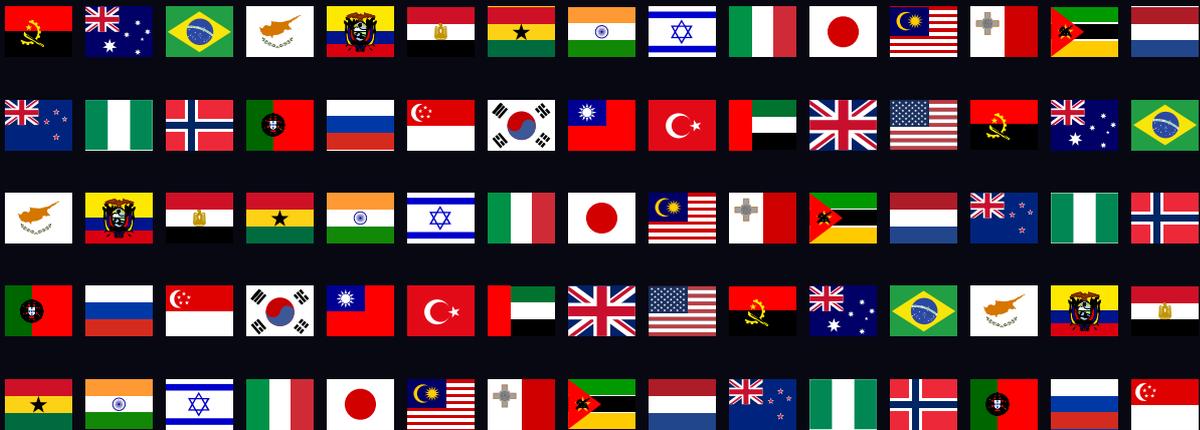


SHIPPING

Nigeria



Shipping

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MFB Solicitors

Quick reference guide enabling side-by-side comparison of local insights into newbuilding contracts; ship registration and mortgages; limitation of liability; port state control; classification societies; collision, salvage, wreck removal and pollution; ship arrest; judicial sale of vessels, carriage of goods by sea and bills of lading; shipping emissions; ship recycling; jurisdiction and dispute resolution; international conventions; and recent trends.

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NEWBUILDING CONTRACTS

Transfer of title

When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Title in the ship usually passes from the shipbuilder to the shipowner upon the execution of the Protocol of Delivery and Acceptance. However, parties may agree otherwise pursuant to the terms of their contract.

Law stated - 23 May 2022

Refund guarantee

What formalities need to be complied with for the refund guarantee to be valid?

A refund guarantee is simply an undertaking issued by the bank or financial institution on behalf of a shipbuilder to the extent that any pre-purchase remittances made by the shipowner or purchaser towards the building of the ship, will be refunded upon the happening of certain occurrences that will affect the building and/or delivery of the vessel within the terms of the agreement.

For the RG to be valid, it must be:

- written and properly worded to conform with the terms of the shipbuilding contract. A case in point is the English case of *Rainy Sky SA & Ors v Kookmin Bank* [2011] UKSC 50; [2012] 1 All ER (Comm);
- issued by an authorised bank official; and
- by a deed duly registered.

Law stated - 23 May 2022

Court-ordered delivery

Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Where the shipyard refuses to deliver a vessel upon becoming due, it falls as a maritime claim under sections 2(2(a)) & (3(l)) of the Admiralty Jurisdiction Act 1991 (AJA), which relates to a claim arising from possession, title to, ownership of or share in a ship as well as a claim relating to a vessel before it was launched. The shipowner may, pursuant to an application under Order 28 of the Federal High Court (Civil Procedure) Rules 2019, seek a declaratory relief based on the agreement of the parties and accordingly pray for a mandatory order of the court directing the shipyard to deliver the said vessel. The application is usually by a motion on notice but may be by motion *ex parte* in the event of urgency.

Law stated - 23 May 2022

Defects

Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

Should damage occur as a result of a defect in the vessel and the person who suffers the damage is any of these three: the shipowner or a purchaser from the original shipowner or a third party, a general maritime claim may lie against the shipbuilder in the following manner.

A shipowner can either maintain a claim in contract pursuant to section 2(3)(l) of AJA, which relates to a claim in respect of the construction of a ship. The shipowner's claim may also lie under product liability pursuant to section 2(3)(a) of AJA, which relates to claims for damage done by a ship in whatsoever manner or under section 2(3)(c) of AJA if the damage relates to loss of life or for personal injury.

The claims of the purchaser from a shipowner and a third party may lie under section 2(3)(a), being damage done by the ship and section 2(3)(c) if the damage relates to loss of life or for personal injury.

Law stated - 23 May 2022

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the agency of government under which the Ship Registry is anchored. The said Ship Registry makes provision for various forms of registration and the types of vessels eligible for registration under their specific registries, which include:

- merchant ships;
- fishing vessels;
- vessels under construction;
- bareboat chartered vessels of 12 months and above;
- licensed vessels below 15 gross tonnage;
- floating, production, storage and offloading and floating, storage and offloading vessels;
- vessels licensed to operate in coastal and inland waters of Nigeria;
- vessels weighing from 15 gross tons; and
- vessels owned by citizens of Nigeria or Nigerian registered bodies corporate.

It should be noted that vessels under construction are eligible for registration in Nigeria and under the flag of Nigeria.

Law stated - 23 May 2022

Who may apply to register a ship in your jurisdiction?

Persons who may apply and/or are eligible to apply to register their vessels in Nigeria are:

- Nigerian citizens;
- bodies corporate; and
- partnerships established under the laws of the Federal Republic of Nigeria and having their principal place of business in Nigeria.

Law stated - 23 May 2022

Documentary requirements

What are the documentary requirements for registration?

For requirements of registration, we shall consider two types of registration: flag registration and bareboat chartered vessel registration.

Flag registration

- Formal letter of application by the owner or authorised representative;
- copy of certificate of incorporation;
- copy of Certified True Copy (CTC) of memorandum and articles of association;
- copy of CTC of Form CAC7 (particulars of directors) and Form CAC2 (allotment of shares); 25 million naira minimum share capital;
- copy of company's current tax certificate;
- copy of bank reference letter;
- duly completed declaration of ownership form with passport photograph attached (Ship Registry Form);
- duly completed application for approval of ship's name form (ship registry form);
- duly completed application for registration of ship form (ship registry form);
- expired provisional certificate of registry (where applicable);
- copy of vessel insurance policy;
- copy of certificate of registration as a shipping company;
- copy of class certificate (where applicable);
- copy of bill of sale with warranty against encumbrances and liens from the seller;
- copy of deletion certificate (foreign flagged vessel only);
- copy of the builders' certificate (new builds only);
- certificate of approved plan specifications and drawings (for new builds only);
- certificate for tonnage measurement;
- condition survey report;
- photos of bow and stern of the vessel showing her name and port of registry duly marked permanently and conspicuously and the official number and the registered tonnage; and
- letter of assurance (fishing vessels).

Bareboat chartered vessel registration

- Copy of certificate of incorporation;
- copy of CTC of memorandum and articles of association;
- copy of CTC of Form CAC7 (particulars of directors) and Form CAC2 (allotment of shares);
- 25 million naira minimum share capital;
- copy of company's current tax certificate;
- copy of bank reference letter;
- duly completed declaration of ownership form with passport photograph attached (ship registry form);
- duly completed application for approval of ship's name form (ship registry form);
- duly completed application for registration of ship form (ship registry form);
- copy of class certificate for conventional vessels only;

- copy of bareboat charter party agreement;
- copy of evidence of suspension from original registry;
- certificate for tonnage measurement; and
- condition survey report.

Law stated - 23 May 2022

Dual registration

Is dual registration and flagging out possible and what is the procedure?

