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NIGERIAN SHIPPERS' COUNCIL ACT, CAP. N133, LAWS OF THE FEDERATION OF NIGERIA, 2004

NIGERIAN SHIPPERS' COUNCIL (PORT ECONOMIC) REGULATIONS, 2015

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S. I. No. 18 of 2015

NIGERIAN SHIPPERS' COUNCIL ACT, CAP. N133, LAWS OF THE FEDERATION OF NIGERIA, 2004

NIGERIAN SHIPPERS' COUNCIL (PORT ECONOMIC) REGULATIONS, 2015

[22*nd Day of April*, 2015] Commencement.

In exercise of the powers conferred on me by section 9 of the Nigerian Shippers' Council Act, 2004 and all other powers enabling me in that behalf, I, SENATOR IDRIS A. UMAR, the Minister of Transport, make the following Regulations—

PART I—OBJECTIVE AND APPLICATION

1. The objective of these Regulations is to create an effective regulatory regime at Nigerian ports for the control of tariffs, rates, charges and other related economic services. Objectives.

2. The Nigerian Shippers' Council (in these Regulations, referred to as "the Council") shall perform economic regulatory role at Nigerian ports, as an Interim Ports Regulator, with the administrative backing of the Federal Ministry in charge of transport in line with— Application.

(*a*) the provisions of section 3(*e*), (*f*) and (*j*) of Nigerian Shippers' Council Act which empowers the Council to—

(*i*) advise the Government of the Federation, through the Minister, on matters relating to port charges, facilities and other related matters,

(*ii*) negotiate and enter into agreements with Conference Lines and Non-Conference Lines, ship owners, the Nigerian Ports Authority and any other body on matters affecting the interest of shippers, and

(*iii*) carry out such other activities as are necessary to the discharge of its functions under the Act ;

(*b*) the provisions of the Port Concession Agreements entered into between Nigerian Ports Authority as Lessor, Bureau of Public Enterprises as the Confirming Party and Concessionaires as Lessees which provide for the role of a Port Regulator to regulate and control the development and conduct of Nigeria's port industry ; and

(*c*) the need to enforce fair trade practices that will ensure the protection of rights and balance of interests of providers and users of shipping and port services at Nigerian ports.

3. In the performance of the Regulatory roles under regulation 2 of these Regulations, the Council shall— Performance of Regulatory Role.

(*a*) provide guidelines on tariff setting in order to guard against arbitrariness ;

(*b*) monitor and enforce standards of service delivery to ensure availability, accessibility, affordability, stability, predictability and adequacy of services ;

(*c*) encourage competition and guard against the abuse of monopoly and dominant market position ;

(*d*) perform mediatory role among stakeholders ;

(*e*) establish accessible and modern dispute resolution mechanisms ;

(*f*) regulate market entry and exit ;

(*g*) promote efficiency in the provision of Port services ;

(*h*) minimise high cost of doing business and prevent its inflationary effect on the Nigerian economy ;

(*i*) encourage private sector investment in the port sector ; and

(*j*)monitor and ensure compliance by all parties with the provisions of Port Concession Agreements.

PART II—REGULATED SERVICE PROVIDERS AND REGULATION OF TARIFFS AND CHARGES

Registration of providers of regulated services and other port users.

4.—(1) From the commencement of these Regulations, every Regulated Service Provider at Nigerian ports shall register with the Council.

(2) For the purposes of sub-regulation (1) of this Regulation, "Regulated Service Providers" include—

(*a*) the Nigerian Ports Authority ;
(*b*) Seaport Terminal Operators ;
(*c*) Shipping Companies and Agencies ;
(*d*) Off Dock Terminal Operators ;
(*e*) Cargo Consolidators ;
(*f*) Logistics Service Providers ;
(*g*) Freight Forwarders and Clearing Agents ;
(*h*) Inland Container Depot Operators ;
(*i*) Stevedoring Companies ; and
(*j*) any other port service provider or user.

Regulation of Tariffs and Charges.

