

A BILL

FOR

AN ACT TO ESTABLISH THE MARITIME SECURITY AGENCY TO PROMOTE
MARITIME SECURITY AND FOR OTHER RELATED PURPOSES

Sponsored by Hon. Ntufam Etta Mbora

[] Commencement

BE IT ENACTED by the National Assembly of the Federal
Republic of Nigeria as follows:

1 PART I - ESTABLISHMENT OF THE MARITIME SECURITY AGENCY, ETC.

2 1. -(1) There is established a body to be known as the Maritime
3 Security Agency (in this Act referred to as “the Agency”) which shall:

Establishment of
the Agency

4 (a) be a body corporate with perpetual succession;

5 (b) have a common seal; and

6 (c) sue and be sued in its corporate name.

7 (2) The Agency may:

8 (a) enter into contract and incur obligation;

9 (b) acquire, hold, mortgage, purchase, sell, lease or deal in any way
10 it deems fit with property, whether movable or immovable, real or personal,
11 for the purposes of this Act; and

12 (c) do or suffer any or all acts or things which a body corporate may,
13 by law, do or suffer which are necessary or convenient for the purposes of
14 this Act;

15 (d) let or hire plant, machinery, craft, equipment or goods.

16 (3) The common seal of the Agency shall be kept in such custody as
17 the Agency may direct and shall be used only on the direction of the Agency.

18 (4) The head office of the Agency shall be located in the Federal
19 Capital Territory, Abuja.

20 2.-(1) This Act shall apply to any person, ship, aircraft or any other
21 craft or object in the internal, territorial sea and coastal land of Nigeria.

Application and
scope

Objectives of
the Agency

1 (2) This Act does not apply to warship or military patrol ship.

2 PART II - OBJECTIVES OF THE AGENCY

3 3. The objective of the Agency is to-

4 (a) provide clear direction and leadership in the establishment of a
5 platform for national maritime security;

6 (b) encourage the development of expertise in local and global maritime
7 security and awareness of marine information and communication
8 technologies for the Nigerian maritime industry;

9 (c) provide security information and mechanism to protect all national
10 maritime and maritime related infrastructures within Nigerian territorial sea
11 and coastal land; and

12 (d) regulate corporate body or person engage in the provision of
13 maritime security services within Nigerian territorial sea and coastal land.

14 PART III - FUNCTIONS AND POWERS OF THE AGENCY

Functions of
the Agency

15 4. The Agency shall:

16 (1) to the exclusion of any other body, ensure the continuation and
17 coordination of the implementation of the Chapter 11 (2) of SOLAS
18 International Ship and Port Facility Security (ISPS) Code of the International
19 Maritime Organisation (IMO).

20 (2) have responsibility for the provision of national maritime
21 infrastructures security;

22 (3) interface with the operations and the activities of security organs
23 of state in the discharge of its functions;

24 (4) monitor, regulate and co-ordinate maritime related
25 communication between persons, objects or craft within Nigerian maritime
26 environment;

27 (5) assist in search and rescue operations of all agencies and
28 organisations;

29 (6) provide security information on oil and gas pipelines, rigs,
30 platforms and all other established or anchored under water, over ground or any

1 other similar or related forms of installation;

2 (7) develop and maintain a database of national maritime
3 infrastructure;

4 (8) establish a security and infrastructure protection mechanism
5 for all sea ports and jetties in Nigeria;

6 (9) pool and co-ordinate resources towards maritime security and
7 necessary industry upgrade, intra and inter industry co-ordination capacity
8 and professional management of information and co-operation between the
9 general maritime community and the national intelligence and security
10 forces community; and

11 (10) carry out such other activity to promote and realise its
12 objectives as specified in this Act.

13 **5. -(1)** Where the Agency is required to provide a facility or service
14 or discharge a function, it shall do so:

Mode of exercise
of Powers

15 (a) by itself;

16 (b) in cooperation with another person or body; or

17 (c) by arranging for another person or body to do so on its behalf
18 and the Agency is ultimately responsible for the exercise of the delegated
19 power.

