier would be unable to arrest the supplied vessel pursuant to the AJA.

Notwithstanding the foregoing, it is possible to arrest a vessel for unpaid bunker claims where (i) the governing law for the bunkers supply contract creates an in rem right against the supplied vessel (in the form of a maritime lien), or (ii) the terms and conditions of the bunkers supply contract creates an in rem right against the supplied vessel.

Neither case law nor any legislation makes any distinction between a contractual supplier or the actual supplier of unpaid bunkers for an in rem right to arrest of a vessel.

4.5 Arresting a Vessel

Further to the AJPR and the Federal High Court (Civil Procedure) Rules 2019 (the “FHC Rules”), an application for the arrest of a vessel is brought via an ex parte application (if the vessel is within Nigerian territorial waters – that is, 12 nautical miles off the coast of Nigeria from the low-water mark, or of the seaward limits of inland waters according to the Territorial Waters Act, Cap T5, LFN 2004, 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 and an affidavit of urgency deposited to by the applicant, its counsel or its agent;
- an undertaking to indemnify the ship against wrongful arrest; and
- 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 NGN100,000 (circa USD2,420) for maintaining the vessel under arrest.

Original copies of the supporting documents are required. However, where an original document has been lost or is unavailable, a notarised copy of the document will suffice. If the document provided is a public document within the meaning of Section 102 of the Evidence Act 2011 (ie, documents forming the official acts or records of the official acts of the sovereign authority, official body or tribunals or public officers, agencies of the legislative, judicial or executive arms of government and public records kept in Nigeria or private documents), a certificate written at the foot of that copy, by the relevant public officer, declaring that it is a true copy of the document, is required in certification of that document.

Documents prepared in a language other than the English language are required to be translated into the English language.

The FHC does not require a security deposit from the arresting party. However, Order 13 of the AJPR provides that the court may order security for costs, on the application of the arrested party, where the sum claimed is more than NGN5 million or its foreign currency equivalent (circa USD11,000), or where the arresting party has no assets in Nigeria. The security for

cost may be in the form of a cash deposit into court, a letter of undertaking (LOU) from a member of the International Group of Protection and Indemnity Clubs (IGP&I) or a guarantee from a Nigerian bank or insurance company.

Where the ordered security for costs is not provided within the set timeline, the vessel would be released from arrest.

4.6 Arresting Bunkers and Freight

Claims for bunkers and freight are maritime claims under the AJA. It is therefore possible to arrest bunkers and freights in Nigeria. See 1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts and 4.4 Unpaid Bunkers.

4.7 Sister-Ship Arrest

Section 5(4) permits sister-ship arrests, provided that the Relevant Person is, at the time the action is filed, the owner, in respect of all the shares of the sister ship.

4.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, another possibility of obtaining attachments orders is through an application for a Mareva injunction, which is an interim attachment of assets equivalent to the value of the claimant's claim. Nigerian courts will only grant a Mareva injunction where the claimant has a justifiable cause of action against the defendant and there is a real risk of the defendant removing their assets from jurisdiction.

4.9 Releasing an Arrested Vessel

Pursuant to the AJPR, an arrested vessel may be released upon an application by a party where:

- an amount equal to the amount claimed or the value of the ship has been paid into court;

- the defendant provides security in an amount equal to the amount claimed in the suit, or the value of the vessel, whichever is the lesser. However, where the claim relates to salvage, the release is subject to the value of the vessel being agreed upon by the parties or being determined by the court;
- the arresting party consents to the release in writing;
- the suit is discontinued or dismissed and there is no caveat against the release of the vessel; or
- where the cargo on board the ship is under arrest, but the ship is not.

An LOU from a member of the IGP&I would be acceptable for the release of an arrested vessel. A bank guarantee from a foreign bank would not be accepted by the FHC, as it is not one of the forms of security prescribed by the AJPR. Notwithstanding the foregoing, the FHC may accept a foreign bank guarantee for the release of an arrested vessel where the arresting party is willing to accept such a guarantee.

4.10 Procedure for the Judicial Sale of Arrested Ships

Where a vessel has been under arrest for more than six months and her owners have failed to provide security for her release, the court may, on the application of the arrestor or any interested party, order that the vessel be valued and sold by the Admiralty Marshal and the proceeds of the sale placed in an interest-yielding fixed-deposit account in the name of the Admiralty Marshal, pending further orders from the court.

