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NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY ACT

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NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY ACT

An Act to provide for the promotion of maritime safety and security, protection in the maritime environment, shipping registration and commercial shipping, maritime labour, the establishment of Nigerian Maritime Administration and Safety Agency; and for related matters.

[2007 No. 71.]

[25th May, 2007]

[Commencement.]

ENACTED by the National Assembly of the Federal Republic of Nigeria.

PART I

Objective, Application and Scope of the Act

1. Objective of the Act

(1) The objective of the Agency shall be to-

- (i) promote the development of indigenous commercial shipping in international and coastal shipping trade; and
- (ii) regulate and promote maritime safety, security, marine pollution and maritime labour.

(2) The objective of this Act shall be achieved through-

(a) the establishment of a National Maritime Administration and Safety Agency who shall be responsible for the executing the provisions of this Act, the Merchant Shipping Act and its amendments and all other Federal legislation on maritime labour, safety and security;

[Cap. M11.]

(b) the merger of the National Maritime Authority and Joint Maritime Labour Industrial Council;

(c) the transfer of the ownership of land and assets currently vested in the National Maritime Authority and the Joint Maritime Labour industrial Council to the Nigerian Maritime Administration and Safety Agency; and

(d) the abolition of the Office of Government Inspector of Shipping created under Merchant Shipping (Delegation of Powers) Notice, Merchant Shipping Act, and the transfer of the functions and powers in that Notice to the National Maritime Administration and Safety Agency.

[Cap. M11.]

2. Application and scope

(1) This Act shall apply to ships, small ships and crafts registered in Nigeria and extend to ships, small ships and crafts flying a foreign flag in the exclusive economic zone, territorial and inland seas, inland waterways and in the ports of the Federal Republic of Nigeria.

(2) This Act does not extend to warships and military patrol ships.

(3) This Act applies to all matters related to the provision of maritime labour in Nigeria's maritime zone and all matters related to the provision of maritime labour by Nigerians to the international maritime labour market.

(4) The Agency established by this Act shall be under the supervision of the Federal Ministry responsible for Marine Transportation.

PART II

Establishment of Nigerian Maritime Administration and Safety Agency and Staffing

(3) Establishment of the Nigerian Maritime Administration and Safety Agency

(1) There is established the Nigerian Maritime Administration and Safety Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and shall have the power to-

(a) enter into contracts and incur obligations;

(b) acquire, hold, mortgage, purchase, sell, lease and deal howsoever with property, whether movable or immovable, real or personal for the purpose of this Act;

(c) do and suffer all acts and things which a body corporate may by law do and suffer and which are necessary or convenient for the purpose of this Act.

(3) The common seal of the Administration shall be kept in such custody as the Agency directs and shall not be used except as authorised by the Administration.

4. Succession

(1) On the commencement of this Act, all assets, liabilities, rights and obligations of the National Maritime Authority and the Joint Maritime Labour Industrial Council shall vest in the Nigerian Maritime Administration and Safety Agency.

(2) Any enactment, instrument or other document passed or made before the commencement of subsection (1) of this section which refers to the National Maritime Authority and the Joint Maritime Labour Industrial Council shall have effect, so far as necessary for the purposes of or in consequence of anything being transferred, as if any reference to the National Maritime Authority and the Joint Maritime Labour Industrial Council were a reference to the Nigerian Maritime Administration and Safety Agency established by this Act.

(5) Agency's board and membership

(1) The Agency shall have a governing board (in this Act referred to as "the Board") which shall comprise of-

(a) a Chairman;

(b) one representative not below the rank of a Director of the following Federal Ministries-

- (i) the Federal Ministry responsible for Marine Transportation; and
- (ii) the Federal Ministry responsible for Labour Relations;

- (c) a representative of the Nigeria Navy;
- (d) three persons with cognate experience in maritime, shipping or labour matters;
- (e) the Director-General; and
- (f) three (3) Executive Directors.

(2) The Board of Directors of the Agency-

(a) is responsible for the determination of the general policy of the Agency with regard to the financial, commercial and operational programme of the Agency; and

(b) may exercise the powers of the Agency but shall not have or exercise any of the executive functions of the Agency vested in the Director-General under section 12 of this Act.

(3) In managing its affairs, the Agency's board shall have regard, in addition to any relevant general guidelines on the governance of public bodies, to such generally acceptable principles of good corporate governance as it is reasonable to regard as applicable to them. The supplementary provisions set out in the Second Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.

[Second Schedule.]

(4) Subject to subsection (3) of this section, the Board shall have capacity to make standing orders for the regulation of its proceedings and meetings howsoever and acts of the Board shall be deemed to be acts of the Agency.

(5) All payments, allowance, benefits and expenses howsoever called, payable to the Board members including the Director-General and Executive Directors of the Agency shall be determined by the Board and in accordance with extant Federal Government Guidelines.

6. Qualification of board members

(1) The President on recommendation of the Minister shall appoint to the Board only persons with relevant experience and capacity applicable to maritime administration, recognised expert knowledge, qualification and experience in one or more of the following fields-

- (a) Maritime Safety;
- (b) Maritime Security;
- (c) Maritime Pollution;
- (d) Nautical Sciences and Hydrography;
- (e) Marine Engineering;
- (f) Finance;
- (g) Marine Laws;

- (h) Transport Logistics;
- (i) Administration; and
- (j) Marine Labour.

(2) in nominating persons for appointment to the Agency's board, the Minister shall take into consideration the objects of this Act and the functions of the Agency.

(3) A person shall not be appointed or remain in Office as a Director if he-

- (a) is not a Nigerian citizen;
- (b) has been certified to be of unsound mind;
- (c) is an undischarged bankrupt;
- (d) has been convicted in Nigeria or elsewhere of a criminal offence;
- (e) has at any time been removed from an Office of trust on account of misconduct.

(4) The conflict of interest provisions contained in the Third Schedule to this Act shall apply to all Board members.

[Third Schedule.]

7. Appointment of board members and tenure of board members

(1) All board members shall be appointed by the President on the recommendation of the Minister.

(2) The President on recommendation of the Minister shall appoint the Chairman and the Director-General of the Agency.

(3) Subject to sections 11 (2) and 12 (2) of this Act, each board member shall serve for a term of four (4) years and may be re-appointed for another term of four years and no more.

8. Resignation of a board member

(1) A non-executive board member may resign his Office by giving one month's written notice while the Director-General and Executive Directors are required to give three months' written notice.

(2) The notice given in subsection (1) shall be addressed to the President through the Minister.

9. Removal of a board member

(1) Subject to subsections (2), (3) and (4) of this section, a board member shall only be suspended or removed from Office on the recommendation of the Minister and with the approval of the President if he-

- (a) is found to have been unqualified for appointment as a member under section 6 of this Act or is in breach of section 3 (6) after his appointment; or
- (b) has demonstrated inability to effectively perform the duties of his Office; or
- (c) has been absent from five consecutive meetings of the Board without the consent of the Chairman except where he shows good reason for such absence; or
- (d) is guilty of a serious misconduct in relation to his duties as a Director;

- (e) in the case of a person possessed of professional qualifications, is qualified or suspended from practicing his profession in any part of the world by an order of a competent authority; or
- (f) is in breach of the conflict of interest rules set out in the Third Schedule to this Act.

[Third Schedule.]

(2) Prior to the suspension or removal of a Director under subsection (1) of this section, the Minister shall inform him by written notice, as soon as practicable, of the intention to suspend or remove the Director from Office and the reasons for such suspension or removal.

(3) The affected Director shall be given a reasonable opportunity to make written submissions to the Minister within a time period specified in the notice and such time period shall not be less than fourteen days from the date of the notice.