20 (2) The Agency shall, notwithstanding the provisions of any other
21 Act, have power to:

22 (a) receive and consider any report of the commission of an offence
23 in relation to this Act;

24 (b) stop, enter, board, inspect, search any ship or craft within the
25 Nigerian maritime zone or territorial waters;

26 (c) demand the production of any license, permit, record,
27 certificate or other document or make copies of or take extracts of such
28 license, permit, record, certificate or other document in relation to matters
29 provided for under this Act;

30 (d) cause an investigation into any offence which it has reason to

1 believe is being committed or is about to be committed or has been committed
2 in relation to this Act;

3 (e) exercise the right of pursuit in conjunction with other security
4 agencies;

5 (f) exercise through its staff and employees, the right to carry light
6 arms in the execution of its functions and powers under this Act;

7 (g) examine and seize any article, device, goods, ship, craft or any
8 other item related to any offence which has been committed or it has reason to
9 believe has been committed in relation to this Act;

10 (h) dispose or any article, device, goods, ship, craft or any other item
11 related to any offence which has been committed or it has reason to believe has
12 been committed in relation to this Act;

13 (i) arrest any person whom it has reason to believe has committed any
14 offence;

15 (j) refuse entry to or expel any ship which it has reason to believe to
16 that its entry or continuous stay is detrimental to the interest of or will endanger
17 the order of public interest and safety of Nigerian maritime zone; and

18 (k) enter ports, terminals, jetties and ships to monitor and investigate
19 matters related to maritime safety and security.

20 (3) Without prejudice to the generality of subsection (1) of this
21 section, designated officers of the Agency shall have, for the purposes of this
22 Act, all the powers which any law enforcement agency may exercise under any
23 Act applicable to the Nigerian maritime zone.

24 (4) Notwithstanding the provisions of subsection 2 (b) of this section,
25 no ship shall be stopped, entered, boarded, searched or inspected within the
26 area of the territorial waters of Nigeria if the passage of the ship within the
27 territorial waters of Nigeria is an innocent passage.

28 (5) For the purpose of this section, the passage of a ship is regarded as
29 an innocent passage if it is not prejudicial to the safety and security of the
30 maritime zone of Nigeria.

1	6. The Agency will assist the Nigerian Navy and NIMASA to carry	Activities prejudicial to Safety and Security
2	out the following activities in the Maritime zone of Nigeria:	
3	(a) any threat or act which in any matter is a violation of the provisions	
4	of this Act or any other legislation applicable to the Agency;	
5	(b) act of pollution;	
6	(c) unauthorized fishing activity;	
7	(d) the carrying out of unauthorized research or survey activities;	
8	(e) act aimed at interfering with any systems of communication or any	
9	other facilities or installations of the Agency any act which is in	
10	contravention of the Coastal and Inland Shipping (Cabotage) Act, 2003 or	
11	any similar law; and	
12	(f) any other activity not having a direct bearing on passage.	
13	7. In the exercising its powers, the Agency may collaborate with,	Collaboration with other Agencies
14	request for and shall be entitled to receive assistance from other government	
15	agencies responsible for the maintenance of security in the maritime zone of	
16	Nigeria.	
17	8. In the performance of its functions, the Agency may, where	Consultation with other Agencies
18	appropriate, consult with government, commercial, industrial, consumer	
19	and other relevant bodies and organisations.	
20	PART IV - GOVERNING BOARD OF THE AGENCY AND ITS MEMBERSHIP	
21	9. -(1) There is established for the Agency a Governing Board (in	Governing Board of the Agency
22	this Act referred to as “the Board”) to be appointed by the President on the	
23	recommendation of the National Security Adviser.	
24	(2) The Board shall consist of:	
25	(a) a Chairman;	
26	(b) the Director-General;	
27	(c) the Executive Directors of the Agency;	
28	(d) a representative each not below the rank of a Director from:	
29	(i) Federal Ministry responsible for marine transportation;	
30	(ii) Federal Ministry of Finance;	

- 1 (iii) Federal Ministry of Interior.
- 2 (e) a representative of the Office of the Chief of Defence Staff not
3 below the rank of Brigadier-General or its service equivalent;
- 4 (f) a representative of the Office of the National Security Adviser;
- 5 (g) a representative of the office of the Inspector General of Police not
6 below the rank of Assistant Inspector General of Police; and
- 7 (h) a representative of the Nigerian National Petroleum Corporation
8 not below the rank of Group Executive Director.

9 (2) The Board is responsible for the determination of the general
10 policies of the Agency with regard to its financial, commercial and operational
11 programmes.

12 (3) In managing the affairs of the Agency, the Board shall have regard,
13 in addition to any general guidelines on the running of public institutions, to
14 such generally acceptable principles of good corporate governance as is
15 reasonably applicable to the Agency.

