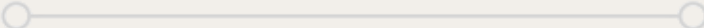


AKABOGU & ASSOCIATES
Barristers, Solicitors





A & A MONTHLY

**LOAN RECOVERY IN SHIP
FINANCE**
THE A&A MINI GUIDE

**PROPOSED AMENDMENTS
TO CAMA**

SEAFARER RIGHTS
SOME POINTS TO NOTE

and more!

**SUBSCRIBE
NOW!**

**DOWNLOAD
THIS EDITION**



**THE A&A MINI GUIDE
TO LOANS RECOVERIES IN
SHIP FINANCE TRANSACTIONS**



READ MORE



**CORPORATE AFFAIRS
COMMISSION**

**ONE MAN COMPANIES IN NIGERIA?
PROPOSED AMENDMENTS TO CAMA**



READ MORE



**STAKEHOLDERS HOSTED TO
A&A SEMINAR ON SHIP FINANCE**



READ MORE



**SEAFARERS' RIGHTS UNDER THE
MARITIME LABOUR CONVENTION 2006:
THREE POINTS TO NOTE**



READ MORE



THE A&A MINI GUIDE

TO LOANS RECOVERIES IN

SHIP FINANCE TRANSACTIONS

This Guide is intended solely for information purposes and is not to be construed, under any circumstances, by implication or otherwise, as legal advice

Mortgagor: The person who wishes to purchase a vessel or construct a vessel.	Mortgagee: The Body advancing the Credit Facility
--	---

INTRODUCTION

Ships aren't necessarily cheap assets to acquire and unless you are listed on the Forbes Rich List, you may just need the assistance of a financial institution or lending house to facilitate the acquisition of that dreamboat that you have wished so hard upon a star for. More importantly is the fact that the financial institution that advances the credit facility used to purchase a ship will also be interested in ensuring that its interests remain secure. In recognition of the difficulties faced by many financial institutions in securing their interests in ship finance transactions, the team here at Akabogu & Associates has put together a concise and compact mini guide for financial institutions who may be going through such challenges. Three things you should note:

1. HAVE A LEGAL MORTGAGE

A Ship Mortgage is a common method of financing the purchase or construction of a ship. Just like a normal mortgage transaction in real estate, in a ship mortgage, the Mortgagee in exchange for credit, gives the Mortgagor a proprietary interest in the vessel which returns to him, upon repayment of the loan advanced.

The registration of Ship Mortgages in the Nigerian Ship Registry or indeed any other relevant registry is advisable and is provided for under Section 53(1) of Nigeria’s Merchant Shipping Act, 2007. “Why?” you may ask. This is because, the registration of such brings same to the awareness of Nigeria’s Maritime Administration and Safety Agency (NIMASA) and such a move is important when it comes to the enforcement of the lender’s security.

2. OPTIMISE YOUR RISK MANAGEMENT STEPS

Financiers are advised to take crucial steps to ensure that credit is advanced to the right person and more importantly ensure that there is some guarantee that it will receive its money back. How then, can a lender protect its interest in ship mortgage transaction?

Due Diligence: Conduct searches on the vessel. From the Nigerian Ship Registry Office to relevant international ship intelligence services, a financier should take advantage of the information available on the said vessel. Searches may come at a cost.

Assess the Vessel's Value: Ships are tangible and like every tangible item, will depreciate in value over time. As such, it is advisable that an assessment of the vessel's condition is conducted. The assessment of a vessel's condition is better conducted by a classification society.

Register the Mortgage: Registering the Mortgage in line with the Merchant Shipping Act 2007 will guarantee that:

- a. The Mortgagee's interest in the vessel is protected against bankruptcy proceedings, where the mortgagor is declared bankrupt (Section 57, Merchant Shipping Act, 2007);
- b. An earlier registered mortgage will always take precedence over a later registered mortgage (Section 53, Merchant Shipping Act, 2007);
- c. Where there is a forced sale, only a registered mortgagee will be notified of such. Remember, a mortgagee will be paid back his security from the proceeds of a forced sale (subject to maritime liens) and as such will be interested in being notified of same

Monitor the Loan: Having profiled the risk of the borrower at the beginning of the transaction, ensure that you keep closer look at the activities of the borrower post disbursement to ensure that the funds are properly applied. Monitor the movement of the ship, keep an eye on operations to avoid the accrual of maritime liens and enter caveats where necessary.