(4) The affected Director may, within the time period specified in the notice, submit a written submission and the Minister shall consider the submission in making his final decision on the Director's suspension or removal from Office.

10. Vacancy on the Board

(1) There shall be a vacancy on the Agency's Board if a member-

- (a) dies; or
- (b) is removed from Office in accordance with section 9 of this Act; or
- (c) resigns from Office; or
- (d) completes his tenure of Office.

(2) A vacancy in the Board shall be filled by the appointment of another person to the vacant Office on recommendation of the Minister by the President in accordance with sections 6 and 7 of this Act, as soon as is reasonably practicable after the occurrence of such vacancy.

(3) Any person appointed in accordance with subsection (2) of this section shall hold Office for a term of four years which may be renewed for a further term of four years.

11. Director-General

(1) The President on the recommendation of the Minister shall appoint a Director-General for the Agency in accordance with the provision of sections 6 and 7 of this Act.

(2) The Director-General shall be a person with extensive knowledge of and ability in maritime affairs and subject to section 9 of this Act, he shall hold Office for such term, not exceeding four years which term may be renewed for a further term not exceeding four years.

(3) The Director-General shall be the Chief Executive and Accounting Officer of the Agency and shall be responsible for

- (a) the execution of the policies and decisions of the Agency's board;
- (b) the organisation, control and management of the day to day business of the Agency;

- (c) the implementation of the Agency's functions and ensuring that the Agency achieves its goals;
- (d) the direction, supervision and control of other employees of the Agency, subject to any direction and restriction imposed on him by the Board;
- (e) ensuring the maintenance of accounting records in accordance with applicable laws governing corporate bodies and generally accepted accounting principles in Nigeria.

(4) The Director-General may be suspended or removed from Office by the President if he-

- (a) has demonstrated inability to effectively perform the duties of his Office; or
- (b) is guilty of serious misconduct in relation to his duties as Director-General; or
- (c) in the case of a person possessed of professional qualifications, he is disqualified or suspended from practicing his profession in any part of the world by an order of a competent authority; or
- (d) is guilty of a conflict of interest as stipulated in section 9 of this Act.

(5) The Director-General shall not be removed from Office except in accordance with the provisions of this Act.

12. Executive Directors

(1) The Agency shall have 3 Executive Directors appointed in accordance with section 7 of this Act who shall perform such executive functions as the Agency's Board shall determine.

(2) The Executive Directors shall be persons possessing sound knowledge of and ability in the executive function concerned and shall hold Office for a term not exceeding four years which term may be renewed for a further period not exceeding four years.

13. Board secretary

(1) The Agency's Board shall appoint a secretary who shall possess relevant and adequate professional qualifications and experience as a Barrister-at-Law, Solicitor or Chartered Secretary, and shall be so qualified for a period of not less than 10 (ten) years.

(2) The Secretary shall report to the Board and the Director-General of the Agency and shall be responsible for-

- (a) making arrangements for Board meetings and preparing the agenda and minutes of such meetings;
- (b) communicating the decisions of the Board to the Board members;
- (c) keeping corporate records of the Board;

(d) arranging for payment of fees and allowances of meetings and all other matters affecting members of the Board; and

(e) any other duties affecting the Agency assigned to him, by the Board or the Director-General of the Agency.

14. Employment and conditions of service

(1) The Agency shall have powers to employ such persons as it may deem necessary for the discharge of the duties and powers of Agency under this Act and regulations made pursuant to it.

(2) The Agency shall have the powers to determine the job description, title, terms, qualifications and salaries of any such person and all such persons shall be subject to the conflicts of interest provisions in the Third Schedule to this Act.

[Third Schedule.]

(3) The employment of the Agency's staff, including its Secretary, shall be subject to such terms and conditions as may from time to time be stipulated by the Agency's board and contained in the respective staffs employment contract.

PART III

Finance

15. Funding of the Agency

The Agency shall be funded by monies accruing to the Agency from the following sources-

(a) 3% of gross freight on all international in-bound and out-bound cargo from ships or shipping companies operating in Nigeria to be collected and paid over to the Agency to meet its operational costs;

(b) 0.5% of stevedoring charges collected by employers of dock labour;

(c) all fees for ship registration, licences, surveys, examination certification and permits issued by the Agency, fines and levies paid to the Agency;

(d) all other financial assets that may from time to time be vested in or accrue to the Agency in the course of performing its functions under this Act or pursuant to this Act;

(e) all other sums collected or received by the Agency for services rendered or facilities provided by the Agency;

(g) gifts, grants, aids, etc.; and

(h) all such other sums as may be received by the Agency from other sources.

16. Budget and expenditure

(1) The Agency shall not later than 30th September in each financial year prepare and forward to the Minister for presentation to the National Assembly for approval a statement of estimated income and expenditure for the following financial year.

(2) The Agency shall provide-

(a) not less than 25% of its revenue for the Maritime Fund; and

(b) not less than 5% of its revenue for the Maritime Academy of Nigeria in its plans as per subsections (1) and (2).

(3) An Agency may open a current account with any bank approved by the Board of the Agency.

17. Maritime Fund

(1) There is established the Maritime Fund (in this Act referred to as "the Fund").

(2) Monies in the Fund may be applied only for the purpose of furthering the objectives and functions of the Agency under this Act.

(3) Monies in the Fund at the end of any financial year shall be carried forward as a credit to the Fund to the following financial year.

(4) The Agency may apply monies in the Fund to promote the development of indigenous shipping and shipping infrastructure in Nigeria.

(5) The beneficiaries of the Fund under subsection (4) of this section shall be Nigerian citizens and companies.

18. Power to accept gifts

(1) The Agency may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Agency shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Agency under this Act or if they are in conflict with national interest.

19. Accounts and records to be open for inspection

(1) The accounts and records shall at all reasonable times be open for the inspection of-

(a) any board member of the Agency; and

(b) any other person specifically authorised to inspect the accounts by the Minister.

(2) The books of accounts shall be kept at the Head Office of the Agency.

20. Statement of accounts and audit

(1) The Agency shall keep proper and regular accounts and other records of monies received and paid by the Agency and of several purposes for which such monies have been received or paid, and of the assets, credits and liabilities.

(2) The Agency shall do all things necessary to ensure that all payments out of its money are correctly made and properly authorised and that adequate control is maintained over the assets of, or in custody of, that Agency and over the expenditure incurred by that Agency.

(3) The accounts of the Agency shall be audited annually by a firm of auditors appointed from the list of chartered accountants approved from time to time by the Board of the Agency.

(4) A firm shall not be qualified for appointment as Auditors under subsection (3) of this section unless it is an approved company auditor under the Companies and Allied Matters Act and any other applicable laws.

(5) As soon as the accounts of the Agency and the financial statements have been audited in accordance with this Act, the Agency shall forward a copy of the audited financial statements to the Minister, together with any report or observations made by the auditor or auditors on the said statement of accounts.

(6) The remuneration of the auditor shall be paid out of the funds of the Agency.

(7) The Agency shall, not later than 3 months after the close of the financial year, prepare and submit the financial statements in respect of that year to the auditor who shall audit and report on them.

21. Annual and other reports

(1) The Agency's board shall, not later than 6 months after the end of each financial year, make a report to the Minister on its activities and performance during that year.

(2) The Board of the Agency shall cause its annual report to be published and made available to the public at the end of each financial year.