16 *First Schedule.*

17 (4) The supplementary provisions set out in the First Schedule to this
18 Act shall apply to the proceedings of the Board and other matters contained
19 therein.

20 (5) The Board shall make standing orders regulating its proceedings
21 and meetings;

Cessation of
Membership

22 **10.-(1)** A member ceases to hold office if:

- 23 (a) he has been certified to be of unsound mind;
- 24 (b) he is an undischarged bankrupt;
- 25 (c) he has been convicted in Nigeria or elsewhere of a criminal
26 offence involving fraud or dishonesty;
- 27 (d) has, at any time, been removed from an office on account of
28 mistrust or misconduct; or
- 29 (e) his retention on the Board is inimical to public interest or of the
30 Agency.

1 *Second Schedule*

2 (2) The conflict of interest provisions contained in the Second
3 Schedule to this Act shall apply to members.

4 **11.**-(1) Members, other than ex-officio, shall hold office for a term Tenure of
5 of four years and may be eligible for re-appointed for a further term of four members
6 years and no more.

7 (2) A member other than ex-officio may resign his appointment by
8 giving one month written notice to the President through the National
9 Security Adviser.

10 (3) The Director-General and Executive Directors shall give 3
11 months written notice of resignation to the President through the National
12 Security Adviser.

13 **12.**-(1) A member may be suspended or removed by the President Removal of
14 on the recommendation of the National Security Adviser. Member by
President

15 (2) In making a recommendation under subsection (1) of this
16 section, the National Security Adviser shall have regard to section 10 of this
17 Act.

18 **13.**-(1) A vacancy occurs in the Board if a member: Vacancy in the
Board

19 (a) dies;

20 (b) is medically certified unfit;

21 (c) is removed;

22 (d) resigns;

23 (e) completes his term of office.

24 (2) The President, on the recommendation of the National Security
25 Adviser shall appoint another person into the Board to replace a member
26 whose office became vacant pursuant to subsection (1) of this section and
27 the person shall represent the same interest as that of the former member.

28 (3) A person appointed under subsection (2) of this section shall
29 serve the unexpired term of the former member and may be reappointed for
30 another term of four years and no more.

Remuneration of members	1	14. All payments, allowances, benefits and expenses payable to a
	2	member shall be determined by the Board in accordance with Government
	3	guidelines.
Director-General	4	15. -(1) The Director-General shall:
	5	(a) subject to Section 10 of this Act, be a person that possess extensive
	6	knowledge of security matters or maritime affairs;
	7	(b) be appointed by the President on the recommendation of the
	8	National Security Adviser; and
	9	(c) hold office for a term of five years in the first instance and may be
	10	eligible for reappointment for another term of five years and no more,
	11	(2) The Director-General is the chief executive and chief accounting
	12	officer and responsible for:
	13	(a) the implementation of the policies of the Agency and decisions of
	14	the Board;
	15	(b) organisation, control and daily management of the affairs of the
	16	Agency;
	17	(c) the direction, supervision and control of the employees of the
	18	Agency subject to any direction issued by the Board;
	19	(d) ensuring the maintenance of accounting records in accordance
	20	with applicable laws and accounting principles; and
	21	(e) any other thing incidental or related to the object of this Act.
Executive Directors	22	16. -(1) Executive Director of the Agency shall:
	23	(a) be appointed by the President on the recommendation of the
	24	National Security Adviser;
	25	(b) be a person that possess sound knowledge of and ability in the
	26	executive function he is appointed to handle;
	27	(c) perform such functions as may be determined by the Board from
	28	time to time;
	29	(d) serve for a term of four years in the first instance and may be
	30	eligible for reappointment for a further term of four years and no more.

1 **17.** -(1) The Board may establish such number of departments
2 necessary for the attainment of the objectives of the Agency and each
3 department shall be headed by an Executive Director.

4 (2) Departments established under subsection (1) of this Section
5 shall include:

6 (a) administration and finance department;

7 (b) operations department; and

8 (c) technical department;

9 **18.** -(1) There shall be appointed by the Board a Secretary to the
10 Board. Secretary to the
Board

11 (2) The secretary must possess relevant professional qualifications
12 and experience, and must have been so qualified for period of not less than
13 ten years as:

14 (a) a legal practitioner; or

15 (b) a chartered secretary.