5.—(1) From the commencement of these Regulations, the Council shall have power to—

(*a*) determine, provide and cause to be published, guidelines for the registration of Regulated Service Providers specifying, amongst other things, the terms and conditions for the registration ; and

(*b*) provide guidelines on tariffs, rates and charges, including setting the minimum and maximum levels of tariffs that shall be applicable in the port sector in Nigeria.

(2) The Council shall have power to monitor and review tariffs, rates and charges of the regulated services to ensure conformity with the approved guidelines, taking into consideration the prevailing local and global economic trends affecting the port industry and the market.

(3) The Council shall publish from time to time as it may deem necessary, all Tariffs, Rates and Charges levied by the Regulated Service Providers.

(4) Tariffs, rates and charges levied or made in contravention of the Guidelines provided by the Council shall constitute an offence under these Regulations.

(5) Any Regulated Service Provider that publishes any tariff, rate or charge other than the tariffs, rates or charges approved by the Council, commits an offence and shall be given a public warning or suspension for a specific period not more than six (6) months and if it persists, shall be blacklisted by the Council.

(6) A Regulated Service Provider listed in regulation 4 (2) of these Regulations, shall file its operating tariffs, rates and charges with the Council within 21 days of setting the tariffs, rates or charges or on request.

(7) A Regulated Service Provider that fails to comply with the provision of sub-regulation (6) of this regulation commits an offence and shall be suspended for a period not more than 3 months and if it persists, after the three months, shall be blacklisted and de-registered.

Power to Monitor and Report.

6.—(1) The Council shall monitor all matters relating to the cost, standard and quality of services rendered by the Regulated Service Providers at Nigerian ports and the market.

(2) Matters upon which the Council shall monitor and report include—

(*a*) the implementation of these Regulations ;

(*b*) the standards and quality of services rendered by the Regulated Service Providers in the port sector ;

(*c*) the tariff, rates and charges applied by the Regulated Service Providers in the port sector ;

(*d*) cargo clearance procedures and processes ; and

(*e*) any other relevant matter relating to services rendered in the port sector.

(3) For the purposes of monitoring and reporting on the matters enumerated in sub-regulation (2) of this regulation, the Council's officials or authorised agents shall have access to port premises and facilities at all times.

PART III—INFORMATION AND EVIDENCE

Power to obtain Information.

7.—(1) This regulation shall apply to all Regulated Service Providers whom the Council has reason to believe—

(*a*) have any information, records or documents that are relevant to the exercise of the Council's regulatory function in the port pursuant to the Presidential Order and these Regulations ; or

(*b*) are capable of giving any evidence which the Council believes is relevant to the exercise of the regulatory powers of the Council under these Regulations.

(2) The Council may, by a written notice, direct any person who is subject to these Regulations, in relation to the information contemplated in sub-regulation (1) of this regulation to—

(*a*) give the Council such information, within the period and in the manner and form specified in the notice ; or

(*b*) produce to the Council any document within the period and in the manner and form specified in the notice.

(3) Any person who is subject to these Regulations and who is required to provide information under sub-regulation (2) of this regulation shall ensure that the information provided is true, accurate and complete.

Refusal or failure to provide Information.

8.—(1) A person who refuses, fails or omits to give any relevant information, evidence or document under regulation 7 of these Regulations shall be issued a warning to provide such information within 5 working days failing which the person shall be suspended from operation for a period not more than six (6) months and if he fails to provide the information, shall be de-registered and blacklisted.

(2) Notwithstanding the provisions of regulation 7 of these Regulations and sub-regulation (1) of this regulation, a person who is subject to these Regulations and who provides information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Council, commits an offence and shall be suspended from operations at the ports and have his premises sealed for a period not more than six (6) months and if he persists in the wrong doing, shall be de-registered and blacklisted.

(3) A person shall not—

(*a*) threaten, intimidate or coerce another person ; or

(*b*) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage because that other person complied, or intends to comply with the request made under this regulation.