Dual registration of a vessel, wherein a vessel has more than one flag registration at a given time, is prohibited. The only circumstance where a vessel primarily registered under a different flag can be registered under the Nigerian flag is if the vessel is bareboat chartered for a minimum period of 12 months to a Nigerian entity. In such a situation, the original registration of the vessel at the country of registration will be suspended throughout the entire period of such bareboat charter arrangement with evidence of such suspension furnished at the time of the bareboat registration.

Law stated - 23 May 2022

Mortgage register

Who maintains the register of mortgages and what information does it contain?

NIMASA is the government agency that maintains the Register of Mortgages upon application by the vessel owner or representative attaching copy of the executed deed of mortgage duly stamped at Federal Inland Revenue Service (FIRS) and with Certificate of Registration of same at the Corporate Affairs Commission, a board Resolution approving the mortgage, if a body corporate, and duly completed or executed and stamped NIMASA statutory mortgage forms. The Register contains the parties (mortgagor and mortgagee), the details of the vessels as well as details of the mortgage such as the mortgage sum.

Law stated - 23 May 2022

LIMITATION OF LIABILITY

Regime

What limitation regime applies? What claims can be limited? Which parties can limit their liability?

The applicable limitation regime in Nigeria is the Convention on Limitation for Maritime Claims (LLMC), 1976 (1976 Convention) as well as the Protocol to Amend the Convention on Limitation for Maritime Claims (the 1996 Protocol) by virtue of Nigeria being a State party to the Convention and also domestication of the 1976 Convention and the 1996 Protocol in the Merchant Shipping Act (MSA) 2007 pursuant to section 351(1)(f) of MSA.

Pursuant to section 351 of MSA and section 9 of the Admiralty Jurisdiction Act 1991, the following persons may be able to limit their liability in the event of a claim:

- shipowners, which includes charterers, managers and operators of a seagoing ship;
- salvors; and
- insurer of liability of claims subject to limitation.

In the same vein, the claims for which the above persons can apply to limit their liability pursuant to section 352 MSA include claims in respect of:

- loss of life or personal injury, loss or damage to property occurring on board or in direct connection with the operation of a ship or salvage operations, and consequential loss resulting therefrom;
- a person other than the person liable in respect of measures taken to avert or minimise loss for which the person liable may limit his or her liability under the Convention, and further loss caused by such measures;
- loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- the raising, removal, destruction or the rendering harmless of a ship that is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship; and
- the removal, destruction or the rendering harmless of the cargo of the ship.

Nigeria is a signatory to the 1976 Convention and also took steps to domesticate the said 1976 Convention and the 1996 Protocol in the MSA pursuant to section 335 thereof. However, following the express provision of section 356 of MSA as per the general applicable limits and limits for passenger claims, the limits set by the 1996 Protocol could not and did not take effect as at June 2015. This will remain the position pending any amendment of the relevant provisions of the Act in consideration of the new limits.

Law stated - 23 May 2022

Procedure

What is the procedure for establishing limitation?

Limitation proceedings are usually commenced by way of an action in personam at the Federal High Court, wherein at least one of the respondents is named on the originating summons while any other respondent(s) may also be named or merely identified as respondents to the originating summons by referencing them as belonging to a specified class of people. In constituting the limitation fund, it is necessary pursuant to Order 15 Rule 6 of the Admiralty Jurisdiction Procedure Rules (AJPR) for the ship owner to pay the limitation fund, as may be ordered, into court to abide by the result of the consideration of the claim. The limitation fund is calculated based on the special drawing rights as defined by the International Monetary Fund, which in the absence of any agreement by the parties, is converted into naira at the date of the constitution of the limitation fund, payment made or security given.

The ship owner or any other entitled person can rightly opt to plead the defence of limitation of liability by merely filing a defence to any claim commenced against him or her by any claimant. In such a case, he or she does not need to set up a limitation fund. The ship owner can proceed to institute an action for setting up the limitation fund pursuant to Order 15 of the AJPR and section 351 of the MSA without necessarily waiting for such an action to be commenced by any person who may have suffered a direct loss resulting from any damage done by the ship.

It must be emphasised that a ship owner can conveniently proceed to institute a limitation action aimed at setting up a limitation fund without necessarily admitting liability or having a claim against him or her pursuant to section 351(6) of the MSA.

Law stated - 23 May 2022

Break of limitation

In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

By the provisions of the MSA (section 354) the ship owner is prevented from relying on limitation of liability if the claimant can prove that 'the loss or damage resulted from the ship owner's or operator's personal act or omission or by the act or omission of ship owner's servants or agents acting in the course or within the scope of their employment, and that such act or omission was committed with the intent to cause such loss or damage or recklessly and with the knowledge that such loss would probably result.' In such a situation, the limit is said to be broken and the ship owner would be made to pay the full liability resulting from the act or omission.

Limitation of liability was broken in a notable case in Nigeria – in the Shipcare Nigeria Ltd (Owners of The M/N African Hyacinth v The Owners of The M/V Fortunato (2011) 7 NWLR (Pt. 1246) 205, wherein the Supreme Court upheld the decision of the trial court as well as the Court of Appeal in holding that the appellant cannot limit its liability following their failure to ensure a pilot was onboard the vessel within a district of compulsory pilotage by the Nigeria Ports Authority or a licensed pilot, when the accident occurred. The courts held that the said failure to have a qualified pilot man the vessel at the material time when their vessel collided with the respondent's vessel, amounts to actual fault or privity that acts or omission, defeats the defence of limitation of liability.

It is not certain what the courts would have held had other elements necessary for the successful breaking of the limits of liability, been relied upon by the appellants and astutely canvassed before the trial court and on appeal, which is the proof that '...such act or omission was committed with the intent to cause such loss or damage or recklessly and with knowledge that such loss would probably result.' It will be interesting to see how the courts will consider these elements in future.

Once limitation is broken, any order establishing the fund so established is set aside by the court in favour of a reversal to the claim as constituted by the claimant, upon the successful claim thereto after trial.

Law stated - 23 May 2022

Passenger and luggage claims

What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

The applicable limitation Regime in Nigeria is the LLMC, as well as the Protocol to Amend the Convention on Limitation for Maritime Claims (the 1996 Protocol) by virtue of Nigeria being a state party to the Convention and also domestication of the 1976 Convention and the 1996 Protocol in the MSA pursuant to section 351(1)(f) of MSA.

The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 and its Protocol of 1990 also apply in Nigeria by virtue of section 215 of MSA and the Minister of Transportation is required to have due regard to the said 1974 Convention in making regulations relating to carriage of passengers and their luggage by sea under section 333 of the MSA.

Law stated - 23 May 2022

PORT STATE CONTROL

Authorities

Which body is the port state control agency? Under what authority does it operate?

The NIMASA through its Maritime Safety and Security (MSS) is the Port State Control agency in Nigeria charged with

the responsibility of inspecting vessels to ensure they are not unseaworthy or substandard which is aimed at maintaining safety in the international marine transport sector. NIMASA operates its Port State Control inspections under the Nigerian Maritime Administration and Safety Agency Act 2007 as well as the MSA 2007 both of which give credence to the International Maritime Organisation (IMO) procedures for Port State Control as may be amended from time to time, being part of international Conventions and treaties recognised by Nigeria.

Law stated - 23 May 2022

Sanctions

What sanctions may the port state control inspector impose?

Following the inspection of ships by MSS or any person acting under their instruction, any ship found to be deficient or unseaworthy may be issued a deficiency notice and accordingly detained pending when the deficient conducts are restored and payment of fines so imposed. The vessel may alternatively be delayed for the deficiency to be corrected if very minor, although a deficiency notice may still be issued with attendant imposition of fines. MSS, following the detention or release of any ship, notifies all relevant classification societies, the flag state and IMO of same.

Law stated - 23 May 2022

Appeal

What is the appeal process against detention orders or fines?

A ship owner or operator aggrieved over the detention and/or imposition of fine following the Port State Control inspection exercise may pursuant to sections 223, 432 and 433 of the MSA 2007 appeal to the Minister of Transportation who shall convene a board of survey (the body charged with matters involving the survey of ships) or forward the appeal to a Scientific Referee operating at the port where the ship is located. The Board of Survey or Scientific Referee shall then investigate and make a report to the Minister. Where the Minister is satisfied with the Report and can confirm that every other requirement has been made, he or she may issue a Certificate of Survey.