PART IV

Functions and Powers of the Agency

22. Functions of the Agency

(1) The functions and duties of the Agency shall be to-

- (a) pursue the development of shipping and regulate matters relating to merchant shipping and seafarers;
- (b) administering the registration and licensing of ships;
- (c) regulate and administer the certification of seafarers;
- (d) establish maritime training and safety standards;
- (e) regulate the safety of shipping as regards the construction of ships and navigation;
- (f) provide search and rescue service;
- (g) provide directions and ensure compliance with vessel security measures;
- (h) carry out air and coastal surveillance;
- (i) control and prevent marine pollution;
- (j) provide direction on qualification, certification, employment and welfare of maritime labour;
- (k) develop and implement policies and programmes which will facilitate the growth of local capacity in ownership, manning and construction of ships and other maritime infrastructure;
- (l) enforce and administer the provisions of the Cabotage Act 2003;
- (m) perform port and flag State duties;
- (n) receive and remove wrecks;
- (o) provide National Maritime Search and Rescue Service;
- (p) provide Maritime Security; and

- (q) establish the procedure for the implementation of conventions of the International Maritime Organisation and the International Maritime Labour Organisation and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping and for the implementation codes, resolutions and circulars arising therefrom.

(2) Without limiting the generality of the foregoing, the Agency shall-

- (a) inspect ships for the purposes of maritime safety, maritime security, maritime labour and prevention of maritime pollution;
- (b) make enquiries as to shipwrecks or other casualties affecting ships, or as to charges of incompetence or misconduct on the part of seafarers in relation to such casualties;
- (c) administer policy for the development of shipping in general;
- (d) provide on request services to the maritime industry on a commercial basis;
- (e) establish and manage maritime institutions for the training of officers of the Agency;
- (f) generally to perform any other duty for ensuring maritime safety and security or do all matters incidental thereto;
- (g) provide consultancy and management services relating to any of the matters referred to in this subsection; and
- (h) perform any other prescribed functions relating to or incidental to any of the matters referred to in this subsection.

(3) The Agency may provide its services both within and outside Nigeria.

(4) Subject to the provisions of this Act, the functions to provide services may be performed at the discretion of the Agency.

(5) Subject to the provision of section 22 (1) (f) a search and rescue service shall be in a manner that is consistent with Nigeria's obligations under international conventions.

(6) The Agency shall perform its functions in a manner consistent with the obligation of Nigeria under any agreement between Nigeria and another country.

23. Powers of the Agency

(1) In addition to any other powers conferred on it by this or any Act, the Agency has, subject to this Act, power to do all things necessary for or incidental to or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the powers include, subject to this Act, power-

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of real and personal property;
- (c) to join in the formation of companies;
- (d) to enter partnerships; and

- (e) to let or hire plant, machinery, crafts, equipment or goods of the Agency not immediately required by the Agency; and
- (f) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Agency.

(3) Where the Agency may provide a facility or service, or discharge a function, the Agency may do so-

- (a) itself;
- (b) in co-operation with another person; or
- (c) by arranging for another person to do so on its behalf.

(4) In subsection (3) of this section "**person**" includes-

- (a) the Federal Government of Nigeria;
- (b) a State Government or that of the Federal Capital Territory;
- (c) the Government or an Agency of the Government of a foreign country; and
- (d) any juristic or natural person.

(5) The Agency shall, in addition, have powers to--

- (a) receive and consider any report of the commission of an offence;
- (b) stop, enter, board, inspect and search any vessel or aircraft and to detain any vessel or aircraft within the Nigerian maritime zone;
- (c) demand the production of any licence, permit, record, certificate or any other document and to inspect such licence, permit, record, certificate or other document or make copies of or take extracts from such licence, permit, record, certificate or other document in relation to matters provided for under this Act;
- (d) cause an investigation into any offence which it has reason to believe is being committed, or is about to be committed or has been committed with respect to offences committed under this Act;
- (e) exercise the right of hot pursuit;
- (f) examine and seize any fish, article, device, goods, vessel, aircraft or any other item relating to any offence which has been committed or it has reason to believe has been committed with respect to offences committed under this Act;
- (g) dispose of any fish, article, device, goods, vessel, aircraft or any other item relating to any offence which has been committed or it has reason to believe has been committed with respect to offences committed under this Act;
- (h) arrest any person whom it has reason to believe has committed an offence;
- (i) expel any vessel which it has reason to believe to be detrimental to the interest of or the endanger the order and safety in the Nigerian Maritime Zone; and
- (j) enter ports, terminals and vessels to monitor and investigate matters related to maritime labour, ship safety and security.

(6) Without prejudice to the generality of subsection (1), designated officers of the Agency shall have, for the purpose of this Act, all the powers which any enforcement agency may exercise under any Federal Law which is applicable to Nigerian Maritime Zone.

(7) Notwithstanding the provision of subsection (5) (b) of this section, no vessel shall be stopped, entered, boarded, searched, inspected or detained within the area of territorial sea if the passage of the vessel within the territorial sea is an innocent passage.

(8) For the purpose of subsection (7) of this section, the passage of a vessel is an innocent passage if and so long as the passage of the vessel is not prejudicial to the safety and security of Nigerian Maritime Zone.

(9) Notwithstanding any written law, for the purpose of subsection (5), the following activities shall be considered to be prejudicial to the safety and security of Nigeria's maritime domain-

- (a) any threat or any act which in any matter is a violation of the provisions of this Act and any other legislation applicable to the Agency;
- (b) any act of pollution;
- (c) any unauthorised fishing activities;
- (d) the carrying out of unauthorised research or survey activities;
- (e) any act aimed at interfering with any systems of communication or any other facilities of installations of the Agency;
- (f) any act in contravention of the Coastal and Inland Shipping (Cabotage) Act, 2003; and
- (g) any other activity not having a direct bearing on passage.

(10) In excising the powers under Part IV, the Agency may collaborate requests for and shall be entitled to assistance by other designated Government agencies responsible for maintenance of security in Nigeria's Maritime Zone.

24. Consultation

In the performance of its functions and the exercise of its powers, the Agency shall, where appropriate, consult with Government, commercial, industrial, consumer and other relevant bodies and organisations and in particular, the Nigerian Navy.

PART V

Directives by the Minister

25. Directives by Minister

(1) The Minister may give the Agency written directives regarding the performance of its functions.

(2) Particulars of any directives given by the Minister in a financial year shall be included in the annual report of the Agency for that year.

PART VI

Charges and Levies

26. Charges and levies

(1) Subject to this section, the Agency may make determination imposing charges and specifying the persons by whom, and the times when, such charges are payable.

(2) The charge or levy may include-

(a) a charge for a service or facility provided by the Agency;

(b) a fee or other charge in respect of a matter in relation to which expenses are incurred by the Agency under this Act or the regulations, including, but without being limited to, a fee or other charge in respect of, or for an application for-

(i) the grant, issue, renewal or variation of a certificate, licence, approval, permission, permit, registration or exemption under an Act or regulation under an Act; or

(ii) the grant or variation of an authorisation, or the cancellation, suspension, variation or imposition of a condition, relating to anything referred to in subparagraph (i);

(c) a fee in respect of a matter referred to in regulations or orders made under-

(i) the Merchant Shipping Act;

(ii) the Coastal and Inland Shipping (Cabotage) Act 2003; or

(iii) all Federal legislation on marine pollution, maritime labour, marine safety and maritime security.

(3) Before making a determination under subsection (1) of this section, the Agency shall give the Minister notice in writing of the proposed determination-

(a) specifying the day from which the determination is intended to operate; and

(b) if it fixes a charge or penalty - specifying the basis of the charge or penalty;
and

(c) if it varies a charge or penalty - specifying the reason for the variation.

