

Terms of Reference for the Drafting of Legislation to Develop Crewing in Jamaica

Background

The Maritime Authority with assistance from the Commonwealth Secretariat commissioned a study on the Development of a Framework for Positioning Jamaica as a Regional Shipping Hub.

The Final report which was submitted in December 2010 described a shipping hub as “a location that has the facilities, expertise and legislative and fiscal frameworks in place to enable a range of maritime activities to be established and prosper”. Additionally the maritime activities identified in the Report as being found in a shipping hub ranged from ship agency, ship management, customs brokerage and freight forwarding to port management and logistics service providers.

The shipping hub is therefore not only an essential element of a logistics hub the scope of which extends beyond maritime related activities but is also complementary. This was highlighted by the Consultant who stated that “the development of logistics services will further strengthen Jamaica’s regional status”.

The Report recommended inter alia that focus be placed on the development of what was termed “*The Stage 1 Maritime Cluster*” which embraced three (3) “low hanging fruit” namely: drydocking, bunkering and crewing.

The reasons cited were:

- “All are sectors in which market opportunities are seen and where there has, to a greater or lesser extent, already been activity designed to capitalize on these opportunities.
- All these sectors offer the promise of good returns and positive economic impact generally.
- The experience of quickly bringing on these three sectors on a Stage 1 basis would provide a “can do” mentality which would be a source of encouragement to the maritime sector generally.
- In each sector there is a relatively clear view of the role of government in facilitating positive development to deliver real benefits to the economy.”

The Commonwealth Secretariat report emphasized that if Jamaica is to become a regional shipping hub, an essential task would be to ensure that there is clarity of legislation, fiscal and regulatory matters.

The Maritime Authority as an initial step seeks to create the governance framework required for the logistics/ maritime hub, and is initiating the legislative work which is fundamental for successful implementation of the programme.

While the establishment of dry docking and bunkering facilities require investment in infrastructure the expansion of crewing services is relatively low cost and more easily accomplished. The MAJ is therefore initiating activities to facilitate the establishment of Jamaica as a global supplier of crew and in this regard seeks to establish the necessary legislative framework.

Justification – Alignment with growth strategy

The Government's Vision 20:30 Development Plan identified the supply of high trained crew to take advantage of the global shortage of officers as a selected sector strategy to attract investment and generate employment and income for the economy.

Importantly, the International Monetary Fund has recently approved the Government of Jamaica's request for an Extended Arrangement under the Extended Fund Facility. The approval of the Facility is predicated on the successful implementation of government's comprehensive economic programme articulated in the Memorandum of Economic and Financial Policies (MEFP).

Shipping and logistics are two of the activities stated in the MEFP in which Jamaica has a competitive advantage and which will be targeted for strategic investments. (MEFP 17).

The promotion of the shipping centre and in particular crewing are therefore clearly identified activities for the achievement of the Government's growth strategy.

Crewing

Jamaica is a crew supply State and approximately two thousand Jamaican nationals who are currently employed in cargo and passenger ships operating in Jamaican waters and in international trade.

The global demand for seafarers continues to increase with the growth of the world shipping fleet and the concurrent steady decline in the interest in the career in developed countries. An industry survey conducted in 2005 indicated a global shortage of seafarers and in particular officers, of approximately 10,000, and this was expected to climb to 27,000 by 2015.

The employment potential for Jamaicans as crew, especially at the management level (officers) is therefore very high with the International Transportation Federation wage

scale for 2012 indicating a basic rate of US\$2430 per month for the lowest officer level (third officer) which is well above the earning threshold of the average university or tertiary institution graduate.

Jamaica can take advantage of the demand for seafarers as it is home to the only International Maritime Organisation (IMO) approved maritime training institution for officers in the Caribbean region, the Caribbean Maritime Institute (CMI) and it is projected that the CMI will produce two thousand five hundred (2,500) officers and ratings over the next five years.

The contribution of the crewing industry to Jamaica's growth strategy is therefore unquestioned and achievable.

Ship Registry.

The Maritime Authority launched the Jamaica Ship Registry in October 2000 as a part of an overall maritime development strategy. The ship registry has become an important foreign exchange earner with approximately Two Hundred and Eighty Four Thousand United States Dollars (USD284,000) being earned during the financial year ending March 2013. There are currently eighty three (83) Jamaican registered ships (flying the Jamaican flag) trading internationally and in the Caribbean region.

The ship registry is not only a source of revenue for the Jamaican government but also serves as a catalyst for the employment of Jamaican seafarers. In this regard legislation was introduced in 2000 to provide incentives to owners of Jamaican registered ships who hired a minimum number of Jamaican officers.

The Registry also plays a strategic role in facilitating arrangements with owners of Jamaican registered ships to provide the critical sea time required by Cadets of the CMI to complete their course of study.

In order however for a career at sea to be seen as a viable option the Government must put itself in a position to protect its seafarers' rights to fair terms of employment and decent working and living conditions on board the ships in which they work.

The promotion of crewing has therefore to be supported by a proper legal framework to ensure that seafarers *inter alia* receive the protection afforded under the Maritime Labour Convention (MLC) which was adopted by the International Labour Organisation in 2006 and serves as the primary international instrument for the regulation of crewing. The MLC has already received global acceptance and will come into force in August 2013.

The benefits of the Convention cannot however be enjoyed without Jamaica acceding to the Convention and it is the policy of the Government of Jamaica that ratification or accession to a treaty must be preceded by legislation incorporating its provisions.

The failure to become a party to the Convention will have adverse consequences for the expansion of the opportunities for crewing.