Notwithstanding the foregoing, the court may also, (i) on the application of the arrestor or any interested party, or (ii) on its own volition, but with notice to the relevant parties and subject to

a valuation, order the sale of the arrested vessel where it is deteriorating in value.

Whilst the Admiralty Marshal has custody from the arrest of the vessel, the arrestor(s) are liable for the cost of maintaining the vessel until she is released or sold by the Admiralty Marshal. An application by the arrestor or any interested party for an order for the valuation and sale of the arrested vessel constitutes an undertaking by that party to pay, on demand to the Admiralty Marshal, the cost of complying with the order. The Admiralty Marshal is also entitled to deduct 2% from the proceeds of the sale of the ship to cover their costs for the valuation and sale of the vessel.

Unless ordered by the court, the judicial sale of an arrested vessel will be undertaken by a public auction conducted 21 days after the Admiralty Marshal places an advertisement to that effect in two national daily papers. Where the parties agree to the sale of the arrested vessel by private treaty, this may be ordered by the court.

After the sale, the Admiralty Marshal will file a return of sale, as well as an account of sale and the vouchers of sale. The Admiralty Marshal will also pay the proceeds of sale to the court.

The priority of claims upon the sale of an arrested ship will be determined by the court upon application by a party. Pursuant to Section 67 of the MSA, maritime liens have priority over mortgages and any other claims, in the following order:

- claims for salvage, wreck removal and contribution in general average;
- wages and other sums due to the Master, officers and other members of the ship's

complement in respect of their employment on the ship;

- disbursements of the Master on account of the ship;
- claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship; and
- claims for ports, canal and other waterways, dues, and pilotage dues.

Pursuant to Section 56 of the MSA, the priority of mortgages is determined by the date on which each mortgage is recorded in the register and registered mortgages have priority over unregistered mortgages.

4.11 Insolvency Laws Applied by Maritime Courts

Nigeria has a scheme of insolvency and restructuring laws, some of which are provided in the Companies and Allied Matters Act 2020 (CAMA) and the Bankruptcy Act. These schemes include administration, and companies' voluntary arrangements which are analogous to Chapter 11 bankruptcy proceedings.

The AJA, which governs the arrest and judicial sale of vessels, does not include these bankruptcy proceedings as grounds for the arrest and judicial sale of a vessel. However, the CAMA and the Bankruptcy Act grant administrators, liquidators and others wide powers with respect to the sale of a company's assets, with or without an order of court.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

Section 13 of the AJA states that the arresting party will be liable for wrongful arrest where:

- the arrest was obtained unreasonably and without good cause; or
- the arresting party, unreasonably and without good cause, demands excessive security in the proceeding, or fails to give a consent required for the release of a ship or other property.

Following the dismissal of the suit, on the basis that there was no probable ground for instituting that suit, the AJPR states that the arrestor would be liable for damages for any loss, injury or expenses that the defendant may have sustained by reason of the arrest, upon the application of the defendant made at any time before the expiry of three months from the termination of the suit.

In addition, the AJPR provides the defendant with the right to institute an action for wrongful arrest against the arrestor if the action is not based on the same grounds upon which the court may have made the award of compensation, and the defendant shall be awarded costs, damages, demurrage and expenses against the arrestor where the court is satisfied that the arrest was wrongful.

The AJPR also empowers the FHC summarily to determine the issue of wrongful arrest, and grant or refuse a defendant's application for award of damages, which is to be made immediately after the Court delivers a judgment in favour of the defendant.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The following international conventions are applicable to the resolution of maritime passenger claims:

- the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974, and its Protocol of 1990; and
- the LLMC.

The AJA and the MSA are the domestic legislation applicable to resolution of maritime passenger claims in Nigeria.

Actions relating to passenger claims must be commenced within two years after the loss of life or injury occurred.

The MSA also imposes a limit of liability on ship-owners in passenger claims arising on any distinct occasion for loss of life or personal injury.

As previously stated, the increased liability for passenger maritime claims, as provided in Protocol Amendment 2015, is inapplicable in Nigeria, because Section 357 of the MSA expressly states the limits under the 1996 Protocol. As such, the MSA will need to be amended by the National Assembly before the Protocol Amendment 2015 (and any subsequent amendment to the 1996 Protocol) in relation to passenger maritime claims is applicable in Nigeria.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Generally, Nigerian courts usually recognise law and jurisdiction clauses stated in contracts, including bills of lading. However, where the competence of an action is challenged on the ground that a bill of lading states a foreign jurisdiction and not a Nigerian court, the court is not bound to enforce those clauses and can exercise a discretion in determining whether to make a stay of proceedings to enable the parties to pursue dispute resolution in the foreign jurisdiction.

