

CALABAR COMMERCIAL PORT PLC ACT, 1993

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## **DRAFTING INSTRUCTIONS**

The Federal Government of Nigeria under its policy of privatisation and commercialisation of public enterprises has directed that the old Calabar port should be commercialised. Prior to this directive, the port, due to its economically and geographically disadvantaged location had been grossly under utilised.

As the Government has now provided modern facilities and machineries for the operation of the port and in view of the anticipated completion of the LNG Gas Project in 1995 in the region, the Government also felt that the port should assume a new status, or in other words to be commercialised to meet up the challenges the Gas Project will provide and to also encourage importers and exporters to make maximum utilisation of the port. The Government will also in the not so distant future, set up an Export Free Zone within the port area. Arising from the above facts, therefore, it has been decided that the port should be separated from other ports in terms of status and administration and governed by a separate Act.

An Act establishing the port should therefore be enacted but to cover, for the time being, the following areas only:

### **1. Declaration, Administration and Finances of the Port**

In the legislation, the port should have a new name of Calabar Commercial Port PLC and the areas constituting the old port as contained in the Ports Declaration Act, 1958 should remain as the areas of the new port; therefore, the legislations should not make provision for declaration of new areas.

Since the intention of the Government was to commercialise the port, it should therefore be a limited liability company and to be registered under the Companies and Allied Matters Decree, 1990. It should in this respect be a body corporate. Though a limited company, it is however to be wholly owned by the Federal Government.

In the event that new functions would be assigned to the port or changes in its name or ownership to be made, the Secretary of

Transport and Communication should be given power in the legislation to do so.

Power also should be given to the Secretary to appoint a Council for the port to be known as Port Council. The Council will function like Board of Directors, that is, to supervise the administration and functions of the Port. The composition of the Council should be made up of a Chairman, Secretary and a Representative each from Petroleum, Shipping, Customs, Export Promotion and Manufacturing Sectors. The Managing Director of the port should also be a member. The number of members of the Council should be determined by the Secretary.

Provision should be made in the legislation for the appointment by the Secretary of a Managing Director of the port who should be the Chief Executive Officer of the port.

It is expected that money to be generated from fees, dues, rates and charges, money from use by other persons of the facilities of the port, money to be earned by investment and other money generated from other matters incidental to the port's powers, should all constitute the finances of the port.

## **2. Office of Harbour Master and Powers of the Port to make Regulations**

The legislation should provide for the appointment by the port, of an officer to be called Harbour Master of the port. Persons possessing appropriate nautical qualifications may also be appointed as Deputy Harbour Master and Assistant Harbour Master so that such persons would also discharge the functions of the Harbour Master. These officers will be under the control, superintendence and direction of the port and their functions are expected to include pilotage services (which the legislation for now, should not provide for) and Port State Control Administration of the port.

In the legislation, powers should be given to the port to make regulations for the control and management of its harbour or port and the approaches. The regulation will be for good order in those areas. The power to make regulations should cover the matters contained in section 85 of the Nigerian Ports Authority Act (as amended) 1991. The matters, therefore, which were with respect to individual port and which need not be outlined in these instructions, should be incorporated by the legislation.

## **3. Provisions with respect to damage by vessel and establishment of navigational aids**

Provisions should be made for owners of vessels or persons employed in connection with same to be liable to pay costs of repairs for any damage caused by the vessel to any wharf, works, harbour or its approaches or equipment of the port in the waters or limits of its harbour or approaches except aids to navigation. The port should

also have right to sue in Court for debt in respect of the damage.

Where a vessel or the person fails to pay cost of repairs, the port should serve notice to a proper officer of customs who should refuse clearance for the vessel to sail out unless the amount is paid or security provided. Powers should be given in the legislation for the port to establish aids to navigation within its navigational waterways and to also exercise supervision over them. This is to ensure safe navigation. It is also expected to have power with respect to lighthouses, lightships, beacons, buoys or other aids to navigation and can also alter or vary the character of any navigational aid.

