

# OFIANYI CHAMBERS NEWSLETTER. VOL. 1 (MAY, 2021) ISSUE.

## TIT- BITS ON BILLS OF LADING.

Bill of Lading is an essential commercial document for carriage of goods by sea and international trade generally. A **bill of lading** is a form of contract between the owner of the goods, and the carrier evidencing the goods being shipped, location of departure, and destination of the goods.

A bill of lading is often referred to as a waybill and serves three major purposes in Maritime:

- a. As a document of title, it allows the person holding it to claim possession of the goods shipped.
- b. As an evidence of contract of carriage
- c. As receipt of goods accepted for carriage and goods delivered. It bears representations as to the quantity and condition of the Cargo.

### **Types and forms of Bill of Lading include:**

- Marine/Ocean Bill of Lading
- Clean/unclean/dirty Bill of Lading
- Received for shipment/shipped Bill of Lading
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Long form/short form/blank backed Bill of Lading

- Conventional Bill of Lading
- Container Bill of Lading
- Port-to-port bills of lading
- Service/Cover/Memo Bill of Lading
- Through/Combined transport Bill of Lading
- House Bill of lading
- Forwarder's/NVOCC Bill of Lading
- Non-negotiable receipts/parcel receipts/consignment notes
- Electronic bills of lading

### Content of a Bill of Lading

- Details of the sending and receiving parties.
- Description of goods and quantity.
- Gross weight and volume of goods
- Amount of freight paid or payable.
- Name of the vessel/ship
- Port of loading
- Port of discharge
- Goods
- Date and place of issue
- Number of signed copies

- Applicable Inco terms

Article III Rule 3 of the Hague Visby Rules, enables the Shipper to insist on issuance of a bill of lading in carriage of goods by sea. Bills of Lading are usually issued in sets of three. This is to allow the Sending party, the Carrier and the Receiving party to retain originals and have some form of protection of their interest.

The importance of bills of lading cannot be overemphasized in the Shipping and logistics industry for the protection of the contracting parties.

### 1. TIMELINES AND PROCESSES FOR ARRESTING A VESSEL IN NIGERIA.

Order 7 Rule 1(1) of the Admiralty Jurisdiction Procedure Rules 2011, states thus:

“A party to a proceeding commenced as an action in rem may by a motion ex-parte, apply for warrant of arrest in respect of a ship, or other property against which the proceeding was commenced. Provided that at the time of application, the ship or the property is within Nigerian territorial waters or is expected to arrive there within three days”.(Underlining is ours).

A Plaintiff may now commence **in rem** proceedings against a vessel, once she is within jurisdiction or expected to arrive jurisdiction within 3 days at the time of filing the application.

A vessel can only be arrested in Nigeria, when she is within the limits of the territorial waters of Nigeria, namely within 12 nautical miles from the baselines, or a plaintiff can obtain a warrant of arrest in anticipation of the arrival of the offending vessel within the territorial limits and upon the arrival of the vessel within Nigerian territorial waters; and once she arrives, **pounces** on it with the warrant of arrest.(Underlining is ours).

Giving consideration to the peculiarity of an action **in rem**, which is an arrest of the vessel itself and not the owners(**in personam** action), the court is guided to treat claims arising from an action in rem with a string of urgency, especially because the ship being an international business tool, may leave the jurisdiction of the court at any time. To this end, the plaintiff is expected to, together with other originating processes, file an Affidavit of Urgency, requiring that the Judge gives the matter immediate attention before the vessel sails out of Nigeria.

A prudent owner or an interested person of a ship under arrest, is anxious to have his vessel quickly released to him, in order to mitigate the colossal damages/loss and costs incurred during the period of arrest.

In the case of **Maxwell Ebube v. Gold Star Line Ltd 2 NSC 266**, an order of arrest was made in anticipation of the arrival of the vessel within Nigerian territorial waters, which vessel was then arrested as soon as it came within Nigerian territorial waters. In his book, the learned author Christopher Hill, recognised such practice of issuing a writ in rem and waiting during the validity of the writ for a time to 'pounce' on the res when it comes within jurisdiction, as an excellent way of getting the owner of the res within the plaintiff's grasp.

A warrant of arrest is **valid for six months from the date of issue and can be renewed for another six months.**(ORDER 7 R.3 AJPR).

## **PROCESSES FOR ARRESTING A VESSEL IN NIGERIA.**

The International Convention on Arrest of Ship:

There are two remarkable Conventions on arrest of ships. These Conventions were necessitated to provide uniformity

amongst countries with respect to the arrest of ships. The first conference where the issue of arrest of ship was discussed was in 1930, and four questions were raised: (i) Which ship may be arrested? (ii) Who is entitled to arrest? (iii) Where can arrest be made and, (iv) How can a ship be released from arrest?

These questions led to a compromise between the French pretrial remedy of 'saisie conservatoire' (Detention of a Ship) and an action in rem.

A ship within same jurisdiction cannot be arrested more than once by the same Plaintiff.