The ILO has indicated that “[a]n important advantage of ratification would be of a political nature: ratification would amount to a demonstration of the country’s attachment to the values being promoted by the Organization. Failure to ratify when the country is in a position to do so could be understood as indicating a lack of real interest in ensuring that its seafarers have decent conditions of work”.

When the MLC comes into force, ships which fly the flags of non party States will be given “no more favourable treatment” when in the ports of States which are party to the MLC. Such ships will be targeted for compliance with the provisions of the Convention as the operators will not be able to demonstrate that the ship in all respects meets the Convention standards.

Enhanced inspections will result in unnecessary delays and costs to shipowners whose ships will be detained in ports for prolonged periods. In these circumstances the risk of

owners transferring their vessels from Jamaica to States which are party to the MLC will increase.

This decision will have a negative impact on the employment of the estimated forty (40) Jamaican officers on Jamaican ships and as indicated above, the ability of Jamaican cadets to obtain the required sea time.

Of note the overwhelming majority of Jamaican ships are beneficially owned by non nationals with no particular allegiance to Jamaica and with the imminent coming into force of the MLC, several queries have already been received by these owners regarding Jamaica's position in relation to the Convention.

The annual loss of revenue from the transfer of vessels beneficially owned by non nationals would be equivalent to seventy percent (70%) of the total annual revenue of the ship registry.

The regulation of seafarer recruitment and placement services has been specifically addressed by the MLC as they play a major role in reducing the risk of the exploitation of seafarers (which is defined under the MLC to include persons working hospitality departments of cruise ships). By not being party to the MLC, Jamaica could be viewed as not being in compliance with the international requirements for the recruitment and placement of crew thus prejudicing the employment opportunities of Jamaican seafarers.

Objectives of the Consultancy

It is intended that the Consultant will review existing legislation governing the development of crewing in Jamaica and prepare draft legislation to promote this activity and in particular to incorporate the Maritime Labour Convention adopted by the International Labour Organisation in 2006.

The MLC consolidated over ILO Conventions addressing maritime labour standards into a single instrument. These

Conventions were adopted before the passage of the Shipping Act, 1998 and a legislative gap analysis has indicated that the provisions of the majority of these Conventions have been incorporated in the Shipping Act, 1998 and regulations made thereunder.

The amendments to the Shipping Act, 1998 which will be required to give full and proper effect to the MLC will therefore not be substantive in nature and the drafting exercise should be completed within a short period.

Scope of Work

1. Review the following legislation:
 - a. Shipping Act , 1998
 - b. The Shipping (Training, Certification, Safe Manning, Hours of Work and Watchkeeping) Regulations, 1998
 - c. The Shipping Medical Examinations) Regulations, 1998
 - d. The Shipping (Medical Examinations, (Amendment) Regulations, 2010
2. Review existing legislation from the Caribbean and States which administer large ships registries and are crew supply States as described under the Maritime Labour Convention 2006.
3. Review the position papers, draft cabinet submission, legislative gap analysis and drafting instructions related to MLC, 2006 ;
4. Liaise with the MAJ, Shipping Association of Jamaica, Port Authority of Jamaica, CMI concerning the detailed requirements for the legislation required ;
5. Liaise with the Legislation Committee of the Logistics Hub Task Force to ensure that all factors are being considered in the draft legislation;
6. Draft legislation;
7. If required, attend the meeting of the Legislation Committee when the draft bill and/or regulations are being examined and collaborate with the Office of the Parliamentary Counsel (OPC) on any amendments required by the Committee; and

8. Provide continuing support as may be necessary to the OPC to resolve any issues, draft any amendments and provide assistance during all stages of the enactment until the bill has been passed by parliament

Deliverables

1. Prepare indicative Legislative plan for discussion;
2. Initial Draft legislation incorporating the Maritime Labour Convention, 2006 in the form of a Shipping (Amendment) Act and or Regulations made under the Shipping Act, 1998; and
3. Final legislation incorporating amendments recommended by legislation Committee
Supervision and coordination

The Consultant will work under the direct supervision of the Director Legal Affairs of the Maritime Authority of Jamaica . He or she will be available for consultation by the Legislation Committee of the Logistics Hub Task Force, Chief Parliamentary Counsel and other OPC representatives as may be required during all stages of the legislation process.

Level of effort and timing

1. Prepare indicative legislative plan for discussion – 2 man days;
2. Present first draft of the legislation - 8 man days;
3. Present final draft of legislation for submission to Cabinet -5 man days
4. Present final draft of legislation incorporating comments of the legislation committee for submission to Parliament - 5 man days.

Provide three (3) hard copies and two (2) CD copies

Term

The assignment is to be completed within **20 man** days beginning on June 17, 2013 and should not go beyond August 7, 2013.

Costing

Ten Thousand United States Dollars (USD16, 000.00 @ J\$98.70 = US\$1 = J\$1,579,200.00)

Schedule of Payments

Payment will be disbursed upon acceptance and approval in accordance with the following deliverables:

- First Payment - 20% on submission of Legislative Plan/Framework (J\$315,840.00)
- Second Payment - 30% on submission of Initial draft Legislation (J\$473,760.00)
- Third Payment - 20% on submission of Revised draft of Legislation (J\$315,840.00)
- Fourth Payment - 30% on submission of Final Legislation (J\$473,760.00)

Qualifications

The Consultant should have:

- Post graduate qualifications in legislative drafting or equivalent professional experience in the field.
- Knowledge and experience in the legislative processes in Jamaica or other commonwealth countries.

Working knowledge of policy and law relating to the shipping industry would be an asset.

Maritime Authority of Jamaica

May 2013