Provision should be made for the port to grant licences to persons to carry out the above mentioned activities on specified terms and conditions. Penalties should be provided for any person contravening or infringing on these powers of the port. Provision should be made on the procedure for applications and fees for the grant of a licence should be prescribed by the port. Exemptions may be granted in respect of certain aids to navigation from these requirements.

The port should have the duty to publish and update lists of aids to navigation and changes or deficiencies in the same should be brought to the notice of the public. The Secretary may also declare any notice to that effect as nautical publications and in legal proceedings it will be evidence of the information in it.

Provisions dealing with offences in respect of aids to navigation should be made. Any person who causes damage either negligently or deliberately or interferes with aids to navigation or removes them should be made guilty of an offence and a fine or imprisonment or both should be provided for.

Payment of cost of repairs of damaged aids to navigation by persons or vessel including detention of the vessel until such payments are made should also be covered by the legislation. The person or owner of the vessel causing the damage should also be made to report such damage to the port and penalty provisions for failure to do so should be made.

Burning or lighting of a fire in an area of navigation should be prohibited as such fire or light could mislead navigators. Therefore persons responsible should be given notice to extinguish the fire or light and penalties for failure to comply with the notice should be provided for such as fines. The port should, under the provision, extinguish such fire.

The legislation should confer on the Secretary the power to make regulations with respect to the system of lighting marks or features or aids to navigation. He should however have due regard to any international system of buoyage if that system is applicable in the area.

#### **4. Dredging and Removal of Obstructions**

It will be the duty of the port to dredge all its navigable waters but can grant licence to individuals to perform that duty on its behalf.

It will be an offence for any person to do so without a licence. The legislation should therefore cover this area and provide for a penalty which should be a fine or imprisonment or both, for contravention.

Application to the port for the licence should contain a detailed proposal and intended mode of operation. A licence granted should not be an exoneration of liability of any person with regard to payment of cost of repairs to damaged property or works as a result of the operation of the licence.

Power should be given to the port to remove obstructions within navigable waterways but not vessels. Obstructions could impede navigation hence the need to provide for this. Whatever is removed as an obstruction and if its identity or owner is known, the port should give notice to the owner to take possession. Notice within one month of taking over is sufficient. The provision should vest the thing removed in the port if it is not claimed within the period given. The same thing should apply where the owner is not known but in this case the period should be three months after the port has taken possession of the thing.

Furthermore, where the thing removed is perishable, it should be disposed of by the port if the custody of it will cause immeasurable expense or inconvenience to the port and can recover cost of expenses from the proceed, but the balance should be vested in the port only if not claimed within three months. Where the port carried out the above function but could not recover fully the expenses, it should have the right to recover in an action against any person who was the owner at the time of its abandonment or loss.

Provisions should be made to cover for the marking of wrecked vessels in the waters of the port and where the wreck will be a potential danger to life and property, the port should protect it and the area where it is situated. Also unauthorised persons should keep away from it. A penalty for violation should be imposed which could be a fine or a term of imprisonment or both. But where due to any action of emergency, exercise of functions under any law or out of necessity because of weather or navigational hazards, a person enters the areas of protected wrecks, the provision should not make such action an offence.

#### **5. Dues, Rates and Charges**

The power to levy dues, rates and charges should be given to the port in the legislation. The power to do so should cover light dues, anchorage, passenger dues, rates or charges for use of its premises, works and plants or for any service to be performed. It

may also charge such dues for landing of goods, receiving of goods, warehousing, use of wharf, use of crane, gear, tackle, tools or any other instrument or materials supplied by the port, use of fire fighting facilities, towage, supply of water, carriage of passengers or goods, use of facility for the deposit of oil residues or disposal of refuse and supply of fuel, electricity or any other form of energy.

#### **6. Liability for Loss of Goods and Limitation of Suits against the Port**

The provisions to deal with the above matters should be the same with those contained in Part IV of the Nigerian Ports Authority Act (as amended) 1991 with respect to all ports. Those provisions should therefore be incorporated in the legislation.