Reduce the risk of default: The longer the term the greater risk of exposure. Higher pay back costs but lower instalment payments means less risk of default.

3. FORCED SALE: WHEN IT ALL GOES WRONG

A Court ordered sale of a ship may be ordered by way of an interlocutory order or executory judgment. This will be as a consequence of a legal or equitable mortgagee bringing an action in rem pursuant to section 2 of the Admiralty Jurisdiction Act for the enforcement of the Mortgage.

A Mortgagee should strategically consider if a Forced Sale is his best option in each particular situation bearing in mind such things as priorities, charterparties and their value, the value of the ship and the likelihood of securing a buyer.

CONCLUSION

Ship Financing is important to the development of Nigeria's Maritime sector and the legal issues surrounding such transactions are beyond being documented in this mini guide. Owing to our commitment to the rapid development of this sector, we have compiled this mini guide to serve as handy nuggets for financiers interested in advancing or recovering ship finance loans.

Akabogu & Associates is a foremost maritime practice deeply engaged in on-going research into the development of this sector. The firm possesses a wealth of experience in this field and is open to engaging with prospective shipowners, shipbuilding companies and financial institutions who are interested in loans and recoveries relating to ship finance. To get in touch with a member of our team, please [click here](#).



ONE MAN COMPANIES IN NIGERIA? PROPOSED AMENDMENTS TO CAMA

THE DAWN OF ONE MAN COMPANIES? PROPOSED AMENDMENTS TO THE COMPANIES AND ALLIED MATTERS ACT

INTRODUCTION

The Companies and Allied Matters Act (CAMA) 1990 was enacted to establish the Corporate Affairs Commission (CAC) as well as regulate the affairs of companies, corporate entities and business organizations in Nigeria. The Act mandates the Commission to regulate and supervise the formation, incorporation, management and winding up of companies as well as establish and maintain companies' registry and offices in all the states of the Federation.

Thirty years have passed since its enactment and in line with this, Nigeria's legislature has decided to review the provisions of the act. This is in view of the need to ensure that the CAMA is in sync with modern needs of business organizations and corporate entities; in the past thirty years, the needs of these bodies have evolved and the laws governing their activities must be reflective of this.

BACKGROUND

Acknowledging the need for an amendment of the Act, the CAC enacted a committee tasked with reviewing the CAMA and proposing an amendment of same to the National Assembly. Consequent to the completion of its review, two bills were proposed for the amendment of the act namely;

- "A Bill for an Act to amend the Companies and Allied Matters (CAMA) Act to provide for the Incorporation of Companies, registration of business names together with incorporation of trustees of certain communities, bodies associations and incidental matter" sponsored by Sen. Fatima Raji Rasaki; and
- "A Bill for an Act to amend the Company and Allied Matters Act and for the establishment of State Corporate Affairs Commission (CAC) for registration of business names and for other matters connected therewith" sponsored by Sen. Ovie Omo-Agege.

Both bills have since passed the second reading in the Senate and are now at the committee stage. They have also been consolidated into one bill before the house.

The existing Act is divided into four parts:

PART A – Registration of Companies

PART B – Registration of Business Names

PART C – Registration of Incorporated Trustees

PART D – Schedule to the Act

The Act restricts the formation of companies under PART A to two or more persons. Corporate Entities under PART C of the Act can also only be formed by two or more persons. However, a person seeking to trade under a name, other than their full name, must have that name registered under PART B of the Act.

SOME PROPOSED AMENDMENTS

- (i) The One Man Company: As pointed out above, it takes at least two people to form a company under PART A of the Act. However, the bill proposes a provision for the incorporation of a private company limited by liability by a single individual. This extends the blanket of corporate personality to a sole proprietor who fulfills the conditions for registration. This proposed amendment is intended to align the Act with the provisions of other jurisdictions in the allowance of the ‘One Man Company.’
- (ii) Business Rescue Proceedings: “..., “business rescue proceedings” means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for –

1. the temporary supervision of the company and of the management of its affairs, business or property;
2. a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
3. the development and implementation of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities and equity in a manner that maximizes the possibility of the company continuing in existence on a solvent basis or, if it is not possible for the company to continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company.”

