

NIGERIAN PORTS (LIABILITY FOR LOST OR DAMAGED GOODS) ACT 1996

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**DRAFTING INSTRUCTIONS**

**NIGERIAN PORT (LIABILITY FOR LOST OR DAMAGED GOODS) ACT 1996**

During the past two years a number of complaints and protests have been made against the Nigerian Ports Authority by the Nigerian business community which form about 90 percent of Nigerian shippers. These complaints and protests were triggered by the unprecedented cases of loss of or damage to goods which occur when goods are placed in the custody of the Authority for onward delivery to the consignees or for subsequent shipment from the country.

Most of these complaints have been brought before the Nigerian Shippers' Council, which is the governmental body charged with the duties of protecting the interests of Nigerian shippers on the one hand and advising the government on matters relating to shipping and maritime legislation on the other.

After a preliminary investigation of the complaints, the Nigerian Shippers' Council decided that the matter required urgent attention, and consequently referred it to the Minister of Transport for more

serious consideration. The Minister set up a committee consisting of representatives from all maritime organizations in the country, and charged the committee with the duty of investigating the complaints and recommending possible solutions to the problems complained about.

After a thorough investigation, the committee found as follows:

1. That there had been a tremendous increase in the import/export trade in the country. As a result of this, the volume of goods passing through the ports has, by far, outstripped the Ports Authority's capacity to effectively handle these goods. The existing cargo handling equipment and storage facilities have been rendered insufficient to meet the ever increasing demand. The result of this is that goods were poorly handled and stored, leading to a great number of them being damaged, destroyed, stolen or pilfered.

2. Secondly, that due to the lack of any legal regime for the determination of the respective rights of the cargo owners and the Ports Authority in such cases of loss or damage, the resolution of such cases more often lead to unsatisfactory results. While on the one hand, a number of genuine claims were left unsatisfied, the Authority spent large sums of money in settling spurious claims brought by some people who were aware of the chaotic situation and attempted to gain advantage from it.

3. Thirdly, that due to the near impossibility of bringing a successful claim against the Authority, owing to the difficulty in proving their negligence, the Authority had tended to be unconcerned about the way their servants and agents handle goods while in their custody.

4. That as a result of the frustrating experiences encountered by Nigerian shippers in cases of loss of or damage to goods in Nigerian ports, most of them have opted for the practice of routing their imports through the ports of neighbouring countries and transporting them on land into the country. This practice, besides the tremendous inconveniences and expenses it causes to Nigerian shippers, has the effect of depriving the country of the much needed revenue payable to the Government in the form of port dues and other charges.

In considering any solutions to these problems, the committee had to take into account two basic conflicting interests which needed to be balanced. These are, the interest of the Ports Authority as a revenue generating organ of the government on the one hand, and the interests of Nigerian shippers as citizens of the country on the other. It is important that in taking any action, care should be taken so as not to frustrate the revenue generating functions of the Ports Authority as well as not to frustrate the business aspirations of Nigerian shippers.

The Committee's findings and recommendations had been submitted to the Provisional Ruling Council, (PRC) by the Minister of Transport and the PRC, accepting the Committee's recommendations, had requested the preparation of draft legislation to take into account all the points highlighted in the Committee's report and to provide an adequate legal regime for solving the problems.

An Act providing for the liability of the Ports Authority in respect of loss or damage to goods should therefore be enacted, which should cover the following areas:

**1. Specification of the goods to which the Act will apply**

The Ports Authority, in their day to day activities, may have to deal with goods for reasons other than those envisaged by this legislation. There is need therefore to restrict the application of the Act to its proper scope. Consequently, the Act should be made applicable only to goods received from carriers by sea for onward delivery to the consignees, and goods received from shippers for subsequent shipment. For the avoidance of any doubt there should be a clear exemption of goods which do not fall into the categories stated

above.

The Act should also be made applicable to goods detained by the Authority under section 17 of the Ports Ordinance if such goods were received for delivery or shipment.

There should be provisions excluding the Authority's liability in respect of "overtime goods"; dangerous goods not properly packaged, labelled and documented in accordance with the applicable laws; and perishable goods not properly declared.