Additionally, Section 20 of the AJA provides that any jurisdictional clause in an agreement which seeks to oust the jurisdiction of the court will be void where the agreement relates to any admiralty matter under the AJA (only the jurisdictional aspects of the clause are affected, not the entire agreement) and where:

- the place of performance, execution, delivery, act or default is or takes place in Nigeria;
- any of the parties is in Nigeria;
- the payment under the agreement is made or to be made in Nigeria;
- in any admiralty action or in the case of a maritime lien, the plaintiff submits to the jurisdiction of the court and makes a declaration to that effect, or the res is within Nigerian jurisdiction;
- it is a case in which the Federal Government or the Government of a State of the Federation is involved and the Government or State submits to the jurisdiction of the court; or
- under any convention currently in force to which Nigeria is a party, the national court of

- a contracting State is either mandated or has a discretion to assume jurisdiction; or
- in the opinion of the court, the cause, matter or action is adjudicated upon in Nigeria.

6.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Nigerian courts recognise and enforce law and arbitration clauses in charterparties and bills of lading. Specifically, Section 10 of the AJA empowers the FHC to recognise and enforce arbitration clauses in admiralty agreements.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Nigeria is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the “New York Convention”), which has force of law in Nigeria pursuant to the Arbitration and Conciliation Act, Cap A18, LFN 2004 (ACA).

The ACA is the principal domestic law on arbitration in Nigeria.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Nigerian courts can order the arrest of vessels or other attachments where the relevant claim is subject to a foreign arbitration and/or jurisdiction, due to a foreign jurisdiction or arbitration clause.

6.5 Domestic Arbitration Institutes

The Maritime Arbitrators Association of Nigeria (MAAN) is the primary domestic arbitration institute which specialises in maritime claims. It is a non-governmental body which comprises maritime practitioners and maritime lawyers who are experts in both arbitration and maritime law practice in Nigeria. Other arbitration bodies

which deal with general commercial arbitration, including maritime, include the Chartered Institute of Arbitrators UK (Nigeria branch), the Lagos Regional Centre for International Commercial Arbitration, and the Lagos Court of Arbitration.

6.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In relation to a foreign jurisdiction clause, the defendant may file an anti-suit injunction in the relevant foreign court. This approach is aimed at ensuring that the party in breach terminates the Nigerian proceedings in favour of proceedings in the foreign court, as prescribed by the foreign jurisdiction clause.

The defendant may apply for a stay of the proceedings before the FHC in accordance with the relevant foreign arbitration clause that has been breached and further to the provisions of the AJA and the ACA. If the FHC sees merit in the defendant's application, it will grant the stay. Where a vessel is under arrest, the FHC may order that the proceedings be stayed on condition that the arrest and detention of the vessel shall stay or be satisfactory security for the release of the vessel for the satisfaction of any award that may be made in the foreign arbitration.

7. Ship-Owner's Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

Nigerian law does not have a special tax exemption or tax reliefs applicable to the income earned by vessels.

8. Implications of the Coronavirus Pandemic, Environmental Legislation and Trade Sanctions

8.1 COVID-19-Related Restrictions on Maritime Activities

At the beginning of the COVID-19 pandemic, the Federal Government of Nigeria, through NIMASA, directed that only cargo vessels that have been at sea for more than two weeks will be allowed to dock in Nigerian ports. NIMASA also directed that the arrival of crew on board those vessels would be predicated on the crew testing negative for COVID-19. However, vessels carrying oil and gas products were exempted from the above restrictions.

The NIMASA also issued guidelines requiring maritime stakeholders to develop policies to control the spread of COVID-19 on board vessels, including:

- the requirement to develop risk assessments and safety intervention guidelines for their personnel and operations on the areas of vulnerabilities of their maritime operations that can be affected by COVID-19;
- the requirement for all ongoing and/or other scheduled offshore operations requiring new crew or crew changes from affected countries shall ensure that pre-departure tests for COVID-19 are conducted on those persons, and self-isolation procedures for the prescribed period are instituted for the new crew/personnel before their exposure to other personnel;
- that only international marine vessels that have thermal screening facilities for passengers and crew may be allowed in the ports; and
- that the shipping agent or Master of a vessel must submit all documents related to crew

and passengers regarding their travel to/from the COVID-19-affected countries.