(iii) Conformation to Innovative Technology: The bill also amends several provisions of the Act to allow better synergy with modern technology. Expanding, with the advent and proliferation of e-mails, websites within the corporate world, it is fair to note that the way that we do business is changing, put simply. Accordingly, there has been a dire need for this to be reflected in legal instruments and the proposed amendments do just that. Reflecting this change, take note of the following provisions:

<i>Section 213 (2)</i>	<i>Section 371</i>
<i>A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with regulations made by the Commission from time to time.”</i>	<i>Every company shall, once at least in every year, make and deliver either in hard copy or through electronic communications to the Commission an annual return in the form, and containing the matters specified in sections 372, 373 or 374 of this Act as may be applicable...”</i>

(iv) Unclaimed Dividends: The proposed bill also touches on the subject of unclaimed dividends. The bill proposes to strike out the limitation period within which a shareholder can claim his/her dividends. The Act currently provides that a shareholder has 12 years within which to recover his unclaimed dividends. If the bill is passed, a shareholder shall have to recover is unclaimed dividends at any time. Further to this, where dividends are returned to the company unclaimed, it is proposed that a list of unclaimed dividends and the names of person entitled to said unclaimed dividends be published in two national newspapers in addition to attaching the list as published to the notice of the next annual general meeting.

Other Notable Amendments

The proposed bill also makes some notable amendments to the extant law namely:

- (a) A liquidator must either be a legal practitioner or accountant before he/she can be appointed as a liquidator
- (b) One of the members of the Board of the Corporate Affairs Commission must be a member of the

Institute of Chartered Secretaries and Administrators of Nigeria.

(c) The minimum authorized share capital to be amended from N10,000 to N100,000 for private companies and from N500,000 to N2,000, 000 for public companies.

(d) Additions to the functions to the board and the commission.

(e) Total amount of liability of members for a company limited by guarantee should not be less than N100,000 as opposed to N50,000 in the extant Act.

COMMENTS

The proposed amendments to the CAMA have reflected the need to bring the Act in accordance with the times and the current global best practice. The upgrade of the penalties will ensure stricter compliance with the provisions of the Act. Furthermore, the introduction of electronic submission of incorporation documents will further hasten the incorporation of companies and engender the ease of doing business in Nigeria.

There is the question of readiness. Is Nigeria truly ready for "One Man Companies"? Would granting the sole proprietor an opportunity at hiding behind the corporate veil not create an opportunity for fraud and other enlarged activities? The passing of the Bill into law will give the opportunity to see how the concept will work in Nigeria.

Concerning the Business Rescue Proceedings proposed in the bill, it is just to note that this new provision is crucial to the resurrection of dying companies. However, note that these proceedings have been proposed "without prejudice" to the provisions relating to the appointment of a receiver. It will indeed be interesting to see how effective these proceedings will be if the bill is passed into law, given that upon the appointment of a receiver, these proceedings may be rendered futile.

CONCLUSION

The proposed bill demonstrates the pro activeness of the National Assembly and the Corporate Affairs Commission in ensuring that Nigerian legislation is business friendly and attractive to investors, all in the aim of facilitating economic development. The passage of this bill into law will be a step in the right direction in making Nigeria's business environment even more, investor friendly.

Damilola Yakubu Esq

Associate

Akabogu & Associates



RIGHTS OF SEAFARERS UNDER THE MARITIME LABOUR CONVENTION: THREE POINTS TO NOTE

The Month of May is indeed a very special one for many workers around the world and this year, here at Akabogu & Associates, we, in recognition of Labour Day (Worker's Day) which fell on Monday 1st May, 2017, commemorate many seafarers around the world who work tirelessly to keep the sector afloat.