### **AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A COMMERCIAL PORT TO BE KNOWN AS THE CALABAR COMMERCIAL PORT PLC AND TO REGULATE ITS OPERATIONS.**

#### **PART I** **PRELIMINARY**

Short title and commencement 1. This Act may be cited as the Calabar Commercial Port PLC Act, 1993, and shall come into force on a day to be appointed by the Secretary by notice published in the Gazette.

Interpretation 2. In this Act unless the context otherwise requires -

"approaches" means -

- (a) in relation to a harbour, an area to the seaward of the limits of the harbour declared to be the approaches under the Nigerian Ports Declaration Act, 1958;
- (b) in relation to a port, an area of water declared to be the approaches under the Nigerian Ports Declaration Act, 1958;

"ballast" includes every kind of gravel, sand and soil and every commodity or thing commonly used for the ballasting of ships;

"beacon" means any light, mark or sign used as an aid to navigation,

- other than a lighthouse or buoy;
- "buoy" includes any floating light, mark or sign used as an aid to navigation, other than a lighthouse;
- "cargo" includes all kinds of movable personal property, other than animals;
- "Chairman" means Chairman of the Ports Council;
- "ferry" means any ship plying from one side of a waterway to the other for the purposes of the carriage of passengers or goods;
- "goods" includes live animals and all tangible personal property of any kind;
- "harbour" means -
- (a) the areas of the sea named and their limits respectively set out under the Nigerian Ports Declaration Act, 1958;
- (b) any other area of the sea declared to be harbour under the Nigerian Ports Declaration Act, 1958;
- "harbour land" means land adjacent to a harbour or port and occupied wholly or mainly for the purposes of activities there;
- "Harbour Master" means the Harbour Master of the Calabar Commercial Port PLC appointed under section 7(1) and includes, to the extent of his authority, any person authorised by or under section 7(3) and (4) to discharge the functions of the office of Harbour Master of the Calabar Commercial Port PLC;
- "marina" means a sheltered water area in a harbour provided with moorings, floats and buoys for small vessels, boats, yachts etc;
- "master" includes every person lawfully having for the time being command or charge of any ship, but does not include a pilot;
- "mooring" includes anchoring;
- "aids to navigation" means -
- (a) a lighthouse, lightship, beacon or buoy;
- (b) any other structure, mark, device or apparatus that is an aid to marine navigation, including a siren or other description of fog signal, a radio beacon or an electronic aid, but does not include any device or apparatus used or for use on a vessel being a lightship;
- "owner" in relation to a vessel means the person registered or licensed as the owner of the vessel or, in the absence of such registration or licensing, the person who owns the vessel (except that in relation to a vessel owned by a State and operated by a person registered as its operator it means the person registered as the operator) and includes master, agent, charterer, mortgagee in possession, or other beneficial owners;
- "the Port" means Calabar Commercial Port PLC and for the purpose of operations means an area having port facilities the limits of which are set out under the Nigerian Ports Declaration Act, 1958;
- "port operations" means -
- (a) the berthing or drydocking of a vessel using a port;
- (b) the warehousing, sorting, weighing or handling of goods at a wharf within the limits of the port or one harbour land adjacent to the port;
- (c) the towing or moving of a vessel that in or about to enter the harbour or port or the approaches thereto, or the towing or moving



- of a vessel to and from a wharf in the harbour or port;
- (d) the loading or unloading of goods or embarking or disembarking of passengers -
- (i) in or from a vessel that is in the harbour or port or the approaches thereto;
- (ii) at a wharf within the limits of the harbour or port or on land adjacent thereto;
- (e) the movement of goods or passengers within the limits of the harbour or port or the approaches thereto or on land adjacent thereto;
- "port services" includes services in connection with the performance of port operations;
- "proper officer" has the meaning assigned to it in the Customs Act, 1962;
- "Secretary" means Secretary of Transport and Communications Ministry;
- "vessel" means -
- (a) every description of vessel, however propelled or moved, including hydrofoil and hovercraft and every other type of non-displacement craft, anything constructed or used to carry persons or goods by water, and a seaplane on or in the water;
- (b) store ship or other vessel without means of propulsion;
- (c) such other thing constructed or adapted for floating or being submerged in water as the Secretary may by order specify as a vessel for the purposes of any provision of this Act;

Declaration of 3. The areas of old Calabar Port, its Calabar Port and harbours and approaches thereto declared harbours by the Secretary under the Nigerian Ports Declaration Act, 1958, shall continue to be the areas constituting the Calabar Commercial Port PLC.