While ships and crew members are still required to maintain safety standards while on board the vessel, all pre-existing COVID-19 restrictions and testing requirements have been relaxed by the Federal Government of Nigeria.

8.2 Non-performance of a Shipping Contract

While Nigerian courts recognise the concepts of force majeure and frustration and would generally apply these principles in deserving cases, there has been no decision from a Nigerian court on the implication of COVID-19 as a force majeure event. Thus, whether the coronavirus pandemic will be regarded as a force majeure event (in relation to shipping contracts or commercial contracts) by a Nigerian court will depend on the provisions of the force majeure clause (if any) in the relevant shipping or commercial contracts, as the courts will not read a force majeure clause into a contract except where the contract makes specific provision. As such, the scope of what the courts will allow as a force majeure event will depend on the wording of the relevant contract.

8.3 Enforcement of the “IMO 2020” Rule Relating to Limitation on the Sulphur Content of Fuel Oil

By Section 336(1)(a) of the MSA, provisions of the International Convention for the Prevention of Pollution from Ships 1973/1978, of which the IMO 2020 is a product, apply in Nigeria. Furthermore, the NIMASA and the Nigerian Ports Authority (NPA) have made commitments towards ensuring the implementation and enforcement of the IMO 2020.

NIMASA is responsible for the enforcement of the sulphur-content limitation and the limit is

the same as the global limit and IMO Standard, 0.5%.

Although there have been no large-scale enforcement actions, NIMASA engages with the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian National Petroleum Corporation (NNPC) to ensure that marine fuel to be refined or imported meets the IMO standard.

Finally, the NIMASA has installed Tytro X on vessels; this device would help in monitoring fuel consumption and determine the sulphur content in the fuel. There have been no known proceedings/sanctions that took place because of a violation of the sulphur limitation or related regulations.

8.4 Trade Sanctions

Nigeria has not incorporated any of the international trade sanctions. The main legislation governing sanctions and export controls is the Customs and Excise Management Act 2004 (CEMA). Under the CEMA, the Nigerian Customs Service has legal authority to act on behalf of Nigeria in all customs-related matters. Whilst, as far as is known, there are no specific entities that have been sanctioned, the Nigerian Customs Service can impose sanctions such as the seizure and forfeiture of goods. In cases of serious violations, civil or criminal liability may arise, and appropriate prosecution proceedings may be instituted in the Nigerian courts.

There are no trade sanctions-related impacts of the Russia-Ukraine war on Nigeria, save for the shortage in the supply of certain agricultural products and the consequent increase in the prices of such commodities in Nigeria.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Cabotage Operations

The Cabotage Act provides that only vessels which are wholly owned and manned by Nigerians and built and registered in Nigeria can engage in the cabotage trade (ie, the domestic coastal carriage of cargo and passengers within the coastal and territorial inland waters, or any point within the waters of the exclusive economic zone of Nigeria).

The Cabotage Act further provides that vessels shall not be registered or used in cabotage, unless:

- the vessel is wholly and beneficially owned by Nigerian citizens or by a company wholly and beneficially owned by Nigerian citizens; a vessel or company is deemed to be wholly and beneficially owned by Nigerian citizens where all the shares in the vessel or in the company are held by Nigerian citizens, free from trusts or other obligations (fiduciary or otherwise) in favour of non-Nigerians;
- the vessel is under a bareboat charter to Nigerian citizens or companies and is under the full control and management of Nigerian citizens or a company wholly and beneficially owned by Nigerians;
- the vessel is owned by a company registered in Nigeria and the percentage of shares held in the company by Nigerian citizens is not less than 60%; and
- the vessel is exclusively manned by officers and crew of Nigerian citizenship.

However, the Minister may grant waivers on the requirement for a vessel to be wholly owned and

wholly manned by Nigerian citizens and to be built in Nigeria, if the Minister is satisfied that there is no wholly owned Nigerian vessel suitable to provide the services or perform the activities required, no qualified Nigerian officer or crew for the position specified or no Nigerian ship-building yard with the capacity to construct the type and size of vessel specified. Further to a five-year strategy set in April 2019, the NIMASA (and by extension the Minister) seeks to cease the issuance of cabotage waivers, which has become the norm instead of the exception, thus giving continued advantage to foreign-flagged vessels and foreign-owned vessels, as well as foreign crew. The strategy, which is to be implemented in phases, has commenced with the stoppage of manning waivers (with the exceptions of captains and chief engineers).

