

PROPOSED MERGER OF JOMALIC WITH NMA FOR A NEW MARITIME SAFETY ADMINISTRATION: ADVANTAGES TO THE NIGERIAN MARITIME INDUSTRY.

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The reported Government's plan to merge the Joint Maritime Labour Industrial Council (JOMALIC) with the National Maritime Authority (NMA) and also formally merge the Government Inspector of Shipping (GIS) with NMA, under a new maritime safety administration that will combine the present functions of JOMALIC and NMA, with additional functions, and by a new Act to be enacted for maritime safety administration, may appear not to be going down well with some people because they do not properly understand the merits. However, as a stakeholder in the maritime industry who had been following Government's maritime policies and events in the maritime industry, I see the plan as one of the best ways by the Federal Government through the Honourable Minister of Transport and the National Assembly, to move the Nigerian maritime industry forward. Therefore, the plan should be commended and supported because it would consolidate our maritime laws, eliminate duplication and multiplicity of agencies and functions, eliminate or reduce administrative costs, update the empowerment of agencies to strengthen enforcement of safety and environmental pollution regulations, enhance unity for stronger and more efficient enforcement of maritime pollution and safety laws and make Nigeria fully IMO-compliant.

The merits of the plan are significant and are canvassed hereafter.

- 1. Consolidation of our maritime laws.**
- 2. Elimination of duplication and multiplicity of agencies and roles.**

Matters concerning maritime labourers (including officers and crew of ships) such as their education, training, qualification, certification and welfare relate to maritime safety and marine pollution prevention. It has been argued that with continuous technological advancement in shipping (in these days of automation, radar observation and collision avoidance etc), the human factor has become significant in maritime safety because no matter how sophisticated the equipment on modern ships are, the safety of ships and maritime transport and marine pollution prevention will highly depend on their crews, their professional training, experience, skills and dedication. In recognition of this, the International Maritime Organisation (IMO) made the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 78/95, which Nigeria had already ratified and domesticated in order to be put on the White List created by IMO. However, to remain on the White List, Nigeria must constantly comply with and update its laws in this respect in accordance with the STCW 78/95. On the welfare of seafarers, the International Labour Organisation (ILO) has adopted various Conventions and Recommendations the most popular of which are Convention 163 and Recommendation 173, in order to secure guarantees against malpractices violating the welfare and fundamental human rights of seafarers. Seafarers' welfare include matters such as health and safety, vacation, short leave, disputes resolution, employment and wages rates, recreation, retirement, terminal benefits, training and retraining are very important for the performance and efficiency of seafarers. In Nigeria, the Honourable Minister of Labour and Productivity works

towards the compliance of seafarers' working conditions with international best practices and ILO Conventions and Regulations.

Pursuant to section 395 of the Merchant Shipping Act cap. 224, Laws of the Federation of Nigeria, 1990 ("MSA") and Merchant Shipping (Delegation of Powers) Notice which commenced on 27/9/67, the Honourable Minister of Transport delegated to the GIS the performance of certain functions conferred on him by the provisions of the MSA. Some of the salient delegated functions (but which do not allow the delegation to the GIS of any power to make regulations or orders for the purposes of MSA) are, *granting certificates of competency, designating times and places of and regulating all examinations and qualifications of seafarers, keeping a register of all persons serving in Nigerian ships*, receiving and approving plans and specifications and ordering detention of ships without approved plans and specifications, *granting permits for ships to clear from Nigeria, issuing certificates of surveys, safety equipment and radio and issuing notices of cancellation of certificates*. Other relevant ministerial functions delegated to the GIS include detaining and releasing un-seaworthy ships, detaining unsafe foreign ships and ships without evidence of ownership, recognising ship "builders", *granting new certificates of registry, approving provisional certificates of registry for ships which in a foreign country become Nigerian ships and giving necessary statutory consents.* (italics mine for emphasis).

In order to give Nigerian maritime and safety administration a solid foundation in line with current global trend, by virtue of Merchant Shipping (Delegation of Powers) Notice, 2003, the office of the GIS was merged with NMA and a new department in NMA called Maritime Safety and Seafarer Standards Department, was created. By that means, NMA took over and had been performing those functions conferred on the Honourable Minister of Transport by the MSA that were delegated by the Honourable Minister of Transport to the GIS. By virtue of sections 6, 7, 14, 123, 408(c),(d),(e),(f), (h),(l) and (p) of MSA, (ministerial powers in respect of which had been delegated to NMA), and Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations S.I. 11 of 2001 and Merchant Shipping (Training and Certification of Seafarers) Regulations S.I. 12 of 2001, NMA became statutorily empowered to issue certificates of competency and qualifications to persons who have been trained and who qualify as seamen and officers of ships in line with the STCW 1978/95 after conducting examinations for them. NMA also consequently keeps a register of all such persons who serve in Nigerian ships (except where the vessels are solely employed in the navigation of the inland waters of Nigeria).