16 (3) The Secretary shall be responsible to the Director-General and
17 the Board and shall perform the following duties:

18 (a) arrange for meetings of the Board, prepare the agenda and write
19 minutes of such meetings;

20 (b) communicate the decisions of the Board to members;

21 (c) keep records of the Board;

22 (d) ensure the payment of the allowances of members for attending
23 meetings; and

24 (e) carry out any other duties as may be assigned to him by the
25 Director General or the Board.

26 **19.**-(1) The Agency may employ such number of staff or Other staff and
conditions service
27 employees as it may deem necessary for the efficient performance of its
28 functions.

29 (2) The Board shall determine the job description, title, terms,
30 qualifications, salaries, allowances and other benefits of staff or employees

1 who are subject to the conflict of interest rules in the Second Schedule to this
2 Act.

3 (3) Staff of the Agency, including the Board Secretary, shall be
4 subject to such terms and conditions as may, from time to time, be stipulated by
5 the Board and as contained in their letters of employment.

Pension Reform
Act, 2004

6 **20.** Service in the Agency shall be approved service for the purpose of
7 Pension and staff or employees of the Agency shall be entitled to retirement
8 benefit as prescribed in the Pension Reform Act.

9 PART V - FINANCIAL PROVISIONS

Funding of the
Agency

10 **21.** -(1) The Agency shall establish and maintain a fund into which
11 shall be paid:

12 (a) 1 percent of the value of the gross tonnage of in-bound and out-
13 bound cargo in vessels calling at or departing from any port in Nigeria;

14 (b) the maritime security levy;

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

17 (d) all other sums collected or received by the Agency for services
18 rendered or facilities provided by it;

19 (e) gift, grant, aid including financial and material support from
20 multilateral agencies and non-governmental organizations;

21 (f) such other sums that may be received from the Federal
22 Government; and

23 (g) such other sources of revenue or income other than those specified
24 in paragraphs (a) to (f) of this subsection:

25 Provided that the conditions attached to the revenue or income shall
26 not be inimical to the objectives of this Act and the functions and powers of the
27 Agency.

28 (2) The Agency shall apply the funds in Sub-section (1) of this Section
29 to:

30 (a) carry out its functions under this Act;

- 1 (b) train staff and related personnel;
- 2 (c) its general administration;
- 3 (d) the payment of salaries, allowances, emoluments and other
- 4 benefits of the executive members of the Board, the Director General and
- 5 staff;
- 6 (e) acquire and maintain any property for the use of the Agency;
- 7 and
- 8 (f) any other expenses that are necessary for the effective discharge
- 9 of its functions.

10 **22.** The Agency shall, not later than 30th September in each

11 financial year, prepare and submit to the National Security Adviser, for

12 presentation to the President and consideration by the National Assembly

13 for approval, a statement of estimated income and expenditure for the

14 following financial year.

Budget and
expenditure

15 **23.** -(1) The Agency may accept gift of land, money or other

16 property on such terms and conditions as is consistent with the functions of

17 the Agency.

Power to accept
gifts

18 (2) The Agency shall not accept any gift if the condition attached

19 by the person or organization making it is inconsistent with the functions of

20 the Agency or are in conflict with national interest.

21 **24.** -(1) The accounts and records of the Agency shall, at all times,

22 be open for inspection by:

Account and
records to be
open for
inspection

23 (a) a member of the Board; or

24 (b) person specifically authorized by the National Security Adviser

25 to inspect them.

26 (2) The books of accounts and records shall be kept at the head

27 office of the Agency.

28 **25.** -(1) The Agency shall keep proper and regular accounts and

29 other records of monies received and paid by it and of several purposes for

30 which such monies were received and expended; and of the assets, credits

Statements of
accounts and
audit

1 and liabilities of the Agency.

2 (2) The Agency shall ensure that payments out of its money are
3 correctly made and properly authorized and that adequate control is
4 maintained over the assets and the expenditure incurred by the Agency.

5 (3) The accounts of the Agency shall be audited annually by a firm of
6 Auditors appointed by the Board from the list of Auditors supplied by the
7 Auditor-General for the Federation.

8 (4) As soon as the accounts of the Agency and the financial statements
9 have been audited, the Agency shall forward a copy together with the report or
10 observations made on them by the Auditor to the National Security Adviser.

Annual and
other reports

11 **26.** The Agency shall, at the end of each financial year, prepare and
12 submit to the National Security Adviser and Auditor General for the Federation
13 a report in such form as shall accurately reflect all the activities of the Agency
14 during the preceding year; and the report shall include a copy of the audited
15 accounts of the Agency.

