

COMPULSORY PILOTAGE DISTRICTS AND THE LIMITATION OF VESSEL OWNER'S LIABILITY

It is essential for ships coming into Port from international waters to have on board persons familiar with the local waters, in order to avoid accidents, particularly as the Master of a vessel plying international routes cannot be expected to be familiar with the local waters of each and every port the vessel calls into. Each vessel coming into Nigerian port is therefore obliged to contract the services of a licensed pilot to guide the vessel to berth.

The Nigerian Ports Decree 1999

(the "NP Decree") basically governs the issue of compulsory pilotage in Nigeria. Section 41 of the NP Decree empowers the Minister of Transport (the "Minister") to establish pilotage districts and areas of compulsory pilotage within the confines of any port, or the approaches to and exits from any port, or within Nigerian territorial waters. The Minister is also empowered to make other subsidiary legislation, orders and byelaws regulating pilotage activities in the Nigerian ports. These regulations are normally administered by the Nigeria Ports Authority (NPA), which is referred to as "the Company" throughout the Decree.

Where an area is designated a compulsory pilotage district, any vessel navigating within such an area or being moved within the Port in the district must have either a "company pilot" or a "licensed pilot" on board. A "Company Pilot" is simply a pilot employed by the NPA. A "licensed pilot" is a non- NPA pilot who is licensed by the NPA to provide pilotage services.

The following classes of vessels are exempted from the need to have a pilot on board the vessels, even if navigating within compulsory pilotage districts:

- Ships belonging to any of the armed forces of the Federation.
- Ships owned or operated by the Company.
- Pleasure yachts.
- Ferry boats plying exclusively within port limits.
- Ships not exceeding ten tones gross tonnage.
- Tugs, dredgers, barges, or similar vessels whose ordinary course of navigation does not exceed beyond port limits.
- Ships exempted form compulsory pilotage by regulations made by the Minister.

The following compulsory pilotage districts have been designated by the Minister under the NP Decree. Alongside are the rates chargeable:

Pilotage Districts	Rates (in US \$)
Lagos Fairway to Lagos Port Complex	0.059 per ton of GRT
Lagos Fairway to Tin Can Island Port and beyond.	0.071 per ton of GRT
Bonny Fairway to Bonny Town	0.078 per ton of GRT
Bonny to Port-Harcourt	0.092 per ton of GRT
Port-Harcourt to Okrika	0.059 per ton of GRT
Bonny to Okrika	0.088 per ton of GRT
Bonny to Onne	0.071 per ton of GRT

Escravos Fairway to Warri	0.176 per ton of GRT
Escravos Fairway to Sapele	0.162 per ton of GRT
Escravos Fairway to Koko	0.176 per ton of GRT
Escravos Fairway to Burutu	0.129 per ton of GRT
Calabar Fairway to Calabar Port	0.162 per ton of GRT
Bonny to Dawes Island	0.071 per ton of GRT
Dawes Island to Okrika	0.038 per ton of GRT
Dawes Island to Port-Harcourt	0.059 per ton of GRT
Bonny to Abonnema	0.162 per ton of GRT

LIABILITY OF OWNER/MASTER WHERE A SHIP IS UNDER PILOTAGE WITHIN A COMPULSORY PILOTAGE DISTRICT (Ss. 54 and 55)

S. 54 of the NP Decree renders the Master or Owner of a vessel navigating in a compulsory pilotage district answerable for any loss or damage caused by the ship or by any fault of the navigator of the ship in the same manner as he would be liable if pilotage were not compulsory.

Indeed, the **Nigerian Ports Plc Dues and Rates Regulation 1993** specifically states that the “*safe navigation of a ship including piloting in a compulsory pilotage district is the duty of the master regardless of the presence of a compulsory pilot*”. The regulations go further to state that “*the contract*

under which pilotage services are proffered and rendered, is performed solely in the pilot's capacity as the servant of the ship and her owners." The liability of the Master in this instance does not prevent the owners from commencing proceedings to limit their liability under the Nigerian **Merchant Shipping Act (MSA)**. Based on Section 383 of the MSA, the company is entitled to limit its liability where the act causing damage to property or life is carried out without its actual fault or privity. The owners are thus entitled to limit their liability in accordance with the relevant provisions of the MSA.