It is also possible for the shipowner, where still dissatisfied with outcome of the appeal to the Minister, to resort to the Court (Federal High Court) to seek redress against the Agency (NIMASA) provided the conditions for instituting such an action are met (ie, the action is commenced within the time allowed under the NIMASA Act and a pre-action notice is duly served on NIMASA).

Law stated - 23 May 2022

CLASSIFICATION SOCIETIES

Approved classification societies

Which are the approved classification societies?

The following are the classification societies as approved by the Nigerian Maritime Administration and Safety Agency (NIMASA):

- International Naval Survey Bureau;
- American Bureau of Shipping;
- Lloyds Register;
- International Register of Shipping ;

- Det Norske Veritas-Germanischer Lloyds;
- Bureau Veritas Nigeria Limited;
- Phoenix Register of Shipping;
- Indian Register of Shipping – IR Class;
- Overseas Maritime Certification Service; and
- Conarina Nigeria Limited.

Law stated - 23 May 2022

Liability

In what circumstances can a classification society be held liable, if at all?

It is true to say, governments, which are state parties or signatories to certain international conventions on safety, as it were, delegate their statutory responsibilities in respect of those conventions to classification societies, to ensure compliance with set standards.

While it is not a common practice in Nigeria to hold classification societies liable in carrying out these responsibilities, there is no provision of law that exonerates them from liability over their actions or omissions. So, it may be possible to hold them liable, either in contract or in tort, as the case may be.

Law stated - 23 May 2022

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

Can the state or local authority order wreck removal?

The Minister of Transportation of the Federal Republic of Nigeria appoints a wreck receiver and assistant receivers of wreck as may be appropriate who are charged to implement the provisions of the Merchant Shipping Act (MSA) 2007 as it concerns wreck removal. By the provisions of the MSA and the Nigerian Maritime Administration and Safety Agency (NIMASA) Act, the Receiver of Wrecks in Nigeria is NIMASA. Pursuant to its appointment by the state, the Receiver of Wrecks determines when a wreck constitutes a hazard and accordingly orders the ship owner to remove same.

Law stated - 23 May 2022

International conventions

Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

The international Regulation in relation to collision in Nigeria is the Convention on International Regulation for Preventing of Collision at Sea 1972 (COLREGS).

In relation to wreck removal, there are presently no international Conventions or Protocols in force in Nigeria.

The principal international convention or protocol in force in relation to salvage in Nigeria is the International Convention on Salvage 1989. Other related international conventions and protocols are as provided in section 215 of the MSA 2007 and include:

- International Convention for the Safety of Life at Sea 1974;
- Protocol Relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto;
- International Convention on Maritime Search and Rescue 1979;
- The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 and its Protocol of 1990;
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol thereto;
- Placing of Seamen Convention 1920;
- International Ship and Ports Facility Security Code; and
- International Convention for Safe Containers 1972.

The international conventions applicable in Nigeria in relation to pollution are as detailed in section 335 of MSA and include the following:

- International Convention for the Prevention of Pollution from Ships 1973/1978 and the Annexes thereto;
- Convention Relating to Intervention on the High Seas in Cases of Threatened Oil Pollution Casualties 1969;
- International Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matters 1972;
- International Convention on Oil Pollution Preparedness, Response and Co-operation 1990;
- International Convention on Civil Liability for Oil Pollution Damage 1992;
- Convention on Limitation of Liability for Maritime Claims, 1976 and the 1996 Protocol thereto;
- Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 and its Protocol of 1992; and
- Basel Convention on the Control of Transboundary Movements of Wastes and their Disposal 1989.

Nigeria is a signatory to the Convention for the Unification of Certain Rules of Law with Respect to Collisions between Vessels 1910. However, Nigeria reserves its rights, pursuant to article 4 of the Convention, not to implement the provisions of certain articles of the Convention in certain instances. In any event, the said Convention is not in force in Nigeria as it is yet to be enacted as a law of the National Assembly in compliance with the provisions of section 12 of the Constitution of the Federal Republic of Nigeria 1999.

Nigeria is a signatory to the Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention). However, the Nairobi Convention is not in force in Nigeria as it is yet to be enacted as a law of the National Assembly and accordingly domesticated in compliance with the provisions of section 12 of the Constitution of the Federal Republic of Nigeria 1999. The domestication of the Nairobi Convention would automatically repeal the provisions of Part XXVI of the MSA 2007.

The International Convention on Civil Liability for Oil Pollution Damage is in force in Nigeria having been domesticated in our laws by virtue of section 335 of the MSA 2007.

The International Convention on Salvage 1989 is in force in Nigeria having been domesticated in our laws by virtue of section 387 of the MSA 2007.

Law stated - 23 May 2022

Salvage

Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

Nigeria is a signatory to the International Convention on Salvage 1989 (Salvage Convention) which was accordingly domesticated and in force in Nigeria pursuant to section 387 of MSA (Part XXVII) 2007.

There is no mandatory form of salvage agreement in Nigeria. To that extent, a salvage operation can be carried out pursuant to an agreement between the salvor and the owner/master of the vessel or property on board the vessel. Salvage operations can also be rendered without any formal agreement or engagement, by any person (master/operator of a vessel) who appreciates the vessel in distress and offers salvage services as provided by section 401 of MSA 2007, which is in accordance with article 10 of the Salvage Convention. Lloyd's standard form of salvage agreement is also acceptable in Nigeria.

It is trite that salvage operations may be carried out by any vessel. However, pursuant to the provisions of section 399(1)(a) of MSA, it would appear that, if the salvage is in respect of operations within the inland waters of Nigeria in which all the vessels involved are of inland navigation, only vessels registered under the Cabotage Registry (which are vessels wholly owned by Nigerian citizens) under the Coastal & Inland Shipping (Cabotage) Act 2003, can engage in such salvage operations. However, a close review of section 4(2) of the Cabotage Act, says 'nothing in the Act shall preclude a foreign vessel from assisting persons, vessels or aircrafts in danger or distress within Nigerian waters.' Also, section 8(1)(a) and(b) of the Cabotage Act 2003 expressly allows foreign vessels to carry out salvage operations within Nigerian inland waters where the operations are beyond the capacity of a Nigerian salvage vessel or company, provided the approval of the Minister is obtained.

Law stated - 23 May 2022

SHIP ARREST

International conventions

Which international convention regarding the arrest of ships is in force in your jurisdiction?

Nigeria is a party to the International Convention Relating to the Arrest of Sea-Going Ships 1952. The 1952 Convention is widely accepted with over 70 ratifications but with a closed or limited list of claims for which a vessel may be arrested, thereby creating a situation where a defendant may claim damages for wrongful arrest if he or she can prove that the arrest was in bad faith. One of the outstanding features under the Convention is the practice of being able to arrest a sister ship in the absence of the ship in question.

Law stated - 23 May 2022

Claims

In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

In the event of a proprietary maritime claim or a general maritime claim where the claim arises in connection with a ship and the person who would be liable (relevant person) if a claim in personam were to be commenced, was, when the cause of action arose, the owner or charterer of or in possession or control of the ship, an action in rem may be brought against that ship or any other ship if the relevant person is either the beneficial owner of all her shares or the charterer under a charter by demise – section 5(4) of Admiralty Jurisdiction Act 1991 (AJA).

In the light of the above, a sister ship or associated ship belonging to the same owner may be arrested provided the owner owns the offending ship in relation to all the shares therein. Only a ship under a demise (bareboat) charter, wherein the charterer is in control of the ship and is the relevant party liable for the act for which the arrest is being

made, can be arrested. To this extent, a time-chartered vessel cannot be arrested since the relevant person would not have been the owner of all the shares in the ship.