Directives by
the National
Security Adviser

16 **27.** The National Security Adviser may give the Agency written
17 directives regarding the performance of its functions and particulars of the
18 directives given in any financial year shall be included in the annual report of
19 the Agency for that year.

20 PART VI - CHARGES AND LEVIES

Maritime
Security Levy

21 **28.-(1)** As from the commencement of this Act, there shall be charged
22 and payable a Maritime Security Levy which shall be assessed, collected and
23 administered in accordance with the provisions of this Act.

24 (2) The levy in Subsection (1) of this Section 1% of the declared
25 annual profit of any company engaged in maritime related activity in the
26 federation.

Imposition of
charges

27 **29.-(1)** The Agency may by regulation impose charges and specify
28 the persons to whom it shall apply, and the times when they shall become due
29 and payable.

30 (2) The charges may include:

- 1 (a) a charge for a service or facility provided by the Agency;
- 2 (b) a fee or other charges in respect of a matter in relation to which
3 expenses have been incurred by the Agency including, but not limited to a
4 fee or other charges in respect of, or for an application for:
- 5 (i) the grant, issue, renewal or variation of a certificate, license,
6 approval, permission, permit, registration or exemption under an Act or a
7 regulation; or
- 8 (ii) the grant or variation of an authorization or the cancellation,
9 suspension, variation or imposition of a condition relating to anything
10 referred to in subparagraph (i) of this subsection.
- 11 (3) Before making regulations under subsection (1) of this
12 section, the Agency shall give notice in writing of the proposed regulation to
13 the National Security Adviser in which it shall specify the:
- 14 (a) day on which the regulation is intended to take effect;
- 15 (b) basis of a charge or penalty; and
- 16 (c) reasons for varying a charge or penalty.
- 17 (4) The National Security Adviser shall, in the exercise of his
18 discretion, after receiving a notice of the proposed regulation, give the
19 Agency a notice in writing approving, rejecting or recommending an
20 alternative regulation.
- 21 (5) The Agency may make regulations under subsection (1) of this
22 section with the approval of the National Security Adviser.
- 23 (6) Subject to subsection (8) of this section, where a charge
24 imposed under subsection (1) is not paid within the period determined by the
25 Agency, being a period beginning on the day on which the charge became
26 due and payable, the person liable shall pay to the Agency, in addition to the
27 charge, a penalty not exceeding 50% of the sum calculated upon the unpaid
28 amount of the charge from the day on which the charge became due.
- 29 (7) The penalty shall not exceed an amount equivalent to the 50%
30 of the unpaid amount of the charge for each day during which it remains

1 unpaid, calculated from the day on which the charge became due and payable.

2 (8) Unpaid charge and penalty may be recovered as debt due to the
3 Agency.

4 PART VII - SAFETY AND SECURITY OF SHIP

Inspection of
ships

5 **30.** The Agency shall have power to do the following:

6 (a) stop and inspect any ship or vessel within the territorial sea and
7 inland waters of Nigeria in the discharge of its functions under this Act;

8 (b) interfere, intercept or do any thing it deems necessary to enhance
9 communication capabilities of ships, vessels or crafts within the maritime
10 boundaries and domain of Nigeria;

11 (c) monitor any ship, vessel or craft with regard to ensuring the safety and
12 security of maritime infrastructure in the territorial sea and inland waters of
13 Nigeria.

14 PART VIII - GENERAL PROVISIONS

Establishment
of Maritime
Security Offices

15 **31.** The Agency, to ensure maritime safety and security, may establish
16 maritime security office in any part of Nigeria or such other places considered
17 necessary for the effective performance of its functions under this Act.

Records to be
kept of ships

18 **32.** The Agency shall keep records of the following-

19 (a) the number, type, location, mission and capabilities of ship, vessel
20 and craft entering or leaving Nigeria's territorial sea and inland waters; and

21 (b) any other information that it deems necessary to enable it
22 discharge its functions under this Act.

Power to detain
ships

23 **33.-(1)** The Agency shall upon an application made to the court
24 (where it believes that the master or owner of a ship has committed an offence
25 under this Act), to cause a detention order to be issued, on the ship which order
26 shall be in a prescribed form.

27 (2) The power in subsection (1) of this section shall be exercised in
28 accordance with the Ship Detention Order Regulations and other relevant laws
29 in that regard.