**PART II**  
**THE CALABAR COMMERCIAL PORT PLC,**  
**ADMINISTRATION AND FINANCIAL PROVISIONS**

Nature of the Port 4. (1) The Calabar Commercial Port PLC shall be a limited liability company registered under the Companies and Allied Matters Decree, 1990 and shall constitute the Calabar Commercial Port PLC hereinafter in this Act referred to as "the Port".

- (2) The port shall be a body corporate with perpetual succession and a common seal, and shall have power to sue and be sued in its corporate name and to acquire and hold and dispose of lands.

Ownership of port (3) The port shall be wholly owned by the Federal Government of Nigeria and the Secretary may if desirable, alter the name or functions of the port in consultation with the Ports Council.

Administration of 5. (1) There shall be appointed by the

the port Secretary, a council to be known as the Port Council to supervise the administration and functions of the port.

- (2) The number of persons to be appointed as members of the Council shall be determined by the Secretary but the membership shall comprise among others of the following:
  - (a) a Chairman;
  - (b) a Secretary; and
  - (c) a representative each from the petroleum, shipping, customs, export promotion and manufacturing sectors.
- (3) There shall be an officer of the port to be known as the Managing Director who shall be the Chief Executive Officer of the Port and shall be responsible for the execution of the policy of the port and the transaction of its day to day business and he shall be appointed by the Secretary and be a member of the Port Council.

Finances of the port shall consist of -

- (a) money generated from such fees, dues, rates and charges as may be levied under this Act;
- (b) moneys generated from any arrangements for the operation by another person or organisation of the facilities of the port;
- (c) money earned by or arising from investments made by the port in accordance with this Act;
- (d) such other moneys as may lawfully be paid to the port in respect of any matter incidental to its powers and functions under this Act.

**PART III**  
**APPOINTMENT AND FUNCTIONS OF HARBOUR MASTER**  
**AND POWER TO MAKE REGULATIONS**

Appointment of Harbour Master. (1) The port shall appoint an officer to be called the Harbour Master of the port (hereinafter referred to as the Harbour Master).

- (2) A person shall not be appointed as Harbour Master unless he possesses such qualifications as may be prescribed.
- (3) The port may also, in its discretion, appoint any fit and suitable person, possessing appropriate nautical qualifications and experience, to be a Deputy Harbour Master of the port, and such Deputy Harbour Master may, subject to such limitation as may be attached to his appointment, exercise any of the functions of the Harbour Master.
- (4) In addition to Harbour Master and Deputy Harbour Master, the port may appoint any suitable person possessing appropriate

nautical qualifications and experience to be an Assistant Harbour Master for the port and the person so appointed may discharge in relation to the harbour or port or the approaches thereto any such functions of the office of the Harbour Master as may from time to time be specified by the port by notice in writing.

- (5) The Harbour Master or any Deputy Harbour Master or Assistant Harbour Master shall be under the control, superintendence and direction of the port.

Functions and 8. The functions and duties of the Harbour Master shall include the administration of pilotage services and Port State Control of the port.

