

LEGAL RESPONSIBILITIES OF OPERATORS IN THE NIGERIAN PORTS (NPA, TERMINAL OPERATORS, SHIPPING AGENCIES AND FREIGHT FORWARDERS)

INTRODUCTION:

The Federal Republic of Nigeria is a Littoral State situated in the Gulf of Guinea along the same coastline as Liberia, Cote D'Ivoire, Ghana, Togo, Republic of Benin, Cameroun, Equatorial Guinea, Gabon, etc.¹ Among the many rivers that flow into the Gulf of Guinea are the Niger and the Volta. Nigeria is blessed with a coastline [total length of the boundary between the land area including islands and the sea] of 853 kilometers. Within the Nigerian coastal States lie our seaports. Nigeria has several seaports, a soon to materialize river port in Onitsha (and incubating and budding dry ports in the form of Inland Container Depots planned across the country).

This paper will discuss and provoke further discussions on the Legal Responsibilities of Operators in the Nigerian sea Ports, with emphasis on the Nigerian Ports Authority, Terminal Operators, Shipping Agencies and Freight Forwarders. A good starting point in my view will be to take a cursory look at the history of the Nigerian sea Ports and their development stages.

The Nigerian Ports Authority was established in 1954 pursuant to the Ports Act of 1954. The Ports in Nigeria at the present cater for 45% of the total maritime trade in the West African sub-region, with cargo throughput² averaging 76 million metric tons of cargo per annum. From just two main ports in 1954, the Lagos Port (Apapa Quays) the construction of which berths began in 1921 and the Port Harcourt Port which opened for business in 1916, Nigeria at the moment has six main ports known as Lagos Ports complex, Tin Can Island Port complex, Calabar Port, Port Harcourt Port, Onne Ports complex and Delta Ports complex.³The legislation establishing

¹Gulf of Guinea is the northeasternmost part of the tropical Atlantic Ocean located between Cape Lopez in Gabon, north and west to Cape Palmas in Liberia. The intersection of the Equator and Prime Meridian (zero degrees latitude and longitude) is in the gulf.

² Cargo throughput means the total volume of dry cargo both inward and outward that were handled at the port over a period of reference.

³There are ports within the port complexes such as Kirikiri lighter terminal, Ikorodu lighter terminal in the Lagos area, Federal lighter and ocean terminals in Onne, Akassa Port, Bonny Port, Degema Port, Brass Port in the Port

the Nigerian Ports has undergone series of amendments. The extant legislation is the Nigerian Ports Authority Act. The authority charged with the responsibility to establish ports in Nigeria is the Nigerian Ports of Authority (NPA) which is created by section 1 of the Act⁴ in these words.

***“There is hereby established, an authority to be known as the Nigerian Ports Authority*”**

The authority is a body corporate, with perpetual succession and has a common seal and may sue and be sued in its corporate name.⁵

Section 8 of the Act imbues the Authority with the power among other things to:

“construct, execute, carry out, equip, improve, work and develop ports, docks, harbours, piers, wharfs, canals, water courses, embankments and jetties”

It is pursuant to this power that NPA develops and owns ports in Nigeria. Port in the context of this discourse is about maritime shipping and navigation, including;

- (a) Shipping and navigation on tidal waters;
- (b) Shipping and navigation on the River Niger and its affluents and on any such other inland waterway as may be designated by the National Assembly to be an international waterway or to be an inter-State waterway;
- (c) lighthouses, lightships, beacons and other provisions for the safety of shipping and navigation;
- (d) such ports as may be declared by the National Assembly to be Federal ports (including the constitution and powers of port authorities for Federal ports).⁶

LEGAL RESPONSIBILITIES OF THE NIGERIAN PORTS AUTHORITY (NPA)

Harcourt are and Burutu, Forcados, Escravos and Koko Ports in the Delta Ports area. Lekki Deep sea port in Lagos is still under construction. It is expected that when the Lekki Deep seaport is completed and comes on stream there would be an up-surge in transit cargo and Nigerian would serve as a hub-port with Nigerian ports controlling more than 60% if the cargo destined to the West and Central African countries. See www.nigerianports.org/news.asp

⁴ See CAP N126 Laws of the Federation of Nigeria 2004

⁵ See section 1(2) of the Act

⁶ These are matters within the exclusive legislative powers of the National Assembly , see item number 36 in Part 1 of Second Schedule (section 4 of the Constitution of the FRN 1999 as amended – Exclusive Legislative List)

We now take a look at the legal responsibilities of the NPA from the enabling Act as contained therein, as well as its responsibility within the framework of the concession of the ports infrastructure regime in Nigeria. The discourse will be limited to responsibilities that have direct impact on navigation, shipping and shipping services.

Section 7 of the Nigerian Ports Authority Act provides that the functions of NPA shall be to:

a) provide and operate, in the ports, such facilities as appear to it best calculated to serve the interest of Nigeria;

b) maintain, improve and regulate the use of the ports

c) ensure the efficient management of port operations, optimal allocation and use of resources, diversification of sources of revenue and guaranteeing adequate returns on its investment, in order to contribute effectively to the wellbeing of the Nigerian society

d) provide, for the approaches to all ports and the territorial waters of Nigeria such Pilotage services and lights, marks and other navigational services and aids, including cleaning, deepening and improving of all waters

e) provide facilities for

(i) berthing, towing, mooring, moving or dry-docking of ships, in entering or leaving a port or its approaches

(ii) the loading and unloading of goods or embarking or disembarking of passengers in or from a ship

(iii) the litherage or the sorting, weighing, warehousing or and handling of goods; and

(iv) for the carriage of passengers or goods

f) manage, supervise and control or take part in the management, supervision or control of any company or undertaking in which the Authority is interested, by reason of shareholding or otherwise and for that purpose appoint and remunerate directors, accountants, other experts and agents

g) provide and use appliances for the towage or protection, or salvage of life and property or for the prevention of fire within Nigeria and on vessels on the high seas

h) supply water to shipping vessels

i) control pollution arising from oil or any other substance from ships using the port limits or their approaches

j) provide and operate other services as the Minister may, from time to time require, and

k) carry out such other activities which are connected with or incidental to its other functions under this Act

From the provisions of section 7 and other sections of the Act, it is clear that NPA has legal responsibility to carry out commercial, regulatory and other essential functions in the Nigerian Ports. There is the tendency to think that since the concessioning of the Nigerian port infrastructures NPA has ceded its commercial functions to concessionaire port terminal operators. This is not wholly the case, as we shall see in this discourse; what NPA ceded to private companies operating the port terminals is the cargo handling responsibilities hitherto undertaken by the NPA.