(4) The Minister may, within 30 days after receiving a notice of the proposed determination, give the Agency notice in writing approving or disapproving the proposed determination, but in doing so, the Minister shall have regard to the objectives and functions of the Agency.

(5) A notice under subsection (4) disapproving a proposed determination may recommend an alternative determination.

(6) The Agency shall make a determination under subsection (1) of this section only if-

(a) the Minister has approved it; or

(b) the period within which the Minister may give a notice to the Agency under subsection (4) has expired without the Minister having given such a notice.

(7) Subject to subsection (9), where a charge imposed under subsection (1) of this section is not paid within the period determined by the Agency, being a period beginning on the day on which the charge became due and payable, the person liable for the charge is liable to pay to the Agency, in addition to the charge, a penalty calculated upon the unpaid amount of the charge from the day on which the charge became due and payable, and compounded.

(8) The penalty shall not exceed an amount equivalent to the prescribed percentage of the unpaid amount of the charge for each day during which it remains unpaid, calculated from the day on which the charge became due and payable, and compounded.

(9) Unpaid charges and penalties may be recovered as debts due to the Agency.

PART VII

Maritime Labour

27. Registration and regulation of maritime labour

(1) The Agency shall-

(a) register and maintain a register of every dock worker, seafarer, stevedoring company and seafarer employer, jetty, terminal operators and offshore platforms or terminals;

(b) provide training, conduct examinations and regulate the certification of seafarers and the conditions of service of dock workers and seafarers;

(c) ensure that dock workers and seafarer employers comply with existing regulations and standards in relation to crewing, wages, safety, welfare and training of dock workers and seafarers at ports and on board vessels; and

(d) upon notification, investigate disputes relating to the employment of dock workers and seafarers.

(2) The Agency shall have the power to discipline, suspend, cancel or revoke the permit, approval, licence or certificates of dock workers, seafarers and employers of maritime labour who contravene the provisions of this Act.

(3) A person who is not a registered dock worker or seafarer and engages in the performance of dock work in any port, terminal or offshore platforms or terminals in Nigeria or on board any Nigerian vessel in contravention of this section commits an offence and is liable on conviction to a fine of not less than N50,000.00 or to a maximum term of imprisonment of 6 months or both.

(4) An employer of dock workers or seafarers including shipping companies, stevedoring companies, jetty or terminal operators who engages a dock worker or seafarer who is not registered with and certified by the Agency, commits an offence and shall, in addition to any penalty provided in any other law, be liable to a fine of not less than ₦ 1,000,000.00 for each person so employed.

PART VIII

Shipping Registration and Development

28. Shipping registration

(1) Unless as otherwise provided in this Act, the Agency shall be responsible for the registration of ships.

(2) The Nigerian Ship Registration Office is established in the Agency to register ships in accordance with the applicable provisions of this Act, the Merchant Shipping Act, and its amendments.

(3) The Agency may establish branch offices of the Ship Registration Office at respective places in Nigeria as the Agency may determine.

29. Registrar and Deputy Registrars

(1) There shall be an officer of the Agency called the Registrar of Ships, who, subject to the direction of the Agency, be responsible for the maintenance of the Register and in charge of the Registration Office.

(2) There may be appointed Deputy Registrars of Ships, the number of which may be determined by the Agency, who, subject to the directions of the Registrar, have all the powers and duties conferred on the Registrar by this Act, except the power of delegation.

30. Appointment of Registrar and Deputy Registrars

The Registrar and Deputy Registrars shall, with the approval of the Minister be appointed by the Director-General from the staff of the Agency and the Agency may appoint the necessary staff for the Registration Office or any branch office from its staff.

31. Powers and duties of Registrar

(1) The Registrar may do all things necessary or convenient to be done for or in connection with, or incidental to, the exercise of his powers in terms of this Act or any law, including powers that may be prescribed for and in relation to requiring the supply of information and documents as well as the delivery of certificates and other documents granted or issued under this Act.

(2) In addition to any other duty imposed by this Act or any other law, the Registrar shall maintain the Register and shall for that purpose-

(a) receive and record all information and documents required or permitted to be lodged with the Registrar under this Act;

(b) grant, issue, vary or revoke the certificates and other documents that are required or permitted to be granted or issued under this Act; and

(c) issue copies of and extracts from-

(i) any certificate or other document completed in paragraph (b); and

(ii) any entry in the Register.

32. Seal of Registration Office and signature of Registrar

(1) There shall be a seal of the Registration Office, in a form approved by the Agency which shall be under the control of the Registrar.

(2) In all judicial proceedings, judicial notice shall be taken of the impression of the seal of the Registration Office on a document and it shall be presumed, in the absence of evidence to the contrary, that the seal was duly impressed.

(3) If a signature on a document purports to be the signature of the Registrar or of a person authorised to sign the document by virtue of a delegation in terms of section 53, it shall be presumed, in the absence of evidence to the contrary, that the signature is that of a person who at the relevant time was holding the Office of Registrar or was performing the duties of the Office of the Registrar, or was empowered to sign that document, as the case may be.

33. Limitation of liability

The Minister, Agency or a person in the service or acting on the authority of the Agency, or any person appointed to exercise any power or to perform any duty under this Part, is not liable in respect of any loss or damage resulting from anything done or not done in good faith in accordance with the provisions of this Act.

34. Ships entitled to be registered

(1) In addition to any other provision of this Act, the Merchant Shipping Act, Cabotage Act, or any other law and subject to this Part, the following ships are entitled to be registered-

- (a) Nigerian owned ships;
- (b) small vessels, including fishing vessels, except canoes and primitive boats engaged solely in artisan fishing that are-
 - (i) wholly owned by Nigerian residents or Nigerian residents and Nigerian citizens; or
 - (ii) operated solely by Nigerian residents or Nigerian citizens or both such residents and such citizens; and
- (c) ships on bareboat charter to Nigerian citizens.

(2) The Registrar may not register a ship under this Act if the ship is registered under the law of another State, unless-

(a) in the case of a Nigerian owned ship, it was acquired pursuant to an order of court under the Admiralty Jurisdiction Act, and its subsidiary legislation, and the evidence thereof as prescribed by the Agency has been lodged with the Registrar; or

[No. 59,1991.]

(b) in the case of a ship on bareboat charter to a Nigerian citizen, all the relevant documents prescribed by the Agency have been lodged with the Registrar and the provisions under the Bareboat Regulations have been complied with.

(3) The Agency shall perform all the customary duties of a flag State and all the functions and powers vested in the Office of the Government Inspector of Ships under the Merchant Shipping Act, and notices issued under the Merchant Shipping Act.

[Cap. M11.]

(4) A ship registered under this section shall comply with the requirements of the Coastal and Inland Shipping (Cabotage) Act, 2003 if such ship is to operate in Nigerian coastal and inland waterways.

35. National carrier status to shipping companies

The Minister, on the recommendation of the Agency, may grant national carrier status to a shipping company if-

(a) the Nigerian individuals or enterprises fully owned by Nigerian individuals own at least sixty percent of its equity shares, sixty percent in the shares of any vessel owned by the company and the shipping company is registered in Nigeria;

(b) the vessel owned by the company operates on international route, the deep sea and not in Nigerian coastal or inland waterways;

(c) the head office of the company is located in Nigeria and its management and control is directed from its Nigerian head office;

(d) the company owns at least one ocean going vessel of not less than 5,000 net registered tonnage;

(e) the terms and conditions of the employment of seafarers engaged by the company are in conformity with Nigerian laws and accepted international rules and standards;

(f) the company's vessels are registered in the Nigerian Ship Registration Office and the vessels satisfy all conditions stipulated in the Merchant Shipping Act; and

(g) one hundred percent of the crew and at least seventy-five percent of the ship-board officers, including the captain and the chief officer and wherever possible chief engineers, are Nigerians.