## **2. Basis and Limits of Liability of the Ports Authority**

The Act should make the Authority liable for any loss or damage to any goods in their custody or under their responsibility unless the Authority proves that all reasonable care was exercised to avoid the cause of that loss or damage. There should be provision for proper sharing of loss where it is proved that the claimant contributed to the cause of the loss or damage either through negligence or otherwise.

The Authority should be exempted from liability for loss or damage caused by forces beyond the reasonable control of the Authority such as natural causes, governmental orders, strikes and other labour

problems. The employees, servants and agents of the Authority should also be exempted from personal liability when acting in its official capacity.

In order to protect the finances of the Authority from being drained through the settlement of excessively high claims, the following limits of liability should be provided:

(a) Where goods are totally lost, the liability should not exceed the market value of the item, regardless of whatever incidental costs the owner may have incurred in connection with the item. Where the market value is not certain, the Authority should be liable to an amount not exceeding N 20.00 per kilogram of the gross weight of the goods lost.

(b) In the case of damage to goods, the liability should not exceed the reasonable cost of repair or reinstatement of the goods. Where this is in doubt, the Authority's liability should be limited to an amount not exceeding N 5.00 per kilogram of the gross weight of the damaged goods.

(c) In the case of live animals, the limits of liability of the Authority should be provided as follows:

- (i) N 500.00 for a horse.
- (ii) N 400.00 for a cattle.
- (iii) N 300.00 for a donkey.

(iv) N 150.00 for a goat or sheep.

(v) N 50.00 for any other animal.

However, where the value of the animal is declared at the time of delivery the limit of liability should be the declared value if the Authority accepted the declared value and made extra charges in respect of it.

In view of the fluctuating value of the Naira and the inflationary trends in the economy, it is necessary to give the Minister the power of varying the limits of liability set up in this Act whenever necessary.

The limits of liability under this Act should be made applicable to any claim under the Act whether the claim is based on contract, tort, or otherwise.

The Authority should be denied the right to limit liability under this Act in respect of any loss or damage which is caused by a wilful act or omission of the Authority, its servants or agents, which was done with the intention of causing such loss or damage, or with knowledge that such loss or damage will likely occur.

### **3. Notice of Loss of Damage**

The Act should provide for proper notice of loss or damage to be given to the Authority. The period of notice should vary in cases of loss or damage which are apparent at the time of delivery and those only discovered after delivery. A period of five days for the former and twenty days for the latter cases respectively, should be provided. Notice should also be given in respect of goods deemed lost, namely goods which the Authority fails to deliver within thirty days after a request for delivery has been made to the Authority.

#### **4. Legal Proceedings**

The Act should provide a limitation period for bringing any action in respect of any matter covered by this Act. A two year period should be ideal, in order to afford the parties sufficient time for investigating the case and attempting an out of court settlement. Before commencing any action against the Authority it is necessary to notify the Authority of the intention to commence such action, at least one month before the action is to be commenced.

In order to avoid a situation where the functions of the ports would be frustrated through the attachment of essential cargo handling and other equipments, a provision prohibiting attachment of the property of the Authority should be included. The provision should make it clear that satisfaction of any judgment award will be made by

the Authority from the funds of the Authority.

## **5. General Matters**

Since this Act is not intended to repeal any provision of the Ports Ordinance, it is necessary to preserve the powers conferred by the Ordinance on the Authority. There should however, be a clear indication that in cases of conflict between the provisions of the Ports Ordinance and those of this Act with respect to any matter to which this Act is applicable, the provisions of this Act will prevail.

The Chairman and the Secretary of the Authority should be designated as persons on whom notices and other documents for the Authority should be served.

The validity of pending suits and actions should be preserved. Powers conferred by Custom and Excise Laws should also be preserved.

The Minister should be given a general power for making regulations for the proper implementation of this Act.

**NIGERIAN PORTS (LIABILITY FOR LOST OR DAMAGED GOODS) ACT 1996**

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**NIGERIAN PORTS (LIABILITY FOR LOST OR DAMAGED GOODS) ACT 1996**

An Act to provide for the liability of Nigerian Ports in respect of goods lost or damaged while in their custody, to prescribe limits of liability and procedures for making claims

against the Ports Authority in respect of lost or damaged goods, and other related matters.