The NSRO is also responsible for maintaining the cabotage register for vessels eligible to undertake coastal trade in Nigeria.

The Cabotage Act established a Cabotage Vessel Finance Fund (CVFF) and it also stipulates that a surcharge of 2% of the contract sum performed by any vessel engaged in coastal trade shall be paid into the CVFF.

Seafarers' Rights

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

- rights with regard to their employment contracts (and obligations of their employers), including wages, leave benefits and discharge from service; and
- rights regarding general welfare, health and accommodation.

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the “STCW Convention”) has the force of law in Nigeria via the rule-making authority of the Minister (Section 408 of the MSA) 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.

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 are the other international conventions on seafarers’ rights that have been domesticated by the MSA.

Nigeria has ratified the Maritime Labour Convention 2006 (MLC) but has yet to domesticate it in accordance with the Constitution. Notwithstanding the foregoing, the NIMASA, by requesting evidence of compliance with the MLC financial security provisions before certain operational permits are issued to vessels, has started to implement the provisions of the MLC.

Enforcement of Foreign Judgments

A foreign judgment is required to be registered before it can be enforced in Nigeria. There are two applicable statutory regimes dealing with the enforcement of foreign judgments in Nigeria: the Reciprocal Enforcement of Judgments Ordinance Cap 175 of the Laws of the Federation of Nigeria and Lagos, 1958 (the “Ordinance”), and the Foreign Judgment (Reciprocal Enforcement) Act, 2004 (FJA). A party may also bring an action under common law.

The FJA provides for the enforcement in Nigeria of final judgments of foreign superior courts

which accord reciprocal treatment to judgments of Nigerian courts. Such foreign countries are to be listed in an Order to be made by the Minister of Justice under Part 1 of the FJA. Although the Order is yet to be made, Section 10(a) of the FJA allows the enforcement of foreign judgments from countries to which Part 1 of the FJA has not been extended, provided that such applications for enforcement are made within 12 months of the delivery of the foreign judgments or within such time as the court may permit.

The Ordinance applies to judgments of certain commonwealth countries, including the United Kingdom, Ireland, and Ghana. Under the Ordinance, for a foreign judgment to be enforceable in Nigeria, an applicant must file a petition *ex parte* or on notice to a judge for leave to register the foreign judgment in Nigeria. The petition *ex parte* or on notice shall be supported by an affidavit of the facts which must state that, to the best of the information and belief of the deponent, the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the cases precluded from registration. The petition and the affidavit in support shall be accompanied by a written address, addressing all the legal issues involved in the matter.

If the court finds merit in the petition, it shall order that the foreign judgment be registered as a judgment of the Nigerian court, and the order will usually specify a time limit within which the judgment debtor can apply to set aside the order – this is usually 14 days if the judgment debtor is within the territory of the registering court, or longer if otherwise. The Ordinance has a six-year limitation period for the registration and enforcement of foreign judgments.

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Under common law, a party seeking to enforce a foreign judgment in a maritime claim must institute fresh proceedings in the FHC, with the foreign judgment as the basis for the claim. The judgment creditor may apply for the case to be placed on the undefended list, an expedited procedure for cases where there is no reasonable defence to the claim, and the existence of the foreign judgment will be the judgment creditor's basis for belief that there is no defence to the claim. A certified copy of the foreign judgment will be attached as an exhibit to the application.

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Bloomfield LP is a specialist commercial law firm that operates out of Lagos and other littoral Nigerian cities, including Port Harcourt and Warri. The firm offers comprehensive and exceptional legal solutions to meet clients' expectations. Bloomfield's lawyers, more than 30 in number, include leading shipping experts (in contentious and non-contentious as well as dry and wet shipping matters) who continue to influence the industry and shipping jurisprudence in Nigeria. The firm's clientele spans across ship-owners, charterers, managers, shipyards, financiers, brokers, insurers (including P&I members

of the International Group of Protection and Indemnity Clubs (IGP), as well as fixed-premium marine insurers), oil-servicing companies, port and terminal operators/promoters, petroleum marketing and distribution companies and commodity trading houses. Bloomfield's lawyers have contributed to, or authored, leading texts within many key sectors, and are often called upon to attend Nigerian and international seminars/workshops and to serve as public and private-sector officeholders, advisers, and consultants.

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