Section 32 (1) of the NPA Act empowers the Authority to make port regulations with the approval of the Minister of Transport, for the maintenance, control and management of any port and for the maintenance of good order therein, and in particular and without prejudice to the generality of the foregoing power, to make regulations for all or any of the following purposes, that is:

(a)Regulating traffic within the limits of a port or the approach to a port (b) regulating the berths and stations to be occupied by ships and the removal of ships from one berth, station or anchorage to another berth, stations or anchorage, and the time within which the removal shall be effected; (c) regulating ships whilst taking in or discharging ballast⁷ or cargo (d) keeping free

⁷Ballast (water) is water carried in ships ballast tanks to improve stability, balance and trim. It is taken up or discharged when cargo is unloaded or loaded, or when a ship needs extra stability in foul weather.

passages of such width as is deemed necessary within any port and along or near to the piers, jetties, landing places, wharves, quays, docks, moorings and other similar works in or adjoining the port and for marking out the spaces to be kept free; (e) regulating the anchoring, fastening, mooring and unmooring and warping of all ships and the use of warps, mooring bouys, chains and other moorings; (f) regulating traffic, preventing obstruction and keeping order on piers, jetties and wharves and ensuring the safety of piers, jetties and wharves and any cargo on them; (g) regulating the use of fires and lights and the signals to be used and measures to be taken, by day and by night, in case of fire in a port; (h) enforcing and regulating the use of navigating lights or signals and of signal lights by ships; (i)(j) regulating the manner in which ships arriving a port, shall be boarded by the harbor master, and the information to be supplied to him by the master of the ship (k)(l).....(m).....(n) regulating whether by prohibition or otherwise, the floating of timber, casks or other objects in any port or in the approach to any port and the casting or depositing of any dead body, ballast, rubbish, or other thing into any port or in the approach to any port, in contravention of the Act and for the redemption on payment of expenses and a penalty, within a time limit to be fixed, of anything forfeited; (o).....(p).....(q) regulating the placing and maintaining of moorings or bouys; (r) regulating and licensing weighing and metering of goods and (s)

Section 40(1) of the Act also empowers the Authority to make bye-laws for the control and management of the wharves and premises vested in or in the possession of the Authority and the maintenance of good order in the wharves and premises, and in particular, without prejudice to the generality of the foregoing power to make bye laws for all or any of the following purposes:

(a)..... (b) regulating the manner in which and the conditions under which the loading and discharging of ships shall be carried out; (c) regulating the use of any shed, warehouse and railway vested in or in the possession of the Authority; (d) the exclusion and removal from the premises of the Authority of idle and disorderly or other undesirable persons and trespassers; (e) – (g)(h) setting up pollution control guidelines and

monitoring oil spillage, dumping of waste and garbage by ships arriving at the ports, wharves and jetties.⁸

The provisions of section 7 of the Act and the Regulations made pursuant to section 32 and Bye-laws made pursuant to section 40(1) are comprehensive enough to enable NPA carry out its functions, initiate actions and programmes which are at present in place in the exercise of its responsibilities. It is pursuant to the provisions referred to above that NPA carries out:

(A) WRECKS REMOVAL FROM THE PORTS

Until recently there has been raging controversy between NPA and the Nigerian Maritime Administration and Safety Agency [NIMASA] as to whose function it is to remove wrecks from our territorial waters, including the port areas, access channels and adjacent waters. While NPA may have laid claim to this responsibility by relying on the provisions of section 7 (d) and (k) of its enabling Act, NIMASA has laid claim to that responsibility under section 22 (1) (n) of the NIMASA Act 2007. It is gratifying to note that the recently concluded Nairobi International Convention on the Removal of Wrecks which entered into force on Tuesday 14th April 2015 has resolved the conflict.⁹ Since the responsibility of NIMASA (as National maritime administration) for wreck removal is limited by that Convention to wrecks lying in Nigeria's exclusive economic zone or equivalent 200 nautical miles zone, it follows that responsibility for removal of all wrecks lying within the territorial waters including the ports, access channels to the ports and the surrounding waters is that of NPA.¹⁰

(B) CONTROL OF SHIPS ENTRY AND EXIT FROM THE PORTS

⁸ Although NIMASA is now in charge of pollution control on Nigerian waters generally by virtue of the provisions of section 22 (1) (i) of NIMASA Act 2007 and section 335 of the Merchant Shipping Act 2007, NPA still regulates the handling of all ship generated wastes as required by MARPOL 73/78 Convention. In fact NPA has an existing arrangement with African Circle Limited to provide port waste reception facilities in ports in Lagos, Bonny/Port Harcourt, Calabar and Warri.

⁹ Nigeria is a State Party to the Convention along Antigua and Barbados, Bulgaria, Congo, Cook Islands, Denmark, Germany, India, Iran, Liberia, Malaysia, Marshall Islands, Morocco, Palau and the UK.

¹⁰ Section 1 Territorial Waters Act, CAP T5 LFN 2004 provides that the territorial waters of Nigeria shall for all purposes include every part of the open sea within 12 nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.

Pursuant to Section 32(1) of the enabling Act, NPA has made the Nigerian Ports Authority (Port) Regulations which enable it control movement of ships in and out of the Ports. Paragraph 24 of the Regulation provides:

No person shall take or attempt to take any ship other than one owned by any of the armed forces of the Federation, Federal or State Government, into or out of a port without the permission of, or in disobedience to the directions of the harbour master and then only in the proper order and succession appointed by the harbour master, having regard to other ships about to enter or leave the port.

This is another very important responsibility of NPA in both operational and legal spheres, and the chaos which would attend our ports if this responsibility is not diligently carried out would be better imagined than experienced.

(C) ACCESS CONTROL OF PERSONS/TRUCKS

Yet another important responsibility of NPA is access control of persons in the port environment. Section 40(1) (d) of NPA Act empowers NPA to exclude and remove from the premises of the Authority, idle and disorderly or other undesirable persons and trespassers. This responsibility is discharged through the issuance of Port Pass by NPA to Customs Brokers, Freight Forwarders and other applicable persons who ply their facilitation trade in the port premises. Very recently and still ongoing NPA has started certifying vehicles that enter the ports to take delivery of goods with a view to setting standards in the state of condition and maintenance of vehicles that are fit to trade in the Nigerian ports. This is highly commendable.