**PART I - PRELIMINARY PROVISIONS**

Commencement and application.

1.- The provisions of this Act shall come into force on 1st October, 1996, and shall apply to all the ports in Nigeria.

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

"animals" means animate things of every kind except human beings.

"Authority" means the Nigerian Ports Authority established under Section 7 of the Ports Ordinance.

"Goods" includes baggage, animals (whether alive or dead) and all other movable property capable of being transported by sea.

"Government" means the Government of the Federation of Nigeria.

"Minister" means the Federal Minister charged with responsibility for maritime shipping and navigation.

"Overtime goods" means goods which have been declared as such by the Authority by reason of the goods having been in their custody for an unreasonably long time and efforts to get the owner to accept delivery have failed.

"Shipper" means an individual or body of persons (corporate or unincorporate) having direct interest in cargo, and who is the original consignor or the actual owner or future owner of the cargo, or any person who concludes a contract of carriage on behalf of the cargo owner.

"Suit" includes action and means a civil proceeding commenced by a writ of summons

or in such other manner as may be prescribed by rules of court and does not include a criminal proceeding.

**PART II - GOODS TO WHICH THE ACT APPLIES**

Goods received from carriers and shippers. 3.- (1) The provisions of this Act shall apply to all goods received by the Authority,

(a) from the carrier by sea for onward delivery to the owner, consignee or other person entitled to receive the goods, or

(b) from the shippers for subsequent shipment from any port in Nigeria to another port or any other place whether in or outside Nigeria.

(2) For the purposes of this section, goods include live-animals if such are received by the Authority for the purposes stated in sub-section (1) of this section.

General exemption. 4.- This Act shall not apply to goods which are in the custody of the Authority for reasons

other than those stated in sub-section (1) of section 3 of this Act.

Goods detained 5.- (1) Where goods are detained by the Authority in the lawful exercise of their right of lien under section 71 of the Ports Ordinance, or under any law or regulations in force in Nigeria. Such goods shall be subject to the provisions of this Act concerning the Authority's liability.

(2) Nothing in sub-section (1) of this section shall be construed as limiting or affecting in any way the power of sale conferred on the Authority by section 74 of the Ports Ordinance.

"Overtime goods". 6.- The provisions of this Act shall not apply to goods in the custody of the Authority which have been declared in conformity with the relevant laws as "Overtime goods".

Dangerous goods. 7.- (1) Where dangerous goods are handed over to the Authority without being property

marked, labelled, packaged or documented in accordance with the provisions of the Merchant Shipping (Dangerous Goods) rules, 1963, and if at the time the goods are handed over, the Authority does not otherwise know of their dangerous character, the Authority is entitled to take all precautions the circumstances may require, including when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means.

(2) Notwithstanding anything to the contrary in this Act or in any other law in force in Nigeria, the Authority shall not be liable for any loss resulting from the loss of or damage to goods caused by the precautions taken by the Authority under sub-section (1) of this section.

Perishable Goods.

8.- Where perishable goods are handed over to the Authority without proper declaration as

to their perishable nature, the Authority shall not be liable for any loss of or damage to such goods resulting from their perishable nature.

**PART III - BASIS AND LIMIT OF LIABILITY**

General basis  
of liability.

9.- The Authority shall be liable for loss resulting from loss of or damage to goods if the occurrence which caused the loss or damage took place during the time when the goods were in the custody of or have come under the responsibility of the Authority unless the Authority proves that its servants, agents, or other persons whose services the Authority makes use of for the purposes of receiving the goods or for performing any services in connection therewith took all measures that could reasonably be required to avoid the occurrence resulting in the loss or damage.

Contributory  
negligence

10.- (1) Where the loss of, or damage to any goods is caused -

by claimant.

(a) partly as a result of any failure on the part of the Authority, its servants, agents or other persons whose services the Authority makes use for purposes of receiving the goods or for performing any services in connection therewith to take the measures referred to in section 9, and

(b) partly as a result of the failure on the part of the owner, consignee, shipper, or their servants, agents, and other representatives, to exercise reasonable diligence to avoid the loss or damage -

(2) The Authority shall be liable only to the extent that the loss suffered is attributable to the failure on the part of the Authority, its servants, agents, or persons whose services the Authority makes use for receiving the goods or for performing any services in connection therewith.