Law stated - 23 May 2022

Maritime liens

Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Nigeria recognises the concept of maritime liens, which is enforceable pursuant to an action in rem. section 2(5)(3) of the AJA provides that the claims that may give rise to a maritime lien include claims involving:

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

Law stated - 23 May 2022

Wrongful arrest

What is the test for wrongful arrest?

Where the Court, upon the application of a party, order the arrest of a ship and it turns out that the Court ought not to have made the order of arrest and/or the security, the arrest is usually termed wrongful and accordingly vacated pursuant to the application of the owners of the ship. Circumstances that could warrant such declaration are rife and include instances where there were no reasonable or sufficient grounds for effecting the arrest including suppression and non-disclosure of material facts.

Pursuant to section 13 of AJA and Order 11 Rule 2(a) and (b) of the Admiralty Jurisdiction Procedure Rules (AJPR) 2011, the following would amount to wrongful arrest:

- where a party unreasonably and without good cause demands excessive security. This obtains even where the party would have had a good cause to arrest the vessel;
- where a party unreasonably and without good cause obtains the arrest of a vessel or property; and
- where a party or other person unreasonably and without good cause fails to give a consent required under the AJA for the release from arrest of a vessel or other property.

The defendant may either choose to commence a fresh action for wrongful arrest pursuant to Order 11(3) of AJPR 2011 or orally apply at the end of the trial of the substantive suit, for substantive cost for wrongful arrest pursuant to Order 11(4) AJPR 2011.

Law stated - 23 May 2022

Bunker suppliers

Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

A claim with respect to bunkers is maintainable as a maritime claim pursuant to section 2(1)(k) of AJA, 1991 being 'a claim with respect of goods, materials or services supplied to a ship for her operation.' However, to be able to maintain an in rem action against a vessel in connection with bunker services rendered or supplied to the vessel, the plaintiff must ascertain that the relevant person, with whom the contract for the supply of bunker was entered into, who will ordinarily be liable in personam (the relevant person) was when the cause of action arose, the owner or charterer of or in possession or in control of the ship if the relevant person is either the beneficial owner of the ship as it respects all the shares in it or the charter under a charter by demise as provided by section 5(4)(a) of the Admiralty Jurisdiction Act (AJA) 1991. To this end, the only circumstances, wherein the bunker supplier can validly maintain an in rem action against the vessel pursuant to a contract with the charterer, and accordingly arrest the vessel, is where the charter in question is in respect of a bareboat charter and not any other kind of charter whatsoever, such as a time charter or voyage charter arrangement. See section 5(4) AJA 1991 and Order 7 Rule 6(b)(iii) of AJPR 2011.

Law stated - 23 May 2022

Security

Will the arresting party have to provide security and in what form and amount?

Ordinarily, the arresting party is not expected, pursuant to the Rules of Court, to provide security in order to secure the arrest of a vessel, but is required to file an 'undertaking as to damages' in the event of a wrongful or needless arrest. However, upon the arrested party's application as provided in Order 13 AJPR 1991, the court may order security for cost if the claim is above 5 million naira (or its equivalent in foreign currency) or where the arresting party does not have any assets in Nigeria.

Furthermore, the court, pursuant to Order 9 Rule 1 of AJPR, as a condition for granting an application for the issuance of a warrant of arrest of ship, demands that the application is accompanied by an undertaking to pay the Admiralty Marshal's fees being the amount equal to the expenses of the Admiralty Marshal in relation to the arrest, which is usually not less than 100,000 naira and not more than 500,000 naira as a deposit towards meeting such liability. More payment demands are made every two weeks in this regard. Where there is more than one arresting party in respect of the same ship, they shall jointly and severally pay the Admiralty Marshal's fees. This will continue until such a time when the owner of the ship puts up a bank guarantee as security for the claim of the arresting party should the claim succeed and accordingly secures the release of the vessel from arrest.

Law stated - 23 May 2022

How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

Where a ship is under arrest by the order of the court at the instance of the arresting party, same may be released by the court if satisfied that 'an amount or bail bond equal to the amount claimed by the arresting party or an amount or bail bond equal to the value of the ship, whichever is less, has been paid or deposited into court. It shall be noted that the court may, by order, increase or reduce the amount in which bail bond has been provided.

The security in this regard takes the form of either a deposit of the sum specified by the court or a guarantee or undertaking supplied by a Protection & Indemnity (P&I) Club, a bank or an insurance company.

In a nutshell, the security to be provided to secure the release of an arrested vessel must not exceed the value of the vessel.

Law stated - 23 May 2022

Formalities

What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

In Nigeria, there are no formalities required for the appointment of a lawyer in respect of an arrest application. It is not a requirement to provide a power of attorney or other document to the court and as such there are no formalities or form to be adopted in this regard. However, as a standard practice, most lawyers insist on a written instruction or an engagement letter containing the details and terms of their engagement.

Nigeria is not a signatory to the Apostille Convention and as such the attendant requirements applicable for procuring an arrest order under the Convention are not required in Nigeria.

The requirements for an application to procure an arrest order in Nigeria are as follows:

- The applicant commences an in rem action at the Federal High Court.
- The applicant conducts a search at the Caveat Register to ascertain that there is no caveat in place against the arrest of the vessel.
- The applicant files an ex parte application for the warrant of arrest of the vessel or other property against which the proceeding was commenced. The vessel or other property must, at the time of filing, be within the jurisdiction of the Federal High Court or expected to arrive within three days.
- The applicant or his agent files an affidavit showing the nature of the claim, the nature of the contract and the name of the vessel in issue, the name of the vessel to be arrested and her port of registry (if known), the name of the owners of the vessel (the relevant person) who was the owner of the vessel or in control when the cause of action arose and who was the beneficial owner of all the shares in the vessel at the time. The content of the affidavit depends, essentially, on the nature of the claim.
- The applicant usually files an 'Undertaking as To Damages' before the issuance of the warrant of arrest or shortly afterwards, as the court may direct.
- The application for a warrant of arrest shall constitute an undertaking to the court to pay the Admiralty Marshal's fees, which shall be an amount equal to the expenses of the Admiralty Marshal upon demand.
- The warrant of arrest, where issued, lasts for a period of six months from the date of issue and may be renewed for another period of six months.
- A warrant of arrest shall be executed by the Admiralty Marshal or his or her substitute, either after the writ of summons would have been served on the vessel or together with the writ of summons and same, can be executed on any day.

The applicant does not need to have the original documentary evidence for the arrest application. It will be sufficient to have the documents scanned and sent via an electronic medium. Where translations are required from another language to English, they must be from a sworn (or notarised) translator.

Should there be insufficient time to comply with all the required formalities for filing the arrest application, it is possible to set the arrest procedure in motion while undertaking to the court to complete the formalities within a specified period of time. Order 3 Rule 3(2) provides that a 'plaintiff shall within seven days of filing the summons, file written statements of the witnesses, which shall be adopted on oath' in the course of the trial. All that is required at this stage, with respect to witnesses, is to file a list of witnesses among other originating processes.

The Federal High Court, the court having jurisdiction over admiralty matters, provides in Order 58 of its Civil Procedure Rules, 2019, for an electronic Filing (E-Filing) Registry. Matters commenced electronically shall conform to E-Filing

Rules and are meant to be concluded via the same process. However, this has not taken full effect.

There is no laid-down notice period to prepare an arrest application. There is usually an attendant urgency that naturally attaches to in rem proceedings owing to the short berthing time of vessels within the jurisdiction of the court. In recognition thereto and from experience, arrest processes are usually prepared within 24 to 36 hours of being properly briefed or engaged by the client.

Law stated - 23 May 2022

Ship maintenance

Who is responsible for the maintenance of the vessel while under arrest?

The Admiralty Marshal is charged with the responsibility of maintaining the vessel whilst under arrest provided the arresting party continues to meet the financial obligation on a bi-weekly basis, of providing the Admiralty Marshal's fees equal to the expenses so incurred in relation to the arrest, which is usually not less than 100,000 naira and not more than 500,000 naira as a deposit towards meeting such liability. This is usually the case where the owner of the vessel refuses or fails to pay or deposit, into court, a bank guarantee, in the amount of the claim of the arresting party, as a form of security for the claim in the event that the claim succeeds.