1 **34.**-(1) The Agency may, subject to the approval of the Board make Regulations
2 regulations generally-

3 (a) prescribing the matters required by this Act to be proscribe-

4 (b) prescribing the manner in which and the persons or bodies by
5 whom charges, levies and related penalties are to be collected; and the
6 manner in which security may be provided for the payment of such charges,
7 levies and related penalties;

8 (c) regulating the detention of ships; and

9 (d) prescribing all matters necessary or expedient for the
10 achievement of the objectives of this Act.

11 (2) The regulations made under subsection (1) of this section may
12 include such incidental, supplementary or transitional provisions as may be
13 reasonably necessary or expedient.

14 (3) In making the regulations, the Agency shall take into account
15 the need to give effect to the provisions of any international convention or
16 agreement ratified by Nigeria.

17 PART IX - LEGAL PROCEEDINGS

18 **35.** -(1) Notwithstanding anything contained in any other law or Limitation of
19 enactment, no person shall institute an action against the Agency, a member suits against the
20 of the Board, the Director General or any staff of the Agency for any act done Agency
21 or omitted to be done in the discharge of any public duty under this Act or
22 any other law or in respect of any alleged neglect or default in execution of
23 any duty under this Act or any such law, unless it is commenced within one
24 (1) year after the act, neglect or default complained of; or in the case of a
25 continuance of damage or injury, within one (1) year after the ceasing of the
26 act.

27 (2) An action shall not commence against the Agency, a member of
28 the Board, the Director General or a staff of the Agency before the expiration
29 of a period of one (1) month after a written notice of intention to commence
30 the action had been served on the Agency by the intending plaintiff or his

1 agent and the notice shall clearly state the:

2 (a) cause of action;

3 (b) particulars of the claim;

4 (c) name and place of residence of the intending plaintiff; and

5 (d) the relief to be sought.

6 (3) The service of court process on the Agency shall be valid only if
7 such a process is served on the Director-General or Secretary or at the
8 designated office of the Agency.

9 (4) No arrest shall lie against any staff of the Agency whilst on duty
10 except with the consent of his immediate superior officer.

11 (5) Where a staff is found guilty of an offence by a competent court
12 and as a result of which the Agency has made any financial contribution, such a
13 staff shall indemnify the Agency for the contribution.

Judicial
management
and liquidation

14 **36.** The Agency shall not be placed under judicial management or
15 liquidation except as authorized by an Act of the National Assembly.

16 PART X - OFFENCES

Damage to
property of the
Agency

17 **37.** -(1) A person who, willfully removes, destroys or damages any
18 property belonging to or which is in the custody or possession of the Agency; or
19 hinders or prevents such property from being used or operated in the manner in
20 which it is intended to be used or operated, commits an offence and is liable on
21 conviction to a minimum fine of N1,500,000.

22 (2) Any person convicted under Sub-section (1) of this Section shall,
23 in addition, make good any loss, destruction or damage suffered by the Agency,
24 including the expenses of any inspection or survey carried out by the Agency to
25 ascertain such loss, destruction or damage.

Evasion of fees,
levies, etc.

26 **38.** -(1) A person who by any means evades or attempts to evade,
27 neglects or omits to pay any levy, charge or fee payable under this Act commits
28 an offence and is liable on conviction to a minimum fine of N1,000,000 or to
29 imprisonment for a term of six months or to both such imprisonment and fine.

30 (2) Any person found guilty under Subsection (1) of this Section shall,

1 in addition, pay to the Agency a penalty double the amount of the levy,
2 charge or fee evaded or attempted to be evaded or neglected or omitted to be
3 paid.

4 **39.** A person who makes, whether knowingly or recklessly any
5 statement which is false in any material particular in any claim or other
6 document which is requested or authorized to be made by or under this Act
7 or a regulation made under it, commits an offence and is liable on conviction
8 to a minimum fine of N1,000,000 or to imprisonment for a term of twelve
9 months or to both fine and imprisonment.

Penalty for giving
false statement

10 **40.** -(1) A person who, without lawful excuse, refuses, neglects or
11 fails to comply with any direction lawfully given by the Agency in the
12 exercise of its powers under this Act; or who fails to comply with any
13 provision of this Act or of any regulation made under it, commits an offence
14 and is liable on conviction to a minimum fine of N1,500,000 or to
15 imprisonment for a term of twelve months or both; and in the case of a
16 continuing offence, to a further fine of N250,000 for every day during which
17 the offence continues.