(D) DREDGING, CHANNELS/QUAY APRON/COMMON USER AREAS MAINTENANCE

Under the present regime of port concessioning of the Nigerian ports, NPA still carries out exclusively dredging and maintenance of water channels and quay aprons. It also maintains the common user areas of the port as well as render Pilotage services.

Section 8 of the Act needs a repeat mention in part at this juncture in this presentation. Section 8 of the Act offered NPA an option in the discharge of its responsibility within the Port

management matrix. The section provides for NPA elaborate powers, but I will reproduce some paragraphs which I consider apposite for the purpose of this discourse. These are:

- a) construct, execute, carry out, equip, improve, work and develop ports, docks, harbours, piers, wharves, canals, water courses, embankments and jetties;
- e) carry on the business of carrier by land or sea, stevedore, wharfinger, warehouseman or lighter-man or any other business desirable for the functions of the Authority;
- l) enter into agreement with any person for the operation or the provision of any of the port facilities which may be operated or provided by the Authority**

In 2004, Nigeria adopted the landlord model of port operation, which commercialized operations in our ports with very far-reaching legal and economic implications. It has been argued in some quarters that there is no law backing the commercialization of ports in Nigeria and that the present port operation arrangement is illegal.

This argument has been countered by NPA and other stake-holders interested in the debate by pointing to section 8(l) of the NPA Act which allows NPA to enter into agreement with any person for the operation or the provision of any of the port facilities which may be operated or provided by the Authority. Much change may not be expected in the law to validate the concession agreement already entered with private operators in the port system. In fact the 2014 version of Nigerian Ports and Harbours Authority draft Bill before the 7th National Assembly treated concession as synonymous with leases, and operating agreements. Part VI of the draft Bill titled **THE AUTHORITY'S LANDLORD POWERS** provides in section 31 thereof *"(31) (1) The Authority may enter into leases, concession agreements, operating agreements, or other arrangements with private parties for the occupation of its land for the purpose of enabling such parties to operate or perform port related activities or services for a period not exceeding five years. (2) Subject to the provisions of this Act, the Authority may lease or concede its premises to terminal operators, shipping companies, shipbuilding companies or any other licensed operator for a period not exceeding five years"*

The commercialization of port operations in Nigeria saw the leasing/concessioning of a total of twenty-five port terminals to private operators with lease agreement ranging between ten and twenty five years. **At-least one of the concessions is on the build, operate and transfer (BOT) basis, but most are based on Build Rehabilitate Operate and Transfer (BROT).**¹¹ IN BROT a private concessionaire takes over an existing facility, builds an add-on to it, rehabilitates it and operates and maintains the facility at its own risk for the period of the arrangement.¹² The Nigerian arrangement was in most cases mid-wived by Bureau for Public Enterprises (BPE).¹³

Between 2005 and 2006/2007, while technical aspects of port management remained with the Nigerian Ports Authority and still remain till-date, the following companies took over cargo handling operations in Nigeria as follows:

1. APM Terminals Apapa Limited – Lagos Port complex
2. Apapa Bulk Terminal Limited – Lagos Port complex
3. Greenview Development Nigeria Limited – Lagos Port complex
4. ENL Consortium Limited – Lagos Port complex
5. Ports and Cargo Handling Co. Ltd – Tin Can Island Port
6. Tin Can Island Container Terminal – Tin Can Island Port
7. Josepdam Nigeria Limited - Tin Can Island Port
8. Five Star Logistics Limited – Tin Can Island
9. Ports & Terminal Multiservices Ltd – Roro Port Lagos
10. Intels Limited - Federal Lighter Terminal and Federal ocean terminal, both in Onne, Rivers State.
11. Bua Ports and Terminals Limited – Port Harcourt Port
12. Port and Terminal Operators Nigeria Limited - Port Harcourt Port
13. Brawal Oil Services Limited – Federal Ocean Lighter Terminal, Onne

¹¹ BROT is a variant of BOT.

¹² **Port Klang** in Malaysia is cited as a first successful example of this kind of arrangement for 21 years (1986 to 2007).

¹³ Visit www.nigeriaports.org/History.aspx?id=241. NPA is listed as No. 3 on the list of entities slated for full commercialization by the National Council on Privatization and the Bureau for Public Enterprise, vide Part II of Schedule II referred to in section 6 (2) of the Public Enterprises (Privatization and Commercialization) Act 1999, CAP P38 LFN 2004.

14. Gulftainer Bell Limited/Greenleigh Limited – Koko Port
15. Ecomarine Limited – Calabar Port
16. Julius Berger Plc – Warri Terminal C¹⁴

LEGAL RESPONSIBILITIES OF PORT TERMINAL OPERATORS

With the above short introduction of the private terminal operators in our ports, I find it appropriate at this point to discuss their legal responsibilities in the port as such terminal operators. The relationship between the Lessor (Nigerian Ports Authority) and the Lessees (Port terminal operators) is governed by either LEASE AGREEMENT or CONCESSION AGREEMENT.¹⁵ Let us look at the conceptual difference between LEASE AGREEMENT and CONCESSION AGREEMENT, as well as their variants such as BOT and the Hybrid agreement. The conceptual difference underlines the key but peculiar responsibilities under each type

In a typical **CONCESSION ARRANGEMENT** under the Nigerian Ports Authority (Landlord) model, the Concessionaire is **allocated exclusively a vacant land in the port area** delineated in a survey plan for the Concessionaire to **design**, develop, finance, construct, complete, test, commission, operate, manage, maintain and **transfer a Port Terminal** in accordance with an approved design **at a specified total cost** and in accordance with terms and conditions of the concession agreement **over a specified period of time**. Build, Operate and Transfer (BOT) is a very key element in a concession agreement. With the BOT arrangement the Concessionaire at the expiry of the agreement transfers the Port to the Nigerian Ports Authority **free of charge, all the Concessionaire's rights, title and interest** in and to the Port Terminal which shall be in a well maintained and in good working condition. **Cargo dues sharing formula is also a critical element of the economics of concession arrangement, whereby the Concessionaire gets a large chunk of the cargo dues and rent on cargo while the grantor gets a small part of the said dues and rent. Concessions entail heavy capital outlay from the Concessionaire and therefore necessarily involves long period**

¹⁴ There are other minor lessees, but these are the major ones. In all there are 25 concessionaires. Some of the mentioned Lessees run more than one terminal.