Power to make 9. (1) The Secretary may confer power on the port to make regulations for the control and management of the harbour or port or the approaches thereto and for the maintenance of good order therein and, in particular for all or any of the following purposes -

- (a) inspection of any vessel arriving in or departing from the harbour or port by the Harbour Master or other officer of the port and the manner in which vessels arriving shall be boarded;
- (b) providing for information to be supplied to the port by the master or agent of a vessel prior to arrival or on arrival or departure;
- (c) regulating the movement of vessels within the harbour and port and the approaches thereto;
- (d) designating routes or channels for the movement of vessels and otherwise regulating traffic;
- (e) prescribing and designating prohibited and restricted areas and anchorages within the limits of the harbour or port or the approaches thereto and regulating the use thereof;
- (f) keeping free passages of such width as is deemed necessary within the harbour or port or the approaches thereto and along or near to the wharves, moorings and other similar works in or adjoining the same and for marking out the spaces so to be kept free;
- (g) regulating the anchoring, mooring and unmooring and warping of all vessels and the use of warps, mooring buoys, chain and other moorings;
- (h) regulating the use of fires and lights and the signals to be used and measures to be taken in case of fires;
- (i) enforcing and regulating the use of aids to navigation, signal lights and sound signals by vessels and the steps to be taken for avoiding collision by vessels;
- (j) regulating the flags and signals to be used by vessels arriving at, lying in and departing from the harbour or port or the approaches thereto;
- (k) regulating the operation of any ferry service and providing for its safe and convenient use;
- (l) regulating the use by vessels of whistles, sirens and other sound signalling apparatus;

- (m) regulating the taking on and discharge of oil, ballast or substances likely to cause pollution, and the discharge into the port or harbour of earth, stone, mud, sand or other similar matter;
  - (n) regulating the placing, laying down, alteration or maintenance of private moorings or aids to navigation;
  - (o) the licensing of persons engaged in the business of stevedoring, wharfingers, or any other activity;
  - (p) regulating the loading and discharging of goods and the embarkation and disembarkation of passengers within the harbour or port or the approaches thereto;
  - (q) regulating the construction, operation and licensing of marinas;
  - (r) providing for the protection of any seawall, breakwater or similar works within the limits of the harbour or for the protection of any natural feature which protects the harbour or its approaches;
  - (s) regulating the operation of vessels within the harbour, port and the approaches thereto, including, but not restricted to, the granting of licenses or permits.
- (2) For the breach of any regulations made under this section the port may prescribe as a penalty a fine not exceeding one thousand Naira and in the case of a continuous breach, a further fine not exceeding one hundred Naira a day for every day after the first during which such breach continues, and a term of imprisonment not exceeding three months, or both such term of imprisonment and fine.

**PART IV**  
**DAMAGE BY VESSELS AND POWER TO ESTABLISH**  
**AIDS TO NAVIGATION**

- Damage by vessels10.(1) The owner of a vessel shall be liable to pay to the port the cost of making good any damage done by the vessel or by any person employed on or about the vessel to -
- (a) any wharf or other works of the port in the harbour or the approaches thereto;
  - (b) any equipment (not being an aid to navigation) belonging to the port in the waters within the limits of the harbour or port or the approaches thereto.
- (2) The port may recover from the owner of the vessel as a debt in a court of competent jurisdiction the cost of making good any such damage.
- (3) Where a proper officer of Customs is notified in writing by the port that there is an undischarged liability under this section to pay an amount specified in the notice in respect of damage caused by a vessel he shall refuse clearance to the vessel until he is satisfied that the amount specified has been paid to the port or security has been given to the satisfaction of the port

for the payment of the amount due to it under this section.

Power to establish11. (1) The port may establish such aids to aids to navigationnavigation as are necessary to facilitate safe navigation within its navigational waterways and shall exercise general supervision over all such aids.

- (2) Without prejudice to the generality of subsection (1), in particular the port may -
- (a) establish, replace and maintain lighthouses, lightships, beacons, buoys or other aids to navigation;
  - (b) add to, alter or vary the character of any navigational aid which is the property of the port.

Port to licensel2. (1) No person, other than the port, and publish lists ofshall establish, alter or remove any aid aids to navigation to navigation unless he is licensed to do so by the port under this section.

