

# The Legal Framework for Setting up A Deep Sea Port in Nigeria

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**Abstract:** The purpose of this research is to identify the necessary framework to set up a Deep Sea Port in Nigeria. A Deep Sea port is a port that provides for the staging and anchoring or docking of boats, ships, and other marine vessels often for the purpose of loading or unloading products or goods. The difference between deep sea ports and regular ports is that a deep sea port has a longer depth from surface to sea bottom. We will examine the framework and regulatory compliance required to set up a Deep Sea Port. Finally, we will consider the impact of Deep Sea Ports around Nigeria on the Nigerian economy.

**Keywords:** Legal Framework, boats, ships, and other marine vessels.

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## 1. INTRODUCTION

In the global maritime industry, there is a trend moving towards the creation of deep seaports. Most developments in the maritime industry relates to seaport development and the reason for this scramble is not unconnected to the economic gains of using very large carriers. This preference for mega ships which can only berth in deep drafts is expected to increase. It can be likened to the evolution of cars from small and slow to big and fast.

The maritime industry is regarded as the nation's second revenue earner after oil and gas. However, analysts believe that the industry has the potentials to surpass the oil and gas sector if properly regulated and operated. Nigeria's maritime sector is central to her economic development. Nigeria is dominant in the import and export trade within the West and Central African sub-region thus Nigeria, cannot be expected at the rear lines in the scramble for deep seaports in the global maritime industry.

Seaports are gateways to and fro most coastal states and can also be said to be an avenue for international trade between such states and the international markets. Existing ports and their capacities have become inadequate to meet the constant increasing volume of cargo and trade demands thereby, affecting shipping operations adversely.

The construction of Deep Sea Ports with very deep draughts will go a long way in improving the quality of shipping operations in Nigeria.

It is against this backdrop that this article will consider the legal and legislative framework of setting up a Deep Sea Port.

## 2. THE CONCEPT OF A DEEP SEA PORT

A port is usually an area or platform entered into from the sea, by vessels, boats, ships, which also allows for protected staging and anchoring or docking for these ships to load and unload consignments and continue towards their destination.

The Section 445 of the Merchant Shipping Act of 2007, defines a Port as: "a place for arriving, loading and unloading of ships and includes a harbour, piers, jetty and lighter terminals."

A deep water port, from its nomenclature, is different from regular ports in respect of the depth of water. A usual port ranges from about 6-9 metres of depth. It has been said that a Deep Sea Port is a port that has a depth of at least 18 metres. Some maritime experts have opined that a Deep Sea Port must be able to accommodate a Panamax Ship.

A Deep Sea Port is usually made for the usage of very large and heavily loaded ships. The depth of water helps get them access to the deep water ports.

Due to the connection of a Deep Sea Port with the depth of water, it is not impossible that the desired location will be far into the sea. A legal challenge might be posed where a Deep Sea Port is to be constructed beyond twelve (12) nautical miles. Section 1 of the Territorial Waters Act, Cap T5 L.F.N 2004 provides that the territorial waters of Nigeria include every part of the open sea within twelve (12) nautical miles of the coast of Nigeria (measured from low water mark) or of the sea-ward limits of inland waters. However, this challenge might be solved by the fact that Nigeria exercises control over 200 nautical miles from its coastline. This area is known as Exclusive Economic Zone (“EEZ”).

Usually, for ports to be constructed, the boundaries are outlined by regulatory authorities, which are discussed below.

### 3. APPLICABLE LEGISLATION FOR SETTING UP A LEGAL FRAMEWORK

Section 8(L) of the Nigerian Ports Authority (“NPA”) Act stipulates that the Nigerian Port Authority can “enter into agreement with any person for the operation or provision of any of the port facilities which may be operated or provided by the Authority”.

The duty to grant an area as a port is provided for in Section 30 (1) of the Nigerian Ports Authority Act.

Section 30(1) which states:

1. The Minister may, by order -

1. declare any place in Nigeria and any navigable channel leading into that place, to be a port within the meaning of this Act;
2. specify the limits of any place declared, as a port in accordance with paragraph (a) of this subsection;
3. Declare any navigable channel leading into a port to be an approach to that port, within the meaning of this Act.