¹⁵For reasons of confidentiality, this write-up would not tie any particular type of agreement to any of the named terminal operators. The agreements are referred to as samples only.

arrangement. Under the Nigerian arrangement, concession periods are twenty five years, renewable for same length of time or as may be agreed.

Under a typical port concession arrangement therefore as seen in the Nigerian model, the legal responsibilities of the terminal operator covers the design, development, finance, construction, completion, testing, commissioning a Port Terminal at a specified total cost, operating, managing, maintaining and **transferring the said Port Terminal** in accordance with an approved design and in accordance with terms and conditions of the concession agreement **over a specified period of time**. This would involve construction of new Berth or Berths, dredging the berths to specified drafts, building of power station and provision of other required infrastructure over an agreed time line.

Two frequently recurring questions with regards to the operation of a concession arrangement within the Nigerian model are (1) who is responsible for power provision and (2) who is responsible for labour in the arrangement.

With regards to power and other utilities, Clause 14.5 of the sample concession agreement provides *“The Grantor shall ensure that all Utilities, such as electricity and water, necessary for the construction, operation and maintenance of the Port Terminal are made available to the Concessionaire in a timely manner **and at fair rates on terms** no less favourable to the Concessionaire than those generally available to commercial customers receiving service substantially equivalent to that being provided to the Concessionaire. Except as otherwise provided herein, the Grantor shall at its own cost connect and extend such Utilities to the boundary of the Port Terminal”*.

On labour issues, Clause 15.8 of the sample Concession Agreement provides under the title Use of Nigerian Labour thus: *“Except to the extent not locally available, the Concessionaire shall employ competent Nigerian labour for the construction, operation and maintenance of the Port Terminal. The Concessionaire shall be responsible for compliance with this provision by its contractors and their sub-contractors”*.

There may also be a **HYBRID CONCESSION ARRANGEMENT** whereby a Concessionaire undertakes to **equip**, manage, operate, maintain and repair a facility and provide the **facilities and services**, entirely at its own cost, charge, expense and risk as may be agreed. The Concessionaire pays a **commencement/commitment/contributory fee** in a certain amount and thereafter pays **a token lease fee per annum until after the Financial Closing Date**, etc. Financial Closing Date means the date upon which a financial closing certificate is issued by an independent Expert confirming the repayment of any and all development fees payable by the Grantor for the development of the Concession Area and, less an amount equal to the **commitment fee contributed to the development** by the Concessionaire and not recoverable from the lease fees. **Indeed one of the Concessions has this characteristic.** Under this port management model, Concessionaires' responsibility covers such important issues as stevedoring, loading and unloading of vessels, shore work, storage, customs inspection delivery and reception of containers to and from the customer.¹⁶ Also covered is the responsibility to provide and maintain all general port infrastructure required for the concession, unless such is to be provided and maintained by the Grantor under the concession agreement.¹⁷ Under Clause 9.1 (c) of our sample Concession Agreement, the Concessionaire has obligation to "collect vessel related charges from its Customers for and on behalf of the Grantor and make payments to the Grantor of such vessel related charges and keep records of such collections in accordance with Schedule 3 of the Agreement."¹⁸

For a better understanding of the this writer's position in this presentation, it may not be out of place to refer to Clause 13 of our sample agreement under general obligations of the Grantor with the title: Utilities and Services. Clause 13.1 provides "*The Grantor shall, throughout the Concession period, provide all infrastructure facilities and utilities to the Concession Area including, but not limited to, water, electricity and telecommunication facilities necessary to equip, operate, maintain, manage and repair the Concession Area at rates and on terms no*

¹⁶This is contained in Clause 9.1 (f) of one of the sample hybrid concession agreements.

¹⁷See Clause 9.1 (aa) of our sample hybrid concession agreement.

¹⁸Schedule 3 isabout accounting books and records, including annual reports and accounts, planning and investment report, quarterly traffic report and similar sundry records.

lessfavourable to the Concessionaire than those generally available to other Port users availing substantially equivalent facilities and utilities”

Clause 13.2 provides: *“In the event that the Grantor fails to provide the utilities and the services, then the Concessionaire reserves the right to provide them at its own cost and to debit the Grantor from any revenue collected by the Concessionaire on behalf of the Grantor for substantiated costs”*.

It is clear from the Concession Agreement whether within the typical model or in the hybrid model that the cost of labour and control thereof fall on the Concessionaire. Also the cost of electricity (power) is borne by the Concessionaire. In fact the Concessionaire has option of buying electricity from the Grantor (Landlord) of the concession or build and maintain its own power plant.

In a Lease arrangement on the other hand, the Lessee leases a fully developed facility, with equipment which remain the property of the Lessor for a specified period, paying lease fee annually, among other conditions, as may be agreed. Lease agreement option dominates the Nigerian Port operation model.

The entire agreement on the private management of cargo operations in the Nigerian Port system is about rights and obligations, be it Concession Agreement or Lease Agreement. Suffice to state that the Lease Agreements are similar to lease agreements obtained globally in the business of leasing port terminal facilities. Again let us look at these two recurring questions, Labour issues and power – who is responsible for them under the lease arrangement?

Section 4.1 of Article IV of our sample lease agreement provides that the Lessee shall only use the Lease Property to perform the Operations, and may not use the Lease property for any other purpose without the Lessor’s prior written approval. What is “Operations”? Part A of Appendix E states: “During the Term, the Lessee shall perform the following Operations on the premises, utilizing the Fixed Assets, the Moveable Assets, and such other assets to be added to the Lease Property pursuant to the Development Plan: 1. The handling and delivery services for the Containers and cargo contained therein, including without limitation

STEVEDORING,LOADING AND UNLOADING of vessels, transporting, sorting, storage and the procurement, operation and maintenance of equipment for the foregoing; 2. the repair and maintenance of the Fixed Assets and the Moveable Assets.

It is clear from the above provision that the Lessee of the Nigerian Port facilities is responsible for the employment and remuneration of dockworkers and other labour required to carry out operations in the Nigerian ports.

On provision of Power, section 4.5 of Article IV under the sub-head UTILITIES provides: *“subject at all times to the covenants of the Lessor set out in section 9, the Lessee shall make its own arrangements and pay for the supply of utilities to the Lease Property, including serving the vessels that call at the Premises”*. The definition section of the Lease Agreement says: *“Utilities” means infrastructure, equipment or services relating to the supply of electricity (including back-up power), water, sewage and drainage, telecommunications, fibre optic network, gas and fossil and other liquid fuel*”. Lessor’s responsibility under section 9.10 of the agreement with regards to Utilities is limited to providing all infrastructure for the provision of the Utilities to the Premises necessary to equip, operate, maintain, manage and repair the premises. The Lessor is under obligation to grant rights of way and easements through the Port outside the Premises for existing and future Utilities to the Premises, and also not take any action which is detrimental to the efficient supply of such Utilities to the Lessee. Section 9.11 of the agreement mandates the Lessor to provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.