It is worthy of note that although the pilot who (due to his lack of skill or neglect) causes damage to the vessel being navigated or to another vessel or other property, may be proceeded against in court. Section 55(1) of the Decree limits a pilot's liability (i.e. the pilot's contribution to the damage) so as not to exceed the penalty of a bond and the amount due to him for his duties as a pilot on the occasion of the damage. Presently, the bond given by the Nigerian Ports Authority (NPA) pilot does not exceed ₦10,000.00 (or approx. US\$ 100.00)! Furthermore, note that the Act only appears to limit the liability of NPA pilots and not independently licensed pilots.

Section 55(3) of the Decree empowers a court of law to determine a pilot's liability when other claims are apprehended in respect of the same neglect or want of skill. Having regard to the fact that the Decree limits a pilot liability to ₦ 10,000.00, it is doubtful whether the amount, which the court would determine, will be higher than the limit prescribed by the Decree. Such sum or amount as determined by the court would be paid into court. When payment has been made to the court, the court will do one or more of the following:

- Distribute the amount ratably among the several claimants.
- Stay any proceedings pending in any other court in relation to the same matter.
- Make persons interested parties to the proceedings.
- Exclude claimants who do not come within a certain time.
- Require security from the pilot.
- Ensure payment of costs.

It should be noted that there are provisions within the Decree that could render the NPA liable (in relation to its duties in connection with pilotage) for loss or damage caused to a ship. For instance, under S. 87 of the Decree, the NPA would be liable where it is proved that the damage caused was a result of the NPA's actual fault or privity. Where this has been established, the Decree states that the NPA shall not be liable beyond "the amount of N 10,000.00 (approx. US\$100.00) multiplied by the number of NPA and licensed pilots entitled to pilot ships in the pilotage district where the loss or damage occurred. The Decree, however does not indicate what would amount to "actual fault or privity" of the NPA and this will turn on judicial interpretation although it is assumed that the same principles applicable to Ship owners seeking to limit their liability under the MSA will apply.

LIABILITY OF OWNER WHERE SHIP IS NAVIGATING WITHIN COMPULSORY PILOTAGE DISTRICT WITHOUT A LICENSED OR COMPANT PILOT ON BOARD

Where a ship navigates within a compulsory pilotage district without an authorized pilot on board, and causes damage to another vessel, the owners of the erring vessel would be liable for the damage caused. Furthermore, the owners of the erring vessel would be unable to limit their liability under section 383 of the MSA. The reason being that for an owner

to limit its liability under the MSA, it must be established that the cause of the damage was not borne of its actual fault or privity. Nigerian courts have held that where a vessel navigates in a compulsory pilotage district without a licensed pilot on board, that amounts to actual fault or privity on the part of the owners.

Authority for this proposition can be found in the case of **AXIS OWNERS OF THE M.S “DRAGON II” – VS- TIDEX (NIGERIA) LIMITED, OWNERS OF THE M.V. “RED RIVER” AND SANTA FE (NIGERIA) DEVELOPMENT CO. LTD [1972]. Unreported**, where the High Court of the Lagos State held that:

“The owner of a vessel in waters where pilotage is compulsory has the duty of ensuring that under no circumstances will the vessel navigate without a pilot; and allowing the vessel to navigate without a pilot amounts to actual (fault) or privity within the meaning of S. 383(1) of the Merchant Shipping Act, 1962 disentitling the owner from limiting his liability as provided in the section.”

In a more recent case (1998) in which this firm represented the defendants in an action for limitation for liability, the plaintiff’s vessel was navigating in a compulsory pilotage district without a pilot on board. The plaintiffs’ vessel collided with the defendant’s vessel and the plaintiffs subsequently instituted limitation proceedings. At the hearing, the court, following the decision in the case aforementioned, ruled that the plaintiff’s were not entitled to limit their liability, on the ground that allowing a vessel to navigate in waters where pilotage was compulsory without a pilot on board amounted to “actual fault or privity” on the part of the owners within the meaning of S.383 (1) of the MSA.

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