Law stated - 23 May 2022

Proceedings on the merits

Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Nigerian courts, pursuant to section 10 AJA, entertain situations wherein an arresting party may secure the arrest of a vessel for purposes of securing the claim in the event of a successful proceedings commenced before another court or tribunal sitting in a different jurisdiction. In such situations, the court after granting such an arrest of the vessel, would be minded to stay proceedings pending the hearing and determination of the claim on its merits commenced at any other jurisdiction, on the condition that the arrest of the ship subsist or satisfactory security for its release be given as security for the satisfaction of any judgment or award that may be made in that jurisdiction.

Law stated - 23 May 2022

Injunctions and other forms of attachment

Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Mareva injunction is another form of order of attachment of property aimed at ensuring security of a claim prior to its determination. The said Mareva order attaches to a defendant's assets preventing them from being taken outside the jurisdiction of the court, which in certain cases, may be the res (subject matter of the suit). Once a Mareva Order of injunction is issued against an asset, other courts and tribunals in most jurisdictions of the world, give credence to it by obeying such an order notwithstanding that the order was issued from a foreign court.

There is also the practice of interim attachment of property, pursuant to Order 30 of the Federal High Court (Civil Procedure) Rules 2019, in situations where a defendant portends to delay or obstruct the execution of any law that may be passed against him or her by disposing his or her property, in part or in full, or removing same from jurisdiction. Here the plaintiff may apply to the court, at any time before final judgment, to call upon the defendant to furnish sufficient

security to fulfil any judgment or order that may be made against him or her and to accordingly attach any property (movable or immovable) belonging to him or her pending him or her posting security.

Law stated - 23 May 2022

Delivery up and preservation orders

Are orders for delivery up or preservation of evidence or property available?

Yes.

Order 28 of the Federal High Court (Civil Procedure) (FHC) Rules 2019 allows a party who fears that the res may be dissipated to apply for an injunction seeking a court order for the detention, custody or preservation of any property that is the subject or for the inspection of such property in possession of a party to the action. This application may be brought, in cases of urgency, before the commencement of the action.

It is instructive that Order 30 FHC Rules 2019 relating to 'interim attachment of property' has the same effect as Order 28 FHC Rules 2019 but to the extent that the interim attachment is to ensure the defendant provides some form of security to satisfy the judgment of the court.

Law stated - 23 May 2022

Bunker arrest and attachment

Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Yes.

Section 2(3) of AJA 1991 provides for a general maritime claim. Paragraph (k) relates to a claim in respect of goods, materials or services supplied or to be supplied to a ship for its operation or maintenance'. Bunkers fall under the category of supplies for the operation of a vessel and to that extent may either be the cause for the arrest of the vessel if the person who would be liable in personam (the relevant person) was when the cause of action arose, the owner or charterer of or in possession or in control of the ship if the relevant person is either the beneficial owner of the ship as it respects all the shares in it or the charter under a charter by demise as provided by section 5.(4)(a) AJA or the bunkers may qualify as what amounts to 'other property' as envisaged in Order 7 Rule 1 of the AJPR 2011.

Order 7 Rule 1 provides that a ship or 'other property' may be arrested in a proceeding commenced as an action in rem if at the time of the application for the arrest the ship or other property is within the jurisdiction of the court or expected to be within the court jurisdiction within three days.

Law stated - 23 May 2022

JUDICIAL SALE OF VESSELS

Eligible applicants

Who can apply for judicial sale of an arrested vessel?

Pursuant to Order 16 Rules 1 and 2 of the AJPR, 2011, a party in the suit in which a warrant of arrest of a vessel has been successfully executed, may apply to the court for the valuation and sale of the vessel.

The court may, suo moto and upon notice to the parties, order the arrested vessel to be valued and sold, if and where it considers that the vessel is deteriorating in value following the arrest.

Procedure

What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The procedure for initiating and conducting judicial sale of a vessel are as follows:

- a party applies to the court for, or the court directs, the sale of the vessel;
- the application of the party for the sale of the vessel constitutes an undertaking to pay, on demand, an amount equal to the expenses of the Admiralty Marshal in complying with the order of the court;
- the Admiralty Marshal conducts the sale pursuant to the order of the court and advertises the sale in two national daily newspapers. However, section 73 of MSA, 2007 provides that the court shall issue a 30-day written notice of the time and place of sale to:
 - holders of registered mortgages and preferential rights that have not been issued to the bearer;
 - the holders of registered mortgages and rights issued to the bearer and to the holders of the maritime liens whose claims have been notified to the officers; and
 - the Registrar of ships;
- the sale shall be by auction, on a day not less than 21 days after the advertisement in the national dailies, unless the court directs otherwise;
- the Admiralty Marshal shall within 21 days of the sale of the vessel:
 - file a return of sale;
 - pay into court the proceeds of sale; and
 - file an account of sale and the vouchers of the account;
- computation of the Admiralty Marshal's expenses towards the valuation and sale of the vessel;
- The Admiralty Marshall deducts 2 per cent from the proceeds of sale to cover expenses and bank charges; and
- a person interested in relation to the proceeds of the sale may apply to the court for taxation of the expenses of the Admiralty Marshal.

On the average duration for the judicial sale of a vessel upon the application for sale, it must be borne in mind that every interlocutory application by a party must be served on the other party or parties who shall have a minimum of seven days, from the date of such service, to respond to same by way of a counter affidavit. Following the order of sale and direction for advert placements in the dailies, there shall be a period of 21 days (or 30 days under MSA 2007) before auction sale is held in respect of the vessel. There is yet another 21 days within which the Admiralty Marshal shall file a return of sale and account of sale as well as pay the money into court. In the circumstances, the minimum time frame is a period of 49 days, all things being equal. However, in practice, it takes an average period of three to six months bearing in mind any likely oppositions and/or counter applications to which the court is mandatorily obligated to entertain and give its ruling one way or the other.

The court costs associated with the judicial sale are computed with respect to the Admiralty Marshal's expenses towards the valuation, advertisement, sale of the vessel as well as bank charges.

The Admiralty Marshall's expenses or costs are calculated on the basis of 2 per cent deductions from the proceeds of sale of the vessel.

Claim priority**What is the order of priority of claims against the proceeds of sale?**

The priority of claims pursuant to section 75 of MSA 2007 are as follows:

- The first payment is towards the costs awarded by a court and arising out of the arrest and subsequent sale of a ship, proceeds of sale and the distribution of the proceeds.
- The balance of the proceeds of sale shall then be distributed among the holders of:
 - maritime liens under section 66 of MSA (ie, claims in respect to salvage, damage done by a ship, wages of the master or a crew of the ship and master's disbursements);
 - preferential rights under section 69 of MSA (ie, ship builders and repairers); and
 - mortgages and other preferential rights registered under the MSA.

Law stated - 23 May 2022

Legal effects**What are the legal effects or consequences of judicial sale of a vessel?**

The concept of maritime lien, which is a proprietary right, is directly enforceable against the vessel in an in rem action. Nigeria is a signatory to the International Convention on Maritime Liens and Mortgages 1993. Pursuant to the Convention, maritime lien claims follow the vessel notwithstanding any change of registration or ownership as the case may be.

This presupposes that the right follows and is enforceable against the vessel even when sold and/or transferred to a new owner for value pursuant to the judicial sale even where the purchaser did not have any notice of any previously done liability that attaches to the vessel. However, owing to the prior written notification, pursuant to section 73 of MSA 2007, by the court, to holders of various rights that attach to the vessel, including holders of maritime liens, such persons are given the opportunity to register their claims prior to the sale of the vessel to ensure payment and avoid subsequent claims against the vessel, except those assumed by the purchaser.