Pursuant to the AJA, the Admiralty Jurisdiction Procedure Rules were enacted and they prescribe the procedure for enforcement of maritime claims. The procedure for arrest of a ship is set out in Order 7 Rule 1(1) of the Admiralty Jurisdiction Procedure Rules 2011.

**By the provisions of the AJPR, the procedure is commenced by filing a writ of summons, statement of claim, a motion ex-parte, disclosing a strong prima facie case for the arrest of the ship, with a supporting affidavit stating the nature of the claim.**

Before the issuance of a warrant of arrest, the party applying is expected to conduct a search in the caveat book, in order to

ascertain whether there is a caveat in force against such arrest with respect to the ship.

The affidavit must depose the following facts as provided under Order 7 Rule 6 of the Admiralty Jurisdiction Procedure Rules 2011:

- ⊙ The nature of the claim/counter claim
- ⊙ That the claim has not been satisfied
- ⊙ The name of the ship
- ⊙ The nature of the property to be arrested, which will include the name of the ship and her port of registry if known.
- ⊙ The name of the person who would be liable for the claim in an action in personam.
- ⊙ That the party liable, was the owner, charterer, in possession or in control of the ship in connection with which the claim arose.
- ⊙ In a case for possession of a ship or for wages, the nationality of the ship with respect to which the warrant is required.
- ⊙ Where the warrant is sought against a ship that is not the subject matter in the action, that the deponent had reasonable grounds to believe that

the ship against which the action is sought is beneficially owned by the person who is the owner of the ship that is the subject matter of the action.

⊙ In a case of the claim in respect to liabilities incurred under the Merchant Shipping Act, the facts relied upon as establishing that the court is not prevented from entertaining this action.

If the court finds it reasonable to make the arrest, the ship becomes a security for the determined compensating cost, and an object to be sold to satisfy the claim.

A warrant of arrest shall be issued by a Judge **of the Federal High Court as in Form 7. (Order 7 Rule 2 AJPR).**

It is apparent that arrest of ships is a well-recognised maritime practice internationally. It is an effective tool in the hands of the claimant which prevents the vessel from sailing away thereby frustrating the claimant's claim. It also gives the defendant the opportunity to put up a bail or provide an advance of the judgement sum and it provides adequate funds to secure compliance with any judgement that may eventually be awarded against it, or its owners.

Ship arrest is defined by the *International Convention Relating to the Arrest of Sea-going Ships held at Brussels on 10 May 1952, as the*

detention of a ship by judicial process to secure a maritime claim.

Arrest of a vessel or ship, is part of the process by which an admiralty court gains jurisdiction over the subject matter of a lawsuit.

Ship arrest is an excellent way to obtain security for the claim and potentially prepare for judicial sale of the vessel, should that become necessary.

The right to a pre-judgement arrest of a defendant's assets to secure a potential claim, originated as an exception to the general principle that such rights accrue only upon final judgement. Thus, arose a distinctive feature of the courts of Admiralty.

## 2. INCOTERMS: SPEAKING A COMMON LANGUAGE INTERNATIONAL TRADE

When you sell a product to a foreign customer, it is essential to determine the terms of sale as part of your export pricing strategy. In international commerce, Incoterms which are international commercial terms, are used to define key responsibilities of sellers and buyers in the international sale of goods.

Incoterms are issued by the International Chamber of Commerce. The latest of

which is the Incoterms® 2020. However, sellers and buyers may agree to have the transactions regulated by earlier versions of the incoterms which they may be more familiar with like the Incoterms® 2010.

Each Incoterm is expressed as a three-letter acronym with the place of delivery. Incoterms are a tool to specify who is responsible for paying for certain obligations in the shipping process, such as transportation of the shipment, including loading, unloading and terminal charges; cargo insurance; export clearance (including export and security documentation and if required, an export license); export formalities, such as packing and pre-shipment inspections; customs clearance and import documentation, including an import license if required; import duties and taxes; and cargo unloading and delivery to the agreed upon place.

Incoterms also define when the risk of loss or damage to goods transfers from the seller to buyer. There are other risks to consider in an export transaction, including liability for export compliance obligations and the cost of a potential customs delay.

The choice of one of the 11 Incoterms depends upon whether the shipment uses any mode of transport, or only sea and/or inland waterway transport.

The 11 Incoterms are as follows:

CFR: Cost and Freight

CIF: Cost, Insurance and Freight.

CPT: Carriage paid to

CIP: Carriage and Insurance paid to.