(4) A person who contravenes the provisions of sub-regulation (3) of this regulation commits an offence and shall be liable to be de-registered and black listed.

(5) A person shall not be liable for any loss, damage or injury suffered by another person for giving any information or documents to the Council in good faith, under this regulation.

Evidence of Compliance.

9. A person who is subject to these Regulations, shall produce to the Council evidence of compliance with the provisions of these Regulations or Guidelines made under it, when required in writing to do so.

PART IV—COMPLAINTS AND INVESTIGATION

Investigation.

10. The Council may investigate any matter pertaining to the administration of these Regulations, if the Council has any ground to believe that an infringement of these Regulations is, has been or will be committed.

Conduct of Investigation upon a written Complaint.

11.—(1) The Council may conduct an investigation on a matter referred to it upon a written complaint by a person and the complaint shall specify against whom the complaint is made.

(2) Where a complaint has been made to the Council under this regulation, the Council may make preliminary inquiries of the complaints for the purpose of deciding whether to investigate the matter or not.

(3) Where the Council decides not to investigate a matter to which a complaint relates, or to stop the investigation of a matter after its commencement, it shall within 7 days from the date of the decision and in such manner as it deems fit, inform the complainant and the respondent of the decision and the reasons for the decision.

Conduct of Investigation.

12.—(1) Prior to the commencement of the investigation of a matter to which the complaint relates, the Council shall inform the respondent that the matter is to be investigated.

(2) An investigation under this Part shall be conducted as the Council considers appropriate and the Council may, for the purposes of an investigation, obtain information from any person as it deems fit.

(3) A complainant or respondent may be given an opportunity to appear before the Council in connection with an investigation.

(4) The Council shall not, as a result of an investigation, make a finding that is adverse to a complainant or respondent unless it has given the parties involved an opportunity to make written submissions in relation to the matter to be investigated within a period of 21 days.

(5) The Council shall consider the written submissions made by the complainant or the respondent before making a decision.

(6) On the conclusion of an investigation, the Council may prepare and publish a report which shall cover—

(*a*) the conduct of the investigation ;

(*b*) any findings that the Council has made as a result of the investigation ;

(*c*) the evidence and other material on which those findings were based ; and

(*d*) such other matters relating to or arising out of the investigation as the Council may deem fit in the circumstance.

PART V—MONITORING AND ENFORCEMENT

Power to enter premises.

13.—(1) The Council may in writing authorise any of its officials or appoint external inspectors to exercise on its behalf the powers of monitoring and enforcement vested in the Council under these Regulations.

(2) The Council may direct its authorised officials or appointed external inspectors to investigate the activities of Regulated Service Providers with regard to compliance with these Regulations and Guidelines made thereof.

(3) In the exercise of powers specified in sub-regulation (2) of this regulation, an authorised official of the Council or its appointed inspector—

(*a*) shall on demand produce to the person against whom he is acting, the authority issued to him by the Council ;

(*b*) may at any reasonable time and without prior notice, enter the premises of any affected Regulated Service Provider to—

(*i*) inspect and make copies of extracts from books, records, documents or other information storage systems ; and

(*ii*) demand the production of and inspect the relevant licence, permit, certification or authority; and

(*c*) shall obtain a warrant prior to the entry into the premises of any affected person who is not a Regulated Service Provider under the meaning of these Regulations.

Power to issue Guidelines.

14.—(1) The Council may issue guidelines generally for carrying into effect the provisions of these Regulations.

(2) The Council shall provide guidelines for vessel and cargo clearance and handling procedures, operations of shipping companies and terminal operators, operations of cargo surveyors, and other related practices or operations at Nigerian ports.

PART VI—MISCELLANEOUS

Offences.

15.—(1) Any person who fails to comply with the provisions of these Regulations or performs any act in contravention of the provisions of these Regulations or of any Guideline made pursuant to it or any relevant enactment in the course of the provision or use of port and related services shall be deemed to have committed an offence and shall be liable to appropriate sanctions which shall include—

(*a*) private warning ;

(*b*) public warning ;

(*c*) suspension of operations and sealing of premises for a specific period of time, which shall in the opinion of the Council be deemed to be reasonable ;

(*d*) blacklisting ; or

(*e*) de-registration and revocation of operating license.