- (2) The port may grant a licence for the purposes of subsection (1) upon such terms and conditions as it thinks fit.
- (3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction before a competent Court to a fine not exceeding six thousand Naira or a term of imprisonment not exceeding three years, and in the case of a continuing offence to a further fine of two thousand Naira or a further term of imprisonment not exceeding two months; for every day or part of a day during which the offence continues, or to both such fine and imprisonment.
- (4) The port may make regulations -
  - (a) prescribing the procedure for the application and grant of licenses under this section and the fees to be paid to the port in respect of such licenses;
  - (b) exempting any description of aids to navigation from the provisions of subsection (1).
- (5) The port shall cause to be published and updated a list of Aids to Navigation and shall, upon becoming aware of any changes to or deficiencies in such Aids to Navigation, inform the public thereof.
- (6) The Secretary may by order, subject to any terms and conditions prescribed therein, declare any publications specified in such order to be approved nautical publications.
- (7) In any legal proceeding, the production of an approved nautical publication shall be prima facie evidence of the matters appearing therein.

Offences in respect of aids to navigation 13. Any person who -

- (a) wilfully or negligently injures, damages, destroys or runs foul of any aid to navigation or any light exhibited on such an aid to navigation;
- (b) wilfully or negligently does anything which causes the view of any lighthouse, lightship, beacon or buoy to be obstructed in such manner as to lessen its efficiency;
- (c) wilfully or negligently does anything which interferes with the operation of, or the use by a person of, an aid to navigation so as to hinder the effective operation, or use, of the aid;
- (d) without lawful authority removes, alters, anchors by, or makes fast to any aid of navigation; or
- (e) trespasses on or without lawful authority enters or goes upon any aid to navigation.

shall be guilty of an offence and shall be liable on conviction before a competent Court to a fine not exceeding fifty thousand Naira or to a term of imprisonment not exceeding three years, or to both such fine and imprisonment.

Liability for damage to aids to navigation 14. (1) If any aid to navigation is damaged to or destroyed by any person or vessel, the person or the owner of the vessel, as the case may be, shall be liable to pay the cost of repairing or replacing such aid.

(2) A vessel referred to in subsection (1) may be detained and dealt with in accordance with the relevant provisions of the Nigerian Merchant Shipping Act until the cost of repairing or replacing such aid is paid or security given for the payment of the amount due to the satisfaction of the owner of the aid.

Report of damage to vessel which damages an aid to navigation 15. (1) A person who, or the master of a vessel which, damages an aid to navigation shall, as soon as practicable, report the damage to the port or to such officer as the port may prescribe by notice or regulations.

(2) Any person who fails to make a report as required by subsection (1) shall be guilty of an offence and shall be liable on conviction before a competent Court to a fine not exceeding fifty thousand Naira.

Fires and lights exhibited in such a place or manner detrimental to navigation 16. (1) When a fire or light is burned or exhibited in such a place or manner that, in the opinion of the port it is calculated or likely to mislead persons navigating within the waters of the harbour or port or the approaches thereto, the port may, by written notice, require the person placing or using the fire or light to screen, alter, extinguish or remove it within a reasonable time specified in the notice.

(2) Where a person to whom notice is given under subsection (1) fails

to comply with the notice within the time stated therein, or after complying, replaces the fire or light by another fire or light in respect of which the port would be entitled to give notice under this section, he shall be liable on conviction before a competent Court to a fine not exceeding five thousand Naira and in the case of a continuing offence, to a further fine not exceeding one thousand Naira for every day or part of a day during which such offence is continued.

- (3) The port may extinguish any fire or light in respect of which notice is given under this section where the person to whom the notice has been given fails to comply with the notice within the time specified.
- (4) Nothing in this section shall apply to a light exhibited in accordance with the terms of a licence under section.

Aids to navigation 17. The Secretary may make regulations stipulating the system of lighting and other characteristics marks and features of aids to navigation, and in making such Regulations shall have due regard to any international system of buoyage that may be applicable.

**PART V**  
**LICENSING OF DREDGING AND POWER TO REMOVE OBSTRUCTIONS**

Licensing of 18. (1) No person, other than the port dredging shall scour, deepen, widen or dredge the bed of the waters within the limits of the harbour or port or the approaches thereto except under the authority of a licence granted by the port and in accordance with any conditions subject to which the licence was granted.

- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction before a competent Court to a fine not exceeding fifty thousand Naira or a term of imprisonment not exceeding two years, and for a continuing offence to a further fine not exceeding five thousand Naira or a further term of imprisonment not exceeding one month

for each day or part of a day during which the offence continues after conviction, or to both such fine and imprisonment.

- (3) The port may, upon such terms and conditions as it thinks fit, grant to any person applying therefor a licence to carry out any operations referred to in subsection (1).
- (4) An application for a licence under this section shall be made in writing to the port and shall show the detail of the proposed operations and include particulars defining the mode in which they will be carried out.
- (5) The issue of a licence under this section shall not affect the liability of any person to make compensation for damage to property or works caused by operations carried out in pursuance of the licence.
- (6) The port may charge a fee for granting a licence under this section.

Removal of 19. (1) The port may remove anything other than wrecks likely to become an obstruction or impediment to navigation in, or for the use of, a harbour or port or the approaches thereto.

- (2) If anything removed by the port under subsection (1) is so marked as to be readily identifiable as the property of any person the port shall, subject to subsection (3), within one month of the property coming into its custody, give notice to that person that possession must be re-taken at a place named in the notice and if possession is not re-taken within fourteen days of the service of the notice the property shall, at the end of that period, vest in the port.
- (3) If anything removed by the port under subsection (1) is -
  - (a) not so marked as to be readily identifiable as the property of any person; or
  - (b) is so marked but the place of business of the owner is not known to the port,
 and within three months of it coming into the custody of the port not claim to take possession of the thing is made by any person who proves to the reasonable satisfaction of the port that it belongs to him, the property shall thereupon vest in the port.
- (4) The port may, at such time and in such manner as it thinks fit, dispose of anything referred to in subsection (3) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience, notwithstanding that it has not been vested in the port and if it is sold the proceeds shall be applied by the port in payment of expenses incurred by it under this section in relation to the thing and any balance, if not claimed



within three months from the time when the thing came into the custody of the port by a person who proves to the reasonable satisfaction of the port that he was the owner at the time, shall at the expiration of that period vest in the port.

- (5) If anything removed under this section -
- (a) is sold by the port and the proceeds of sale are insufficient to reimburse the port for the amount of the expenses incurred by it in the exercise of its powers of removal; or
  - (b) is unsaleable,
- the port may recover as a debt in any competent Court the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time the thing removed came into the custody of the port or who was the owner at the time of its abandonment or loss.
- (6) The port shall not under the powers conferred by this section remove anything placed or constructed by any person or authority by virtue of the provisions of this Act or any other law.

Marking and 20. (1) If the port is of the opinion with prohibition of respect to a vessel lying wrecked in the wrecks.waters of the port that, because of its position or anything contained in it, the wreck is a potential danger to life or property, the port may mark the wreck and protect it from interference and may by order designate an area around it as a prohibited area.

- (2) An order under this section shall identify the wreck and the place where it is lying and -
- (a) the prohibited area shall be within such distance of the wreck as is specified by the order excluding any area beyond the landward limit of the foreshore;
  - (b) the distance specified for the purposes of paragraph (a) shall be whatever the port thinks appropriate to ensure that unauthorized persons are kept away from the wreck.
- (3) Subject to subsection (4) a person who, without authority in writing granted by the port enters a prohibited area, whether on the surface or under water, shall be guilty of an offence and shall be liable on conviction before a competent Court to a fine not exceeding then thousand Naira or a term of imprisonment not exceeding six months, or to both such fine and imprisonment.
- (4) Nothing shall be regarded as constituting an offence under this section where it is done by a person -
- (a) in the course of any action taken by him for the sole purpose of dealing with an emergency of any description;

- (b) in exercising functions conferred by or under any enactment on him or a body for which he acts;
- (c) out of necessity due to stress of weather or navigational hazards.

**PART VI**  
**DUES, RATES AND CHARGES, LIABILITY FOR DAMAGE OR**  
**LOSS OF GOODS AND LEGAL PROCEEDINGS AGAINST THE PORT**

Levy of harbour21. Subject to the provisions of this Part, the port may levy upon every vessel entering or leaving a harbour, such harbour fees, dues, rates or other charges as the port may prescribe by regulations.

