

Economic Regulator Issues SOPs for Ports in Nigeria

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Further to an executive order confirming it as economic regulator for Nigerian ports, the Nigerian Shippers Council recently issued Standard Operating Procedures (SOPs) applicable to various users and operators of ports in Nigeria. The SOPs are designed to help in fighting corruption and making the ports more viable for economic activity through the application of technology. They are individually customised for different categories of operators in the port including government regulators, terminal operators, calling ships, shipping companies and support services. Separate SOPs have been developed to cover operations of the ports authority, maritime administration, shippers' council, immigration, customs, drug law enforcement, agricultural quarantine and each of the licensed private terminal operators.

The highlights for each of the SOPs are customised to relate to the individual operations and mandates of the affected organisations. Key highlights of the SOPs for terminal operators are broadly similar, and include standards for vessel reception, booking and positioning of containers, terminal delivery processes, invoicing and container return. Maximum time values are allocated to many of the procedures while guidance is given for billing of storage charges.

Relevant legal issues which may fall for consideration as a result of the SOPs include the powers of the issuing authority and the relationship of the SOPs to the existing contractual or statutory obligations of organisations to which they are applicable. Probably more contentious is that relating to the terminal operators who have in the past contested the powers of the port economic regulator.

The port economic regulator is the Nigerian Shippers' Council (the Council), which derives its powers from the Nigerian Shippers Council (Port Economic Regulator) Order 2015 (the Order). The Order was issued by the Nigerian President pursuant to his powers under sections 5 and 148 of the Constitution of the Federal Republic of Nigeria with the objective of instituting an effective regulatory framework for ports efficiency and addressing negative impacts of port concessions arising from the absence of an economic regulator.¹ The Order empowers the Council to regulate economic activities at the ports, regulate tariffs, rates, charges and other related economic services at Nigerian ports and monitor all matters relating to cost, standard and quality of services rendered by regulated service providers.² It is also empowered to set and enforce standard operating guidelines, regulate ports concession agreements and carry out acts incidental to its role as an economic regulator of the ports.³

By the tenor of the Order, the powers conferred on the port economic regulator extend to all 'regulated service providers' including the Nigerian Ports Authority, seaport terminal operators, shipping companies and agencies, off-dock terminal operators, cargo consolidators, logistics service

¹ Order 1, Nigerian Shippers' Council (Port Economic Regulator) Order 2015

² Order 2, Nigerian Shippers' Council (Port Economic Regulator) Order 2015

³ Order 3, Nigerian Shippers' Council (Port Economic Regulator) Order 2015

providers, freight forwarders and clearing agent, inland container depot operators, stevedoring companies and any other port service provider or user.⁴

On the strength of the powers conferred by the Order and section 9 of the Nigerian Shippers' Council Act 2004, the Nigerian Minister of Transport issued the Nigerian Shippers' Council (Port Economic) Regulations 2015 (the Regulations) empowering the Council to among other things, monitor and enforce standards of service delivery to ensure availability, accessibility, affordability, stability, predictability and adequacy of services. The regulations give further powers to the Council to encourage competition and guard against the abuse of dominant market positions, regulate market entry and exit and ensure compliance by all parties with the provisions of the port concession agreements.⁵

The Government of Nigeria (GoN) entered into various port concession agreements with terminal operators at a time there was no economic regulator for the ports. The agreements nonetheless made provisions which assumed or anticipated the existence of such a regulator. Furthermore, the Nigerian Federal High Court in a seminal judgment upon a suit by terminal operators, held that the Nigerian Shippers' Council validly appointed and had to mandate to act as the port economic regulator.⁶ As a result, the current role of the Council is not in conflict with any provisions of the concession agreements.

The Standard Operating Procedures issued by the port economic regulator are expected to significantly streamline activities in the ports towards improved efficiency and better value for money. They may ultimately reduce the need for disputes and litigation arising from dissatisfaction by port users with the services of many operators.

⁴ Order 5, Nigerian Shippers' Council (Port Economic Regulator) Order 2015

⁵ Regulation 3 Nigerian Shippers' Council (Port Economic) Regulations 2015

⁶ Suit No. FHC/L/CS/1646/2014. Though the matter is currently under appeal, by Nigerian law, the judgment defines the current legal position on the subject.