Law stated - 23 May 2022

Foreign sales**Will judicial sale of a vessel in a foreign jurisdiction be recognised?**

A judicial sale in a foreign jurisdiction will be recognised in Nigeria. However, such sale should be manifestly confirmed with a certificate to the effect that the sale has been devoid of any encumbrances and/or mortgages and liens except those assumed by the purchaser. This will enable the Registrar of ships to accord the necessary registration to the vessel, etc.

Law stated - 23 May 2022

International conventions

Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

Nigeria is a signatory to the International Convention on Maritime Liens and Mortgages 1993. Nigeria acceded to the Convention on 5 March 2004.

Law stated - 23 May 2022

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

The Hague Rules and the Hamburg Rules have been ratified and domesticated in Nigeria. Accordingly, they have the force of law. The Hamburg Rules were domesticated without repealing The Hague Rules or complying with the process for denunciation under the Hague Rules. Nigeria also failed to denounce or notify Belgium of its denunciation of The Hague Rules on becoming a contracting state of the Hamburg Rules as stipulated in the Hamburg rules. As the Hamburg Rules do not provide for the consequences of non-denunciation, the Hamburg Rules apply.

Although this matter has not been subject of specific judicial consideration, the Supreme Court holds that The Hague Rules may apply to inbound carriage contract through a Paramount Clause – which incorporates it into the contract. It follows therefore that the Hamburg Rules, however, may apply to both inbound and outward carriages in the absence of a clause paramount.

Nigeria has neither ratified nor domesticated the Hague-Visby Rules. Nevertheless, Nigeria has ratified the Rotterdam Rules, which are not yet in force.

In Nigeria, carriage at sea begins on the carrier's receipt of goods and ends on the carrier's delivery to the receiver at the place so designated in the contract of carriage.

Law stated - 23 May 2022

Multimodal carriage

Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

There are no conventions or domestic laws in force in respect of road, rail or air transport applicable to stages of the transportation except by sea under a combined transport or multimodal bill of lading.

Law stated - 23 May 2022

Title to sue

Who has title to sue on a bill of lading?

The carrier, the shipper, the consignee and an endorsee of a bill of lading can sue under a bill of lading. It is noteworthy that a notified party cannot sue under a bill of lading except if the bill of lading is so endorsed to him or her.

Law stated - 23 May 2022

Charter parties

To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

The terms of a charter party can be incorporated into the bill of lading by general or specific reference. All terms of the charter party may be incorporated. The terms of a charter party incorporated into a bill of lading, including jurisdiction and arbitration clauses, are binding on an endorsee of the bill of lading or a third-party holder. However, where such terms are not expressly incorporated, the arbitration clause will not bind a third-party holder of the bill of lading except where the bill of lading has been specifically marked to make the arbitration clause binding.

Law stated - 23 May 2022

Demise and identity of carrier clauses

Is the 'demise' clause or identity of carrier clause recognised and binding?

The Hague and Hamburg Rules both apply in Nigeria. However, the Court has held that the Hague Rules may apply by a clause paramount in an inbound contract of carriage. Accordingly, the demise clause or identity of carrier clause may be recognised and binding in such instances. However, this will not be the case where the Hamburg Rules apply as the demise or identity clause derogates from the Hamburg Rules, which prohibits any provision that derogates from it.

The demise or identity clause treats the carrier as an agent of the shipowner, thereby excluding the carrier from liability where the ship is not owned or chartered by the carrier. The Hamburg Rules create responsibilities for both the carrier and shipowner. It distinguishes between a carrier – a person in whose name a contract of carriage of goods by sea has been concluded by the shipper, and an actual carrier – any person to whom performance of the carriage or part of the performance of the carriage has been entrusted by the carrier. The rules make the carrier liable for the entire carriage and the actual carrier liable for the part of the carriage that he performs. As the demise or identity clause seeks to exclude the carrier from liability despite the strict responsibilities of the carrier under the Hamburg Rules, it will not be recognised and binding because it derogates from the provision of the Hamburg Rules.

Law stated - 23 May 2022

Shipowner liability and defences

Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Ship owners are not liable for cargo damage where they are not contractual carriers. The Bill of lading is a contract between the parties to it. Where ship owners are not contractual carriers, they cannot rely on the terms of the bill of lading unless they have acted as the carrier's agents and the bill of lading, pursuant to the Himalaya clause, provides that the carrier's agents may rely on its terms.

Law stated - 23 May 2022

Deviation from route

What is the effect of deviation from a vessel's route on contractual defences?

Fundamentally, deviation is a breach of the carrier's obligations that disentitles him or her of any defences under the contract, such as the right to limit liability. The carrier will be liable for any resulting damages or loss arising from such deviation, except it was for the purposes of saving life or property or for any other purposes that may be agreed in the carriage contract.

Law stated - 23 May 2022

Liens

What liens can be exercised?

The two broad descriptions of liens are maritime and statutory liens. Maritime liens attach to the vessel and can be exercised against the vessel irrespective of the fact that ownership in the vessel would have changed hands. They are essentially claims bordering on salvage, damage done by a ship, master or crew member wages, or master's disbursements. Statutory liens, on the other hand, can only be exercised where the person who will ordinarily be liable in personam, (the relevant person) was when the cause of action arose, the owner or charterer of or in possession or in control of the ship if the relevant person is either the beneficial owner of the ship as it respects all the shares in it or the charterer under a charter by demise as provided by section 5(4)(a) of the Admiralty Jurisdiction Act (AJA) 1991. The claims here include wreck removal, loss of life and personal injury, and ports, waterways, canal and pilotage dues as prescribed by the Admiralty Jurisdiction Act 1991 and Merchant Shipping Act 2007.

Maritime liens can also be exercised on a sister ship- beneficially owned by the liable party when the action is brought. The carrier may exercise a possessory lien on the cargo for unpaid freight and a charterer can exercise a lien arising in common law on the cargo for unpaid hire.

Law stated - 23 May 2022

Delivery without bill of lading

What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

The carrier will be liable for the entire loss or damage resulting from the delivery of cargo to any person without the production of the bill of lading. The carrier's liability in this instance cannot be limited.

Law stated - 23 May 2022

Shipper responsibilities and liabilities

What are the responsibilities and liabilities of the shipper?

The shipper is responsible for marking and labelling dangerous goods and informing the carrier of the dangerous nature of goods upon handover.

Where the carrier and actual carrier has no knowledge of the goods' dangerous character due to the fault or negligence of the shipper and/or his or her agents, the shipper is liable to the carrier and actual carrier for any loss resulting from the shipment.

The shipper is also responsible for the contents, quantity and state of the goods when the bill of lading is described as said to contain, shipper's load and count or in such similar phrase, which presupposes that the carrier did not take part in the stowing, packing or loading of the goods and as such not responsible for any loss or misstatement contained thereto.

Law stated - 23 May 2022

SHIPPING EMISSIONS

Emission control areas

Is there an emission control area (ECA) in force in your domestic territorial waters?

Although Nigeria has domesticated the International Convention for the Prevention of Pollution from Ships 1973/1978 and the Annexes thereto and accordingly the Convention is in force in Nigeria, there is yet to be any Regulation in place setting out an Emission Control Area (ECA). Consequently, there is currently no ECA in force in Nigerian territorial waters.

Law stated - 23 May 2022

Sulphur cap

What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

Petroleum products are regulated by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), which has specified sulphur cap of 0.5 per cent m/m. Although Nigeria has ratified and domesticated the International Convention for the Prevention of Pollution from Ships, 1973/1978 MARPOL Annexes I-V, it has not, however, made Annex VI Regulations. However, the Flag and Port Regulators have, through notices, engagements and residual powers begun to implement the 0.50 per cent sulphur cap specified by MARPOL Annex VI Regulations introduced in January 2020.

Enforcement

The Port Regulator, the Nigerian Ports Authority (NPA), vide Public Notice No. 4148, informed all mariners that effective 1 April 2021, that the Authority shall commence enforcement of the MARPOL Annex VI Regulation in line with the International Maritime Organization Convention on Sulphur limit on marine bunker fuel oil.