Levy of light22. (1) Subject to the provisions of this Part, the port may levy on or in respect of any vessel

- (a) such light dues;
  - (b) such anchorage dues in relation to the harbour or port for anchoring therein, or for anchoring in any anchorage in the harbour or port, or such buoyage dues for mooring at a buoy or similar facility provided by or under the administration of the port, or
  - (c) such improvement dues for entering, using or leaving the harbour or port at which the port makes or intends to make improvements of any description for the purpose of discharging its functions under this Act,
- as the port may prescribe by regulations.

- (2) The port may levy such passenger dues for every passenger embarking or disembarking at a harbour (irrespective of the use of any facility of the port or the performance of any service by the port as the port may prescribe by regulations.

Levy of dues, rates23. (1) Subject to the provisions of this Part, the port may levy such dues, rates or other charges as it may determine for the use of any premises vested in or in possession of the port or for the use of any works or plant or appliances provided by the port or for any service performed or to be performed by the port or for any goods supplied by the port, in pursuance of powers conferred by this Act and, without prejudice to the generality of the foregoing, for any of the following purposes -

- (a) the landing or shipping or lighterage of goods;
- (b) the receiving, keeping, storing, surveying, measuring, weighing or delivery of goods landed or to be shipped;
- (c) the warehousing of goods;
- (d) the loading, unloading, movement or delivery of containers, or the rendering of other services in relation to containers;

- (e) the embarking or disembarking of passengers;
- (f) the use by any vessel or person of any wharf or other premises of the port;
- (g) the use of any crane, gear, tackle, tools, instruments or materials supplied by the port for the purpose of any vessel using, or any person working at, any wharf or premises of the port;
- (h) the use of any vessel belonging to or maintained by the port for the extinguishing of fire;
- (i) the towing or rendering of assistance to any vessel;
- (j) the carriage of passengers or goods;
- (k) the use of any facility for the deposit of oil residues or the disposal of refuse or other waste matter;
- (l) the supply of water, fuel, electricity and other forms of energy;
- (m) the laying of moorings, cables and pipes.

Liability for loss<sup>24</sup>. Subject to the provisions of this Act or of goods any contract, the port shall not be liable for the loss, misdelivery or detention of or damage to, goods -

- (a) delivered to, or in the custody of, the port otherwise than for the purpose of carriage;
  - (b) accepted by the port for carriage, where such loss, misdelivery, detention or damage occurs otherwise than when the goods are in transit,
- except when such loss, misdelivery, detention or damage is caused by want of reasonable foresight and care on the part of the port or any servant of the port, provided that -

- (a) the port shall in no case be liable for such loss, misdelivery, detention or damage arising from -
  - (i) act of God;
  - (ii) act of war or the state's enemies;
  - (iii) seizure under any legal process;
  - (iv) act or order of the Government;
- (v) act or omission of the consignor, consignee, or depositor, or of the servant or agent of any such person;
  - (vi) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause, whether partial or general;
  - (vii) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
  - (viii) deficiency in the contents of unbroken packages;
  - (ix) insufficient or improper packing, or leakage from defective drums, containers or packages.

Limitation of suits<sup>25</sup>. (1) When any suit is commenced against and service of the port or any servant of the port for documents any act done in pursuance or execution, or intended execution of any Act or Law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of

such Act, Law, duty or authority such suit shall not lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect, or default complained of, or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof.

- (2) No suit shall be commenced against the Port until one month at least after written notice of intention to commence the same shall have been served upon the port by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.
- (3) The notice referred to in this Section and any summons, notice or other document required or authorised to be served upon the port in connection with any suit by or against the port shall be served by delivering the same to, or sending it by registered post addressed to the Chairman of the port.

Restriction on 26. In any action or suit against the port execution against no execution or attachment or process the property of in the nature thereof shall be issued the port against the port but any sums of money which may by the judgment of the court be awarded to the plaintiff shall be paid by the port from the funds of the port.