(3) The burden of proving the amount attributable to its failure shall be on the Authority.

General exemption from liability. 11.- (1) Nothing in this Act shall make the Authority liable for any loss or damage which occurs when the goods are in the custody of the Authority or have come under its responsibility, and arose from -

- (a) act of God;
- (b) act of war or the enemies of state;
- (c) arrest or restraint of princes or rulers, or seizure under any legal process;
- (d) act or order of the Government;
- (e) act or omission of the consignor, consignee or depositor, or of the servant, or agent of any such person;
- (f) fire, flood, tempest, riot, civil commotion, strikes, lockouts, stoppage or restraint of labour;

(g) inherent wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;

(h) deficiency in the content of unbroken packages;

(i) insufficient or improper packing or leakage from defective drums, containers or packages.

(2) Where the Authority seeks to avoid liability under the foregoing sub-section, the burden of proving that any such loss or damage occurred as a result of any of the events therein stated shall lie upon the Authority.

Exemption from liability of employees, servants and agents of the Authority.

12.- Nothing in this Act shall make any employee, servant or agent of the Authority personally liable to any person for any loss resulting from loss of or damage to goods caused by any act or omission on the part of such employee, servant or agent to the extent that such act or omission was committed by such employee, servant or agent while

acting in his capacity as such.

Limits of liability 13.- (1) The limits of liability of the Authority  
for goods lost for claims under this Act shall be as  
or damaged. follows:

(a) In respect of goods totally lost

-

(i) the actual market value  
of the goods at the time of  
loss, or

(ii) an amount not exceeding N  
20.00 per kilogram of gross  
weight of the goods lost, where  
the market value of the goods is  
not known.

(b) In respect of damaged goods,

(i) the actual cost of repair or  
re-instatement of the goods, or,

(ii) an amount not exceeding N  
5.00 per kilogram of the gross  
weight of the goods damaged.

(2) For the purpose of sub-section (1) -

(a) the burden of proving the actual

market value of the goods shall be on the claimant.

(b) Where the claimant fails to prove the actual value of the goods or the Authority reasonably believes that the value claimed does not represent the actual value of the goods lost, the Authority may treat the case as if the value of the goods is not known and accordingly apply sub-paragraph (1) (a) (ii).

(3) Where an amount is claimed as the actual cost of repairs under sub-paragraph (I) (b) (i) and the amount appears to be more than the reasonable cost of such repairs, the Authority may at its own discretion apply the limit set up under sub-paragraph (1) (b) (ii).

Limits of liability 14.- (1) The liability of the Authority in respect of any animal shall not in any case exceed -  
of animals.

(a) in the case of a horse - N 500.00

(b) in the case of a cattle - N 400.00

(c) in the case of a donkey - N 300.00

(d) in the case of a sheep or goat

N 150.00

(e) in the case of any other animal

N 50.00

(2) Where at the time of acceptance of any animal by the Authority for carriage or delivery, the consignor or his agent declared that the value of the animal exceeded the limits set up in sub-section (1) and paid or agreed to pay such additional charges as may be prescribed in respect of such excess value, the liability of the Authority in respect of such animal shall not in any case exceed the declared value.

(3) In any proceedings against the Authority for the recovery of the sum in respect of any animal, the burden of proving the value of the animal, and where the animal has been injured, the extent of the injury shall be upon the claimant.

Power of the Minister to vary limits of liability. 15.- The Minister may by order vary the limits of liability provided for in section 13 and 14 of this Act.

Application to non-contractual claims. 16.- The limits of liability set up in this Act shall apply in any action against the Authority in respect of loss of or damage to goods whether the action is founded in contract, in tort or otherwise.

Loss of right to limit liability. 17.- The Authority shall not be entitled to the benefit of the limitation of liability provided for in this Act if it is proved that the loss or damage resulted from an act or omission of the Authority, its servants, agents or other persons whose services the Authority makes use of for the purpose of receiving the goods or for performing any services in connection therewith, done with the intent to cause such loss or damage or recklessly and with knowledge that such loss or damage would probably result.