The Flag Regulator, NIMASA, has developed draft regulations for implementing MARPOL and continue to push for its

domestication. It has engaged with fuel suppliers to ensure quality and availability of fuel with a 0.50 per cent sulphur cap in liaison with the NMDPRA (the then Department of Petroleum Resources), liaised with Standard Organisation of Nigeria to modify petroleum standard to 0.50 per cent sulphur cap, and placed marine notices on the sulphur cap limit implementation.

Section 32(nn) of the Petroleum Industry Act, 2021 gives the NMDPRA the power to monitor and ensure that the quality of petroleum products sold in Nigeria conforms to defined specifications.

Sanctions

An infraction of the Sulphur Cap Regulation attracts a US\$2,000 penalty imposed by the Nigerian Ports Authority in its Marine Notice, while the NMDPRA will not grant entry or permit the discharge of fuel cargo that does not conform to the sulphur cap.

Law stated - 23 May 2022

SHIP RECYCLING

Regulation and facilities

What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

No international ship recycling regulations apply in Nigeria. The Merchant Shipping Act 2007 and Nigerian Maritime Administration and Safety Agency (NIMASA) guidelines regulate ship recycling in Nigeria. The NIMASA guidelines are similar to the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009, which has neither been ratified nor domesticated in Nigeria by entitling NIMASA to issue ship scrapping and ship scrapping facility permits.

Yes, there are ship recycling or scrapping facilities in Nigeria, approved and published by NIMASA.

Law stated - 23 May 2022

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

Which courts exercise jurisdiction over maritime disputes?

The Constitution of the Federal Republic of Nigeria and the Admiralty Jurisdiction Act (AJA) vests exclusive jurisdiction over any admiralty matter in the Federal High Court (FHC). In practice, there have been some complexities, however, in matters regarding seamen and wages. A constitutional amendment introduced the National Industrial Court of Nigeria (NICN) and vested it with jurisdiction over matters relating to labour, wage payment, employment and entitlement, among others. This provision was made despite the statutory recognition of claims relating to wage and entitlements payment of masters, officers, and other crew members of the ship regarding their employment on the ship as a top ranking maritime lien over which an action can be brought against the ship itself.

The complexity is that the NICN does not have any jurisdiction to arrest a ship as security for claim like the FHC does. Accordingly, seamen are divested of their right to bring an action against the ship, where the ship can be arrested as security for the claim, as the FHC does. Accordingly, seamen are divested of their right to bring an action against the ship, where the ship can be arrested as security for their claim. There have been a number of pronouncements on this matter in the FHC and NICN. So presently, we have a situation where a master, who wishes to claim for wages, may

commence an in rem action at the Federal High Court, for the purposes of obtaining security for the claim and then proceed to the National Industrial Court for trial in the suit.

The Court of Appeal, recently stretched the dichotomy further when it held in *The Vessel MT Sam Purpose (Ex MT Tapti) & Anor v Amarjeet Singh Bains & 6 Ors* that the NICN by virtue of section 254C(1) of the Constitution of Nigeria, is clothed with jurisdiction to hear claims with respect to wages of the crew of a ship.

Law stated - 23 May 2022

Service of proceedings

In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

The Rules of Court that govern service of court proceedings on a defendant located out of jurisdiction in shipping and admiralty matters are the Federal High Court (Civil Procedure) Rules 2019, the Admiralty Jurisdiction Procedure Rules 2011 and the Sheriffs and Civil Process Act, Laws of the Federation of Nigeria 2004.

Generally, for service of court processes outside the jurisdiction of the court, the applicant must first obtain the leave of the Court, which said leave must prescribe the mode of such service. There must be a record of such service, in every Registry, which must be entered by the officer who executed same in addition to filing an affidavit/proof of service in the Court's file.

Law stated - 23 May 2022

Arbitration

Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

Yes, there are several domestic arbitral institutions in Nigeria.

The Chartered Institute of Arbitrators (Nigeria) is well disposed to set up specialised panel to address specific challenges such as a panel of specialist maritime arbitrators.

The Maritime Arbitrators Association of Nigeria is, however, a specialised maritime arbitral institution that is significantly active in resolving maritime disputes.

Law stated - 23 May 2022

Foreign judgments and arbitral awards

What rules govern recognition and enforcement of foreign judgments and arbitral awards?

The rules that govern foreign judgments and arbitral awards differ.

Foreign judgments

The Foreign Judgment (Reciprocal Enforcement) Act 2004 (FJA) and Reciprocal Enforcement of Judgment Act Ordinance 1958 (REJ) both govern the Enforcement of Foreign Judgments in Nigeria. The FJA and REJ make the registration and enforcement of foreign judgments dependent on the principle of reciprocity. However, reciprocal status is granted to countries listed in the REJ, while the FJA authorises the Minister of Justice to make orders regarding

countries to benefit from the reciprocal enforcement regime for the provisions of the FJA to apply. The FJA remains inoperative as the Minister of Justice has made no order and the FJA, the latter legislation, did not repeal the REJ. The Supreme Court has held that the REJ applies until the required orders are made by the Minister of Justice under the FJA.

Arbitral awards

Although the FJA includes arbitral award in the definition of judgment and provides for the enforcement of such awards on a reciprocal basis, the FJA is still inoperative as the minister has made no pronouncement on countries to enjoy reciprocal enforcement.

The Arbitration and Conciliation Act 2004 provides for two ways to enforce an award, which are:

- Recognition of an award as binding on the parties despite the jurisdiction wherein it was granted. The party seeking to enforce an award shall present the court with an authenticated original award and the original arbitration agreement or certified true copies. Where the award was not granted in English, the party shall provide a duly certified English translation.
- The domestication of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards by Nigeria as part of the Arbitration and Conciliation Act 2004, which recognises and enforces awards from contracting states on a reciprocal basis.

An arbitration award under the International Centre for Settlement of Investment Disputes can also be enforced by a deposit of the award certified by the Secretary-General of the Centre with the Supreme Court and its enforcement as a judgment of the Supreme Court.

Law stated - 23 May 2022

Asymmetric agreements

Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

Jurisdiction and arbitration agreements are treated differently in maritime disputes.

The AJA provides a wide ambit of matters over which the Nigerian courts may exercise jurisdiction, thereby eliminating the Common Law principle of the court exercising its discretion to assume jurisdiction or not through the Brandon Tests and the assessment of whether a foreign jurisdiction clause is 'real, genuine, bona fide, legal, reasonable and not capricious and absurd'.

According to section 20 of the AJA, any agreement seeking to oust the Court's jurisdiction shall be null and void if:

- Nigeria is the place of performance, execution, delivery or where default takes place;
- Nigeria is or was the place of residence of any of the parties;
- payment was made or will be made in Nigeria;
- under any convention in force to which Nigeria is a party; and
- the Nigerian Court opines that the matter, action or cause should be adjudicated upon in Nigeria.

Accordingly, an asymmetric jurisdiction agreement that seeks to deprive the Nigerian courts of exercising jurisdiction in the above circumstances will not be valid and enforceable in Nigeria.

Arbitration is, however, treated differently as an arbitration agreement is binding on its parties unless any of the vitiating

elements of contract is proved. The Nigerian courts are increasingly demonstrating a strong commitment to uphold arbitration agreements and giving effect to the intention of the parties thereunder.

Law stated - 23 May 2022

Breach of jurisdiction clause

What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

If the claimants issue proceedings in a jurisdiction other than that specified in the agreement, the defendant may enter a conditional appearance and file an application in protest requesting the court to stay proceedings or decline jurisdiction to hear the matter and order that parties comply with the terms of their contract. In shipping and admiralty matters in Nigeria, the defendant may issue proceedings in Nigeria as specified in the agreement and may file an application for anti-suit injunction stopping the proceedings. It should be noted that section 20 of the AJA, 1991 nullifies any agreement that seeks to oust the jurisdiction of Nigerian courts on admiralty matters under the AJA. Accordingly, Nigerian courts will entertain any matter that falls under the wide ambit of matters in section 20 of the AJA 1991 over which it will exercise exclusive jurisdiction despite a foreign jurisdiction clause unless there are compelling and extenuating circumstances to act otherwise.