From the above provisions it is also clear that it is the responsibility of the Lessee of the Nigerian Port facilities to provide its own power on the leased premises.

Basically all the Lease Agreements follow the same pattern with minor differences on specific areas such as effective date of the lease arrangement, length of notice for purpose of renewal of the lease, dispute resolution, etc .

The rights and obligations of the parties are the normal rights and obligations of parties to a long lease in property matters with the peculiarities of the maritime industry.

We have already taken a look at the two most vexed issues of responsibility, power and labour. It would appear that the issue of labour is simpler in solution in the sense that labour contractors are available to provide labour. **Who pays for the labour also appears to be on the road to resolution with the current discussion going on between the Maritime Workers Union of Nigeria, the Nigerian Ports Authority and the terminal operators.**¹⁹

Since the issue of power appears intractable, it is humbly suggested that as the shorter tenure of the port concession/lease agreements draw to a close, the Nigerian government should factor independent power providers into possible renewal of the concession/lease agreements. This would mean that an independent power company builds a power plant using the best available technology for power generation to serve the port areas in Nigeria. With permit granted by Nigerian Electricity Regulatory Commission, the power provider should be able to generate and supply uninterrupted power and sell same at approved rate to the port terminal operators and other port users.²⁰ Other legal responsibilities of the terminal operators include warehousing, ship shore handling of supplies for vessels, terminal handling, inland depot transfers, maintenance of the Lease Property, etc.

Article VI mandates the Lessee of the Lease Property to perform the Operations and other services and the standard of performance is very clear. The Lessee shall perform the Operations:

- (a) In a safe, efficient, effective and economic manner, (b) with due care and skill and (c) in accordance with Applicable Law and Prudent Industry Standards. (Prudent Industry Standard is defined as the generally accepted practices, methods, techniques and standards employed internationally (as applicable, in container, bulk, multi-purpose) industry in accordance with Applicable Law with respect to (a) the

¹⁹The good news now is that terminal operators have started issuing letters of permanent employment to their dock workers.

²⁰Section 62 of the Electric Power Sector Reform Act 2005 provides that any person intending to engage in the business of electricity generation, transmission, system operation, distribution or trading shall be required to obtain an operator's licence from the Nigerian Electricity Reform Commission.

development, operation, maintenance of(the particular Operations, (b) personnel and terminal safety and environment protection and (c) optimizing the performance of the operations.)

RESPONSIBILITY TO ACHIEVE MAXIMUM UTILIZATION OF LEASE PROPERTY

This is a Performance requirements: Lessee is to use its best efforts to develop, market and promote cargo throughput and cargo related business of the lease property in order to achieve maximum utilization thereof, within the bounds of the applicable law

RESPONSIBILITY TO MAINTAIN COMPETITIVE OPERATIONS RATES AND NOT TO INCREASE RATES WITHOUT AGREEMENT/GOVERNMENT CONSENT

The “operations rates” clause common to all the concession/lease agreements on the Nigerian Ports runs thus: *“(a) General parameters: The Lessee shall ensure that the Operations Rates shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property (b) Specific parameters: The Lessee shall charge cargo dues and delivery charges for the Operations which are not greater than the rates set forth in Section A of Appendix H (“the Operations Rates”) in accordance with the terms and conditions included therein. The Lessee shall not make any increases in the Operations Rates, unless agreed to in writing by the Parties and any required consents of Governmental Authorities have been obtained.....The Lessee shall also be allowed to charge for other services rendered but not specified in Appendix I, including but not limited to: terminal handling, inland container depot transfers, storage and for penalties for violation of applicable rules and regulations set down by the Lessee. The level of terminal handling charges and inland bonded terminal transfer charges shall not exceed the market rates charged by the shipping agents and the Lessor respectively prior to this agreement and any further increases shall require the consent of the relevant Government Authorities.”²¹*

²¹“Governmental Authority” is defined as any Nigerian governmental ministry, bureau, authority, council, office, or other instrumentally having jurisdiction over a Party, the Port, the Lease Property or the Operations, as the case may be, including without limitation, the Lessor, the Regulator, the Utilities Charges Commission and any national or local port authority, or Affiliate of any of the foregoing. At the moment the designated governmental authority

OTHER OBLIGATIONS/LEGAL RESPONSIBILITIES OF THE TERMINAL OPERATORS

Article VIII – Lessees Covenants

- Insurance: Lessee covenants to take out insurance in the sum not less than USD10m comprehensive enough to cover loss, damage, destruction of all commodities, accidents and death, public liability (liability to all persons making lawful use of the premises), risks arising from general hazards, including environmental, etc.
- Safety and security: adequate measures and sound procedures
- Environment – compliance with laws/remediation
- Emergencies – dealing with
- Information; Communication – shall be compatible with Electronic Data Interchange For Administration, Commerce and Transport (EDIFACT)
- Taxes, Licences, Permits, etc, etc.

Article XI- Documentation and Audit

Under this head, proper books of account and audit are required to be kept and undertaken respectively.

Lessee is under obligation to provide to the Lessor:

- Accurate data on the quantity, types and weights of Cargoes handled in the premises
- Accurate data on the numbers and types of ships, wagons or road trucks loaded or unloaded in the premises
- Average ship turn around time, cargo dwell time, truck loading/unloading time
- Claims received/paid in relation to cargo damage
- Immediate notification of accidents causing death or serious injuries
- Immediate notification of incidents causing oil pollution or other forms of environmental damage
- Information on industrial relations
- Information on public complaints

is the Nigerian Shippers Council, S.I No. 13 Nigerian Shippers' Council (Port Economic Regulator) Order, 2015 and S.I. No. 18 Nigerian Shippers' Council (Port Economic) Regulations, 2015.

- Notification of additions to and disposal of mechanical equipment and other significant assets

Lessee is under obligation to prepare Annual Report showing technical and financial information, covering among other things, volume of traffic passing through the premises, number of vessels, inward/outward cargos and cargos stored, pollution incidents, emergencies, etc.

Lessee is also under obligation to prepare Quarterly Traffic Reports which would cover volume of traffic passing through the premises and number of vessels, inward/outward cargos and cargos stored.