The construction of a Deep Sea Port in Nigeria would require compliance with several Governmental Authorities’ Laws/Regulations and Guidelines for Approvals, Permits and Consent. These requirements are outlined below;

#### (a) The Federal Ministry of Transport/Nigerian Ports Authority – NPA Act:

- Application for the Declaration of area as a Port Area to the Public – pursuant to Section 30 of NPA Act;
- Design and approval of engineering design and other technical documents;
- Application for Building permits;
- The NPA has the power to seek, through the President of Nigeria, that any land or building is declared as being required by the NPA for a public purpose and that same be acquired – pursuant to the provisions of the Lands Use Act, Cap. L5, LFN, 2004;
- Dredging and Dumping/Reclamation Permit - pursuant to sections 8(n),(o) and 9 which states that NPA can reclaim, excavate, enclose, raise or develop any of the lands acquired by or vested in the Authority;
- Notification of port coordinates and layout of sub-sea communication cables to the UK Hydrographic Department, through the NPA; and
- Approval from the Federal Ministry of Transport for NPA’s expenditure above N250 Million.

#### (b) The State Government of the area where the Port would be located:

- Application for a Right of Occupancy in respect of foreshore land adjacent the sea and coastal land – pursuant to the Lands Use Act, Cap. L5, LFN, 2004 or create security over land interest such as Governor’s Consent; and
- Operations Permit for dredging and developmental activity (reclaiming land) along the waterfronts (for example, the law in Lagos State - Waterfront Infrastructure Development Law, 2009).

#### (c) Nigeria Maritime Safety and Administration Agency (“NIMASA”):

Permit to do any act that may affect maritime safety obtainable from the NIMASA Director General – pursuant to Section 22, NIMASA Act, 2007

**(d) Board of Customs and Excise:**

- Application to the President (through Customs) for the designation of the Port Area as a Customs Port – pursuant to Section 12, Customs and Excise Management Act, Chapter C45, Laws of the Federation of Nigeria, 2004; and
- Approval of a place as a wharf at a Customs Port – pursuant to Section 14, Customs and Excise Management Act, Chapter C45 Laws of the Federation of Nigeria, 2004.

**(e) Ministry of the Interior/Immigrations:**

- Application to the Minister for Interior for recognition of the Port as a port of entry – pursuant to Section 14, Immigration Act, CAP 11, Laws of the Federation of Nigeria, 2004.

**(f) Other Regulatory Bodies**

- National Environmental Standards and Regulations Enforcement Agency (“NESREA”);
- The Federal Ministry of Environments;
- Nigeria Export Processing Zone/ State Free Trade Zones;
- Nigerian Civil Aviation Authority (“NCAA”).

**4. IMPACT OF A DEEP SEA PORT IN NIGERIA**

- **Employment Impacts:** The creation of more Deep Sea Ports will help create jobs and increase employment of services. It can create directly and/or indirectly, approximately three to four million jobs over a five year period.
- **Regional Load Centre:** It is pertinent to state that a Deep Sea Port’s primary benefit is its capability to handle larger vessels. This capacity brings with it many advantages to the nation’s maritime industry and fall-out economic gains. Since Nigeria is already a dominant market for ships bound for West and Central Africa regions, creation of more Deep Sea Ports will increase Nigeria’s chance to attain regional shipping hub status.
- **Economic impacts:** It will also increase revenue from berthing charges and handling charges for the transshipment of cargoes. The whole enhanced general maritime activities will create jobs and improve per capita earnings, which are important factors in GDP economics. The effects on the economy if Nigeria attains regional transshipment status will be huge. Nigeria will become a primary destination for ships bound for West Africa, a position complemented by hub port capabilities; transshipment in Nigeria would in these circumstances become a valid and compelling business decision, with collateral shuttle services from Nigeria to other ports in the region. Local bunker markets, ship agency representation, marine insurance sales, more robust port dues and royalties payable to government, increase in the range of handling services, ship repair and dockyard services, pilotage, legal services, including positioning as a regional arbitration centre and development of other professional maritime services etc., will be benefits accruing from having Deep Sea Ports in Nigeria.

**5. THE FACILITIES NEEDED IN A DEEP SEA PORT**

- Modern diversified facilities;
- Deep sheltered waters;
- Track record in oil and gas;
- On and offshore renewable support;
- Premier Cruise destinations;
- Good communication links;
- Skilled labour force; and
- 24 hour access.

It is envisaged that the creation of more deep sea ports in Nigeria will enhance international trade and increase the efficiency of port operations and management. It will also lower the cost of freight and port services to port users. However, the right legal framework must be put in place to ensure that an enabling environment is created for the realisation of the policy objectives.

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