(2) Notwithstanding the provisions of sub-regulation (1) of this regulation and without prejudice to other provisions of these Regulations, the Council shall have power to impose any other appropriate sanctions to enforce compliance with the provisions of these Regulations, guidelines made or directives given by the Council in the performance of its duties.

(3) Where an offence under these Regulations is committed by a body corporate with the connivance of or is attributable to any act, omission or negligence on the part of a director, manager or other principal officer of the body corporate, or any person purporting to act in any such capacity, the person as well as the body corporate, where practicable, is deemed to have committed the offence and shall be liable to be prosecuted.

(4) Any person who refuses, neglects or fails to comply with any penalty imposed upon him by virtue of the provisions of these Regulations or any Guidelines made pursuant to it, shall have its operational premises sealed off until the penalty has been complied with.

Interpretations.

16. In these Regulations—

"*Blacklisting*" means the indefinite stoppage of a service provided by a Regulated Service Provider for violation of any provisions of these Regulations ;

"*Council*" means the Nigerian Shippers' Council established by the Nigerian Shippers' Council Act, Cap. N133 Laws of the Federation of Nigeria, 2004 ;

"*charges*" includes all kinds of fees, charges and payments for services rendered or to be rendered in the port sector ;

"*Deregistration*" means removal of the name of a Regulated Service Provider from the register ;

"*Economic Regulation*" means Government intervention designed to influence the economic behavior of firms and individuals in the public or private sector and involves the imposition of rules backed by penalties and sanctions aimed at modifying the economic behavior of individuals or firms in the private or public sector. This includes the regulation of tariffs, rates and charges, quality of service, market entry and exit, competition, availability, accessibility, affordability, stability, predictability and adequacy of service ;

"*Fair Trade practices*" means practices which are not fraudulent, deceptive or dishonest, or prohibited by Guidelines, Regulations, domestic or international law ;

"*Guidelines*" refers to Guidelines made pursuant to the execution of the Council's Regulatory role ;

"*Person*" includes a natural person, corporate body or partnership ;

"*Port Concession Agreement*" refers to the Agreement entered into by the Federal Government of Nigeria or its agencies with concessionaires ;

"*Port Regulator* or "*the Council*" means Nigerian Shippers' Council ;

"*Providers and users of Port Services*" includes port and harbours operators, seaport terminal operators, off-dock terminal operators, river port operators, dry or inland port operators, stevedoring companies, bonded warehouse operators, shipping companies, shipping agencies, shippers, freight forwarders, cargo consolidators, etc ;

"*Minister*" means the Minister in charge of transport ;

"*Rates*" means individual costs for each item or component of service in the port sector ;

"*Regulatory role*" refers to the directive of the President of the Federal Republic of Nigeria given to the Nigerian Shippers' Council to perform as Interim Port Economic Regulator for Nigerian ports ;

"*Shipping company*" means any company registered in Nigeria which carries on business as the agent of a shipping line or carrier and provides such ancillary services as handling, security, berthing, discharge, loading, clearance and warehousing ;

"*Suspension*" means stopping a Regulated Service Provider from carrying out its business for a specific period of time not more than 6 months ; and

"*Tariffs*" means list of charges and fees levied in respect of port services.

18. These Regulations may be cited as the Nigerian Shippers' Council (Port Economic) Regulations, 2015. **Citation.**

MADE at Abuja this 22nd day of April, 2015.

SENATOR IDRIS A. UMAR
Minister of Transport

EXPLANATORY NOTE

(This note does not form part of the these Regulations but is intended to explain their purport)

These Regulations establish a regulatory regime at Nigerian Ports for the regulation of tariffs, rates, charges and other related economic services, in the interim, pending the enactment of an applicable enactment by the National Assembly.