36. Government exports and imports for national carrier

(1) National carriers shall have exclusive right to carriage of export and import cargo belonging to the Federal, State and Local Governments including Federal and State owned companies and agencies.

(2) The Agency and the Federal Government shall from time to time issue guidelines on incentives to be granted to Nigerian shippers other than the parties under subsection (1) of this section who employ national carriers for the carriage of cargo.

(3) The Agency may, from time to time, develop and attach additional eligibility criteria for granting the status of national carrier to a shipping company.

37. Carriage of cargo

(1) Subject to subsection (2) of this section, national carriers shall have the right to participate in the carriage of bulk dry or liquid cargo.

(2) The participation of national carriers in the carriage of bulk cargo to and from Nigeria shall be subject to a carriage right of not less than fifty percent of such cargo.

(3) All other cargo to and from Nigeria outside the jurisdiction of liner conferences shall be subject to the same principles of cargo sharing as specified in subsection (2) of this section and subject to such exceptions as the Federal Government may, from time to time, determine.

(4) A cargo support shall cover the totality of available trade, including bulk dry and liquid cargo.

(5) The Nigerian flagged vessels shall carry at least fifty percent of the cargo generated through technical assistance or international aid.

(6) The Agency shall determine an efficient strategy for the participation of national carriers in the carriage of crude and petroleum product to and from Nigeria.

38. Revocation of national carrier status

The Minister, on the recommendation of the Agency, may suspend or revoke the national carrier status of a company, if the company fails to meet any of the prescribed conditions, including the training of Nigerian seafarers.

39. Indigenous fleet expansion

(1) The Agency shall undertake measures to eliminate unfair and uncompetitive practices by shipping companies.

(2) The Agency shall develop and implement policies and measures to promote indigenous ownership of ships and shipping infrastructure.

PART IX

Ship Safety and Security

40. Detention of unsafe ship

(1) Notwithstanding the provisions of any other law, where the Agency has reason to believe that any ship, being in any port or place in Nigeria, is an unsafe ship and a security risk, and is, by reason of any of the matters mentioned in subsection (2) of this section, unfit to proceed to sea without serious danger to human life having regard to the nature of the service for which it is intended, such ship is liable to be detained.

(2) The matters referred to in subsection (1) of this section are-

(a) the condition or unsuitability for the purpose of-

(i) the ship, its machinery or equipment; or

(ii) any part of the ship, its machinery or equipment;

(b) under-manning;

(c) overloading, unsafe or improper loading; and

(d) other matters relevant to the safety and security of the ship.

(3) In performing its functions under this section, the Agency shall have regard to the ISM Code, the ISPS Code and other international conventions and Federal legislation on ship safety and security.

41. Use of unsafe lighters, etc.

(1) Where a person uses or causes or permits to be used in navigation any lighter, barge or like vessel, because of-

(a) the defective condition of its hull or equipment;

(b) overloading or improper loading; or

(c) under-manning, it is now unsafe that human life is endangered, he shall be guilty of an offence and be liable on conviction to a fine not exceeding one million naira.

(2) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

42. Owner liable for unsafe operation of ship

(1) The owners of a ship to which this section applies shall take all reasonable steps

to ensure that the ship is operated in a safe manner.

(2) This section applies to--

(a) a Nigerian ship; and

(b) any ship which-

(i) is registered under the law of, or flies the flag of, any country other than Nigeria; and

(ii) is within Nigerian waters while proceeding to or from a port in Nigeria.

(3) Where the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1) of this section, he shall be guilty of an offence and be liable on conviction to a fine as may be determined by the Agency or imprisonment for a term not exceeding six months, or both.

(4) Where any such ship is chartered by demise, or is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement, any reference to the owner of the ship in subsection (1) or (3) of this section, shall be construed as including a reference to-

(a) the charterer under the charter by demise; or

(b) any such manager; or

(c) if the ship is both chartered and managed, both the charterer and any such manager, and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

43. Liability in respect of unsafe ship, lighters and operation of ships

(1) The Agency shall, immediately after the commencement of this Act, issue regulations on the liability of owner, master and charterer in respect of unsafe ships.

(2) The regulation under this section, shall take into account the penalty and compensation regime of relevant international conventions and codes of which Nigeria is a party to.

PART X

Marine Pollution

44. Regulation on marine pollution

(1) The Agency may make such regulations with the approval of the Minister and not inconsistent with this Act for such provisions as it considers appropriate in relation to-

(a) the dumping of ship and shore generated waste in Nigerian waters; and

(b) removal of wrecks which constitute navigation risks and which is a threat to the marine environment.

(2) In making such regulations, the Agency shall take into account the need to give effect to provisions which are contained in any international convention or agreement to which Nigeria is a party.

(3) The regulations may provide that where a person contravenes a requirement under the regulations he is guilty of an offence and is liable-

(a) on summary conviction, to a fine not exceeding the amount as may be determined by the Agency; or

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding the amount as may be determined by the Agency or to both statutory maximum.

45. Prohibitions on carriage, shipment and jettisoning of harmful substances

(1) All ships to which this Act applies are prohibited from-

(a) carrying harmful substances in packaged form except in accordance with this part; or

(b) jettisoning harmful substance in packaged form.

(2) A person shall not ship or offer for shipment from any Nigerian port harmful substances in packaged form except in accordance with this Part.

(3) In all documents relating to the carriage of harmful substances by sea where such substances are named, the correct technical name of each such substance shall be used.

(4) The shipping documents supplied by the shipper shall include, or be accompanied by, a signed certificate or declaration that the shipment offered for carriage is properly packaged and marked, labelled or placarded as appropriate and in proper condition for carriage to minimise the hazard to the marine environment.

(5) Each ship carrying harmful substances shall have-

(a) a special list or manifest setting forth the harmful substances on board and the location thereof;

(b) a detailed stowage plan setting out the location of all harmful substances on board in lieu of the special list or manifest referred to in paragraph (a) of this subsection; and

(c) copies of the documents referred to in this subsection shall also be retained on shore by the owner of the ship or his representative until the harmful substances are unloaded and a copy of one of these documents shall be made available before departure to the office of the Director-General.

(6) The Agency shall make regulations prescribing-

(a) detailed requirements on packing, marking, labelling, documentation, stowage, quantity limitations and exceptions for preventing or minimising pollution of the marine environment, in conformity with the IMDG Code;

(b) terms and conditions under which ships to which this Act applies may carry, or persons may ship or offer for shipment harmful substances in packaged form;

(c) measures to be taken to regulate the washing of leakages overboard based on the physical, chemical and biological properties of harmful substances; and

(d) inspections to be made by the Agency of all ships to which this Act applies to ensure compliance with this Part.

General Provisions

46. Establishment of marine offices

The Agency may establish marine offices in any part of Nigeria and in other countries as the Agency may deem necessary, for the purpose of effectively performing its functions under this Act and other applicable legislation.

47. Record of shipping infrastructure

The Agency shall keep accurate records of-

- (a) the number, location and capability of shipyards in Nigeria;
- (b) the types of ships suitable for Nigeria's seaborne trade; and
- (c) any other data or record as may be necessary for the efficient performance of its functions under this Act.

48. Power to detain ships

(1) Notwithstanding the provisions of any other law, where the relevant officer of the Agency has reason to believe that the master or owner of a ship has committed an offence under this Act or regulations, he may detain the ship by the service of a Detention Order issued under the signature of a principal officer in a prescribed form.

