

THE NIGERIAN PORTS AND HARBOURS AUTHORITY BILL: A REVIEW

INTRODUCTION

In April, the Nigerian Ports and Harbours Authority Bill passed its third and final reading at the Senate. By the provisions of Nigeria's constitution, it still requires concurrent passage at the House of Representatives as well as presidential assent to become law. Many industry watchers in the country consider these later hurdles lesser ones, thus, a sneak peek into some of the bill's more significant provisions is not only worthwhile but topical at this time.

OBJECTIVES OF THE BILL

- The objectives of the Nigerian Ports and Harbours Authority Bill are clearly spelt out in its first section to be: Provision of an appropriate institutional framework for the ownership, management and development of ports and harbours;
- Ensuring the integrity, efficiency and safety of the ports based on the principles of accountability, competition, fairness and transparency;
- Encouraging private sector participation in the provision of port services and port infrastructure; and
- Promoting and safeguarding Nigeria's competitiveness and trade objectives.

These objectives will resonate with followers of ports reform efforts in Nigeria as they show clearly an intention to give legal fillip to the Landlord model of ports management and administration adopted by the Government of Nigeria in

2006. The bill's objectives thus address some of the legal issues resulting from inadequate statutory provisions supporting Nigeria's so-called "ports concessions era".

THE "NEW" NIGERIAN PORTS & HARBOURS AUTHORITY

- The Bill expressly repeals the Nigerian Ports Authority (NPA) Act Cap N126 LFN, 2004 and transfers all assets and liabilities vested in the NPA to the Nigerian Ports and Harbours Authority (NPHA); a new entity created therein. As provided for in Section 9 of the Bill, the functions of the NPHA will, amongst other things be to: develop, maintain and implement a national strategic ports plan;
- provide and enforce technical regulation on operations, construction and installations within the ports and harbours;
- set overall policy for port security, health and safety, environmental protection and coastal conservancy;
- encourage and facilitate private sector participation and investment in the provision of port services and facilities;
- approve the establishment and planning of offshore cargo-handling facilities and related services;
- negotiate, supervise, implement and ensure compliance with international maritime obligations under applicable international conventions and protocols;
- provide landlord services in ports and harbours, in an economically, socially and environmentally sustainable manner;

- in cooperation with other relevant bodies, ensure that the ports are effectively integrated with other systems of infrastructure outside the ports;
- facilitate sustainable growth of trade through the ports;
- develop and deploy resources in ports to enhance port security;
- engage in any business activity, either alone or in partnership with other persons as may be approved by the Minister;
- ensure compliance of private operators with its overall policy on health and safety, environmental protection, coastal conservancy..."

From the above, it is clear that the transfer of the assets and liabilities of NPA to the NPHA saves for example the existing port concession agreement in their respective terms. It is also clear that in addition to the traditional functions of a ports authority such as the provision of technical regulation as well as formulation and implementation of government policies relating to the ports,, the NPHA is also empowered to initiate and indeed participate in relevant private sector led ports related ventures.

Also noteworthy is the fact that unlike the extant NPA Act which makes such things as provision of facilities for berthing, towing, mooring, moving or dry-docking of ships and even the lighterage or the sorting, weighing, warehousing and handling of goods part of the NPA's functions, the Nigerian Ports and Harbours Bill simply requires the NPHA to provide landlord services in ports and harbours; a testament once again to the model of ports management and administration operative in the country. Granted, being the ports' Landlord will not legally prevent the NPHA from personally embarking on some or all of the functions listed in the extant Act – in fact, Section 29 of the Bill expressly

addresses this –, however a combined reading of the objectives of the NPHA Bill and the functions of the NPHA leaves no one in doubt of the intentions of the Law maker. The NPHA will thus majorly act as a regulatory body and landlord, while port operations (especially cargo handling) will be carried out by private entities.

A notable point of potential conflict relating to NPHA's functions will however be the one mandating it to “negotiate, supervise, implement and ensure compliance with international maritime obligations under applicable international conventions and protocols. Placed side by side with Section 22 (1)(q) of the Nigerian Maritime Administration and Safety Agency (NIMASA) Act which requires NIMASA to carry out similar – if not more elaborate – functions, one can immediately posit that conflict of functions situations are bound to occur if the NPHA Bill becomes Law in its present state.

The labour issues associated with passage of the NPHA Bill are also potentially problematic areas which may require attention. The Maritime Workers' Union of Nigeria (MWUN) for example has already expressed serious reservations to some of the bill's provisions. Specifically, the union has cited the provision of Item 6 in the Second schedule of the Bill as repulsive. The item essentially entitles the newly created NPHA to only retain as many staff of the NPA as it may require. When one considers that no clear provisions relating to severance packages for present employees of the NPA are incorporated into the Bill, one appreciates MWUN's objection even more clearly. Privatization of public entities

and industries is however a fairly well traveled road for Nigerian authorities. It is thus expected that political, if not legal resolutions will be found for this and other labour issues in the long run.

Other important provisions of the Bill are found in Part VIII dealing with concessions. Provisions are made in Section 33 to the effect that no entity shall provide in a port any marine or port service or facility unless authorized to do so by the NPHA. Section 34 also empowers the Authority to grant concessions subject to laws relating to or governing concessions. However, no concession exceeding five years may be granted by the authority without the approval of the President. It is opined that Section 33 of the NPHA Bill again will potentially create a duplication of functions situation in the light of the provision of Section 31 (1) of the National Transport Commission (NTC) Bill which entitles the proposed National Transport Commission to register and certify operators in the regulated transport sector. The section provides that no person shall operate or maintain a transport facility or provide transport services in a regulated transport sector unless the person is a holder of a Registration Certificate granted by the Commission. It is hoped that in order to avoid over regulation and duplication of functions and powers, the provisions of NPHA Bill and those of the NTC Bill will be harmonized.

COMMENTARY

The Nigerian Ports and Harbours Authority Bill is obviously different from the NPA Act. It provides for a deviation from the owner/operator model of ports

management characteristic of the extant Act, favoring however the Landlord model which makes for improved private sector participation in ports operations. The bill lays out the legal structure for government policy which is already operative in Nigeria. It is thus a welcome (even if) overdue development.

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