DPU: Delivery at place unloaded

DAP: Delivery at Place

DDP: Delivered duty paid

EXW: Ex works

FCA: Free Carrier

FAS: Free Alongside ship

FOB: Free on Board



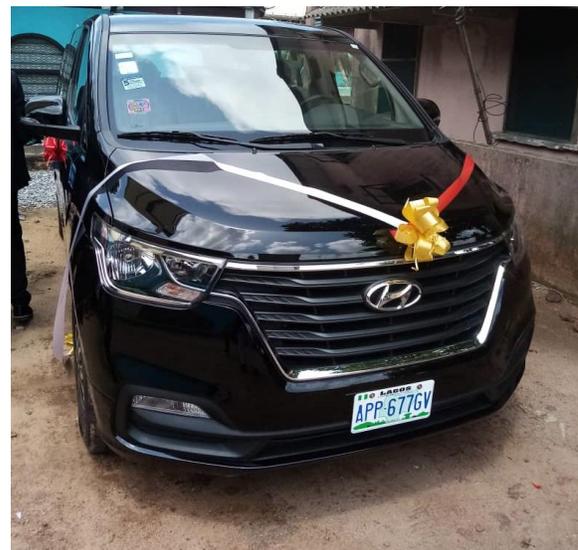
## **NEWS AND EVENTS**

**MISSION TO SEAFARERS, LAGOS (MTSL) APPOINTS MRS. JEAN CHIAZOR ANISHERE (SAN) OF OFIANYI CHAMBERS TO ITS SUPPORT AND ADVOCACY GROUP**

On Wednesday, 26<sup>th</sup> May 2021 the Mission to Seafarers, Lagos (MtSL) appointed Mrs. Jean Chiazor Anishere (SAN) of Ofianyi Chambers, as a member of its Support and Advocacy group. Mission to Seafarers (Mts), aims to promote the spiritual, moral and physical well-being of all seafarers and their families, irrespective of nationality, race, gender or creed.

The Mission to Seafarers has evolved since 1856 from the Singular Bristol Channel outreach in South West England, to a Global Organization comprising over 200 “stations” located around seaports all over the world.

Also, on Wednesday, the Management of the Mission to Seafarers, Lagos, also held an event at the Mission Center in G.R.A. Apapa, Lagos, Nigeria, to commission and celebrate a brand new 11-seater Bus donated by Sifax Group.



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## GLOSSARY OF SHIPPING TERMS:

- i. **AFFREIGHTMENT:** A contract in which a shipowner or carrier agrees to carry goods by sea, or to hire out his own vessel for the carriage of goods on payment of a mutually agreed sum, or the hiring out of a ship.
- ii. **ADMIRALTY COURT:** Court that exercises jurisdiction over all maritime issues, e.g. torts, contracts, injuries and offences, for instance, in Nigeria, the Federal High Court has jurisdiction over all admiralty /maritime actions or matter.
- iii. **CARGO:** Goods carried in a vessel or ship.
- iv. **CARGO TRACKER:** A process in which messages are sent by a ship's agent informing cargo owners about the position of their cargo, whether the cargo was discharged wrongly or not loaded at all, etc.
- v. **BUOY:** A floating object marking the navigable limit of channels, sunken dangers, isolated rocks, telegraph cables, etc.
- vi. **BUNKER:** (Tank) space or compartments onboard a vessel to store fuel; fuel consumed by the engines of a ship.
- vii. **BUNKERING:** An activity involving delivering bunker fuel by barge, tanker, pipeline or terminal to a ship or other vessel (e.g. oil rig)
- viii. **BANK GUARANTEE:** An undertaking by a bank to be answerable for payment of a sum of money in the event of non-performance by the party on whose behalf the guarantee is issued. It is used in releasing a cargo from a shipping company.
- ix. **BILL OF LADING:** A document of title to the goods being carried on the ship, which acts as a receipt for the cargo and contains the term of the contract of carriage. It is a document which evidences a contract of carriage by sea
- x. **CABOTAGE:** The carriage of goods or passengers for remuneration taken on at one point and discharge at another point within the territory of the same country.
- xi. **CHARTER PARTY:** A contractual agreement between a shipowner and a cargo owner, usually arranged by a broker, whereby a ship is chartered (hired) either for one voyage or for a period of time.
- xii. **FREE ALONGSIDE SHIP:** This indicate that the quote price for

- the good which include all cost up to delivering them alongside a vessel at the loading berth is to be borne by the seller or exporter of the goods.
- xiii. **FREIGHT:** The amount of money paid to a shipowner or shipping line for the carriage of cargo, or ocean transportation, loading or discharging costs.
- xiv. **HIRE OR HIRE MONEY:** The amount of money paid by the charterer to a shipowner for the hire of a ship taken on time charter. Hire money is payable, by agreement, at regular intervals such as monthly or semi-monthly, normally in advance.
- xv. **JETTISON CLAUSE:** A clause in a bill of lading or charter party that specifies the country in which any court action relating to the transaction must be pursued or resolved.
- xvi. **SHIPYARD:** A place where ships are built or repaired.
- xvii. **THROUGH BILL:** A contract of affreightment that cover goods throughout the period of transit, including both land and sea transit.
- xviii. **PORT OF REGISTRY:** The port where a ship is registered. This establishes her nationality and is so marked on the stern of the ship
- xix. **PIRACY:** An illegal attack or act of violence or detention, or any act of depredation committed on a vessel, her cargo, crew, or passengers at sea by persons owing no allegiance to a recognized flag and acting for personal gain.
- xx. **DOCK:** An enclosed basin surrounded by quays that is used for loading and discharging ships.