(2) The Agency's power to detain a ship under this Act shall be exercised in the manner prescribed under the Ship Detention Order Regulation and in accordance with other laws of the Federation.

49. Marine Casualty Investigation Committee

(1) The Director-General shall set up a Marine Casualty Investigation Committee on any event the consequences of which are-

- (a) the loss of the seaworthiness of a ship or small ship or a shipwreck;
- (b) the cause of damage to one's own ship or other towed floating vessel;
- (c) environmental pollution by a ship or small ship or floating platforms; or
- (d) any other marine incident.

(2) The purpose of a marine casualty investigation shall be to-

- (a) identify the circumstances, reasons and consequences of a marine casualty;
- (b) identify the persons at fault in a marine casualty; and
- (c) develop measures for the prevention of marine casualties on the basis of experience gained in the course of the investigation.

(3) In performing its functions under this section, the Agency shall conform to the provisions under the Marine Casualty Regulation and its amendments.

50. Independent Commission for Marine Casualty

(1) The Minister may establish an Independent Commission for Marine Casualty to receive and evaluate reports on marine casualties prepared by the Agency.

(2) The Commission established under subsection (1) shall report directly to the Minister.

(3) The procedure for classification, investigation and registration of marine casualties shall be established by the Minister.

51. Regulations

(1) The Agency may subject to the approval of the Minister make regulations, not inconsistent with this Act-

- (a) prescribing all matters required or permitted by this Act to be prescribed;
- (b) prescribing the manner in which and the persons or bodies by whom charges, levies and related penalties are to be collected and the manner in which security may be provided for the payment of such charges, levies and related penalties;
- (c) prescribing the conditions of service of dock workers and seafarers;
- (d) regulating marine casualty;
- (e) regulating the application of monies in the Maritime Fund;
- (f) regulating the detention of ships; and
- (g) prescribing all matters necessary or expedient to be prescribed for the better achievement of the objects of this Act.

(2) Regulations under subsection (1) may include such incidental, supplementary or transitional provisions as may be reasonably necessary or expedient.

(3) In making the regulations, the Agency shall take into account the need to give effect to provisions which are contained in any international agreement which has been ratified by Nigeria.

52. Delegation

The Minister may delegate any of the powers under this Act to the Agency.

PART XII

Liability and Legal Proceedings

53. Limitation of suits against the Agency

(1) Notwithstanding anything contained in any other law or enactment, a suit shall lie not against the Agency, a member of its Board, its Director-General or any other employee of the Agency for any act done in pursuance or execution of any public duty under this Act or any law or enactment, or in respect of any alleged neglect or default in the execution of any duty under this Act or such law or enactment unless it is commenced within one year after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within one year after the ceasing thereof.

(2) A suit shall not be commenced against the Agency, a member of its Board, its Director-General or any employee of the Agency, before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Agency by the intending plaintiff, or his agent and the notice shall clearly and explicitly state--

- (a) the cause of action;

- (b) the particulars of the claim;
- (c) the name and place of abode of the plaintiff; and
- (d) the relief sought.

54. Judicial management and liquidation

Notwithstanding the provisions of any other law, the Agency may not be placed under judicial management or liquidation except it is authorised by an Act of the National Assembly enacted specifically for such purpose.

PART XIII

Offences

55. Damage to property of the Agency

If a person wilfully removes, destroys or damages any property belonging to, or in the custody or possession of the Agency or hinders or prevents such property from being used or operated in the manner in which it is intended to be used or operated commits an offence and is liable on conviction to a fine not exceeding ₦1,000,000.00 and shall make good any loss, destruction or damage suffered by the Agency, including the expenses of any inspection or survey carried out by the Agency to ascertain such loss destruction or damage.

56. Evasion of fees, levies, etc.

A person who, by any means, evades or attempts to evade, or neglects or omits to pay any levy, charge or fee payable under this Act commits an offence and is liable on conviction to a fine not exceeding ₦800,000.00 or to imprisonment for a term not exceeding six months or to both such imprisonment and fine, and shall, in addition, be liable to pay to the Agency a penalty equal to double the amount of the levies, charges or fees he evaded or attempted to evade, or neglected or omitted to pay.

57. Penalty for giving false statement

A person who makes, whether knowingly or recklessly, any statement which is false in any material particular in any claim or other document which is requested or authorised to be made by or under this Act or any regulation under this Act, commits an offence and is liable on conviction to a fine not exceeding ₦800,000.00 or to imprisonment for a term not exceeding twelve months or to both such imprisonment and fine.

58. Non-compliance with direction of Agency or with any provision of this Act

(1) A person who, without lawful excuse, refuses, neglects or fails to comply with any direction lawfully given by the Agency in exercise of its powers under this Act, or who fails to comply with any provision of this Act or of any regulation made under this Act, commits an offence and, unless another penalty is established for such offence in this Act, is, in addition to the forfeiture of any article seized, is liable on conviction, to a fine not exceeding ₦1,000,000.00, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, and in the case of a continuing offence to a further fine not exceeding ₦200,000.00 for every day during which the offence continues.

(2) Where a person, without lawful excuse, refuses or neglects to obey any direction lawfully given under this Act or the regulations made under this Act is guilty of an offence under this Act or the regulations under this Act, the Agency may, irrespective of whether any proceeding has been instituted against, or any punishment imposed on such person for the refusal or neglect, do or cause to be done all such acts as are in its opinion reasonable or necessary of the purpose of carrying out such direction.

(3) The powers conferred by subsection (1) of this section include the power to hire and employ such persons as are necessary and proper for making good whatever loss or damage that has been caused by any refusal or neglect of the person to whom the direction has been given.

(4) Any expenses incurred by the Agency in the exercise of its powers under this section shall be recoverable from the person to whom the direction has been given.

59. Obstructing the Agency in performance of its duties

A person who, at anytime, hinders, obstructs or molests the Agency or any of its employees, agents or contractors in the performance and execution of their duty or of anything which they are respectively empowered or required to do so by virtue of or in consequence of this Act commits an offence and is liable on conviction to a fine not exceeding ₦650,000.00 or to imprisonment for a term not exceeding six months or to both such imprisonment and fine.

60. Preservation of secrecy

(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, a person, who is or has been a member an officer, employee, adviser or agent of the Agency or a member of a committee of the Agency shall not disclose any information relating to the affairs of the Agency or of any other person which has been obtained by him in the performance of his duties or functions.

(2) A person who contravenes subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding ₦300,000.00 or to imprisonment for a term not exceeding 6 months or to both.

(3) The Agency, in exercise of its powers under subsections (1) and (2) of this section, shall be subject to the laws of the Federation.

61. Offences by companies

(1) Where an offence has been committed under this Act or the regulations by a company or other body of persons, any such person who at the time of the commission of the offence was a director, manager or a partner in the corporate body or other body of persons or acted in such capacity may be charged with the same offence.

(2) If a company or other body of person is convicted of an offence under this Act, any person charged with the same offence shall be guilty of that offence and be liable to the penalty of that offence unless he proves that the offence was committed without his knowledge or consent and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

62. Fines to be paid to the Agency

All fines imposed for any offence under this Act or the regulations and all sums collected under this Act shall be paid to the Agency.

PART XIV

Miscellaneous

63. Repeals and savings

(1) The following Acts and instruments are repealed-

- (a) Nigerian Shipping Policy Act Cap. 279, L.F.N. 1990;
- (b) Nigerian Maritime Labour Act 2003;
- (c) section 288 of the Merchant Shipping Act Cap. M11; and
- (d) Merchant Shipping (Delegation of Powers) Notice under section 395 of the Merchant Shipping Act, Cap. M11.