By sections 2, 19 to 26 and 32 of Nigerian Maritime Labour Act, 2003 (under which JOMALIC was set up), JOMALIC is statutorily empowered to among other things register, keep and maintain the register of each dock worker, seafarer, stevedoring company and seafarer employer, jetty and terminal operator, regulate conditions of service and activities of dockworkers and seafarers for smooth operations at the ports and off board vessel, enforce existing regulations and standards on crewing wages, safety, welfare, training of dockworkers and seafarers at ports and on board vessels, act as a medium of dispute resolution in the maritime industry and conduct a census of dockworkers and seafarers in the pool every three years.

Although by sections 29 and 30 of the Coastal and Inland (Cabotage) Shipping Act, 2003, the Minister of Transport maintains a separate Register for cabotage vessels in NMA which is the Registrar of Ships, and had established a cabotage enforcement unit in NMA, according to the Guidelines on Implementation of Cabotage Act, companies seeking to be registered for cabotage or to renew their ministerial waivers and licences must comply with JOMALIC's rules regarding employment of Nigerian seafarers.

So, as the situation now stands, there are overlapping functions between NMA and JOMALIC concerning the issuance of certificates of competency and qualifications, examinations, the registration of seafarers serving in Nigerian ships and enforcement of the Cabotage Act, which are bound to bring about struggles for recognition, supremacy, control and friction in the implementation of those overlapping functions by the two Agencies. Persons applying for certification and registration as seafarers will also be faced with chaos and forced to make duplicated efforts before the two agencies to get certified and registered. It has been argued that since the Nigerian Maritime Labour Act, 2003 (which was enacted after the MSA and the above Notices and Regulations were made), did not repeal the MSA or the Regulations and Notices empowering NMA to exercise the above powers on seafarers (which the law makers were fully aware of before enacting the Nigerian Maritime Labour Act, 2003), it was the intention of the law makers not to prevent NMA from carrying out such overlapping functions in respect of seafarers. It has also been argued that the lack of effective coordination and cooperation between relevant Ministries and relevant Agencies, is one of the stumbling blocks to the proper implementation of IMO and ILO maritime Conventions.

Therefore, the merger of JOMALIC and its functions with NMA and its functions under a new Act on maritime safety administration and pollution control, would consolidate the two agencies into one, consolidate our maritime laws which confer their overlapping functions on them and also combine their functions and performance, thereby eliminating multiplicity of agencies and functions.

3. Elimination/Reduction of costs/Waste.

One of the main implications of the duplication and multiplicity of agencies and their functions as shown above is the attendant duplication of Government's costs of administering the agencies and costs of doing business with them by members of the public. Government has had to spend scarce resources that should have been channelled towards other projects, into the existing avoidable duplication and multiplicity of agencies and functions, tantamount to wastage. But due to the intended merger, such costs would be conserved and channelled to other areas of the economy that require same for development. As the situation stands, unless one of the agencies backs down for the other on the implementation of its functions or the exercise of its powers on those overlapping areas, intending and registered seafarers onboard ships in Nigeria are bound to comply with the directives issued by each agency even if the directives are on the same subject matter and would have to either pay the necessary fees dictated by each agency or be penalized. Intending and registered seafarers would also spend time trying to meet the requirements and directives of both agencies on the same matters of examination, qualification, certification and registration. A chaotic situation may therefore arise because intending seafarers may also be

confused as to which of the two agencies' requirements and directives they should follow or ignore at their peril.

However, the merger of the two agencies and their functions as planned would eliminate such multiple costs, efforts and time wastage and make for certainty in the minds of the intending and registered seafarers as to what requirements they would and should meet.

4. Updating the empowerment of agencies to strengthen enforcement of maritime safety and environmental pollution laws/regulations.

Nigeria is a major crude oil producing and exporting nation and a major importer of refined petroleum products warranting shipping of crude oil and its products by tankers in its waters. Although Nigeria is an important member of the International Maritime Organisation (IMO), whose functions include using treaties to globally regulate, standardise, control and prevent marine accidents and pollution, the MSA, and Nigerian maritime laws and regulations are not up to date with current international standards of and treaties on maritime safety and pollution control, prevention and enforcement. Major IMO Conventions on marine pollution including MARPOL that were ratified by Nigeria since 2001, are just going through the process of domestication in the National Assembly. Meanwhile, IMO is consistently supplementing or updating or/and amending its Conventions to meet up with changing challenges of safety and pollution and training in the maritime sector thereby inducing new safety and pollution standards at frequent intervals. The International Labour Organisation (ILO) has also been making treaties and regulations concerning the welfare of maritime labour.

