

Charting a New Course: Legal Implications of Merchant Shipping Act, 2025 on Indian Maritime Governance

INTRODUCTION

The enactment of the Merchant Shipping Act, 2025 (“**MSA**”) presents a landmark legislative milestone in India’s vision of becoming a global maritime hub. The MSA repeals the erstwhile Merchant Shipping Act, 1958 (“**1958 Act**”) and introduces a regulatory environment that is aligned with the global maritime industry standards. The MSA is designed for enhancing regulatory efficiency, attracting foreign investment, and increasing Indian tonnage by liberalising key areas such as vessel ownership and registration. This note provides an analysis of the fundamental changes to the maritime sector introduced by the MSA.

APPLICABILITY

Under the 1958 Act, all sea going Indian vessels were required to be registered except certain vessels that were not mechanically propelled, and those weighing below 15 tons that were used only for navigating Indian coasts. However, the MSA requires all Indian owned vessels¹ to be registered. The MSA also expands the definition of ‘vessels’ to include a wide variety of vessels such as rowboats, canoes, amphibious crafts, hydrofoils and traditional sailing ships powered primarily by wind, mobile offshore drilling units, submersibles, non-displacement crafts. Thus, under the MSA, registration of all seagoing vessels has been made mandatory even if they do not call at an Indian port, regardless of tonnage or means of propulsion. This has been done with a view to increase Indian tonnage and boost maritime trade.

The MSA also expands applicability of registration of vessels to two new instances: *first*, it enables registration of foreign-flagged vessels under a bareboat charter-cum-demise contract² with an Indian entity. Under this, the ownership of a vessel is intended to be ultimately transferred to the Indian charterer. This is expected to aid in fleet expansion for

¹ The term “vessel” includes every description of water craft used or capable of being used in the marine environment, such as ship, boat, sailing vessel, fishing vessel, submersible, semi-submersible, hydrofoils, non-displacement crafts, amphibious crafts, wing-in-ground crafts, pleasure crafts, barges, lighters, Mobile Offshore Drilling Units, Mobile Offshore Units, or of any other description, whether fitted with mechanical means of propulsion or not.

² The term “bareboat charter-cum-demise” means a bareboat charter where the ownership of the vessel is intended to be transferred after a specified period to the charterer to whom it has been chartered.

Indian operators without the need for substantial capital outlay for an outright purchase. *Second*, it allows for temporary registration of vessels, including foreign vessels that are destined for recycling in India. Thus, unlike the 1958 Act, the MSA provides a comprehensive framework for registration of vessels. Collectively, these measures provide operators with greater operational flexibility and would likely enhance India's competitive presence in the global maritime sector.

OWNERSHIP

The MSA liberalizes the ownership criteria for Indian-flagged vessels and does away with the requirement of vessels being “wholly owned” by an Indian entity as required under the 1958 Act.³ This relaxation with respect to ownership criteria is likely to pave the way for greater foreign direct investment, joint ventures, and more complex shareholding structures in the Indian maritime landscape. The Central Government is yet to notify the proportion of ownership required to be maintained by Indian entities in a vessel for such vessel to be considered as an Indian vessel.

The MSA also permits vessels to be partly owned by a broader range of entities such as Indian citizens, non-residents (“**NRIs**”), overseas citizens of India (“**OCIs**”), and companies/bodies. Additionally, Central Government may notify any ‘other person or body’ as an eligible entity for registering vessels in India. However, co-operative societies, which qualified as eligible entities under the 1958 Act, have been omitted from the list of permissible owners under this framework. The MSA also provides for relaxation to vessels wholly owned by OCIs from mandatorily registering their vessels under the MSA, offering a strategic choice to OCIs.

A list of permissible owners of an Indian vessel under the MSA and the 1958 Act has been set out below:

MSA	1958 Act
<ol style="list-style-type: none"> 1. Indian citizens; 2. <u>NRIs</u>; 3. <u>OCIs</u>; 4. a company or a body which has its <u>registered office</u> or principal place of business in India; and 5. other person or body as notified by the Central Government. 	<ol style="list-style-type: none"> 1. Indian citizens; 2. a company or a body which has its principal place of business in India; and 3. co-operative societies. (<i>deleted under MSA</i>)

TRANSFER

The 1958 Act required the satisfaction of two broad conditions for effecting a valid transfer of a vessel: *first*, that all wages and other amounts due to seamen in connection with their employment on the ship should have been paid; and *second*, the owner of the ship should

³ Under the MSA, an Indian vessel means a vessel wholly owned by a: (i) citizen of India, (ii) company or body established by or under Indian laws with its principal place of business in India, or (iii) registered co-operative society.

have furnished notice of such transfer or acquisition of the ship to the Director-General. While the MSA retains the first condition, the second requirement of notifying the Director General of such transfer has been removed.

However, the MSA introduces three additional requirements that would need to be satisfied prior to effecting a valid transfer of a vessel. *First*, a transfer is now contingent upon either satisfying all registered mortgages or obtaining the mortgagee’s written consent, thus preserving vessel’s integrity as a financial asset. *Second*, the MSA mandates clearance of all unpaid statutory fees protecting state revenue, and *third*, there should be no subsisting court order which prohibits the vessel’s transfer. Given the foregoing, it is imperative for relevant parties to undertake comprehensive due diligence of the vessel and close out all associated financial and legal issues prior to the transfer of such vessel.

Furthermore, the 1958 Act mandated prior approval of the Central Government for transfer of any Indian vessels or interest therein during periods of national threat, such as war, external aggression, or a proclamation of emergency. Any transaction executed in contravention of this prohibition was deemed to be void and unenforceable. Notably, the MSA expands this restriction to now include periods when security of India is threatened by ‘sanctions’.

This table provides a comparative analysis of pre-requisites for a valid transfer under the MSA and the 1958 Act respectively:

MSA	1958 Act
<ol style="list-style-type: none"> 1. Wages and other amounts due to seafarers in connection with their employment on that vessel have been duly paid 2. All mortgages entered in its register have been satisfied or the mortgagee has given his consent in writing for the transfer of the vessel 3. Unpaid statutory fees levied on the vessel have been paid and informed in writing to the Registrar 4. Subsisting entry has been made of any court order prohibiting transfer or any dealing with that vessel <p><u>Points (2) to (4) are new under MSA</u></p>	<ol style="list-style-type: none"> 1. All wages and other amounts due to seamen in connection with their employment on that ship have been paid 2. Owner of the ship has given notice of such transfer or acquisition of the ship to the Director-General <u>(deleted under MSA)</u>

EASE OF DOING BUSINESS

The MSA streamlines maritime administration by allowing all filings, approvals, and payments to be handled electronically. It also introduces a digital inspection procedure for

vessels, underpinned by a risk-based database, to increase safety monitoring and regulatory compliance at Indian ports.

To promote digital governance, the MSA permits electronic registration of ships and maintenance of electronic records of any agreement, record, database, logbooks and record books. The manner and form of electronic filings and payments are to be released by Central Government as the Indian shipping administration aligns with global practices.

Further, the MSA now provides for greater transparency of charges by requiring full disclosure of shipping-related charges. Every service provider or agent dealing with Indian vessels or those in coastal waters is required to clearly itemize all amounts payable by exporters, importers, consignors, and consignees in the transport document or bill of lading, with non-disclosure or hidden fees attracting monetary penalties extendable to INR 500,000 (Indian Rupees Five Lakh). The authority responsible for imposing the penalty is to be notified by the Central Government. These reforms are geared towards providing a transparent, efficient and predictable framework for conduct of business.

GOVERNANCE FRAMEWORK

The MSA introduces two new bodies for regulatory purposes that the Central Government may appoint or constitute. *First*, a designated body for ensuring security of vessels and port facilities considering that the MSA now explicitly incorporates provisions of the International Ship and Port Facility Security Code under the International Convention for the Safety of Life at Sea, 1974. *Second*, a nodal authority for administering and supervising marine incidents⁴ involving both Indian vessels and foreign vessels entering Indian waters.

Under the MSA, the director general of shipping under the 1958 Act has been renamed as the director-general of maritime administration (“**DGMA**”), and the DGMA has been vested with additional powers to issue binding directions to ship owners, agents, and ports and take direct action against defaulting owners, including confiscation of vessels. Under the MSA, the DGMA also holds general supervisory powers and control over certain other officers such as surveyors, shipping masters and seafarer’s welfare officer. The MSA also empowers the DGMA to call for such information and pass such directions as he may deem fit, for the discharge of obligations by the ports – thus vesting wide discretionary powers with the DGMA to ensure compliance with the provisions of the MSA.

Under the MSA, the principal officer of the mercantile marine department (“**MMD**”) has been designated as the primary authority for imposing penalties for contraventions of provisions, creating a clear first instance adjudicator for ship owners. The MSA also

⁴ The term “marine incident” means an event, or sequence of events, occurring directly in connection with the operation of a vessel that endangers, or if not corrected, would endanger the safety of the vessel, its occupants or any other person or the environment and includes marine violation, marine casualty, marine disaster, cyclones, storms or other adverse weather events, very serious marine casualty and such other event or sequence of events as may be notified by the Central Government.

confers statutory recognition of MMDs at Kochi, and Kandla ports and empowers the Central Government to establish new MMDs not only at ports but at other places.

SOVEREIGNTY

The MSA empowers the Central Government to pursue and seize a foreign vessel in high seas if it has reason to believe that a foreign vessel has violated any law within the coastal waters. This right is similar to the right of hot pursuit, which is also a customary international law, under Article 111 of the United Nations Convention on the Law of the Sea (“**UNCLOS**”). Further, the MSA empowers the Central Government to take charge of a vessel and detain it (including its cargo), if it is not legally entitled to fly the flag of a State or has lost such right which corresponds to the right encapsulated under paragraph 2 of Article 92 of the UNCLOS.

ABANDONED VESSELS

The MSA introduces a dedicated legal framework for handling of abandoned vessels unlike the 1958 Act. While the 1958 Act covered abandoned vessels under the general category of ‘wreck’, the 2025 Act introduces a separate definition for ‘abandoned vessel’. This new definition covers not just the physical state of the vessel but also includes instances where the owner cannot be traced, is financially insolvent, or has unilaterally severed ties by failing to meet statutory obligations related to safety, prevention of pollution, and seafarer welfare. Under the MSA, the Central Government has been vested with the power to issue directions to prevent an abandoned vessel from becoming a threat to life, property, or the marine environment. It also provides for a cost-recovery mechanism under which any expenses incurred by the Government in respect of an abandoned vessel will constitute a statutory debt recoverable from the proceeds of the sale of the vessel or its cargo which effectively creates a charge on the vessel. Thus, the MSA provides for a more proactive and liability-focused framework that safeguards against risks posed by abandoned vessels.

MARITIME LIABILITY

MSA overhauls the liability regime applicable to the maritime sector and aligns it with international conventions. In cases of vessel collision, liability for damage to the vessel, cargo, or other property is apportioned based on the degree of fault of each vessel involved. However, the MSA introduces general limits of liability based on the limits introduced in the Convention on Limitation of Liability for Maritime Claims, 1976 (“**LLMC Convention**”) which caps the amount of damages payable by a party in case of claims for loss or damage to persons and property, and claims for costs related to wreck removal and preventive measure.

Another key change introduced by the MSA is the requirement of taking an insurance or such other financial security for all vessels entering or departing a port in India or operating in the Indian coastal waters. The amount of insurance for each vessel, per incident, must be at least equal to the maximum liability as set out in the LLMC Convention, and for

passenger claims it must meet the limits prescribed under Section 166 of the MSA (which is yet to be notified by the Government). The MSA also stipulates that if any vessel departing a port in India fails to obtain insurance, it will be liable to be detained by the prescribed authority.

The MSA also mandates compliance with the provisions of the Nairobi Wreck Removal Convention, 2007. The 1958 Act did not impose cost for removal of wrecks on the shipowner. In contrast, the MSA casts an obligation on the ship owner to fund the costs of locating, marking and removal of wrecks unless such wrecks can be attributed to, *inter alia*, war, hostilities and insurrection. The MSA also requires a registered vessel owner to locate, mark, and remove a wreck that poses a hazard to navigation, marine environment, coastline or related interests⁵ of India or other States.

Further, under the 1958 Act, the receiver's duties were limited to taking possession of wrecks and preserving property. The MSA expands the role of the 'receiver of wreck' from a mere custodian to an enforcer with a well-defined framework of duties. In this regard, the MSA provides that the Central Government may appoint a receiver for receiving and taking possession of a wreck and performing duties such as facilitating sale and disposal of wreck, enforcing performance of obligations of the ship owner, operator or insurer of the ship and ensuring expeditious removal of wreck by practical means.

POSITION OF SEAFARERS UNDER THE MSA

The MSA establishes a comprehensive legal framework for seafarers moving beyond the piecemeal approach under the 1958 Act. It defines a 'seafarer' as any person employed or engaged in any capacity onboard a sea-going vessel, excluding those on military or non-commercial government vessels closing a jurisdictional gap. It thus extends welfare measures to Indian seafarers serving on foreign-flagged ships. Furthermore, it accords the status of "key workers" to seafarers to ensure their unhindered movement for professional duties, shore leave, and medical care.

The MSA confers a broad spectrum of rights on seafarers including rights pertaining to training, wages, social security, and skill development, whereas the erstwhile legislation was confined to narrower aspects like work hours and medical standards. Moreover, the MSA provides safety nets in terms of minimum employment age of sixteen, mandatory medical fitness and training certifications, and compulsory employment agreements. It also ensures financial security of seafarers through provisions for monthly wage payments with interest for delays, paid leave, repatriation rights, and compensation for vessel loss. Ship owners and recruitment agencies are also required to protect seafarers' contractual

⁵ The term "related interest" means:

1. maritime coastal, port and estuarine activities including fisheries activities, constituting essential means of livelihood of the persons concerned;
2. tourist attractions and other economic interests of the areas concerned;
3. the health of the coastal population and the well-being of the area concerned, including conservation of marine living resources and of wildlife; and
4. offshore and underwater infrastructure.

rights and welfare as seen from statutory requirements like seafarers being given an opportunity to review and seek advice on employment agreement before signing.

In order to facilitate speedy dispute resolution, the MSA requires that any dispute between seafarers, (or their unions) and the ship owners will be referred to a tribunal constituted by the Central Government. The tribunal is required to conduct proceedings on principles of natural justice and is not bound by the Code of Civil Procedure, 1908. It is also relevant to note that the MSA carves out maritime employment from the purview of the Industrial Disputes Act, 1947 thereby establishing a *sui generis* regime for resolution of seafarer disputes. The MSA further stipulates that no party has a right to be represented by a legal practitioner before the tribunal unless the opposite party consents to it and the tribunal has granted leave in respect thereof. While this is likely to render the dispute resolution process less adversarial it ignores the inherent inequality in bargaining power that exists between the ship owners and seafarers.

ENVIRONMENTAL OBLIGATIONS

The MSA introduces a new liability framework for pollution damage caused by the escape or discharge of bunker oil⁶ from a ship under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. It covers any pollution damage within Indian territories, or at a port or place in India, and coastal waters not extending more than two hundred nautical miles from the baseline.

While the 1958 Act required pollution prevention certificates only for certain vessels, including oil tankers of 150 gross tons or more and other vessels of at least 400 gross tons, the MSA expands this requirement to cover all vessels, regardless of tonnage. All vessels are thus now required to obtain pollution prevention certificates as required under the provision of international conventions like MARPOL Convention, Anti-Fouling Systems Convention, the Ballast Water Management Convention, among others to minimize the hazards of marine pollution.

SURVEY, AUDIT AND CERTIFICATION

The MSA introduces Part VIII of the MSA, titled 'Survey, Audit and Certification' which requires Indian vessels, companies, and ports to undergo periodic surveys, audits, and certification to demonstrate compliance with various conventions such as Safety Convention, MARPOL Convention, Maritime Labour Convention, among others. Surveyors appointed by the DGMA can direct fresh surveys or suspend and cancel certificates when deficiencies or unauthorized modifications are discovered post-certification which ensures periodic oversight by relevant authorities.

⁶ The term "bunker oil" means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.

PENALTIES

Similar to the penalty regime under the Indian Ports Act, 2025, the MSA introduces a dual enforcement regime focusing on civil and criminal liabilities. *First*, an administrative penalties system administered by a principal officer which provides for levy of monetary penalties. *Second*, a formal court system for serious offences which will be adjudicated by a judicial magistrate of the first class that can result in both substantial fines and imprisonment. Notably, the MSA also enumerates various factors that need to be taken into consideration while determining the quantum of penalty such as the nature of the gain or loss and the repetitive nature of the default.

Under the MSA, penalties range from imprisonment up to two years, to a fine of up to INR 7 million (Indian Rupees Seventy Lakhs) depending on the nature of the offence and contravention. Moreover, it provides that if any penalty imposed under this Act is not deposited, the amount will be recovered as an arrear of land revenue.

CONCLUSION

The MSA while retaining the core architecture of the 1958 Act, consolidates and aligns the provisions of the 1958 Act with global standards. It supplements them with targeted reforms such as recognition of electronic registration, digitization of ship records, promotion of Indian tonnage, enhancement of seafarer protections, more robust environmental safeguards, clearer delineation of maritime liabilities and compensation mechanisms that align the domestic standards with international conventions. These legislative reforms are anticipated to contribute towards boosting trade, reducing disputes and attracting investments in the shipping sector. Indian shipping companies can expect ease in integrating with international supply chains as the law now aligns with the global standards. Overall, the MSA is a transformative piece of legislation that seeks to migrate India's maritime governance from a fragmented regime to a clearer regulatory regime.

*This insight has been authored by **Aakanksha Joshi** (Partner), **Lipsa Acharyya** (Counsel) and **Akshay Dhekane** (Associate). They can be reached on ajoshi@snrlaw.in, lacharyya@snrlaw.in and adhekane@snrlaw.in, respectively, for any questions. This insight is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*

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ASSOCIATES
ADVOCATES



NEW DELHI
Max House
Tower C, 4th Floor
Okhla Industrial Estate Phase III
New Delhi 110 020
Tel: +91 11 4069 8000

MUMBAI
One World Center
1403 Tower 2 B
841 Senapati Bapat Marg, Lower Parel
Mumbai 400 013
Tel: +91 22 4302 8000