(2) Save as otherwise provided under this Act all regulations, orders and other subsidiary legislations made under the National Policy Act in force immediately before the coming into force of this Act, shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if they had been made under this Act and shall be treated accordingly.

[Cap. 279 L.F.N. 1990.]

(3) A fund established by or under any of the provisions of enactment repealed by this Act shall vest in the Maritime Fund as established under this Act.

64. Interpretation

In this Act-

"Agency" means the Nigerian Maritime Administration and Safety Agency established under section 3 of this Act;

"Agency undertakings" means the undertaking of an Agency that relate to the provision by the Agency of any facility or service of any description in connection with the exercise and performance of its powers and duties under any written law and includes any movable and immovable property and the rights of the Agency that relate to such facility or service;

"Cabotage Act" means the Coastal and Inland Shipping (Cabotage) Act 2003 and its amendments;

"cargo" or "goods" includes any substance or article, livestock, mineral, ware, crude, petroleum product and merchandise of every description and any container or other item used to contain any substance or article;

"Chairman" means the Chairman of the Board of the Agency appointed under section 7 (2) of this Act;

"court" means a court of law of competent jurisdiction;

"employers of dock labour" includes terminal operators, stevedoring and cargo handling companies;

"employers of maritime labour" includes terminal operators, stevedoring and cargo handling companies, dock labour and seafarers employers;

"Federal legislation" means any Act of the National Assembly;

"licence" means an authorisation to own or operate a service issued under this Act and **"licensed"** or **"licensee"** shall be interpreted accordingly;

"ILO" means International Labour Organisation;

"IMDG Code" means International Maritime Dangerous Goods Code issued by the IMO;

"IMO" means International Maritime Organisation;

"ISM Code" means International Ship Management Code issued by the IMO;

"ISPS Code" International Ship and Port Facility Security Code issued by the IMO;

"Maritime Fund" is a fund dedicated to development of indigenous shipping and shipping infrastructure in Nigeria;

"maritime labour" includes dock workers and seafarers;

"Merchant Shipping Act" means the Merchant Shipping Act, Cap. M11 and its amendments;

"Minister" means the Federal Minister for the time being charged with the responsibility for Transport;

"Nigerian citizen" is as defined in the Constitution of the Federal Republic of Nigeria 1999;

"Nigerian company" is a company incorporated in Nigeria in which Nigerian citizens hold at least 60% of the shares as beneficial owners;

"Nigerian waters" and **"Nigerian Maritime Zone"** include inland waters, territorial waters or waters of the Executive Economic Zone (respectively, together or any combination thereof);

"off-shore cargo handling facility" means an off-shore facility within or beyond the port limits used for the transfer of cargo from a vessel to land or platform and *vice versa*;

"owner" in relation to-

(a) goods, includes any consignor, consignee, shipper or agent for the sale, custody, shipping or landing of such goods; and

(b) any vessel, includes any part-owner, charterer, consignee or mortgagee in possession of the vessel;

"person" includes a corporate body or partnership and where an individual is required to represent a corporate body or partnership in any circumstance pursuant to this Act or its subsidiary legislation it shall be sufficient if in the case of a-

(a) corporate body, it is represented by a duly authorised person; and

(b) partnership, it is represented by a partner in the partnership or a duly authorised employee of the partnership;

"port" means any place in Nigeria, navigable river or channel leading into such place having facilities for ships to moor and load or discharge including off-shore cargo handling facilities, inland dry ports, harbour, berths, jetties, pontoons or buoys and wharves within the limits of the ports and includes any place declared to be a port under this Act;

"premises" includes houses, buildings, structures, lands, tenements, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private and whether maintained or not under the jurisdiction of the Agency;

"prescribe" means a rule, direction or order laid down, approved or given under this Act or its subsidiary legislations or regulations or any relevant legislation;

"President" means the President of the Federal Republic of Nigeria;

"regulations" means regulations made under this Act;

"revenue" means any money received by the Agency by way of charges, scales of charges or other duties imposed by or under this Act and includes any money accruing to the Agency under this Act;

"seafarers" includes every person except masters and pilots employed or engaged in any capacity on board any ship;

"ship" includes every description of vessel used in navigation;

"this Act" includes the regulations made pursuant to this Act;

"vessel" means any kind of vessel that is used, or capable of being used, in navigation by water, however propelled or moved, and includes-

(a) a barge, lighter, floating platforms, restaurant or other floating vessel, and an air-cushion vehicle; or

(b) other similar craft that is used in navigation by water.

65. Short title

This Act may be cited as the Nigerian Maritime Administration and Safety Agency Act 2007.

SCHEDULES

FIRST SCHEDULE

1. Consequential amendments

Section 290 of the Merchant Shipping Act. Cap M11, Laws of the Federation of Nigeria 2004 is amended by inserting the following new section "290 (1B)":

"290 (1 *b*) Notwithstanding the provisions of subsection (1) of this section the following ships are entitled to be registered-

(a) Nigeria owned ships;

(b) small vessels, other than fishing vessels, that are-

(i) wholly owned by Nigerian residents and Nigerian citizens

(ii) operated solely by Nigerian residents or Nigerian citizens or both such residents and such citizens; and

(c) ships on bareboat charter to Nigerian citizens."

2. The Merchant Shipping (Delegation of Powers) Notice, Merchant Shipping Act, is amended by deleting all references in the Third Column of the Schedule to "Government Inspector of Shipping" and inserting the words "Nigerian Maritime Administration and Safety

Agency".

[Cap. M11.]

SECOND SCHEDULE

[Section 5 (3).]

Supplementary Provisions relating to the Board of the Agency

Proceedings of the Board

(1) Subject to the provisions of this Act and section 27 of the Interpretation Act, the Board may make standing orders regulating its proceedings or that of any of its committees.

(2) The Chairman shall preside at every meeting of the Board and in his absence, the members present at that meeting shall appoint one of them to preside at the meeting and the minutes shall be taken for each meeting of the Board and any committee by the Secretary.

(3) The quorum for any meeting of the Board shall be at least 5 Directors.

(4) The Board shall meet to transact its business pursuant to this Act whenever it is summoned by the Chairman on at least 7 days' written notice and the Chairman shall, if so required by notice given to him by not less than 4 other members of the Board specifying amongst others, an agenda for the meeting, summon a meeting of the Board which shall be held no later than 14 days from the date on which the notice is served on him to discuss the items specified in the notice and the Board shall for the purposes of this Act meet not less than 4 times in each calendar year.

(5) A member of the Board who directly or indirectly has an interest of a personal nature (including but not limited to financial interests in any contract made or proposed to be made by the Agency) shall, so soon after the facts of the matter of his interests have come to his knowledge, disclose his interest and the nature thereof at a meeting of the Board.

(6) A disclosure under paragraph (5) of this Schedule shall be recorded in the minutes of the Board meeting and the member concerned shall-

(a) not, after the disclosure, take part in any deliberation or decision of the Board or vote on the matter; and

(b) be excluded for the purpose of constituting a quorum of any meeting of the Board for any deliberation or decision with regard to the subject-matter in respect of which his interest is so disclosed.

(7) The decisions at a meeting of the Board shall be taken by a majority save that decisions on matters relating to the establishment of any subsidiary or participation in a joint venture or partnership of any description shall require a majority of at least 75%.

(8) In the case of an equality of votes the Chairman of the meeting shall have a second or casting vote.

Committees

(9) Subject to its standing orders, the Board may appoint such number of standing or *ad hoc* committees as it thinks fit to consider and report on any matter with which the Agency is concerned.