Although, NMA was established by the National Shipping Policy Act (NSPA), which commenced on 30/4/87, and which in its sections 3 and 4 set out the aims/objectives and functions of NMA, yet since its birth over 18 years ago, the NSPA had not been amended to include the changing situations and challenges of maritime safety, pollution administration and manpower training as part of the aims and functions of NMA. Instead of the expected amendments of the NSPA to remove archaic aims and functions and enable NMA meet and implement current global trends in maritime safety and pollution administration in line with national interest, NMA is still statutorily clogged with the implementation of such outdated matters as UNCTAD Code of Conduct of Liner Conference and the observation of ratio 40:40:20 in respect of carriage of goods to Nigerian ports, increment of participation of Nigerian shipping lines in ocean shipping by applying the UNCTAD Code on General Cargo which are still in the NSPA. It has often been argued that the NSPA does not expressly deal with marine safety and marine environment protection and that since its omnibus section 4(g) is not helpful in that regard because its tenor, scope or effect are determined by reference to the aims, objects and functions expressly stated in the NSPA, the scope of the mandate of NMA should be clearly defined. Therefore, the new legislation on maritime safety administration could and should be used to rectify these inadequacies on marine safety and protection of marine environment administration in the NSPA.

Moreover, with the ongoing concession of the ports to the private sector, JOMALIC would not be able to control or regulate the conditions of service or employment of dock workers by the new port concessionaires now taking over our ports or intervene in their dock labourers' matters.

This renders irrelevant that aspect of JOMALIC's statutory functions and existence under the Nigerian Maritime Labour Act, 2003.

It is therefore submitted that in the course of using the intended merger legislation to update the empowerment of the single agency that would come out of the merger, the current inadequate provisions for the administration and enforcement of up to date maritime safety and the protection of the marine environment from pollution, would also be corrected by the lawmakers. In this regard, adequate provisions can now be made for search and rescue and for speedy responses to any maritime mishap and casualty whenever they may arise in our waters.

5. Unity for efficient service delivery and enforcement of maritime and safety laws.

The consolidation of JOMALIC and NMA to result in a single agency means the teaming up of the staff and management of the two agencies with their wealth of experiences and resources in maritime safety administration in the interest of the maritime industry and the nation. So, rather than depleting resources, time and energies on separately performing their overlapping statutory functions, their manpower resources would be combined for the use of a single agency. Unnecessary competition and struggle for supremacy among the two agencies would also cease when they become one.

The result would be a stronger and more efficient single agency, with sufficient well-trained and experienced staff and management to meet the local and international challenges, administration and enforcement of maritime and safety laws and Conventions. A good example of where a merger of functions had led to improved and more efficient service delivery to the maritime sector is the merger of the office of the GIS, the Registrar of Ships and their functions with NMA and its functions. Besides, the strength being derived by the banking industry and the improved service delivery from mergers of banks currently going on in Nigeria is a case in point as to how the intended merger of JOMALIC with NMA would affect the Nigerian maritime industry.

Although JOMALIC is about 2 years old (having been set up in 2003 upon the repeal of the Nigerian Dock Labour Act, 1999), its merger with NMA which has built a strong, reliable structure and local and international goodwill and image during its over 18 years of existence, to form a new entity, is a big plus. Therefore, the Nigerian maritime industry would be the better for the merger of JOMALIC with NMA, because there is strength in unity. In any event since clause 5.1 of the Ministerial Guidelines for the implementation of the Coastal and Inland (Cabotage) Shipping Act, 2003 allows the Honourable Minister of Transport to request secondment to NMA, of officers of relevant enforcement agencies including JOMALIC, to work in the Cabotage Enforcement Unit set up in NMA, it may be argued that the process of collaboration between and the merger of the two agencies, had already been set in motion. Our country would not be the first to merge agencies for stronger and better service delivery. In 1996, Singapore that is a major maritime nation merged its Marine Department, National Marine Board and the Regulatory Departments of the former Port of Singapore Authority into one statutory board called Maritime and Port Authority of Singapore (MPA) under its Ministry of Transport. Therefore, the merger would result in a more vibrant maritime safety administration for better and efficient service delivery.

6. Fully IMO-Compliant.

Apart from the use of the proposed Act on maritime safety and pollution administration to empower the intended agency to implement up to date pollution, safety and labour Conventions of the IMO and ILO, the Agency resulting from the merger of JOMALIC and NMA will be in tune with IMO's desire and policy of identifying and dealing with only one agency in a Member-state on maritime safety and pollution administration. It has been argued that current global fashion is for the union of maritime safety and pollution functions in one agency which consequently serves as the implementing Administration for IMO Conventions. Some examples in other jurisdictions are United States Maritime Administration (MARAD), Danish Maritime Authority, Canadian Coast Guard, United Kingdom Maritime and Coastguard Agency and the Maritime and Port Authority of Singapore.

The main advantage of this type of single agency is that policy formulation and policy execution are streamlined for quicker, clearer, more-focused, cost-saving and effective maritime safety administration and duplications and overlapping functions are avoided.

By becoming fully IMO-compliant, our national pride and international image as a maritime nation among the comity of nations and IMO-member States, would be enhanced and strengthened.

CONCLUSION.

In conclusion, bearing in mind the above-stated merits of the intended merger of JOMALIC with NMA into a new agency through a new Act to be enacted by the National Assembly on maritime safety administration and its importance to the maritime industry, I support the plan and urge the Sponsors of the relevant Bill and the National Assembly to quicken steps on giving birth to the new Act and Agency within the next three months so that the maritime industry would start enjoying its benefits without further delay.

I thank you very much for honouring our invitation.

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