Non compliance
with direction of
the Agency with
direction

18 (2) A person commits an offence if he, without lawful excuse,
19 refuses or neglects to obey any direction given under this Act or a regulation
20 made under it.

21 (3) The Agency may, irrespective of whether any proceeding has
22 been instituted against or any penalty imposed on such person for the refusal
23 or neglect, do or cause to be done an such acts as are, in its opinion
24 reasonable or necessary to carry out the direction.

25 (4) The Agency may hire or employ such persons as are necessary
26 to make good whatever loss or damage may have been caused by the refusal
27 or neglect of the person to whom the direction was given.

28 (5) Any expenses incurred by the Agency in the exercise of its
29 powers under this section is recoverable from the person to whom the
30 direction was given.

Obstructing the
Agency in the
performance
of its duties

1 **41.** A person who hinders, obstructs or molests an employee, agent or
2 contractor of the Agency in the performance of their duty commits an offence
3 and is liable on conviction to a minimum fine of N650,000 or imprisonment for
4 a term of six months or to both such fine and imprisonment.

Preservation of
Secrecy

5 **42.** -(1) Except for the purpose of the performance of his duties or
6 when lawfully required to do so by a court or under the provisions of any law, a
7 person who is or has been a member of the Board, the Director General, an
8 employee, an adviser, an agent or a contractor of the Agency shall not disclose
9 any information related to the affairs of the Agency or of any other person
10 which has been obtained by him in the performance of his duties or functions.

11 (2) A person who contravenes subsection (1) of this section commits
12 an offence and is liable on conviction to a minimum fine of N400,000 or
13 imprisonment for a term of six months or to both such fine and imprisonment.

Offences by
companies and
fines to be paid
to the Agency

14 **43.** -(1) Where an offence under this Act or the regulations was
15 committed by a company or other body or persons, any such person who, at the
16 time the offence was committed, was a director, manager or partner in the
17 company or body of persons or acted in such capacity may be charged with the
18 same offence.

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

28 (3) All sums collected as fines imposed for offences under this Act or
29 the regulations shall be paid to the Agency.

30 (4) The Federal High Court has exclusive jurisdiction to try any

1 offence under this Act.

2 **44.** In this Act:

Interpretation

3 “Act” means the Maritime Security Agency Act;

4 “Action” includes a suit in a court of competent jurisdiction;

5 “Agency” means the Maritime Security Agency established under section 1
6 of this Act;

7 “Board” means the Governing Board of the Agency constituted under
8 section 8 of this Act;

9 “Competent court” means the Federal High Court.

10 “Customs” means the Nigerian Customs Service;

11 “Immigration” means the Nigerian Immigration Service;

12 “IMO” means the International Maritime Organization;

13 “ISPS” means the International Ships and Ports Facilities Security;

14 “Major oil and gas company” means any company engaged in the
15 exploration, exploitation, refining, sale or marketing of crude or refined
16 petroleum products and includes oil services companies;

17 “Member” means a member of the Board of the Agency and includes the
18 chairman;

19 “NSA” means the National Security Adviser to the President;

20 “ONSA” means the Office of the National Security Adviser;

21 “Government” means the Federal Government of Nigeria;

22 “President” means the President of the Federal Republic of Nigeria;

23 “SSS” means the State Security Service.

24 **45.** This Bill may be cited as the Maritime Security Agency Short Title
25 (Establishment, etc.) Bill, 2017.

1 SCHEDULES

2 FIRST SCHEDULE

3 Section 9 (4)

4 SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD OF THE AGENCY

5 *Proceedings of the Board*

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

9 2. The Chairman shall preside at every meeting of the Board & and in
10 his absence, the members present at the meeting shall appoint one of
11 themselves to preside at the meeting; minutes shall be taken by the Secretary
12 for each meeting of the Board and those of any of its committees.

13 3. The quorum for any meeting of the Board shall be five members.

14 4. The Board shall meet to transact business whenever it is summoned
15 by the chairman, after the members shall have been given one week written
16 notice; and the Chairman shall, if so required by a notice given to him by no
17 fewer than five members specifying, among other things, an agenda for the
18 meeting, summon a meeting of the Board which shall be held not later than
19 fourteen days from the date on which the notice is served on him, to discuss the
20 items specified in the notice; and the Board shall, for the purposes of this Act,
21 meet no fewer than four times in each calendar year.

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

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

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

1 (b) be excluded for the purpose of constituting a quorum of any
2 meeting of the Board for any deliberation or decision, with regard to the
3 subject matter in respect of which his interest was disclosed.

