

AWARENESS SEMINAR

ON

THE ROLE OF CARGO DEFENCE FUND
IN THE PROTECTION OF NIGERIAN SHIPPERS

AN OVERVIEW OF THE IMPLEMENTATION
OF THE CARGO DEFENCE FUND

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ESSENCE OF THE CARGO DEFENCE FUND

In order to critically assess the extent and quality of implementation of the Cargo Defence Fund, it is necessary to highlight the factors which led to the setting up of the fund.

Over the years several factors militated against pursuit of legitimate cargo claims by Nigerian importers and exporters. These factors include:

- inadequate shipping documentation
- adverse terms of carriage (limitation periods, limitation of liability, jurisdiction clauses, exemption clauses etc)
- inadequate insurance cover
- financial constraints affecting pursuit of legitimate claims
- ignorance/uninformed transactions

These developments led to many importers and exporters suffering substantial financial losses which in turn impacted adversely on the Nigerian economy.

The Nigerian Shippers' Council fully conscious of its statutory functions which include, **protecting the interest of shippers on matters affecting the shipment of imports and exports to and from Nigeria¹** took up the bold challenge of establishing the Fund to address these problems. The Scheme was therefore envisioned to undertake responsibility for cost of legal and expert (Surveyors, Adjuster etc) representation and advice, investigation and assistance in connection with a dispute arising from a participating shipper's

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¹ See Section 3 of the Nigerian Shippers Council Act 1990.

ownership or interest in any cargo shipped, consigned or transported on board a vessel, aircraft or even by rail or road in cases involving through or combined transportation in and out of Nigeria. The scheme is designed to be complimentary of the usual insurance policy in the pursuit of claim recovery and legitimate litigation in respect of shipments in and out of Nigeria.

Accordingly, in the year 2001, the Nigerian Shippers' Council launched the Shippers' Protection or Cargo Defence Fund as a **company limited by Guarantee** under S. 26 of the Companies and Allied Matters Act 1990. The scheme was launched with a N10 Million "seed" fund by the Federal Ministry of Transport and several other donations.

It is envisaged that all shippers registered with the various State Shippers Association will be entitled to benefit from the scheme - primarily by way of advice on their legal rights and funding shippers' litigation and claim recoveries. It is noteworthy that most Protection & Indemnity (P&I) and Defence Clubs in Europe and USA are organised in this manner as corporate bodies limited by guarantee designed to assist ship owning members in protecting and asserting their legal rights.

In the light of the perceived objectives of the Council and the needs of Nigerian shippers, the setting up of the Fund structured as a company limited by guarantee and with full powers to operate as a separate body corporate is not only timely but most welcome. It is equally important that due consideration should also be given to the

cost effectiveness and efficiency of the corporate body in order to inspire confidence from the Nigerian shippers.

At the year 2001 launching of the Fund in Abuja, this writer advocated that proper administrative and competent technical management should be put in place under a well-constituted Board of Directors/Trustees to ensure the Fund's credibility and acceptance in the shipping industry. He also stressed that much publicity and public enlightenment were critical to increase the awareness of indigenous shippers of the existence and role of the Nigeria Shippers' Council and the Fund.

It is now a year since the Fund was launched and an opportuned time to assess the degree of implementation and draw attention to vital issues which need to be addressed to enhance growth and efficiency. The following key developments have taken place and/or are imperatives in the best interest of the implementation of the Scheme:

- (i) **Management:** The Fund is presently being managed as a special unit under a Deputy Director in the office of the Managing Director of the Nigerian Shippers' Council.

It is hoped that this approach is only a temporary measure in order to get things going and that very soon the Fund being a distinct corporate entity will develop it's own fully operational offices with all the requisite technical manpower and supporting data base and information technology.

The Unit is presently building up its operational base and basic infrastructures. It is hoped that this is not hampered by the bureaucratic "red tape" which informed the recommendation that the Fund be a separate and distinct legal entity from the Council.

- (ii) Trustees: A Board of Trustees, under the Chairmanship of a well respected insurance expert in the person of Prof. J. O. Irukwu, has been constituted to administer the Fund. It is also noteworthy that membership on the Board comprises of other eminent captains of industry, professionals and representatives from Zonal Shippers' Associations of the Council in the country.

The membership of the Board of the Trustees is seen therefore as being representative of a fair cross section of Nigerian cargo interests. The Board, which is expected to meet quarterly, is charged with the actual consideration and approval of all disbursements of the Fund based on the claim reviews and recommendations received from the Special Unit in the Managing Director's office.

It is to be expected that this Board will put in place well defined and strict criteria for eligibility to ensure that the Fund is not abused or seen as part of the infamous "national cake".

(iii) **Funding:** The Cargo Defence Fund was launched by the Federal Ministry of Transport with the sum of N10 Million Naira. Much as this amount is rather low, other agencies and transport parastatals also pledged support for the Scheme. It is hoped that the Council and, indeed, the Fund itself will be able to generate additional funds from within and other sources to enhance implementation of the Fund's objectives. It should be stressed that monies received into the Fund should be well invested for maximum returns and judiciously utilised.

(iv) **Eligibility:** Presently, every Shipper by merely registering as a member of any Zonal Shipper's Association is eligible to present a case before the Fund and its Trustees once his legitimate legal rights have been adversely affected. The Fund remains entitled to review same and determine its merits for appropriate assistance within the established criteria.

As was recommended in the Legal Survey which preceded the establishment of this Fund, it may be desirable to make the Fund a **self-sustaining and contributory Scheme** into which members may subscribe on an annual basis distinct from their contributions towards the membership of the Zonal Shippers' Association.

(v) **Publicity:** It is indeed commendable that an awareness programme is being embarked upon by the Fund in conjunction with the Nigerian Shippers' Council in different parts of the country. This initiative should lead to increased awareness of

the benefits of the Fund among different classes of cargo interests.

It is also important that the awareness programme should include basic enlightenment which would enable Shippers appreciate how shipping documentation and terms are packaged. This would bring about less uninformed transactions and shipping documentation leading ultimately to less contentious cargo claims.

These efforts should translate into more enlightened participation and promotion of the Fund in the best interest of the Nigerian economy.

- (vi) Collaborative Scheme: The implementation of the Fund should progressively evolve into a collaborative and facultative Scheme with the Marine Offices Committee of leading Chambers of Commerce and Marine and Aviation Insurance Companies within the Nigerian economy. This Scheme should not at any time be seen as been in competition with, but rather complimentary to the insurance industry.
 - (vii) Cargo Policy: A radical change in the Nigerian Cargo Policy supportive of a Free on Board (FOB) imports and Cost Insurance and Freight (CIF) exports will go a long way in protecting the Nigerian cargo interests who will be able to generate more protective and favourable contract terms and shipping documentation for their cargo.
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- (viii) Alternative Dispute Resolution (ADR): This approach which is seen as more cost efficient and time saving should be explored by the Trustees as a pragmatic approach to resolving cargo claims being addressed by the Board as and when appropriate in the best interest of the Shippers.

Conclusion:

It is still early days yet for determining whether the implementation of the Fund is fully "on course" or "off course". Pertinent issues such as claim recoveries, foreign jurisdiction, foreign legal representation, evidential burden of proof and their necessary implications are yet to be fully contended with in implementing this laudable Scheme.

It is hoped that the vision which informed the establishment of the Fund will not be stifled but nurtured and given scope for growth from year to year thereby assuring a vibrant Cargo Protection Scheme for many generations to come of cargo interests in a dynamic Nigerian economy.