(10) A committee appointed under paragraph (9) shall-

(a) consist of such number of persons who may not necessarily be members of the Board as may be determined by the Board; provided that the appointment of a non-Board member as a committee member shall be subject to such terms as would be indicated in his letter of appointment; and

(b) be presided over by a member of the Board.

(11) The quorum of any committee set up by the Board shall be as may be determined from time to time by the Board.

(12) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

(13) The fixing of the seal of the Agency shall be authenticated by the signature of the Secretary and that of the Chairman or any other Board member generally or specifically authorised by the Board to act for that purpose.

(14) A contact or instrument which, if made by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Agency by any person generally or specially authorised by the Board to act for that purpose.

(15) A document purporting to be a contract, instrument or other document duly signed or sealed on behalf of the Agency shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.

(16) Subject to the other provisions of this Act, the validity of any proceedings, act or decision of the Board or of any of its committees shall not be affected by-

(a) any vacancy in the membership of the Board or committee; or

(b) any defect or irregularity in the appointment of a member of the Board or committee; or

(c) reason that any person not entitled to do so took part in the proceeding to the Board or committee.

(17) A member of the Board or a committee shall not be personally liable for any act or omission done or made in good faith while engaged on the business of the Agency.

(18) A person shall not by reason only of his membership of the Board be treated as holding an Office of emolument under the Government of the Federation or the State.

THIRD SCHEDULE

[Section 9 (1) (f).]

Conflict of Interest

(1) Subject to further provisions of this Schedule, a Director or member of staff of the Agency shall not have a direct or indirect financial or investment in any shipping, stevedoring, pilotage, terminal operation or any other service by or for the Agency, or receive therefrom any loan, remuneration or other right or have any personal interest in any contract made or proposed to be made by the Agency, throughout the tenure of his Office or employment with the Agency.

(2) Subject to paragraphs (3) and (4) of this Schedule, each Director or member of staff of the Agency shall, on an annual basis, present a written declaration, no later than the third month of each year, affirming the non-existence of any such interest as is specified in paragraph (1) arising or likely to arise during his tenure of employment with the Agency.

(3) The Directors and members of staff of the Agency, as from the commencement of this Act, shall be entitled to a maximum of 6 months within which to divest themselves of their direct or indirect financial interests or investment in any shipping, stevedoring, pilotage or terminal operation or any similar or any similar engagement, if any.

(4) All newly appointed Directors and members of staff of the Agency, after the commencement of this Act, shall be entitled to a maximum of 3 months from their direct or indirect financial interests or investment in any shipping, stevedoring, or any similar engagement, if any.

(5) Each Director or staff of the Agency shall declare on appointment or at the commencement of employment and annually thereafter for as long as he serves the Agency, any interest or investment that he-

(a) knowingly has; or

(b) knows any member of his immediate family to have in any aspect of the shipping industry.

(6) If a Director or member of staff of the Agency contravenes the provisions of paragraphs (1) and (2) of this Schedule, or gives false information under paragraph (5) of this Schedule, he shall be liable, on conviction, to the payment of a fine not exceeding N1,000,000.00 or imprisonment of a term not exceeding 1 year or to both.

(7) Subject to paragraph (8) of this Schedule, the Board may, from time to time, waive the application of the prohibitions specified in paragraphs (1) and (2) of this Schedule to any Director or member of staff of the Agency if the Board determines that the financial interest of the relevant person is not of a material nature or is minimal.

(8) The Board in determining whether or not the interest of a Director or member of staff of an Agency is minimal or not of a material nature shall consider factors including but not limited to-

(a) the revenues, investments, profits and managerial efforts of the relevant company or other entity in regard to its port activities compared with other aspects of the Agency's or such entity's businesses;

(b) the extent to which the Agency regulates and oversees the activity of such company or entity;

(c) the degree to which the economic interests of such company or other entity may be affected by an action of the Agency; and

(d) the perceptions held or likely to be held by the public regarding the relevant person's financial interest or investment in that company or other entity.

(9) The Board may, at any time, review and reverse its determination under paragraph (7) of this Schedule and direct the application of the prohibitions contained in this Schedule to the affected Director or member of staff of the Agency and the Board shall not be under an obligation to disclose the reason or basis for its review to the affected Director or staff member.

(10) In any case in which the Board exercises the waiver or the review as specified in paragraphs (7) and (9) of this Schedule, the Board shall publish the details thereof and such publication shall, include information regarding the identity of the person who has been granted the waiver or whose waiver grant has been reviewed, the position held by such person and the nature of the financial interests which are the subject of the waiver or the review thereof.

(11) For the purpose of this Schedule-

(a) **"company"** shall include partnerships and undertakings howsoever defined; and

(b) **"immediate family"** shall mean a person's spouse, a partner living with that person as if they were married to each other and children who are under the age of 18.

FOURTH SCHEDULE

Transitional and Transitory Provisions

Transfer of property and undertakings from the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council to the Agency

(1) Except as otherwise provided in this Act, as from the commencement of this Act-

(a) the National Maritime Authority and the Joint Maritime Labour Industrial Council cease and their respective directors go out of Office;

(b) all rights, property and assets that, immediately before the commencement of this Act, were vested in the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council vest in the Agency;

(c) all debts, liabilities and obligations of the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council existing immediately before the commencement of this Act become debt, liabilities and obligations of the Agency;

(d) the Agency is a substituted party as applicable to any proceedings pending in any court or tribunal to which the abolished National Maritime Authority and the Joint Maritime Labour industrial Council respectively were parties, immediately before the commencement of this Act;

(e) the Agency is substituted as party to any contract or arrangement, as applicable, entered into by or on behalf of the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council and in force immediately before the commencement of this Act; and

(f) any reference to the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council in any Act or in any Order-in-Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement of this Act, and if not inconsistent with the context or subject matter, shall be construed as a reference to the Nigerian Maritime Administration and Safety Agency.

Allocation of property subject to encumbrances

(2) Unless an allocation statement under this Schedule otherwise provides, where, under this Schedule, property and rights vest in the Agency or liabilities become liabilities of the Agency-

(a) the property and rights so vested shall be subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

(b) the rights to which the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council were entitled in respect of those liabilities immediately before they ceased to be liabilities of the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council shall vest in the Agency.

National Maritime Authority and the

Joint Maritime Labour Industrial Council Instruments

(3) Each Instrument relating to the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council property continues to have effect according to its tenor on and after the commencement of this Act as if a reference in the instrument to the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council were a reference to the Agency.

Transfer of employees of the abolished National Maritime Authority and the Joint Maritime Labour industrial Council to the Agency and the terms of employment under the Agency

(4) The Minister shall compile a list of the staff employed by the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council immediately before the abolition date who are to be transferred to the Agency.

(5) A transferred employee is to be regarded as-

(a) being employed in his new position with effect on and from the commencement of this Act;

(b) having the same terms and conditions as those that applied to the person in relation to his employment with the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council immediately before the commencement of this Act; and

(c) having accrued any entitlement or benefit in connection with the employment with the Agency that is equivalent to the entitlement that the person had accrued as an employee of the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council, immediately before the commencement of this Act.

(6) The service of a transferred employee with the Agency is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement of this Act, as an employee of the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council.

(7) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.

(8) Nothing in this paragraph prevents-

(a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement of this Act; or

(b) a transferred employee from resigning or being dismissed at any time after the commencement of this Act in accordance with the existing terms and conditions of his employment with the Agency.

(9) In this section, "**transferred employee**" means an employee of the abolished National Maritime Authority and the Joint Maritime Labour Industrial Council who is deemed to be an employee of the Agency.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation