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## EDITOR'S CABIN.

Welcome to the OFIANYI CHAMBERS NEWSLETTER for the year 2023's second quarter edition (April- June, 2023). This edition covers research analysis on topics such as ADR in Maritime, Autonomous Shipping, International Oil Pollution Compensation (IOPC) Funds and more.

Pringkat Mangu Nwel Esq. and Ajogu Kelechi S. are the authors of this edition. Other intriguing news are also included.

As usual, this edition is also educational and interesting.

Happy reading!

Pringkat Mangu Nwel Esq.

Editor-in-Chief.

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# UNREGULATED FISHING IN NIGERIA

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## ADR IN MARITIME

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### INTRODUCTION

In commercial transactions, the occurrence of disputes and disagreements are a norm and maritime just like all other commercial transactions sees its own share of strife and disagreements. By its nature, maritime dispute may be a simple disagreement or a complex multi-

party, multi-jurisdictional disagreement.

Just as there are types of transactions, there are also different parties involved in the maritime industry; these include ship owners, charterers, the crew, insurance companies, port administrators, dock owners, inspection agents, bankers, sellers and buyers. Maritime disputes cover a wide range of areas such as charter parties, bills of lading, sale of ships, ship financing, ship building contracts and contracts of maritime insurance. Such disputes usually span oceans and are international in nature.

Litigation while being the most formal method of dispute resolution is not always the best option. This is because it is adversarial, it has a win-lose process and the outcome of litigation is always uncertain. It is also notable that litigation is a long drawn out process as it usually takes time for courts to



adjudicate on a matter for various reasons. It could take years for a single issue to be fully heard and judgment delivered and this could be as a result of a myriad of reasons like; administrative bureaucracy, long drawn out adjournments, back-log of cases in the courts, delay tactics adopted by legal practitioners and so on. Sometimes, ship owners abandon their claims because of the exhaustive delay of the judicial process which may lead to the loss of the subject matter and destroy relationship between the parties.

It has long been a principle of public policy to encourage and promote out-of-court settlement of disputes, this is where ADR comes in to mitigate the shortcomings of litigation and the judicial system.

## **MEANING AND TYPES OF ADR**

ADR is an acronym for Alternative Dispute Resolution. It

refers to any means of settling disputes outside of the courtroom. It is defined as a forum or means for resolving disputes outside the state or federal judicial system. It may be defined as the range of procedures which serve as alternatives to the adjudicatory procedures of litigation and arbitration for the resolution of disputes generally but not necessarily involving the intercession and assistance of a neutral third party who helps facilitate such resolution.

The legislature governing ADR in Nigeria is the Arbitration and Conciliation Laws. There are various treaties that relevant to arbitration at the international arena. However, international commercial arbitration is based on the duo of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law) and the New York



Convention on Recognition and Enforcement of Foreign Awards 1985. These conventions have enjoyed universal acceptance in the international business.

## TYPES

The term ADR covers a wide spectrum of alternatives to litigation, spanning negotiation, mediation, conciliation, valuations, certifications and hybrid of these.

- **ARBITRATION:** A non-judicial legal technique for resolving dispute by referring it to a neutral third party for a binding decision call an 'award'. The decision of an Arbitrator is general, final and binding on both parties. It is a popular, flexible and practical method of settling disputes. In order to refer a maritime dispute to arbitration, parties may either agree that

arbitration is a preferred dispute settlement means at the point when the dispute arise or may have included an arbitration clause in the contract which forms the basis of their transaction. By the provisions of section 1 and 2 ACA the arbitration agreement must be in writing. The essence of this is that the award is binding on both parties, so it should be shown that both parties agreed freely to refer the matter to arbitration.

- **NEGOTIATION:** This is usually the first step in most ADR. It is one of the oldest forms of ADR. It involves discussions or dealings about a matter with a view to reconciling differences and establishing areas of agreement, settlement or compromise that would be mutually beneficial to the parties or that would satisfy the aspirations of each of the



parties. The decision here is not binding on the parties as anyone can choose to rescind from it at any time. The parties have to agree to be bound by it.

- **MEDIATION:** This is also a common form of ADR. It is a flexible process conducted confidentially in which a neutral person (the mediator) actively assists parties in working towards a negotiated agreement of a dispute or difference with the parties in ultimate control of the decision to settle and the terms of resolution.
- **CONCILIATION:** It entails resolution of dispute in an amiable manner. In this method, the conciliator is usually a trusted and respected friend of the parties in dispute. In most cases the conciliator goes on meeting the parties to establish whether they are

willing to settle the dispute and their terms of settlement. The settlement must be reached by consensus. Where the parties agree, the agreement becomes binding on them but if either party disagrees, the agreement falls through.

## **ADR IN THE MARITIME SECTOR**

Of all the types of ADR, Arbitration is the most popular and widely used. This is because the award is binding on the parties so no party can waste the others time and renege at the point of conclusion unlike conciliation. Most times, maritime contracts and agreements now have arbitration clauses in them. This is because maritime like other business transactions does not benefit from long drawn out litigations and the acrimony that comes from it. Litigation can also destroy long



standing business relationships. This also affects business as vessels can sometimes be stopped from operating (especially when said vessel is the subject matter of the litigation) and would amount to ship owners experiencing huge amounts of loss.

The advantage of arbitration over other types of ADR are:

1. Arbitration offers more space for cultural accommodation as it allows parties to choose their arbitrators.
2. Arbitration focuses on the resolution of the underlying problems which leads to the dispute rather than merely the defeat of one's opponent.
3. International arbitration is traditionally seen as more yielding to sovereignty. Arbitral tribunals yield more to limitations set by different countries and this makes it more attractive.
4. In arbitration, autonomy of the parties can also render intervention by third parties virtually impossible.
5. There is need to have a legal binding and compulsory dispute settlement mechanism between the relevant parties which the other ADR processes cannot offer as most are not binding except where the parties agree but arbitration awards are binding
6. Arbitration is attractive at the international level because it provides a mechanism to settle disputes without parties having to be subjected to the jurisdiction of courts other than those of their own choice.
7. Arbitration is useful in technical cases or those involving specialized knowledge as parties can choose their arbitrators who are knowledgeable in the subject matter of the dispute.



## CONCLUSION

ADR is an undeniable method of settling disputes quickly and effectively. With the rise of ADR in Nigeria, we hope to see less congestions in our courtrooms. The maritime sector crosses many waters literally and figuratively and this brings the issue of jurisdiction to the helm of affairs as the dispute may arise on international waters where neither parties are from. The best way to solve these issues is to go by the ADR route.

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## AUTONOMOUS SHIPPING

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## AUTONOMOUS SHIPPING



The term 'autonomous ship' is mainly used to depict a self-sailing crewless vessel, but there are actually various degrees of autonomy. It is first important to distinguish between these levels of autonomy before commenting on when and why these vessels could start to become a reality.

The fast-changing and rapid uptake of technologies enabling autonomous surface ships testing and operations demands an updated role not only for any operator but also for Vessel Traffic Services, including vessel traffic monitoring, management, communication and control.

The autonomous shipping industry is also expected to create new jobs in the future. The changes that the industry will undergo will surely bring technically equipped jobs which include technical route operators, new kinds of pilots and riding gangs. Despite this, the legal

framework will also be required for operating such shipping companies. The International maritime organization, a United Nations Agency, has started working to develop a legal framework and global conventions for the operation of such unmanned ships. This will also create new legal jobs in the autonomous shipping industry.

Autonomous ships have developed rapidly in recent years. The maritime industry is currently undergoing a disruptive technology shift with the increasing development of highly autonomous technologies, maritime autonomous surface ships (MASS), unmanned surface ships (USVs), and autonomous underwater vehicles (AUV), which lead to underwater gliders. Automated ship technology is rapidly moving from theory to practice as the number and size of unmanned or autonomous ship projects increase around the





world. They are widely used both in marine applications and in some commercial applications such as marine research, coastal patrol, inspection and operation of subsea production systems. Safety concerns and economic benefits are the main reasons for the rapid development of autonomous ships. Maritime accidents cause loss of life, environmental damage and economic loss. The evolution to autonomous ships is expected to greatly improve the situation, becoming a cost-effective alternative to conventional ships and improving safety and environmental impact at sea.

There are currently over 1,000 Maritime Autonomous Surface Ships (MASS) worldwide, operated by over 53 organizations. These vessels operate side by side with manned vessels with minimal autonomy and specific regulations. Faced with this lack of guidance, the International Maritime Organization (IMO) has

released the results of its recent autonomous scoping exercise and a roadmap towards autonomous regulation. Issues considered included the regulation of remote control stations.

Determination of a long-range operator as seafarer; her SOLAS equipment requirements for autonomous navigation; and local regulations. While the challenges remain significant, this gap analysis was a first step towards autonomous regulation by IMO.

The IMO aims to integrate new advanced technologies into its regulatory framework, identifying the benefits derived from new advanced technologies and their potential for safety concerns, environmental impacts, facilitation of international trade, and potential for industry. Cost, and the impact on board and on shore. Base personnel to be weighed. The IMO aims to ensure that the regulatory framework for



Maritime Autonomous Surface Ships (MASS) is responsive to rapidly evolving technological developments.

The IMO recently launched a Maritime Autonomous Surface Ship (MASS) regulatory scope study designed to evaluate existing IMO tools and see how they could be applied to ships with varying levels of automation. Has completed. At the 103rd MSC meeting in May 2021, the Regulatory Scoping Exercise (RSE) for Security Contracts was completed, and the contract under the jurisdiction of the Legal Committee was completed in July 2021.

The global shipping companies are looking at autonomous shipping as a golden opportunity in the future. Companies from Scandinavia and Japan are working on their fully-fledged ships which would be capable of carrying logistics and cargoes in

the future. This will also give a boost up to the tech industry as the companies will come forward and collaborate with the shipping companies for providing data, sensors and AI technologies. As the logistics and chain supply industry is also forecasted to have a slump in its market as most of the logistics are supplied by air cargo. It is estimated that such developments will reduce the fuel costs by 20% which will surely be a positive part of the logistics industry.

Autonomous and remotely operated vessels are being tested in some waters.

Most projections assume that autonomous or semi-autonomous operations will be limited to short trips, such as short trips from one port to another.

Autonomous shipping is considered to have a more beneficial development over the manually controlled one. This



development will be better for business, environment and making the voyage safer. The advantages of upcoming technology are given below:

### **BENEFIT OF AUTONOMOUS SHIPPING**

1. They eliminate human error
2. It reduce crewing costs
3. Increase in safer ship operations
4. Increases the safety of life
5. Major cost cut in shipbuilding and crew amenities
6. It allows for more efficient use of space in ship design and efficient use of fuel. (A three year research project by Maritime unmanned Navigation through intelligence in Networks predicted a saving of over \$7m over a 25-year period per autonomous vessel in fuel consumption and crew supplies and salaries.

### **CONCLUSION**

The autonomous ships are going to be a great technological development of the era. In my opinion, there is no viable economic benefit for a completely autonomous ocean-going ship in the immediate future. Despite a belief in the technology, there will always be value in a human presence on board overseeing operations, the safety of the ship and the safety of the cargo.

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### **INTERNATIONAL OIL POLLUTION**



# COMPENSATION (IOPC) FUNDS

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## INTRODUCTION

The International Oil Pollution Compensation Funds (IOPC Funds) provide financial compensation for oil pollution damage that occurs in Member states resulting in spills of persistent oil from tankers. The Fund is under an obligation to pay compensation to states and persons who suffer pollution damage if such persons were unable to obtain compensation from the owner of the ship from

which the oil escaped or if the compensation due from such owner is not sufficient to cover the damage suffered. Under the Fund Convention, victims of oil pollution damage may be compensated beyond the ship owner's liability. The Fund is not obliged to pay compensation to pollution damage suffered in the territories of contracting states

## HISTORY

Oil pollution to marine environment is a serious menace as the quantity of oil being transported increases by the day. Oil spills at sea have contributed to the loss of aquatic life which has affected industries like fisheries and tourism. Oil pollution does not only inflict damage to the natural environment but also harms the economy of the affected victims and that of the state.

On March 18<sup>th</sup> 1967, an oil tanker *SS Torrey Canyon* with a cargo capacity of 118,285 long tons of



crude oil ran aground off the Western Coast of Cornwall, United Kingdom spilling an estimated 25-36 million gallons of crude oil, fouling UK and French Coastlines causing an environmental disaster. This oil spill was one of the world's most serious oil spills which exposed a number of serious shortcomings, in particular the absence of international agreement on liability and compensation in the event of such a spill and led to the development of an International Liability and compensation Regime under the auspices of the International Maritime Organization (IMO). Through the years, this regime has evolved into the successful system of compensation that is put in place today. The framework for the regime was the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Compensation) and the 1971 International Convention for the Establishment of an

International Fund for Compensation for Oil Pollution (1971 Fund Convention).

Overtime, it became clear that the amount of compensation available for major incidents needed to be increased and the scope of the regime widened. This resulted in two further instruments; the 1992 Fund Civil Liability Convention and the 1992 Fund Convention which was adopted in 2003 providing additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the states that become parties to the protocol.

The IOPC Funds are financed by contributions paid by entities that receive certain types of oil by sea transport. These contributions are based on the amount of oil received in the relevant calendar year, and cover expected claims together with the costs of administering the Funds.

## **PURPOSE OF IOPC FUNDS**



1. To provide compensation for oil pollution damage to the extent that is adequate to the Funds.
2. To give relief to ship owners in respect to the financial burden imposed on them.
3. To give effects to the related purposes set out in the convention.
4. The Fund provides assistance to contracting states which are threatened or affected by pollution and wish to take measures against it.
5. The Fund is obliged to indemnify ship-owner or his insurer for a portion of the ship-owners liability under the Liability convention.

## **IMPLEMENTATION OF IOPC FUNDS IN NIGERIA**

Nigeria is party to the 1992 Civil Liability and Fund Conventions. The 1992 Conventions came into force in May 2003, one year after their ratification. As an oil

producing country, crude and other heavy fuel oil are carried within Nigeria's territorial waters. In an event of oil spill from tankers in Nigeria's territory, the polluting tanker owner has the responsibility to clean it up and pay compensation to the victims of damage arising from the spill to the limit of his liability based on the tonnage of his vessel. Government agencies involved in the clean-up are also beneficiaries. Victims who do not obtain full compensation from the ship-owner will have to obtain further compensation from IOPC Fund. Nigeria is not party to the 2003 Supplementary Fund because Nigeria is yet to receive in one calendar year more than 150,000 tons of crude oil and/or heavy fuel (contributing oil). In order to benefit from the rights of being party to the 1992 Conventions, Nigeria has the obligation to put into effect the provisions of the conventions thereby implementing and enforcing them.



In 2012, the Minister of Transport, acceded to the Regulations in this regard pursuant to the Merchant Shipping Act 2007. The minister also constituted a National standing Committee (NSC) in 2004 with the following structure:

- Permanent Secretary of the Federal Ministry of Transport was its Chairperson
- Marine Environment Management Department of Nigerian Maritime Administration and Safety Agency (NIMASA) as its secretariat.
- The membership of the committee is drawn from relevant Federal and State Ministries, Departments and AGENCIES.

To further ensure that the NSC achieves its mandate, five technical Sub-Committees were constituted in 2016 namely;

- (i) Claims Handling Committee chaired by NIMASA;
- (ii) Contributing Oil Reporting Committee chaired by the NNPC/PPMC;
- (iii) The Nigerian Bureau of Statistics chaired Pricing Index Committee;
- (iv) The DPR chaired Committee for the Identification of Receivers of Contributing Oil; and
- (v) The NIOMR chaired Fish Stock Fisheries Committee.

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the regulating and implementing agency of the Conventions and the Regulations made pursuant therefrom. The NSC-IOPC Funds Nigeria has developed a Standard Operating Procedure for IOPC Fund Implementation in Nigeria (SOP-IOPC) and it was forwarded to the



IOPC Funds Secretariat London for their necessary review and input.

The NSC-IOPC Funds Nigeria has developed a Pollution Report (POLREP) Form; the polluter is to complete within 12 hours of notification and email the completed form to NSC-IOPC Funds Secretariat. The NSC-IOPC Funds Nigeria have also developed and maintained a Register for all identifiable Contributing Oil Receivers in Nigeria.

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## **LEKKI PORT WILL REDUCE THE COST OF DOING BUSINESS IN NIGERIAN PORTS**

### **Ports**

A port is a maritime facility comprising one or more wharves or loading areas, where ships load and discharge cargo and passengers. Although usually situated on a sea coast or estuary, ports can also be found far inland, such as dry ports these ports can access the sea via rivers, rail, or canals. Because of their roles as port entries for many cities, these cities have experienced dramatic changes throughout their histories.





It is only when a cargo owner lands his cargo that he can transform his voyage into a profit-making venture. Ports play a pivotal role in getting cargo to their cargo. Ports are usually owned by governments, which usually administer them through one of their agencies. A government could, for purposes of efficiency, decide to privatize or offer concessions to commercial third parties to operate the port. In Nigeria, for instance, the government agency that runs the national port is the Nigerian Ports Authority which has transferred the operation of its parts to private concessionaires.

A port authority is normally the authority that is in charge of the conservancy of the port approaches and the land mass. It may also invest in port infrastructure such as quays, storage areas, Customs sheds, and other items. Many ports, however, leave the handling of cargo to

other third-party organizations which establish the terminals in the port areas. Ports and terminals in close proximity compete with each other for the shipowner's business, particularly in the container trades.

Ports are extremely important to the global economy; 70% of global trade is carried by sea for this reason, ports are also often densely populated settlements that provide the labor for processing and handling goods and related services for the ports. Today by far the greatest growth in port development is in Asia, Nevertheless, countless smaller ports do exist that may only serve their local tourism or fishing industries.

Water quality, which can be impacted by dredging, spills, and other pollution, is the most major environmental impact that ports can have on local ecologies and waterways. Climate change has a significant impact on ports since



the majority of port infrastructure is very susceptible to sea level rise and coastal floods. Worldwide ports are starting to look for ways to enhance coastal management techniques and incorporate approaches for adapting to climate change into their design on a global scale.

### **Modern ports**

Whereas early ports tended to be just simple harbors, modern ports tend to be multimodal distribution hubs, with transport links using sea, river, canal, road, rail, and air routes. Successful ports are located to optimize access to an active hinterland, port grant easy navigation to ships, and will give shelter from wind and waves. Ports are often on estuaries, where the water may be shallow and may need regular dredging. Deepwater ports are less common but can handle larger ships with a greater draft. Other businesses warehouses and freight forwarders, and other processing

facilities find it advantageous to be located within a port or nearby. Modern ports are equipped with specialized -handling equipment.

Ports usually have specialized functions: some tend to cater mainly for passengers and cruise ships some specialize on containers or general cargo; and some ports play an important military role in their nation's Navy.

The terms "port" and "seaport" are used for different types of facilities handling ocean-going vessels, and river port is used for river traffic, such as barges operation and other shallow-draft vessels.

### **Seaport**

A seaport is a port located on the shore of a sea or ocean. It is further categorized as a "cruise port" or a "cargo port". Additionally, "cruise ports" are also known as a "home port" or a "port of call". The "cargo port" is



also further categorized into a "bulk" or "break bulk port" or as a "container port".

### **Cargo ports**

Cargo ports are quite different from cruise ports, because each handles very different cargo, which has to be loaded and unloaded by a variety of mechanical means.

Bulk cargo ports may handle one particular type of cargo or numerous cargoes, such as grains, liquid fuels, liquid chemicals, wood, automobiles, etc. Such ports are known as the "bulk" or "break bulk ports".

Most cargo ports handle all sorts of cargo, but some ports are very specific as to what cargo they handle. Additionally, individual cargo ports may be divided into different operating terminals which handle the different types of cargoes, and may be operated by different companies, also

known as terminal operators, or stevedores.

### **Smart port**

A smart port uses ICT, Digitalization technologies, including the Internet of things (IoT), Visualization, GPRS, and artificial intelligence (AI) to be more efficient in service delivery, Smart ports usually deploy cloud-based software as part of the process of greater automation to help generate the operating flow that helps the port work smoothly. At present, most of the world's ports have somewhat embedded technology.

### **Port of call**

A port of call is an intermediate stop for a ship on its sailing itinerary. At these ports, cargo ships may take on supplies or fuel, as well as unloading and loading cargo while cruise liners have passengers get on or off ship.

Fishing port



A fishing port is a port or harbor for landing and distributing fish. It may be a recreational facility, but it is usually commercial. A fishing port is the only port that depends on an ocean product, and the depletion of fish may cause a fishing port to be uneconomical.

### **Inland port**

An Inland port is a port on a navigable lake, river (fluvial port), or canal with access to a sea or ocean, which therefore allows a ship to sail from the ocean inland to the port to load or unload its cargo. The term "inland port" is also used for dry port. Dry port  
A dry port is an inland intermodal terminal directly connected by road or rail to seaport and operating as a center or the transshipment of sea cargo to inland destinations.

It's expected that the cost of doing business at Lekki Port will be lowest due to the port's

automated processes. The project is a key infrastructural upgrade in our country. Lekki Deep Seaport is a dynamic change in the maritime sector. This is a port that is fully automated and digitalized. The implication of this is that, for once, Nigeria will have a port that will ensure that business is conducted diligently. It also means that the cost of doing business in this port will be the lowest ever. That is the promise. That is the commitment, the port will boost maritime traffic – Operator and accelerate growth, facilitate trade volume growth for Nigeria and increase the Gross Domestic Product, the Port will redefine maritime activities in Nigeria and the entire West African sub-region.

Lekki Port, will be a critical engine that will drive the Nigerian economy and also reinforce Nigeria's status as a regional maritime hub and enable many related industries to flourish and improvement of external trade



competitiveness through improved port efficiency; cost-effective port operations and services; improved turnaround time for cargo handling and clearance; a reduction in delays in the supply of raw materials and equipment; as well as reduced costs of importations and charges such as demurrage, among others”.

The port was completed by CHELE and handed over to the Lekki Port LFTZ Enterprise Limited, to take over a fully completed port after about 16 years the project was announced with fanfare in Lagos. Despite its completion, the port is yet to begin commercial operations.

The entire port project is valued at about \$1.5 billion, but, according to Wu Di, vice president of CHEC, the total value of the EPC contract for the first phase of the port project is \$581 million.

By implication, Nigerians will further see more expansion

projects on the port site after the new port must have started commercial operations.

In this first phase, the port is expected to have a natural depth of 16.5 metres, a quay length of 680 metres, a breakwater of 1.909 metres, about three container berths, a marine services jetty to handle containers as well as a liquid and dry bulk.

The container terminal is built and equipped with the capacity to handle up to 2.7 million 20-foot equivalent units of containers annually. The construction of the port officially started on June 15, 2020, and was completed on October 24, 2022.

On October 23, 2019, the Lekki Port LFTZ Enterprise Limited signed the \$629 million loan facility agreement with China Development Bank. This equity capital infusion lifted the port project to a large extent.



In terms of equipment, the new port has received the first and second batches of equipment, comprising five ship-to-shore cranes and 15 Rubber Tyred Gantry cranes from Shanghai in China.

It was built under the public-private partnership initiative. It has a shareholding structure where the international consortium, led by Lekki Port Investment Holding Inc., holds a 75 percent stake; Lagos State Government, a 20 percent stake; and the Nigerian Ports Authority, 5 percent.

Lekki Port has been described as a game changer that will boost the growth of the Nigerian economy, create about 170,000 direct and indirect jobs, generate about \$361 billion during the 45 years' concession period, and generate over \$201 billion in revenue for both Lagos State and the Federal Government after the liquidation of the loan. Is the first deep

seaport in Nigeria with a capacity to take large vessels.

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## **MARINE INSURANCE**

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### **INTRODUCTION**

The fundamental principles of Marine Insurance are drawn from the Marine Insurance Act 1963, as in all contracts of insurance on property. The contract of Marine Insurance is based on the fundamental principles of

Indemnity, Insurable Interest, Utmost Good Faith, Proximate Cause, Subrogation and Contribution. Practitioners of Marine Insurance must familiarize themselves with the Act and uphold these Principles when negotiating contracts and settling claims under the contract.

A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure. Marine insurance is a contract of indemnity. It is an assurance that the goods on transit from the country of origin to the land of destination are insured. Marine insurance covers the loss/damage of ships, cargo, terminals, and includes any other means of transport by which goods are transferred, acquired, or held between the points of origin and the final destination. Marine Insurance originated when



the need of shipment of goods via sea Arose. Despite what the name implies, marine insurance applies to all modes of transportation of goods. When goods are shipped by air, the insurance is known as the contract of marine cargo insurance. Marine insurance is required in import-export trade proceedings. Goods in transit need to be insured by one of the three parties: -

The Forwarding Agent, the Importer, the Exporter, or anyone involved in the transit of goods.

### **WHAT IS INDEMNITY?**

Indemnity is a form of insurance compensation for damages or loss. Indemnity is a contractual agreement between two parties. In this arrangement, one party agrees to pay for potential losses or damages caused by another party. A typical example is an insurance contract, in which the insurer or the indemnitor agrees to

compensate the other (the insured or the indemnitee) for any damages or losses in return for premiums paid by the insured to the insurer. The object of an insurance contract is to place the assured after a loss, in the same relative financial position in which he would have stood had no loss occurred.

### **INSURABLE INTEREST.**

The Marine Insurance Act contains a very clear definition of insurable interest. It states that there must be a physical object exposed to marine perils and that the insured must have some legal relationship to the object, in consequence of which he benefits by its preservation and is prejudiced by loss or damage happening to it or where he may incur liability in respect thereof.

Whereas in fire and accident insurance an insurable interest must exist both at inception of the contract and at the time of loss, the





interest in respect of a marine contract must exist at the time of loss, though it may not have existed when the insurance was affected. This is necessary when one considers the mercantile practice under which there is every possibility of sale and purchase of goods during transit. However, the MIA has provided that where the goods are insured "lost or not lost" the assured may recover the loss, although he may not have acquired his interest until after the loss, unless at the time of effecting insurance he was aware of the loss and the insurer was not. If the assured had no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss. Arising from this, both a contingent and a defeasible interest are insurable. A partial interest is also insurable.

Unless like the normal indemnity policy of other classes of insurance, a marine cargo policy is

freely assignable either before or after loss provided of course the assignee has acquired insurable interest.

## PRINCIPLES OF MARINE INSURANCE

- **Principle of Good faith** - Parties demand absolute trust on the part of both; the insurer and the guaranteed.
- **Principle of Proximate Cause** - The proximate cause is not adjacent in time; also, it is inefficient. Nevertheless, it is the definitive and adequate cause of loss.
- **Principle of Insurable Interest** - Any object presented as a marine risk and the assured covering the insurance of goods - both should have legal relevance. Also, a series is detailed contracts called 'Incoterms' to respectfully assign the insurance of goods to each party.



- **Principle of Indemnity** - The insurance extended to the parties will only be applicable up to the loss. The parties can't buy insurance to gain profits. If they do, they won't get more than the actual loss.
- **Principle of Contribution** - Sometimes, the risk coverage for goods has more than one insurer. In such cases, the amount has to be fairly distributed amongst the insurers.

cargo interests, or damage to the environment);

- ✓ Legal and other costs.

Marine insurance policy will only provide cover for losses for a peril which the insured and the insurer agreed will form the basis for the compensation. Generally, such peril must be one which is an accident or fortuity. With this in mind, it is important to state that maritime claims which are as a result of ordinary wear and tear, willful misconduct of the assured etc. will not occasion any compensation.

## THE SCOPE OF MARINE RISK

Ship owners, operators, and shippers desire to have insurance against occurrences such as:

- ✓ Loss of, or damage to, their own property;
- ✓ Loss of income;
- ✓ Liabilities to third parties (such as the owners of other ships or other property, or to

However, even if the loss has resulted from a fortuity, it may be the result of many different types of events. For example, such losses etc., can arise as a result of a maritime peril such as bad weather, collisions, groundings, fire, loss of or damage to cargo etc., or as a result of war risks including civil war, revolution and terrorism, or as a result of political risks such as



governmental expropriation or other commercial risks such as frustration or repudiation of contracts, business interruption, inability to repatriate funds etc. Therefore, those that are engaged in maritime activity will normally require different types of insurance cover since the risks that arise as a result of these different events differ in nature and require different risk evaluation. However, the issue can become complicated since certain risks are not necessarily covered by the same category of insurance and this can therefore, affect the scope of cover that is available under such policies.

## **TYPES OF MARINE INSURANCE**

### **Freight Insurance**

In freight insurance, for example, if the goods are damaged in transit, the operator would lose freight receivables and so the insurance will be provided on compensation for loss of freight.

### **Liability Insurance**

Marine Liability insurance is where compensation is bought to provide any liability occurring on account of a ship crashing or colliding.

### **Hull Insurance**

Hull Insurance covers the hull and torso of the transportation vehicle. It covers the transportation against damages and accidents.

### **Marine Cargo Insurance**

Marine cargo policy refers to the insurance of goods dispatched from the country of origin to the country of destination.

## **TYPES OF MARINE INSURANCE POLICIES**

there are a number of insurance policies open to an insurer, depending on the aim it is set to achieve, and they include the following:

- Floating Policy



- Voyage Policy
- Time Policy
- Mixed Policy
- Named Policy
- Port Risk Policy
- Fleet Policy
- Single Vessel Policy
- Blanket Policy

## CONCLUSION

Marine insurance is a tool which can assist in mitigating the risks caused during a marine adventure which can cause significant losses to ship, cargo or any goods on board the vessel. The import of marine insurance is to secure the risk of the ship and cargo owner from perils of the sea. Will marine insurance be a panacea for maritime claims? The answer to this would depend on the type of maritime claim and the surrounding factors of such claim brought by an insured against the insurance company in the given circumstance.

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## THE CRIME OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN NIGERIA

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Marine fisheries provide food directly from ecosystems and are sensitive to climate change. Most human food production comes from heavily modified agricultural ecosystems. But fisheries are not generally manipulated and supplemented (e.g., with fertilizer) but rather produce food from ecosystems that are minimally managed. The direct link from ecosystem to human food is especially strong in marine fisheries and the impact of climate on that production is clear.

Fluctuations in marine fisheries catch is correlated with water

temperature for many species. Sardine, salmon, mackerel, and other species show catch numbers that fluctuate closely with indices of atmospheric circulation and water temperature

Water temperature at various depths influences the distribution of commercially important fish. Some species respond rapidly to short-term changes in water temperature, turning up hundreds of kilometers outside of their normal range, whereas other species respond to the evolution of water temperatures over years or decades as climate changes.

In many countries, the Marine Protected Areas (MPAs) aim to play a dual role of conservation and sustaining coastal fisheries as a key food source. Some MPAs allow regulated fishing, providing food, and livelihoods for local communities. Other MPAs prohibit fishing, allowing the protected ecosystems to thrive (and in many cases, recover), and provide “spillover” of fish larvae



and adults to areas outside the MPA that can then be fished.

## INTRODUCTION

Nigeria is a maritime state having a coastline of 853km within the Gulf of Guinea and 8573km of inland waterways. Like most countries in West Africa, Nigeria's coastal waters contain diverse species of fish, which contribute to the food and economic security of its people.

Small-scale fishing operations contribute 80% of locally produced fish and support the livelihoods of 24 million Nigerians. According to the UN Food and Agriculture Organization, in 2010, fish accounted for 16.7% of the global population's intake of animal protein and 6.5% of all protein consumed. Moreover, fish provided > 2.9 billion people with almost 20% of their intake of animal protein, a crucial nutritional component. The overall GDP contribution from

fishing – small scale and industrial – was 0.84% in 2019 and 1.09% in 2020.

The importance of the fisheries sector to individuals and the economy of many developed and developing countries cannot be overemphasized. It is notable that fish provides more than 60.0% of the world's supply of protein, especially in developing countries. Its importance could be felt directly and indirectly among rural and urban residents in Nigeria. Globally, 350 million jobs are linked to marine fisheries, with 90% of fishers living in developing countries.

In Nigeria, fisheries, particularly an important subsector, contributes about 3.00–5.00% to the agriculture share of the Gross Domestic Product (GDP). Fish are an important protein source in the diet of Nigerians. Protein from fish is highly digestible and of high nutritional value and consists of complete arrays of amino acids, vitamins, and minerals. The fisheries sector is therefore a route



to socioeconomic development in Nigeria. But it also faces threats. One of these threats is the illegal, unreported and unregulated fishing.

## **UNDERSTANDING THE SCALE AND COMPLEXITY OF ILLEGAL FISHING AND ASSOCIATED CRIME**

Fisheries crime denotes a vast and diverse category of illegality and criminality that aids or accompanies illegal fishing. Such crimes can include corruption, customs fraud, human and drugs trafficking and piracy. Illegal fishing and fisheries crime undermines people's livelihoods. The lack of governmental support to address illegal fishing and protect livelihoods within fishing communities' further pushes people into poverty.

Recently, the Nigerian House of Representatives noted that the country loses \$70 million each year to illegal fishing. This includes loss of licence fees,

revenue from taxation and the value that could have been accrued from legitimate fishing by local vessels. Other sources estimate the cost of illegal fishing in Nigeria as much higher, citing anywhere between \$600 million and \$800 million each year.

The variation in these figures reveals the difficulties in calculating the costs of clandestine activity. It's also a result of budgetary neglect of the Nigerian Federal Fisheries Department. The department lacks the capacity to monitor, survey and control vessels operating in Nigeria.

Vessels from China, the European Union, and Belize are notable for illegally exploiting Nigerian waters. Despite varying estimates, all sources agree that the economic losses caused by illegal fishing in Nigeria are high. But the figures alone paint a superficial picture of the true costs of illegal fishing. Illegal fishing does not occur in isolation.



## COMBATING ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN NIGERIA

Global action to fight illegal, unreported and unregulated (IUU) fishing has intensified as Nigeria and 99 other countries have now committed to the UN Food and Agriculture Organisation's Agreement on Port State Measures (PSMA). The PSMA was accepted by the United Nations FAO Conference in 2009 and became effective on June 5, 2016. It was immediately signed by over 25 governments, ensuring that the treaty passed the threshold needed to enter into effect; the treaty now has 55 signatories.

The PSMA is the first binding international agreement specifically designed to prevent, deter and eliminate IUU fishing by denying port access and use to foreign vessels engaging in or supporting such fishing. Nigeria, Angola, Eritrea and Morocco are the latest countries to back the

PSMA. 60 percent of port States globally, are committed to the agreement, which is a binding international instrument to combat IUU fishing.

Prof. Abiodun Sule, Executive Director of Nigerian Institute of Oceanography and Marine Research (NIOMR) at a workshop held on Thursday, May 19, 2022, in establishing the alliance with Stakeholders in the maritime industry combat and eradicate illicit, unreported, and unregulated (IUU) fishing in Nigerian waters stated that as more governments sign on to the pact and demonstrate their commitment to combating IUU fishing, the gaps that allow illegal fishermen to slip through should close.

The Food and Agriculture Organization (FAO) is a specialized agency of the United Nations that leads international efforts to defeat hunger. Commenting on the agreement, FAO Director-General, QU Dongyu, said, "Rising consumer





demand and transforming agrifood systems in fisheries and aquaculture have driven global fish production.

We need to work together to step up port controls and an adequate information exchange through the implementation of the PSMA. This will contribute to transforming aquatic food systems and maximize their role as drivers of employment, economic growth, social development and environmental sustainability,” Manuel Barange, director of FAO’s Fisheries and Aquaculture Division, said.

FAO recently launched the PSMA Global Information Exchange System (GIES), which collects and shares official compliance-related information with a focus on port inspection results, actions taken and port entry or denials. With the FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (Global Record), the platform supports States in their efforts to implement the PSMA and

complementary instruments which aim to combat IUU fishing.

FAO has so far assisted more than 50 countries to review their legislation, strengthen their institutional capacity, improve their monitoring, control and surveillance systems and operations, to effectively implement port state measures and fulfil their international responsibilities as flag, coastal and market States.

Illegal, Unreported and Unregulated Fishing have driven fish production to its highest levels and there is broad recognition of the need to step up the fight against IUU fishing. It is encouraging to see more States support the PSMA in support of the Sustainable Development Goals. One in every five fish caught around the world every year is estimated to originate from IUU fishing, with devastating impacts on the sustainability of fisheries and the livelihoods of those who depend on them, as



well as the conservation of marine ecosystems.

IUU fishing undermines national, regional and global efforts to achieve sustainable fisheries and its elimination is key to succeeding in reaching the UN's Sustainable Development Goals. We have a responsibility to manage and use all aquatic resources sustainably.

Anthony Akpan, President of Pan African Vision for the Environment (PAVE), emphasised the importance of broader stakeholder participation in addressing the menace of IUU fishing in Nigeria. Akpan revealed that the alliance would use a variety of techniques, including networking, advocacy, capacity building, and awareness campaigns, among others, to fight against the IUU fishing menace. He also emphasised the importance of better collaboration with civil society organisations (CSOs) to promote awareness and guarantee that the threat of IUU fishing is addressed.

Prof. Abiodun Sule, Executive Director of Nigerian Institute of Oceanography and Marine Research (NIOMR), stated that IUU fishing was one of the most serious threats to the marine ecology. He explained how IUU fishing has the potential to damage national and regional efforts to manage fisheries sustainability and marine biodiversity; and that the threat of IUU fishing thrives on corrupt government and a weak management system.

The ED further stated that the Nigerian Federal Executive Council recently authorized the ratification of the Port State Measures (PSMA). The PSMA is the world's first and most important international agreement/treaty aimed specifically at addressing illegal, unreported, and unregulated (IUU) fishing. The primary goal of the Port States Measures Agreement (PSMA) is to prevent, dissuade, and eliminate IUU fishing by prohibiting IUU fishing



vessels from utilizing lawful ports to land their catches

## **HINDERANCE TO COMBATING ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN NIGERIA**

Neglect and poor regulations has been an obstacle in combatting illegal, unreported and unregulated fishing in Nigeria. Despite the important contribution that fishing makes to the livelihoods of Nigerians, government neglects this sector. This is evident in the marginal budgetary allocation the sector receives yearly.

The Monitoring, Control and Surveillance Department of Nigeria's Federal Fisheries Department is critical to managing Nigeria's fisheries. Yet no budgetary allocation has been made to it in the last 15 years. The Monitoring, Control and Surveillance Department lacks patrol vessels, and is therefore

unable to monitor the activities of vessels operating in Nigeria. In 2017, the government announced plans to purchase patrol vessels, but it hasn't done so yet. The sector doesn't receive enough funding to function effectively. Nigeria's Fisheries Department operates within the country's Federal Ministry of Agriculture and Rural Development, which was allocated less than 2% of the national budget in 2019.

A number of policies, decrees, and acts have been put in place by successive Nigerian governments as a way of regulating the stocks of marine fisheries resources in the country. Nigeria's fisheries are governed by the Sea Fisheries Act of 1971, the Sea Fisheries (Licensing) Regulations of 1971, the Sea Fisheries (Fishing) Regulations of 1972, the Exclusive Economic Zone Decree of 1978, the Sea Fisheries Decree of 1992, and the 1995 Sea Fisheries Regulations.

Notwithstanding the existing fisheries regulation, it is still



inadequate. These regulations are outdated and ill-equipped to address the current scale and severity of growing fisheries crime. For example, in June 2020, a vessel, Hai Lu Feng 11, was fined ₦3 million (under \$7,300) for switching off its Vessel Monitoring System while in Nigeria's Exclusive Economic Zone. The Vessel Monitoring System is designed to provide estimates of fishing activity in near real time. Switching the system off suggests an intent to evade detection by the authorities. But this fine is tiny when considering the millions of dollars that illegal fishing costs the Nigerian economy each year.

## RECOMMENDATIONS

1. Increasing allocation to the Fisheries Department in the National Budget.

The Monitoring, Control and Surveillance Department of Nigeria's Federal Fisheries Department is critical to managing

Nigeria's fisheries. Nigeria's Fisheries Department operates within the country's Federal Ministry of Agriculture and Rural Development. Solving the problem of illegal fishing in Nigeria requires that the Federal Department of Fisheries is supported to operate effectively. As the agency charged to ensure the sustainable exploitation of Nigeria's fisheries, it must be adequately funded.

2. Current fisheries regulations must also be updated to reflect the current realities and impacts of fisheries crime.

A holistic and collaborative approach is critical to addressing fisheries crime. A national maritime security strategy is needed to guide and facilitate inter-agency and regional cooperation. The strategy should include the establishment of an information-sharing platform.

The capture of the pirates that targeted Hai Lu Feng 11 vessel by



the Nigeria navy was supported by the Fisheries Committee for the West Central Gulf of Guinea. This was through the regional online communications platform established under the West Africa Task Force. This shows that cooperation between fisheries agencies and other maritime enforcement agencies is critical to stemming the tide of illegal fishing – and other crime at sea.

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## RELEVANT REGULATORY AGENCIES IN THE NIGERIAN MARITIME INDUSTRY

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### INTRODUCTION

### AGENCIES IN THE NIGERIAN MARITIME SECTOR

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2. Nigerian Ports Authority (NPA)
3. Nigerian Maritime Administration and Safety Agency (NIMASA)
4. Nigeria Inland Water Ways Authority (NIWA)
5. Nigerian Customs Services (NCS)

## **NIGERIAN SHIPPERS' COUNCIL (NSC)**

Nigerian Shippers' Council is an agency of the Federal Government of Nigeria. The council is responsible for protecting exporters and importers in Nigeria as well as its goods. The council focus on importing and exporting of cargo with regards to port-to-port shipment through the chain of transportation. Its mandate is to establish an effective environment for all Nigerian stakeholders by putting sufficient and good economic regulatory system in Nigerian Port transportation sector.

The Nigerian Shippers' Council was established in the year 1978, with the help of UNCTAD, by the law of Nigerian Shippers' Council Act Cap. N133 LFN 2004. The Nigerian Shippers' Council is an agency under the Federal Ministry of Transport. The enabling Act provides for a Governing Board and an Executive Secretary/Chief Executive Officer, responsible for the day to day management and implementation of policies approved by the Governing Board.

## **ORGANIZATIONAL STRUCTURE**

The Executive Secretary/CEO is assisted by Eight (8) Directors who head the departments in the Council.

The departments are complemented by Nine (9) Independent Units reporting to the Office of the Executive Secretary/CEO.

The Eight (8) Departments are:

- Regulatory Services
- Consumer Affairs



- Strategic Planning and Research
- Human Resource Management
- Inland Transport Services
- Legal Services
- Finance and Accounts
- General Services
- The Nine (9) Independent Units are:
  - Anti-Corruption and Transparency
  - Special Duties
  - Complaints
  - Information & Communication Technology
  - SERVICOM
  - Procurement
  - Internal Audit
  - Public Relations
  - Public Private Partnership (PPP)

There is a Liason office in Abuja and six (6) Zonal Coordinating Offices one in each of the six geo-political zones. They are as follows:

- South-West Coordinating Office – Ibadan;
- South-East Coordinating Office – Aba;

- South-South Coordinating Office – Port Harcourt;
- North-Central Coordinating Office – Jos;
- North-West Coordinating Office – Kano;
- North-East Coordinating Office – Bauchi;
- Abuja Liaison Office.

## REGULATORY SERVICES

- In performing its regulatory functions, the Council:
- Sets, monitors and enforces standards of service delivery, ensures stability, accessibility and adequacy of services;
- Determines, provides and cause to be published guidelines for the registration of regulated service providers specifying, among other things, the terms and conditions for the registration;
- Provides guidelines on tariffs and charges (setting minimum and maximum levels) in order to guard against abuse of monopoly



or dominant market position (encourages competition among regulated service providers);

- Coordinates inter-modal transport;
- Regulates market entry and exit;
- Performs mediatory role among stakeholders;
- Establishes accessible and modern dispute resolution mechanism;
- Promotes efficiency in the provision of port services;
- Minimizes cost of doing business and its inflationary effect on Nigerian economy;
- Encourages private sector investment in the port sector;
- Monitors and ensures compliance by all parties, with the provisions of the Port Concession Agreements.

## STATUTORY FUNCTIONS

The statutory functions of Nigerian Shippers' Council are as follows:

- To provide a forum for the protection of the interest of shippers on matters affecting the shipment of imports and exports to and from Nigeria;
- To encourage the formation of Shippers' Associations all over the country;
- To provide a forum for consultation between the conference and non-conference lines, tramp-owners, the Nigerian Ports Authority and the Government of the Federation on matters of common interest;
- To negotiate and enter into agreements with Conference Lines and non-Conference Lines, ship-owners, the Nigerian Ports Authority and any other bodies on matters affecting the interests of shippers;
- To advise the Government of the Federation, through





the Minister, on matters relating to the structure of freight rate, availability and adequacy of shipping space, frequency of sailings, terms of shipment, class and quality of vessels, port charges and facilities and other related matters;

- To assess the stability and the adequacy of existing services and make appropriate recommendations in that behalf;
- To consider the problems faced by shippers with regards to coastal transport, inland waterways transport and matters relating generally to the transportation of goods by water and advise Government on possible solutions thereto;
- To promote and encourage the study and research into problems affecting shippers in Nigeria;

- To arrange from time to time seminars and conferences on any matter relating to its functions in Nigeria;
- To carry out such other activities as are conducive to the discharge of its functions under this Act.

The functions of the Nigerian Shippers' Council as Port Economic Regulator are as follows:

- Provide guidelines on tariff setting in order to guide against arbitrariness;
- Monitor and enforce standards of service delivery to ensure availability, accessibility, affordability, stability, predictability and adequacy of services;
- Encourage competition and guard against the abuse of monopoly and dominant market positions;
- Perform mediatory role among stakeholders;
- Establish accessible and modern dispute resolution mechanism;



- Regulate market entry and exit;
- Promote efficiency in the provision of port services;
- Minimize high cost of doing business and prevent its inflationary effect on the Nigerian economy;
- Encourage private sector investment in the port sector;
- Monitor and ensure compliance by all parties with the provisions of the Port Concession Agreements.

Other functions of the Nigerian Shippers' Council are contained in the subsidiary legislations as follows: -

- The Nigerian Shippers' Council (Local Shipping Charges) Regulations 1997.
- The Nigerian Shippers' Council (Inland Container Depot) Regulation 2007.
- The Nigerian Shippers' Council (Container Freight Station) Regulation 2007.

## REGULATIONS

The council works based on The Federal Government Port Reform Agenda and it is under Port Economic Regulator of February 2014 and was affirmed by the Ministerial Regulation: Nigerian Shippers' Council (Port Economic) Regulations 2015; and the Presidential Order: Nigerian Shippers' Council (Port Economic Regulator) Order, 2015.

## NIGERIAN PORTS AUTHORITY (NPA)

The Nigerian Ports Authority (NPA) is a federal government agency that governs and operates the ports of Nigeria. The Nigerian Ports Authority started operating in April 1955 following the implementation of the Ports Act of 1954. Operations of the NPA are carried out in affiliation with the Presidency of (Nigeria) and the Nigerian Shippers' Council. The Head office of the Nigerian Ports Authority is located in Marina, Lagos. However, with the



concessioning programme of the federal government, which is aimed at promoting efficiency through, public and private partnership, the Nigerian Ports, has since 2005, being concessioned This landlord arrangement as they call it, has fostered better relationship and high turn-out of goods and services in and around the Nigerian Port system either in the Eastern or the ever-busy Western zone.

The major ports controlled by the NPA include: the Lagos Port Complex and Tin Can Island Port in Lagos; Calabar Port, Delta Port, Rivers Port at Port Harcourt, and Onne Port.

## **STATUTORY DUTIES AND FUNCTIONS**

The statutory duties of the Nigerian Ports Authority are as follows:

- Develop, own and operate ports and harbors;
- Provide safe and navigable channel;

- Offer cargo handling and storage services;
- Maintain Port facilities and equipment;
- Ensure safety and security;
- Develop and own property.

The functions of Nigerian Ports Authority are as follows:

- Ownership and administration of land and water within port limits;
- Planning and development of port operational infrastructure;
- Leasing and concession of port infrastructure and setting bench mark for tariff structure;
- Responsible for nautical/harbour operations and hydrographic survey;
- Marine incidents and pollution;
- Maintenance of safety and security at the common user areas;
- Enacting port regulations and bye-laws as well as monitor and enforce them;



- Day to day monitoring of operations and enforcement of relevant sections of respective agreements;
- Towage, mooring, bunkering, ship chandelling and ship repairs.

## **NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA)**

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the apex regulatory and promotional maritime agency. The Agency was created from the merger of National Maritime Authority and Joint Maritime Labour Industrial Council (former parastatals of the Federal Ministry of Transport) on the 1st August 2006. The obligation of regulating the Maritime industry in Nigeria rests on the Agency through the relevant instruments:-

1. Nigerian Maritime Administration and Safety Agency Act. 2007.
2. Merchant Shipping Act. 2007.

### 3. Coastal and Inland Shipping (Cabotage) Act 2003

The Agency was established primarily for the administration of Maritime Safety Seafarers Standards and Security, Maritime Labour, Shipping Regulation, Promotion of Commercial Shipping and Cabatage activities, Pollution Prevention and Control in the marine environment, the Agency also implements domesticated International Maritime Organization (IMO) and International Labour Organization (ILO) Conventions.

### **Functions**

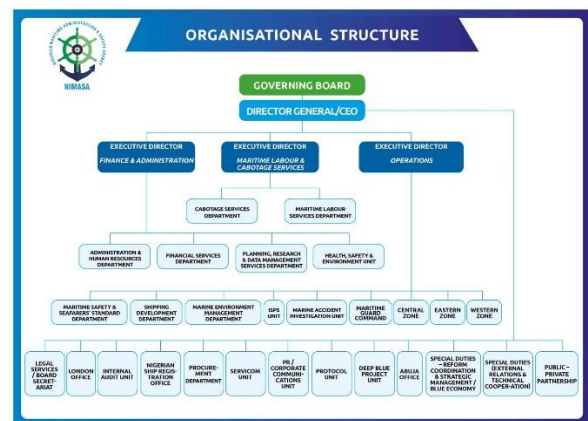
- Pursue the development of shipping and regulatory matters relating to merchant shipping and seafarers.
- Administration and regulation of shipping licenses.
- Administration, Regulation and Certification of Seafarers.
- Establishment of Maritime Training and Safety Standards



- Regulation of safety of shipping as regards the construction of ships and navigation.
- Provision of Maritime Search and Rescue Services
- Provide direction and ensure compliance with vessels security measures
- Carry out Air and Coastal Surveillance
- Control and prevent Maritime Pollution
- Develop and implement policies and programs, which will facilitate the growth of local capacity in ownership, manning and construction of ships and other maritime infrastructure.
- Enhance and administer the provision of Cabotage Act. 2003
- Perform Port and Flag State duties.
- Provide Maritime Security.
- Establish the procedure for the implementation of conventions of the International Maritime Organization (IMO) and the International Labour

Organization (ILO), and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping, and for the implementation of Codes, Resolutions and Circulars arising there from.

## ORGANIZATIONAL STRUCTURE



## LEGISLATION FRAMEWORK

## LEGAL

- Merchant Shipping Timber Cargo Regulations 2010
- Merchant Shipping Pilot Ladders Regulations 2010



- Merchant Shipping Tonnage Regulations 2010
- Safe Man Hours Work and Watch keep Regulations 2010
- Merchant Shipping Manning Regulations 2010
- Merchant Shipping Manning Regulations 2010
- MSR Crew Accommodation Regulations 2010
- MSR Disqualification of Holder of Seafarer Certificates Regulations 2010
- MSR Health Protection and Medical Care for Seafarers Regulations 2010
- MSR Medical Examination of Seafarers Regulations 2010

## **NIGERIA INLAND WATERWAYS AUTHORITY (NIWA)**

The National Inland Waterways Authority (NIWA), hitherto Inland Waterways Department

(IWD) of the Federal Ministry of Transport, metamorphosed into an Authority vide an act of the National Assembly, CAP 47, Laws of the Federation of Nigeria (LFN), 2004 (Decree No. 13 of 1997), established with the primary responsibility to improve and develop Nigeria's inland waterways for navigation. The National Inland Waterways Authority is directly under the supervision of the Federal Ministry of Transport.

The Managing Director/Chief Executive is responsible for the execution of the policies of the Authority and the day to day running of the affairs of the authority amongst other responsibilities.

The Authority has the following Departments: Engineering, Marine, Survey, Research, Planning and Environment, Finance, Human Resources and Administration, Corporate Affairs, Internal Audit, Legal Services, Procurement, Project Management and Special Duties, Port Services,



Area Offices Co-ordination, Business Development and Inland Waterways Police Command.

Each Department is headed by a General Manager, who reports to the Managing Director/CEO. NIWA also has a Governing Board, which supervises and drives forward the strategic direction of the Authority. The Board is headed by a Chairman.

## FUNCTIONS

The National Inland Waterways Authority was established with many functions attached to it. Apart from the development and improvement of Nigeria's inland waterways for navigation, the National Inland Waterways Authority also saddled with the responsibility of carrying out several functions, which include:

1. Regulating inland water navigation
2. Development of facilities and infrastructure for effective and smooth administration of the

National Inland Waterways Authority

3. Developing Indigenous technical and managerial skills in order to contend with the modern challenges of transportation
4. Undertakes Capital and Dredging Maintenance
5. Undertakes surveys, such as hydroelectric surveys, hydrographic surveys and hydrological surveys
6. Undertakes the design of ferry routes properly
7. Removes and receives wrecks from waterways
8. Operation of services, such as ferry services in and within the Inland waterways system
9. Installation and maintenance of Navigational Aids
10. Issues and control licenses to qualified clients, who may wish to engage in the Inland waterways business



## **NIGERIAN CUSTOMS SERVICES (NCS)**

The Nigeria Customs Service (NCS) is an independent customs service under the supervisory oversight of the Nigerian Ministry of Finance, responsible for the collection of customs revenue, Facilitation of both national and international trade and anti-smuggling activities. The NCS is headed by the comptroller general, who oversees the work of six deputy comptrollers general in the following departments:

- Finance and Technical Service;
- Tariff & Trade;
- Enforcement, Investigation, and Inspection;
- Modernization, Research and Economic Relations;
- Excise, Industrial Incentives and Free Trade Zone;
- Human Resource Development.

## **FUNCTIONS OF THE NIGERIA CUSTOMS SERVICE**

The Statutory Functions of Nigeria Customs Service (NCS)

- Collection of Revenue (Import /Excise Duties & other Taxes /Levies) and accounting for same.
- Generating statistics for planning and Budgetary purposes.
- Anti-Smuggling activities
- Monitoring Foreign Exchange utilization etc.
- Engaging in Research, Planning and Enforcement of Fiscal Policies of Government.
- Security functions.
- Manifest processing.
- Licensing and registration of Customs Agents.
- Registration and designation of collecting banks.
- Working in collaboration with other government agencies in all approved ports and border station.





## CONCLUSION

The Nigerian Maritime Industry has developed through time, but there is still a compelling reason to continue developing the industry to attract potential investments to enhance the country's economic performance. It is critical for the Nigerian government to fully support and pay more attention to the industry needs as it will not be able to function at its full potential unless the government becomes more cognizant of how it influences the economy.

The Maritime regulatory agencies ensure the functionality of the maritime sector of Nigeria. A functional maritime regulatory agency in a nation will increase the output and productivity of the country. In Nigeria despite the presence of numerous maritime agencies and their responsibilities being spelt out, the stakeholders still have a lot of complaints as regards the efficiency of these regulatory agencies. The

streamlining of the procedure with other government agencies will greatly minimize unnecessary frictions in operation. No organization is perfect, but credible organizations work towards perfection. Therefore, organizations involved in maritime activities should ensure due diligence in the delivery of services allotted to them, towards the actualization of the Maritime services of our dreams.

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5. <https://nigerianports.gov.ng/history/our-mandate/>
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8. NDUKA & IFEPE: Analysis of the Roles of the Relevant Regulatory Agencies in the Nigerian Maritime Industry

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**(Jean Chiazor & Partners)**

## NEWS AND EVENTS

### Glossary of Shipping Terms

#### CHARTERER'S OPTION

A term in a charter party which stipulates that the charterer has a choice in specific circumstances.

#### CHARTERING AGENT

Shipbroker who acts on behalf of charterer in the negotiation leading to the chartering of a ship.

#### CHOICE OF LAW

Agreement or the statement of law that should govern or be used when there is a dispute between parties, e.g., in a place of most significant relationship.

#### DELIVER

To hand over a ship by a shipowner to the charterer at the agreed place and time at the beginning of a charter period, or, as carrier of cargo, to convey goods to the receiver of bill of lading holder at the place or port of destination mentioned in the contract of carriage.

#### DELIVERED

This sales term makes the seller of an imported good responsible for the arrangement and paying for the carriage of the goods to the place agreed in the contract. The seller bears the risk of loss and damage to such goods until they are delivered to the name place.

**DEFENDANT:** A person defending or denying; the accused in a criminal case.

#### MARKS

The terms used in shipping practice to refer to the load line marks on the ship hull.

#### MASTER



The person in charge of a ship, or who is officially qualified to command a foreign going ship.

### **MATERIAL**

Any circumstances that would affect a prudent underwriter in deciding whether or not to accept an insurance contract in assessing the correct premium to be charged.

### **NOCURENOPAY**

A provision in a salvage agreement stating that no salvage money will be paid unless success has been recorded in the salvage, or that the salvor who fails in his task receives no reward for his effort.

### **NOMINATIONOFASHIP**

The naming of a particular ship to be used for an intended voyage.

### **NON-REVERSIBLELAYTIME**

This signifies that the time allowed to the charterer for loading is to be treated separately from the time allowed for

discharging for the purpose of calculating demurrage or dispatch, invoice or charter party form.

### **OPENCOVER**

A long term insurance contract or agreement between a shipper or a consignee and the insured, in which all shipments are automatically covered, but subject to such shipments being up to the specified limit or tonnage for the vessel to carry and for certain voyages in line with the agreed period. When goods are shipped under open cover, the insurance policy is made out after the shipment.

### **OPEN POLICY OR FLOATING POLICY**

An agreement between an underwriter and a shipper to insure goods to a certain maximum value and which may be shipped in one or more vessels to be named later.

### **OPTIMUM ROUTE**



A shipping route decided upon by taking account of weather conditions based on analysis and predictions.

### **PERFECTING THE SIGHT**

The addition of omitted details to a bill of lading.

### **PERFORMANCE CLAIM**

Claim made by a time charterer against a shipowner when the ship is unable to achieve the speed agreed in the charter party or has consumed more fuel, or both. Than initially stated.

### **PERFORMANCE CLAUSE**

Clause in a time charter party which stipulates that, should the ship be unable to achieve the agreed speed or consumem fuel, the charterer is entitled to recover the money or cost involved from the shipowner the cost of time lo stand that of the extra fuel, by deducting the costs from hire money

### **PORT**

A harbor with facilities for ships to anchor, moor, load or discharge cargoes.

### **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 are cognized flag and acting for personal gain.

### **NEWS AND EVENTS**

#### **EASE OF DOING BUSINESS: MARITIME STAKEHOLDERS BACK FG'S LOW RANKING OF CUSTOMS**



The Federal Government's decision to designate the Nigeria Customs Service (NCS) as the least compliant agency in the ease of doing business has the support of stakeholders in the marine industry.

They pointed out that, contrary to international agreements, the service places more of an emphasis on enforcement, seizures, and revenue generating than on facilitating trade, which is its primary mission.

They assert that due to its activities, the country's ports are now the most expensive in Africa, have deterred investment, and countless firms have been destroyed.

NCS and the Nigerian Shippers' Council were identified as agencies in the maritime sector that performed poorly in terms of transparency and efficiency in the country's 2022 business environment rating in a new

Executive Order 001 (EO1) compliance report by the Presidential Enabling Business Environment Council (PEBEC).

The Nigerian Shippers' Council received a score of 19.28 percent, while NSC received 13.97 percent.

Jumoke Oduwole, Special Advisor to the President for Ease of Doing Business and Secretary of PEBEC, stated that the total EO1 performance grade was based on transparency (70%) and efficiency (70%) (30 per cent).

In order to remove bureaucratic barriers to doing business and make the nation progressively simpler to start and expand a business, President Muhammadu Buhari issued the EO1 on the Promotion of Transparency and Efficiency in 2017.

Oduwole claims that effectiveness evaluates Ministries, Departments and Agencies' (MDAs) adherence to service delivery deadlines, as well as adherence to the EO1's



default approval and government directives.

Efficiency tests a Ministry, Department, or Agency's (MDA) adherence to service delivery deadlines, as well as adherence to the EO1's default approval and government directions.

According to her, the level of openness is determined by the availability of an updated website, an interactive online service portal, specific dates, charges, and legal requirements, as well as customer service contact information.

Lucky Amiwero, a former member of the Presidential Committee on Destination Inspection and Ministerial Committee on Fiscal Policy and Import Clearance Process, bemoaned the militarization of NCS, which made it more concerned with enforcing laws and seizing goods than with facilitating trade.

"Now, 90% of Customs' activity consists of arrests and enforcement, which is not what it

is supposed to be doing. The Kyoto Convention is broken by all NCS activities. The Nigeria Customs Service is detaining and seizing cargoes at ports, not the seamless process that is being discussed in the Africa continental free trade agreement area, he bemoaned.

According to Amiwero, if Customs is not reformed, it would kill the economy, just as it has done to numerous sectors and Small and Medium-Sized Businesses (SMEs) in the nation with its aggressive pursuit of revenue collection through the imposition of excessive tariffs and charges.

Dr. Segun Musa, the managing director of Widescope International Logistics Company, stated that customs needs to be consolidated into a single division that will interact with cargoes and stakeholders, most likely online rather than even in person. He claimed that the service's several departments duplicate tasks, making it difficult to clear freight



and conduct business in the nation. Musa also said the Shippers' council has lost its relevance in the maritime industry.

"We used to be aware of the council through the actions taken by cargo owners, shipping lines, and other parties involved in the shipping industry to advance their interests. But these days, they've lost their direction and are more concerned with little matters than their important duties," he remarked.

## INSTITUTE CANVASSES SUPPORT FOR AFCFTA IMPLEMENTATION



The African Continental Free Trade Area must be implemented successfully, according to the Chartered Institute of Personnel Management of Nigeria.

The 2nd virtual International Academic Conference of the institute, with the theme "The Beginning of AfCFTA: Possibilities for the Work Environment," made this disclosure.

"There is a need to bridge the gap between the town and the gown and between academic theories and strategic human resource management by providing a platform for stimulating a highly intellectual discourse on the shared perspective of both sectors," said Olusegun Mojeed, president and chairman of the CIPM Governing Council.

Pat Utomi, a professor of political economy at Lagos Business School, spoke on the topic of business alignment across the various African nations, explaining that for the AfCFTA to be implemented successfully,



countries on the continent needed to build trust with one another.

He said that although the AfCFTA was already gaining ground, there were challenges related to cultural differences in conducting business.

He declared, "We must take local action to persuade people to cooperate across boundaries. Institutions can help to solve this problem by preserving the regional content that makes each nation unique. Academicians have a responsibility to support case studies on achievable goals.

Utomi discussed the future and the necessity for major measures to finance massive international trading firms.

While this was going on, Lead City University's Vice-Chancellor, Prof. Kabiru Adeyemo, noted that the conference's collaboration with CIPM aimed to combine theory and practice and give attendees the necessary knowledge, skills, and competencies to function

effectively at different levels in both the industry and academia.

The start of the African Continental Free Trade Area, he said, "is a historic moment for the continent and gives us a unique opportunity to restructure the African economy and create new job possibilities."

Oluseyi Makinde, the governor of Oyo State, who was represented by the head of service, Ololade Agboola, said in his message of goodwill that the time was appropriate for the theme because the government was making every effort to broaden and boost the socio-economic development of the nation by formulating various financial and economic policies.

"I am aware that the Federal Government of Nigeria signed the African Continental Free Trade Area agreement in May 2019, joining the other 53 African countries to establish a single market for goods and services to allow free movement of business, travelers, and investments and





create a continental customs union to streamline trade and attract long-term investment," she said.

If the advantages are effectively accessed and harnessed, she continued, this portends significant value for corporate and private business owners in Nigeria.

Professor Peter Olapegba, a professor of Applied Social/Health Psychology, spoke on behalf of Professor Kayode Adebowale, Vice Chancellor of the University of Ibadan, who claimed that the topic was current and had broad implications for the socioeconomic development of Nigeria and, by extension, Africa.

"It is fantastic that Africa is uniting as a force for growth, as human capital is the most valuable asset in any organization," he remarked. So, it is crucial to emphasize the development of human resources. We should take into account our unique characteristics as a continent and create a system that we can truly own and that can

work for Africa to avoid falling into a trap.

## **COURT ORDERS FORFEITURE OF BANANA ISLAND PROPERTY, N725M LINKED TO PATRICK AKPOBOLOKEMI**



Patrick akpobolokemi

The Nigerian Maritime Administration and Safety Agency's allegedly misappropriated N725 million and a property in the Ikoyi neighborhood of Banana Island have been ordered temporarily forfeited by the Federal High Court of Lagos (NIMASA).



Both must be momentarily relinquished to Nigeria's federal government.

In response to an *ex parte* application filed and argued by Bilkisu Buhari, a lawyer for the Economic and Financial Crimes Commission, Justice Tijjani Ringim issued the ruling (EFCC).

The Advance Fee Fraud and Other Similar Offences Act No. 14 of 2006's Section 17 and the 1999 Constitution's Section 44(2b) both served as the basis for the application.

The property, Plot J 37A 218 Close, 2nd Avenue, Banana Island, Ikoyi, was also reasonably suspected to have been acquired with proceeds of illegal activity, according to Buhari, who testified before the court that both the sum of N725.3 million and the property were reasonably suspected to be the proceeds of illegal activity.

The panel established a connection between the funds and assets and

Ziakede Patrick Akpobolokemi, a former NIMASA director-general.

Additionally, Buhari requested that the interim forfeiture order be published by the EFCC in a national newspaper so that "anyone interested in the properties sought to be forfeited may appear before the honorable court to show cause within 14 days why the final forfeiture order of the said properties should not be made in favor of the Federal Government of Nigeria."

"I have listened to the submission of counsel and examined the affidavit in support of the motion combined with evidence," Judge Ringim remarked after granting the application. I think this statutory application has merit, hence it is allowed as requested.

For suspected illicit diverting of the agency's cash, Akpobolokemi and certain top management personnel of NIMASA who worked alongside him are facing multiple trials.



## 7<sup>th</sup> ICC AFRICA CONFERENCE ON INTERNATIONAL ARBITRATION



ICC International Court of Arbitration the International Court of Arbitration is the world's leading arbitral institution. Since 1923, it has administered over 27,000 cases and has helped resolve difficulties in international commercial and business disputes to support trade and investment. The Court provides parties with a flexible and neutral setting for dispute resolution. It offers confidentiality and extraordinary freedom for parties to choose the framework for how and where they want to resolve their dispute.

While the dispute itself is resolved by independent arbitrators, the Court supervises the process from beginning to end, increasing the quality of the process and enforceability of the awards. Members of the ICC Court are appointed by the ICC World Council on the proposal of national committees and groups. To date, the Court has 175 appointed members from 100 jurisdictions. The Court's Secretariat, headed by a Secretary General, comprises a permanent staff of 114 lawyers and administrative staff of 35 different nationalities who speak as many languages. The Secretariat is divided into case-management teams, seven based in Paris, one in Hong Kong, one in New York, one in São Paulo, one in Singapore and one in Abu Dhabi. [www.iccwbo.org/arbitration](http://www.iccwbo.org/arbitration) ICC Institute of World Business Law The ICC Institute of World Business Law is a think-tank working closely with the ICC



International Court of Arbitration. Created over 40 years ago, the Institute provides research, training, and information to the legal profession concerned with the development of international business law. In line with ICC's philosophy of excellence, the Institute proposes publications, trainings and conferences on a range of topics related to international business law. [www.iccinstitute.org](http://www.iccinstitute.org) ICC Nigeria As a national committee of the International Chamber of Commerce (ICC), ICC Nigeria works to promote economic growth and prosperity through international trade and investment. ICC Nigeria's membership cuts across a diverse array of sectors. As such, its members join their counterparts worldwide in contributing to the formulation of global rules, standards and codes—all of which govern the conduct of international business and champion best practices. ICC

Nigeria is the host of the ICC International Court of Arbitration's regional arbitration conference.

The 7th **ICC Africa Arbitration Conference** take place at Eko Hotel and Suites, Adetokunbo Ademola Street, Victoria Island, Lagos. The Conference is being organized by ICC Nigeria Commission on Arbitration & ADR, in partnership with the ICC International Court of Arbitration in Paris and the Nigerian Bar Association (NBA).

The theme of this year's conference is **"INTERNATIONAL ARBITRATION AND ADR: THE AFRICAN JOURNEY SO FAR AND LOOKING FORWARD."** The conference also celebrates the Centenary Anniversary of the ICC International Court of Arbitration. The African continent is currently an attractive investment destination. The influx of foreign investors who insist on arbitration as the dispute settlement mechanism of choice has increased the demand for



international commercial arbitration.

The first six editions of the ICC Africa Conference attracted over 6,000 persons in cumulative attendance from within Nigeria and other parts of the world, top-level African and international law firms.



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