LEGAL RESPONSIBILITIES OF SHIPPING AGENCIES

According to Wikipedia the free encyclopedia, a shipping agency or shipping agent is the designated person or agency held responsible for handling shipments and cargo, and the general interests of its customers, at ports and harbours worldwide, on behalf of ship owners, managers and charterers.²²

Before proceeding further to examine the responsibilities of a shipping agency, let us take a peep into the service performed by the principal, the ship-owner himself. The ship-owner is a business person rendering marine transportation services carried on either as a Tramp shipping operator or as a Liner shipping operator and each operating type has its implications:

A Tramp operator can be likened to a Taxi cab driving around town looking for passengers to carry from place to place. He is said to be on the spot market. A tramp operator is a common carrier. Common carrier is defined by Alderson B in *Ingate v Christie* (1980) 3 Car Kir 61 thus: *“Everybody who undertakes to carry for anyone who asks him, is a common carrier. The criterion is, whether he carries for a particular person only, or whether he carries for everyone. If*

²²See Wikipedia>wiki>Shipping, agency.

a man holds himself out to do it for everyone who asks him, he is a common carrier; but if he does not do it for everyone, but carries for you and me only, that is a matter of special contract". He is not found on a fixed schedule. He trades in all parts of the world calling at ports, loading and discharging cargo. He navigates from harbor to harbor in search of cargo. A tramp operator operates on voyage or time basis, using a very important document called charter party. The charter party will relate to the use of the tramp vessel. Tramp operations feature prominently in the carriage of fertilizers, grains, coal, rice, sugar, etc. Tramp operators connect to shipbrokers all over the world who conduct negotiations on their behalf, using the economic forces of demand and supply of shipping services to determine fixture rates.

A Liner Vessel operator on the other hand operates on a defined route on scheduled interval, weekly, two-weekly or monthly whether the vessels finds full load or not, calling at a group of ports in different countries within the said geographical area, loading and off-loading cargo. In the recent past one often heard of United Kingdom-West African Lines (UKWAL) or Nigerian-American Lines.²³The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea [The Rotterdam Rules) defines Liner transportation to mean a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

Whether in tramp shipping or liner shipping, the ship owner undertakes to carry a consignee's consignment from a port of loading [usually in one foreign country] to a port of discharge in another country. This is the context in which we place this discourse - international shipping space. The contract as to who loads on or discharges cargo from the vessel may be as agreed in the contract of affreightment, but there are basic responsibilities of a ship-owner which may not be easily contracted out to say a voyage charterer of a ship and which in any case would not be in the interest of a ship owner to contract out to a charterer.

Since the ship-owner owner is usually located in one place and his ships sail the oceans of the world and call at different ports in different countries, it becomes a desideratum for the ship

²³See for this comparison the book Export Practice and Management by Alan Branch 4th edition, pages 88 – 89.

owner to appoint at the calling ports cities an agent who would perform those acts which the ship-owner ought to perform by himself.

It is important to state however that in the shipping world, the responsibilities of an agent may very well depend on the type of agency service he/she is rendering to the principal; we shall look at-least at one variable of agency services later. However, the legal responsibility of an agent or agency will be dependent on the principal's specific instruction to the agent, but generally the following responsibilities will be expected to be assumed by a shipping agency on behalf of its principal

- Ensuring a berth for the incoming ship by liaising with a selected terminal operator
- Arranging for the pilot and the tugs if necessary through liaison with the destination Ports Authority.
- Drawing up the documents and arranging for the customs and harbor services
- Arranging for the necessary ship fresh water/provisions
- Arranging for the necessary doctor for the sick crew and any medical assistance
- Arranging for crew [sick or disengaging] landing and crew replacement [e.g. under seaman's engagement terms]
- Arranging for storage bunkers if these are needed
- Arranging for the necessary repairs
- Conveying instructions to and from the ship owner, e.g. demanding for Letter of Indemnity in applicable circumstance.
- Organizing the supply, transport and the handling of the goods in the case of door to door carriage contract [e.g. as under the Rotterdam Rules, i.e United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea].

- Organizing the necessary contacts with the stevedores depending on the terms of carriage, e.g. Liner-in Liner out
- Amending cargo manifests where necessary
- Collecting freights in port of destination where freight is not pre-paid
- Arranging cargo bookings, space reservations and collecting cargoes for storage or safe-keeping and loading for out-bound carriage
- Contacting shippers and the receivers of the goods, through the issuance of cargo arrival notice or other form of communication
- Releasing cargo by accepting surrender of one of the three original Bills of Lading and issuing in its place cargo release note to enable the terminal operator release cargo to the clearing agent or directly to the owner.
- Receiving, cleaning and stacking empty containers for out-bound carriage
- Arranging for Q & Q (quality and quantity) services in case of wet cargo
- Arranging hull or cargo surveys and reports in the case of damage to vessel, to or loss of cargo
- Serving as a middleman between cargo receivers and ship owners in times of cargo claim

The above form a summary of the responsibilities of a general shipping or port agent which would cover tramp shipping/liner agents and for all of these, the shipping agent is paid agency fee by the ship owner or manager (his principal).

SHIP'S PROTECTIVE AGENT is one variant of shipping agency. The Protective Agent is appointed by ship owners in most cases where the Ship under a charter party is consigned to another agent e.g a charterer's nominated agent. In this case there becomes the need to have an agent trusted by the owner to protect its own interest. Where owners appoint their own agent in a

port also, the charterer may appoint its own protective agent just to protect its own interest also. Disbursements are very critical aspect of financials in ships port calls, so protective agent would receive owners fund and release as appropriate to the head agent. Cargo sampling and dispatch to laboratories to determine the quality, specification, etc. So where appointed agents do not perform or perform according to standards, the protective agent will step in, e.g. in times of ship arrest – tardiness in ensuring quick release of vessels.

LEGAL RESPONSIBILITIES OF FREIGHT FORWARDERS

Who is a freight forwarder?

A freight forwarder within the Nigerian law means *“any person or company who arranges the carriage or movement of goods and associated formalities on behalf of an importer or exporter along the international boundaries of sea ports, cargo airport or land border stations”*.