Law stated - 23 May 2022

What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

Where domestic court proceedings breach a clause for a foreign Court or tribunal to exercise jurisdiction over a matter, the defendant, while filing a conditional appearance, may apply to the Court to stay proceedings for it to commence the action in the Court or tribunal specified in the agreement without filing a defence. If the matter falls within the wide ambit of matters over which the court will exercise mandatory jurisdiction under section 20 of the AJA, the clause will be considered null and void.

Where it does not, the Court will exercise its discretion on whether to grant the stay based on certain principles. These include determining whether the defendant seeking for a stay genuinely desires and has taken steps to commence proceedings in the agreed court or arbitral tribunal and if they are merely seeking procedural advantages or their readiness to proceed with the arbitration, considering the impacts of the stay on the justice of the case, among others. Please see section 5 of the Arbitration and Conciliation Act as interpreted in *Onward Enterprises Ltd v MV Metrix* (2010) 2NWLR (Pt. 1179) p.530 @ p554 to the effect that such a defendant must have commenced arbitration proceedings to show commitment to be entitled to a stay order. The burden of convincing the Nigerian courts to adjudicate over a matter despite a foreign Court or tribunal provision in the agreement is on the claimant – the party initiating proceedings in Nigeria.

In domestic arbitral proceedings, a clause providing for a foreign tribunal to have jurisdiction is enforceable in Nigeria.

Law stated - 23 May 2022

LIMITATION PERIODS FOR LIABILITY

Time limits

What time limits apply to claims? Is it possible to extend the time limit by agreement?

The Admiralty Jurisdiction Act provides that except where a statute stipulates a different time limit, the time limit for bringing a maritime claim is three years.

If the contract of carriage under the bill of lading is pursuant to the Hamburg Rules, applicable in Nigeria, the limitation period will be two years, as stipulated therein.

However, if the claim is exclusively commenced under the tort of negligence, for example, bailment, the limitation period will be six years.

It is unlikely for the courts to uphold or enforce an agreement extending the time limit. However, where the breach of contract relates to failure to pay debt, any letter or memorandum acknowledging the debt will operate to renew the time limit from the date of such acknowledgment.

It is necessary to point out that in the case of arbitration, both the arbitral proceedings and the enforcement of any award arising therefrom must be undertaken within the limitation period as held by the Supreme Court in *City Engineering (Nig.) Ltd v Federal Housing Authority* (1997) 9 NWLR (Pt.530) p. 224; 1997 LPELR-868(SC). See also section 7(1)(d) of the Limitation Act 1966.

Law stated - 23 May 2022

Court-ordered extension

May courts or arbitral tribunals extend the time limits?

Courts and arbitral tribunals do not extend time limits specified in a statute. However, where the time limits are specified in Rules of Courts or Arbitral Rules and meant to guide proceedings, a court or an arbitral tribunal may extend the time limit pursuant to any provisions of the Rules allowing for such.

Law stated - 23 May 2022

MISCELLANEOUS

Maritime Labour Convention

How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

The Maritime Labour Convention was ratified by Nigeria in 2006 but is yet to be domesticated in Nigeria. According to Nigerian law, an international convention will not come into force until its enactment as a law of the Federal Republic of Nigeria. Nevertheless, certain provisions of the Merchant Shipping Act are similar to those of the Maritime Labour Convention. Accordingly, the Nigerian Maritime Administration and Safety Agency (NIMASA) enforces these provisions, such as issuing Maritime Labour Certificates and a countersigned Declaration of Maritime Labour Compliance to Nigerian flagged vessels, among others.

Law stated - 23 May 2022

Relief from contractual obligations

Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

The court upholds the principle that parties are bound by their contracts and rarely interferes with the agreement of the parties except where fraud, undue influence, duress and misrepresentation can be proved. The courts are inclined to enforcing the contracts as agreed by the parties unless a force majeure situation beyond the parties' control occurs. The courts do not recognise economic conditions making contractual obligations more onerous to perform as a ground for granting relief from the strict enforcement of the legal rights and liabilities of parties to a shipping contract.

Law stated - 23 May 2022

Other noteworthy points

Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

Yes.

The Coastal and Inland Shipping (Cabotage) Act 2003 (Cabotage Act) being implemented by the NIMASA and the Nigerian Oil and Gas Industry Content Development Act 2010 (Local Content Act) being implemented by the Nigerian Content Development and Monitoring Board have a huge impact on shipping in Nigeria. The aim of the two Acts of the National Assembly is to develop local content in shipping business by encouraging and/or facilitating more participation of Nigerian citizens in the shipping industry through joint venture, technology transfer and human capital development, including training of seafarers. In this regard, the Cabotage Act and the Local Content Act give preference to vessels wholly built, owned and manned by Nigerians to operate in Nigerian territorial waters and used as offshore support vessels. The Cabotage Act also mandates all vessels engaged in Nigerian coastal trade to pay 2 per cent of the contract sum into the established Cabotage Vessel Financing Fund, which is meant to assist indigenous shipowners to acquire vessels. The effect of the local content policy initiated by the Nigerian government on shipping participation, vessel acquisition and manning has led to the increase recorded in the number of Nigerian registered fleet, more business opportunities and manpower and seafarers' development in recent years.

It needs also to be emphasised that the Minister of Transport, through NIMASA, may grant waivers to any person, upon application, where he or she is satisfied that no Nigerian vessel with the necessary requirements is available to perform the service described in the application.

The increase in freight and clearing charges is another issue of concern. Recently, the Nigerian government through the Nigeria Customs Service (Customs) introduced a Vehicle Identification Number Valuation Policy for vehicles imported into Nigeria. The effect of the policy is that duty on imported vehicles is determined by the value ascribed to the vehicle as generated electronically through the VIN as against the actual price the vehicle might have been bought by the consignee. The introduction led to strike action by freight forwarders and other stakeholders. The policy was suspended but Customs has announced resumption of the policy. The policy runs contrary to established economic principles as prices are hardly uniform and mostly determined by forces of demand and supply and parties' bargaining strength.

Law stated - 23 May 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

There are a number of bills for fresh enactments or amendments to existing laws currently pending at the National Assembly relating to Shipping. They include:

- the Nigerian Ports and Harbours Authority Bill;
- the Maritime Security Agency (Establishment) Bill;
- the Nigerian Maritime Zones Act (Repeal & Re-enactment) Bill;
- the National Inland Waterways Authority (Amendment) Bill;
- the Coastal and Inland Shipping (Cabotage) Act Amendment Bill; and
- the National Transport Commission Bill.

Law stated - 23 May 2022

Jurisdictions

	Angola	VdA
	Australia	Holding Redlich
	Brazil	Kincaid Mendes Vianna Advogados
	Cyprus	Chrysses Demetriades & Co LLC
	Ecuador	Villagran Lara Attorneys
	Egypt	Eldib Advocates
	Ghana	Kimathi & Partners Corporate Attorneys
	India	Phoenix Legal
	Israel	J.SPRINZAK Maritime Law Firm
	Italy	Studio Legale Mordiglia
	Japan	Okabe & Yamaguchi
	Malaysia	SKRINE
	Malta	Dingli & Dingli Law Firm
	Mozambique	VdA
	Netherlands	Van Steenderen MainportLawyers
	New Zealand	Hesketh Henry
	Nigeria	Creed & Brooks
	Norway	Advokatfirmaet BAHR AS
	Portugal	Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL
	Russia	Jurinflot International Law Office
	Singapore	Haridass Ho & Partners
	South Korea	Cho & Lee
	Taiwan	Lee and Li Attorneys at Law
	Turkey	Cavus & Coskunsu Law Firm
	United Arab Emirates	Afridi & Angell



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