In line with our homage to seafarer's this month, we have put together this little guide containing five fundamental rights that every seafarer on board every vessel should be aware of. Do note that these rights are as contained in the Maritime Labour Convention 2006. Enjoy and do spread the word:

1. Fundamental Rights and Principles: These are contained in Article III of the Maritime Labour Convention and every Seafarer should be interested in noting these. They are;

- (i) The right to associate and to bargain collectively. This is the right to join a trade union of choice and to bargain collectively.
- (ii) Freedom from forced labour. This is the right not to be treated as a slave
- (iii) The right not to be subjected to child labour.
- (iv) The elimination of discrimination in respect of employment and occupation

2. Employment and Social Rights

- (i) The right to a safe and secure workplace that complies with safety standards.
- (ii) A right to fair terms of employment
- (iii) A right to decent working and living conditions on board ship.
- (iv) A right to health protection, medical care, welfare measures and other forms of social protection.

3. Seafarer's Employment Agreements

- (i) A seafarer has the right to a written employment agreement. It must be clear and legally enforceable.
- (ii) A seafarer must be able to review the employment agreement, and seek advice on it, before signing it.
- (iii) A seafarer must enter into the employment agreement freely.
- (iv) The employment agreement must be signed by the seafarer and the shipowner, or a representative of the shipowner.
- (v) The seafarer and the shipowner must each have a signed original of the employment agreement.
- (vi) If the employment agreement includes a collective bargaining agreement, a copy of the collective agreement must be available on board the ship.
- (vii) The employment agreement must contain the following particulars:
 - (a) The seafarer's full name, date of birth or age, and birthplace;
 - (b) The shipowner's name and address;
 - (c) The place where and date when the employment agreement is entered into;
 - (d) The seafarer's position on board;
 - (e) The amount of the seafarer's wages, or how they are calculated;
 - (f) The amount of annual paid leave, or how it is calculated;
 - (g) The conditions for terminating the agreement, including the notice period, if the agreement is for an indefinite period (this must not be less for the shipowner than for the seafarer); the expiry date, if the agreement is for a fixed term; and the port of destination, if the agreement is for a specific voyage;
 - (h) The health and social security protection benefits provided by the shipowner;
 - (i) The seafarer's entitlement to repatriation;
 - (j) Reference to the collective bargaining agreement, if applicable.
 - (k) A copy of the seafarer's employment agreement, including any applicable collective bargaining agreement, must be available substantively in English on board the ship for review by officers of a competent authority, including port state control officers.

So there you have it, a little guide to some of the very many rights of seafarers enshrined in the Maritime Labour Convention. It is important for Nigerian shipowners to note that Nigeria has ratified the convention and is taking steps to domesticate same. Accordingly, we advise our ship owning subscribers to take note of these rights and many more as contained in the convention to ensure maximum compliance with the law.

For more inquiries on this issue, please get in touch by [clicking here](#) and a member of the team will be happy to help out

Akabogu & Associates is a foremost maritime practice committed to the development of Nigeria's Maritime Sector and is further dedicated to ensuring maximum compliance with Nigerian obligations under International Law.

Medani, Ngozi O (Miss)

Associate

Akabogu & Associates



AKABOGU & ASSOCIATES HOSTS STAKEHOLDERS TO A SEMINAR ON LOANS AND RECOVERIES IN SHIP AND MARITIME FINANCE

On Tuesday 25th April 2017, the firm of Akabogu & Associates opened its doors to stakeholders and financial institutions engaged in the business of ship finance. As part of our ongoing contribution to capacity building in the shipping and maritime industry, we hosted our delegates to a Free Seminar on Loans and Recoveries in Ship and Maritime Finance. Spearheaded by the Senior Partner, Mr. Emeka Akabogu, the seminar entailed four mini lectures delivered by associates within firm on the legal issues that arise in the recovery of loan facilities advanced in Ship Financing transactions. Upon conclusion of the lecture series, the delegates were broken into two groups and presented with a case study for their review and feedback.



The Seminar was a well-attended one and the delegates expressed delight in the initiative and further commended the firm on its proactive approach to building capacity in the sector. Speaking on behalf of delegates, Engineer Oliver Ogbuagu a marine engrineer and former Executive Director with the Nigerian Maritime Administration and Safety Agency (NIMASA) commended the efforts of the firm and called on stakeholders to collaborate with the firm in providing in extending industry frontiers for networking, learning and exchange of ideas.

Akabogu & Associates remains committed to the development and advancement of Nigeria's Maritime Industry and are open to partnering government and private agencies in providing capacity building sessions and training programs for the industry. To get in contact with a member of the team, please [click here](#).

We will be back in June.....Enjoy!