**PART IV - NOTICE OF LOSS OR DAMAGE**

Period of notice.      18.- (1) Notice of loss or damage shall be given to the Authority -

(a) in respect of loss or damage which is apparent at the time of delivery, within 5 days after the receipt of the goods by the person entitled to take delivery of them.

(b) in respect of loss or damage which is not apparent at the time of delivery within 20 days after the receipt of the goods by the person entitled to take delivery of them.

(2) Where the Authority participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the Authority of the loss or damage ascertained during that survey or inspection.

Notice in respect  
of goods totally  
lost or deemed  
lost.

19.- (1) Where goods are totally lost, notice shall be given to the Authority of such loss not later than 5 days when the fact of the loss is known to the person entitled to take delivery or when he becomes entitled to treat the goods as lost in accordance with sub-section (2) of this section.

(2) Subject to sub-section (2) of section 5, if the Authority fails to hand over the goods to, or place them at the disposal of the person entitled to take delivery of them within a period of 30 days after the date expressly agreed upon or in the absence of such agreement, within a period of 30 days after receiving a written request for the goods, the person entitled to make a claim for the loss of the goods may treat them as lost.

(3) The notice required under section 18 and sub-section (1) of this section shall be in writing and shall specify the general nature of the loss or damage.

**PART V - LEGAL PROCEEDINGS**

Prescription  
period.

20.- When any suit is commenced against the Authority, in respect of a claim for loss of or damage to goods or in respect of any matter in connection with such claim, such suit shall not lie or be instituted in any court unless it is commenced within 2 years after the notice of the loss or damage has been given to the Authority.

Notice of  
intention to  
commence suit.

21.- (1) No suit shall be commenced against the Authority until at least one month after a written notice to commence the same has been served upon the Authority by the intending plaintiff or his agent.

(2) The notice referred to in sub-section (1) shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.

Restriction on

22.- In any action or suit against the

execution against  
property of the  
Authority.

Authority, no execution or attachment or  
process in the nature thereof shall be  
issued against the Authority but any sums of  
money which may by the judgement of the  
court be awarded to the plaintiff shall be  
paid by the Authority from the funds of the  
Authority.

#### **PART VI - MISCELLANEOUS PROVISIONS**

Saving of the  
powers of the  
Authority under  
the Ports Ordinance.

23.- Nothing in this Act shall be construed as  
limiting to any extent whatsoever any  
powers conferred on the Authority under  
the Ports Ordinance or any regulations made  
thereunder with respect to maintenance,  
control and management of any port or  
approach thereto and with respect to the  
maintenance of good order in any port or  
approaches thereto.

Overriding power  
of the Act.

24.- Nothing in this Act shall be construed as  
repealing any provisions of the Ports  
Ordinance or any regulations made  
thereunder, except that where there is any

conflict between any provisions of this Act and the Ports Ordinance or any regulations made thereunder with respect to any matter to which this Act applies the provisions of this Act shall prevail.

Serving of notice, summons and processes. 25.- The notice referred to in sections 17, 18 and 20 of this Act and any summons, notice or other document required or authorized to be served upon the Authority in connection with any suit by or against the Authority shall be served by delivering the same to or sending it by registered post addressed to the Chairman or the Secretary of the Authority.

Saving of pending suits. 26.- Nothing in this Act shall be construed as invalidating or affecting in any manner whatsoever any suit or action commenced or anything done or any decision taken prior to the commencement of this Act if such suit, action, thing or decision was validly commenced, done, or taken under any applicable law in force in Nigeria.

Saving of powers under Customs and Excise Management Act, 1958.	27.- Nothing in this Act shall be deemed to derogate from the powers conferred upon any person under the Customs laws as defined in the Customs and Excise Management Act, 1958.
Power of Minister to make regulations.	28.- The Minister may from time to time make such regulations as may be necessary or expedient for carrying out or achieving the objectives and purposes of this Act.
Short title.	29.- This Act may be cited as the Nigerian Ports (Liability for Lost or Damaged Goods) Act 1996.