According to one writer, the freight forwarder provides services in two main fields: the movement of goods out of a country on behalf of exporters or shippers – in which case the forwarder is termed an export freight agent; and the bringing of goods into the country on behalf of importers – in which case the forwarder is termed an import freight agent.²⁴

Since the emphasis in this definition is placed on functions along the international boundaries of sea ports, cargo air ports or land borders which are all points of interchange, there is the need to also look at persons who facilitate clearance and delivery of cargo within the country’s sea port terminals, airport terminals and within the Nigerian land territories. These are Customs Brokers or Customs Clearing Agents as they are known colloquially. So who is a Customs Broker? A Customs Broker is an individual or company that is licensed to transact customs business on behalf of others. Customs business is limited to those activities involving transactions related to the entry and admissibility of merchandise; its classification and valuation, the payment of duties, taxes or other charges assessed or collected; or the refund, rebate or drawback thereof. The emphasis on the functions of the Customs Broker relates to

²⁴See Export Practice and Management, Alan Branch 4th edition, page 417.

the entry and admissibility of merchandise; its classification and valuation, the payment of duties, taxes or other charges assessed or collected; or the refund, rebate or drawback thereof.

So in a way the functions of the Freight Forwarder and the Customs Broker differ, while the former is a facilitator in the international logistics chain, the latter is a facilitator in the local logistics chain. A practitioner has a choice to practice either as a Freight Forwarder or a Customs Broker or both. However the Council for the Regulation of Freight Forwarding in Nigeria Act 2007 and the Customs And Excise Management Act in practice appear to treat the Freight Forwarder and the Customs Broker synonymously. This is borne out in various sections of the Act and in section 19 (2) of the Council for the Regulation of Freight Forwarding in Nigeria [CRFFN] Act 2007 which provides:

“Every freight forwarder licensed under the Customs and Excise Management Act prior to the coming into force of this Act, shall immediately after the commencement of this Act, submit to the Nigerian Customs Service and any relevant authority, a certificate of registration issued by the Council”.

This provision presumes that the CRFFN Act has merged the professions of Freight Forwarding with that of Customs Broker in Nigeria. This presumption is erroneous with due respect. The Nigerian Customs Service never licenses freight forwarders. It only licenses Customs Brokers [Customs Clearing Agents] pursuant to its powers under Customs And Excise Agents (Licensing) Regulations made pursuant to Ministerial powers exercisable under section 156 of the Customs And Excise Management Act.²⁵

Having made this clarification, it is appropriate at this juncture to examine the legal responsibilities of the Customs Broker as a business person operating at the ports, airports and Customs posts in-country and thereafter proceed to look at the functions of the freight forwarder as a business person operating at the international frontier.

LEGAL RESPONSIBILITIES OF THE CUSTOMS BROKER

²⁵CAP C45 LFN 2004.

These responsibilities begin with the protection of the licence itself. The licence is the primary authority to operate in the Nigerian Port system hence the first responsibility of the Customs Broker is the protection of the authority to operate and on this, perhaps, rest all other responsibilities of the Customs Broker. It does not matter whether the other responsibilities have criminal or civil consequences attached to them, as we may see later.

Regulation 5 (2) of the Nigerian Customs & Excise Agents (Licensing) Regulations provides:

“Any licence granted under these Regulations may be revoked at any time by the Board if the Board is satisfied that the licensee has at any time after the licence was issued, infringed any of the conditions of the licence or any provisions of the Act²⁶ or these Regulations, or for any other reasonable cause”.

The Act has elaborate provisions on the duties owed by the Customs Broker in the discharge of his/her functions as a Clearing Agent in the Nigerian Port system. However the provisions of the Act (hereinafter referred to as “CEMA”) placed more emphasis on the criminal liability of the Customs Broker rather than on his/her civil liability. This is perhaps because CEMA is a revenue legislation which traditionally relies heavily on criminal sanctions than civil liability to achieve its object. CEMA in some instances has limited civil liability/responsibility for the Customs Broker. One of such limited responsibilities is contained in section 154 of CEMA under the title Liability of Agents for Duty.

Section 154 CEMA has made it the liability of the freight forwarder to pay for import or export duty which-ever is applicable and for the performance of all acts under the Act in relation to those goods as if the freight forwarder is the importer or exporter of the goods in question subject to two limitations:

- (a) That the liability so created shall cease after one year from the time the payment or the act becomes due.
- (b) Nothing in this section shall relieve the principal from any liability.

²⁶CAP C45 LFN 2004.

This way the law has created a statutory agency whereby the agent is held responsible for the prescribed obligations of the importer or exporter, over a limited period while at the same time foisting wholesome liability on the importer or exporter for all time. It is important in this regard for the importer or exporter while entrusting his responsibility to his agent to find time to look over the shoulder to see if his agent is doing what he ought to do. On the other hand it will be a very happy day for the freight forwarding industry when it can be said that the importer or exporter does not have to look over his shoulders to see if his agent is performing. The freight forwarder must strive to earn the trust and confidence of his principal through superlative performance.²⁷

There are penal provisions of the CEMA which bring out clearly the legal responsibility of the Customs Broker to **correctly declare the goods imported** by his/her consignee or importer and **to pay Customs duty in the correct amount as required under the law**. Let us look at some of these provisions.

Section 161(1) provides that if any person:

- (a) Makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Board or an officer, any declaration, notice, certificate or other document whatsoever; or
 - (b) Makes any statement in answer to any question put to him by an officer which he is required by or under this Act to answer, being a document or statement produced or made for any purpose of customs and excise, which is untrue in any material particular, he shall be guilty of an offence under this section.
- (2) Where by reason of any such document or statement required to be produced under subsection (1) of this section the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback or repayment of duty, the amount of

²⁷See Osuala Emmanuel Nwagbara: Legal framework for the Nigerian freight forwarding industry – Paper presented at the two day 5th annual maritime seminar on standardizing freight forwarding profession in Nigeria, organized by Franolly Incorporated 24 -25th April 2001 at Lagos Airport Hotel, Ikeja.

the duty unpaid or the over payment shall be recoverable as a debt due to the Federal Government.

- (3) Without prejudice to subsection (2) of this section, where any person who commits an offence under this section does so either knowingly or recklessly, he shall be liable to a fine of one thousand naira or to imprisonment for two years or to both; and any goods in relation to which the document or statement was made shall be forfeited.
- (4) Without prejudice to subsection (2) of this section, where any person commits an offence under this section in such circumstances that he is not liable under subsection (3) of this section he shall be liable to a fine of six hundred naira.