4 7. The decisions at a meeting of the Board shall be taken by a
5 simple majority vote of members present.

6 8. In the case of an equality of votes, the chairman shall have a
7 casting vote.

8 *Committees*

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

12 10. A committee appointed under paragraph (9) of this Schedule
13 shall:

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

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

20 *Miscellaneous*

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

23 12. A decision of a committee of the Board shall not take effect
24 until it is confirmed by the Board.

25 13. The fixing of the seal of the Agency shall be authenticated by
26 the signature of the Secretary and that of the Chairman or any other member
27 of the Board generally or specifically authorized by the Board to act for that
28 purpose.

29 14. A contract or instrument which, if made by a person who is not a
30 body corporate, would not be required to be under seal may be made or

1 executed on behalf of the Agency by any person generally or specifically
2 authorized by the Board or the Director General to act for that purpose.

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

7 **16.** Subject to the other provisions of this Act, the validity of any
8 proceeding, act or decision of the Board or of any of its committees shall not be
9 affected by:

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

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

13 (c) reason that any person who was not entitled to do so took part in
14 the proceeding of the Board or a committee.

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

18 **18.** A person shall not, by reason only of his membership of the
19 Board, be treated as holding an office of emolument under the Government of
20 the Federation.

21 SECOND SCHEDULE

22 Section 9(2)

23 *Conflict of Interest*

24 (1) Subject to further provisions of this Schedule, a member of the
25 Board or staff of the Agency shall not have a direct or indirect financial interest
26 or investment in any shipping, stevedoring, pilotage, oil and gas services
27 terminal operations or any other service by or for the Agency, or receive
28 therefrom any loan, remuneration or other right, or have any personal interest
29 in any contract made or proposed to be made by the Agency throughout the
30 term of his office or employment with the Agency.

1 (2) Subject to paragraphs (3) and (4) of this Schedule, each
2 member of the Board or staff of the Agency shall, on an annual basis, present
3 a written declaration, not later than the third month of each year, affirming
4 that no such interest as is specified in paragraph (1) of this Schedule shall
5 arise during his term or employment with the Agency.

6 (3) The members of the Board and staff of the Agency, as from the
7 commencement of this Act, shall be entitled to a maximum period of six
8 months to divest themselves of any direct or indirect financial interests or
9 investments in any shipping, stevedoring, pilotage or oil and gas services
10 terminal operations or any other similar engagements.

11 (4) All newly appointed members or staff of the Agency, after the
12 commencement of this Act, shall be entitled to a maximum period of three
13 months from their respective dates of appointment to divest themselves of
14 any direct or indirect financial interests or investments in any shipping,
15 stevedoring or any similar engagement.

16 (5) Each member or staff of the Agency shall declare, on
17 appointment or at the commencement of employment and annually
18 thereafter, for as long as he is in the employment of the Agency, any interest
19 or investment that he:

20 (a) knowingly has; or

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

23 (6) If a member or staff of the Agency contravenes the provisions
24 of paragraphs (1) and (2) of this Schedule or gives false information under
25 paragraph (5), he commits an offence and is liable on conviction to a fine of
26 N1,000,000 or imprisonment for a term of one year or to both such fine and
27 imprisonment.

28 (7) Subject to paragraph (8) of this Schedule, the Board may, from
29 time to time, waive the application of the prohibitions specified in
30 paragraphs (1) and (2) of this Schedule to a member or staff of the Agency if

1 the Board determines that the financial interest of the member or staff is not of a
2 material nature or is minimal.

3 (8) The Board, in determining whether or not the interest of a member
4 or staff of the Agency is minimal or not of a material nature, shall consider
5 factors including, but not limited to the:

6 (a) revenues, investments, profits and managerial efforts of the
7 relevant company or other entity in regard to its port activities compared with
8 other aspects of the business of the Agency or those of that company or entity;

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

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

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

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

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

27 (11) For the purpose of this Schedule:

28 (a) "company" includes partnerships and undertakings howsoever
29 defined; and

30 (b) "immediate family" means a person's spouse, a partner living with

- 1 that person as if they were married to each other, and children under the age
2 of 18 years.

EXPLANATORY MEMORANDUM

This Act provides, among other things, for the establishment of the Maritime Security Agency which shall be charged with the responsibility of providing security and safety information and communication facilities for all categories of users of the Nigerian maritime industry.