SECTION 162 provides that if any person:-

- (a) Counterfeits or falsifies any document which is required by or under the customs and excise laws or which is used for the transaction of any business relating to customs and excise: or
 - (b) Knowingly accepts, receives or uses any such document so counterfeited or falsified; or
 - (c) Alters any such document after it is officially issued; or
 - (d) Counterfeits any seal, signature, initials or other mark of, or used by, any officer for the verification of such a document or for the security of goods or for any other purpose relating to customs and excise,
- he shall be liable to a fine of one thousand naira or to imprisonment for two years, or to both.

SECTION 164 provides that without prejudice to any other provision of this

Act, if any person:-

- (a) Knowingly and with intent to defraud the Federal Government of any duty payable thereon, or to evade any prohibition with respect thereto, acquires possession of, or is in any way concerned in the carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully

removed from a warehouse or Government warehouse, or which are chargeable with a duty which has not been paid, or with respect to the importation, exportation or carriage coastwise of which any prohibition is for the time being in force: or

- (b) is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition as aforesaid or of any provision of this Act applicable to those, he shall be liable to a fine of six times the value of the goods or four hundred naira, whichever is the greater; or to imprisonment for two years, or to both.

Since according to our function driven definition of a Freight Forwarder, he is a facilitator in the international logistics chain, it would appear that the provisions of CEMA relating to obligations with regards to Export would apply to the Freight Forwarder rather than the Customs Broker whose functions we have looked at earlier. Let us see some of these provisions:

Section 63 of CEMA provides as follows: WHERE

- (a) Except as provided by or under this Act, any goods chargeable with a duty on exportation are exported without payment of that duty, or
- (b) Any goods are exported or loaded for exportation or as stores or are brought to any place in Nigeria for the purpose of being exported or loaded as stores and the exportation of such goods is or would be contrary to any prohibition; or
- (c) Except as provided by or under this Act, any goods are loaded into any ship or aircraft for exportation or as store, or are removed from any customs station from exportation, before entry outwards thereof has been signed by the proper officer; or
- (d) Any goods, being goods chargeable with any duty on exportation or goods the exportation of which is prohibited, are found after having been loaded for exportation to have been concealed in any manner on board any ship or aircraft or in any vehicle; or
- (e) Any goods are exported or brought to any place in Nigeria for exportation concealed in a container holding goods of a different description; or

- (f) Any goods are exported or brought to any place in Nigeria for exportation concealed or packed in any manner appearing to be intended to deceive an officer; or
- (g) Any goods entered outwards are found, whether before or after loading, not to correspondent with the entry made thereof, those goods shall be forfeited.

PENALTIES FOR IMPROPER EXPORTATION OF GOODS, ETC.

Section 64 (1) if any person:

- (a) Except as provided by or under this Act exports or is concerned in exporting:-
 - (i) Any goods chargeable with a duty which has not been paid; or
 - (ii) Any goods contrary to any prohibition; or
- (b) Loads for exportation or as stores or brings to any place in Nigeria for the purposes of exporting or loading as stores any goods the exportation of which is contrary to any prohibition, or assists or is otherwise concerned in such loading or bringing, then, if he does so with intent to evade any such duty or any prohibition, he shall be liable to imprisonment for a term of five years without the option of a fine.

(2) If any person:-

- (a) Except as provided by or under this Act, loads or causes to be loaded any goods into a ship or aircraft for exportation or as stores, or removes or causes to be removed any goods from a customs station for exportation before entry outwards thereof has been signed by the proper officer;
- (b) Exports or causes to be exported, or brings or causes to be brought to any place in Nigeria for exportation any goods concealed in a container holding goods of a different description; or
- (c) Directly or indirectly exports or enters outwards or causes to be exported or entered outwards any goods found not to correspond with the entry made thereof, he shall be liable to imprisonment for a term of five years without the option of fine.

- (3) Where any goods having been loaded or retained on board any ship, aircraft, or vehicle for exportation or as stores are unloaded in Nigeria, then unless the unloading was authorized in writing by the proper officer and, except where that officer otherwise permits, unless any duty chargeable and unpaid on the goods is paid and any drawback paid in respect thereof is repaid, the master of the ship, commander of the aircraft or person in charge of the vehicle and any person concerned in the unloading, re-loading, landing or carrying of the goods from the ship or aircraft or vehicle without such authority, payment or repayment shall be liable to a fine of six times the value of the goods or four hundred naira, whichever is the greater, and the goods shall be liable to forfeiture.

Whether a facilitator in the logistics chain operating in the Port system plays as a Customs Broker or a Freight Forwarder in the context of our discussion in this paper, he/she has legal responsibility to do the following:

- 1) Accurately declare the goods being handled as regards quantity, quality, description and value for the purpose of Customs duty as may be applicable.
- 2) Ensure that only goods allowable for import is cleared out of the port and that only goods allowed for export are exported through the port
- 3) Ensure that all proper procedures for clearing of goods from the port or for exporting goods out of the country through the port system in terms of inspection, documentation and sequence of procedures are followed.

Failure in the discharge of the above responsibilities has both criminal and civil liability implications as can be seen in the various sections of the CEMA. And of course the civil liability of the trade facilitator to the principal is as important for notation as his criminal liability. In spite of the strategic role played by freight forwarders and customs brokers in the movement of goods through the ports, the standard of professional practice in Nigeria remains about the lowest globally. In its present state and level of practice ethics, the freight forwarding industry is seriously threatened by the provisions of the speedily advancing United Nations Convention

on Contracts for the International Carriage of Goods Wholly or Partly by Sea. This Convention signed in Rotterdam on 23rd September 2009 by Nigeria and other contracting sovereign States, will come into effect one year after 20 countries have ratified it. As at October 2015 only three countries, Spain, Togo and Congo have ratified it. The treaty provides a unified legal regime that governs the rights and obligations of shippers, carriers and consignees under a contract for door to door shipments that involve international sea transport. It is greatly reassuring that the Nigerian Shippers Council have publicly stated its avowed determination to sanitize the profession and set minimum standard for the practice of the trade in Nigeria, working within its powers as endowed it by Nigerian Shippers' Council (Port Economic) Regulations 2015.²⁸ It is only a proper sanitization of the profession of freight forwarding/Customs brokerage in Nigeria that will place indigenous players in a position to compete effectively with in-country subsidiaries of international shipping conglomerates that have emerged in the freight forwarding business in Nigeria in the last five years.

THANK YOU FOR LISTENING.

OSUALA EMMANEL NWAGBARA ESQ.

²⁸Freight forwarders and Clearing Agents appear in item g in the list of Regulated Service Providers at the Nigerian Ports.