

## **Ibadan Inland Container Depot Initiative: The Role of Lawyers**

- Specific legal regimes govern the respective modes of transportation earlier identified generally international or regional conventions;
- Legal regimes -
  - Identifies the relevant parties in the transport chain;
  - Specifies required transport document;
  - Allocates obligations and liabilities among the parties;
  - Allocates risks among the parties,
  - Provides for adjudication of disputes
  - provides for jurisdiction, time bar and limitation of liability etc
- Examples of legal regimes for international multimodal transportation-
- CMR – Convention for International Carriage of Goods by Road 1956 -
  - Requires consignment note;
  - Mandatory application in Europe;
  - Not applicable in Nigeria.
- COTIF/CIM 1985 – Convention for International Carriage by Rail-
  - Mandatory application in Europe for Convention rail lines;
  - Requires consignment note;
  - Not applicable in Nigeria.
- Warsaw Convention 1929/1955 - Convention for the Unification of Certain Rules Relating to International Carriage by Air -
  - Requires air waybill or consignment note;
  - Mandatory application in all member states;
  - Applicable in Nigeria.
- Hague Rules 1924 – Convention for International Carriage of Goods by Sea -
  - Requires Bill of Lading;
  - Applicable in Nigeria by virtue of COGSA, Cap 44 LFN, 1990.
- Hague-Visby Rules 1968 -
  - Requires bill of lading;
  - Mandatory application for member states- majority of countries;
  - Contractual application in Nigeria by virtues of “Clause Paramount” in Bill of Lading.
- UNCTAD/ICC Convention on International Multimodal Transport of Goods 1980 -
  - Requires multimodal transport document;
  - Not yet in force therefore not applicable in Nigeria.
- Marine Insurance -
  - York Antwerp on General Average (not applicable in Nigeria);
  - Marine Insurance Act, Cap 216 LFN 1990 -
- S4(1) covers multimodal transportation;
  - Institute Cargo Clause A,B or C incorporated into insurance contract -
- ICC A (all risk) plus Transit Clause is suitable for multimodal transportation

- Role of Lawyers
    - Prior to commencement of ICDs -
  - Determine existence of legal/regulatory frame work for establishment of ICDs or lack of;
  - Recommend and assist in development of appropriate regulatory framework;
  - Recommend and assist in development of appropriate liability regime to govern ICDs;
  - Lobby for incorporation of relevant international conventions.
    - After Commencement -
  - Negotiation and drafting of concession agreement on behalf of Government or ICD operators;
  - Become experts in multimodal transport laws and the complex liability regimes.
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- Existence of legal/regulatory frame work for establishment of ICDs or lack of;
    - Key characteristics of ICDs which require legislative backing -
  - Public statutory authority to own land, regulate on tariffs and standard of service, adjudicate on disputes, enforce uniform standards on security, safety and environmental issues;
  - ICD must be declared as Custom Ports by statute;
  - Establish liability regimes by national legislation.
    - None of the existing laws on transport provides for the above.

Proposed ICDs backed only Government Policy.

- Lawyers may advice government on legal and institutional framework.

- Basic Legal Issues
- Relevant parties -
- ICD operator, Multimodal Transport Operator (MTO), consignor, consignee, notify party, shipper, carriers for the different modes where no MTO;
- Allocation of risk and liabilities governed by the transport document(s);
- Transport documents determined by force of law or by contract as demonstrated earlier.
- Liability Regimes
  - Unimodal i.e. sea, road, rail or air -
- Each unimodal carriage has its own applicable international or domestic law
  - Multimodal -
- UN convention which allocates liability for loss, damage or delay not yet in force;
- What operates now is a *pot pourri* of contractual terms in standard forms, domestic laws and unimodal conventions;

- Familiar ones are the uniform or network liability systems. Net work has wider applicability.
- Uniform liability regime
  - Negotiated and agreed terms or rules between carrier and shipper;
  - Terms or rules apply equally to both shipper and carrier irrespective of the leg where damage or loss occurred;
  - Risk and liability shared by both throughout all stages of carriage;
  - Not popular with MTOs or carriers, cannot enjoy their traditional exemptions.
- Network liability regime
  - Localization of particular mode where loss or damage occurred is critical;
  - Liability is where fault lies;
  - Relevant convention governing the particular unimodal stage where loss occurred is applied e.g.
- If loss occurred during sea leg to Nigeria, Hague-Visby or Hague Rules will apply;
- If on Ibadan/Lagos road, consignment note will apply.

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- Where the event causing loss or damage cannot be localized or damage was gradual traversing different modes -
- Recourse to contractual terms contained in the Standard Form governing contract.
  - Network popular with carriers not shippers. Terms in Standard Forms generally in favour of carriers.
- Example of Standard form is the FIATA Multimodal Transport Bill of Lading and consignment notes.

- Liability of ICD operator
- May be determined by the enabling statute; or
- Determined in the concession agreement; or
- Determined by the multimodal transport document; and/or
- Determined by common law duty of care by baillee of goods and breach of duty.

- Armed with above understanding and aware of the lack of applicable liability rules in Nigeria for land and rail modes lawyers need to collectively develop the most appropriate liability regime for Nigeria ICD;
- Transport lawyers have the responsibility of promoting the adoption of policies which will encourage liability insurance for multimodal transportation of goods.

- Benefits of ICDs if well implemented -
  - Reduced port congestion and consequential delays;

- Convenient load centres for consolidation of export produce;
- Delivery, receipt of cargo, customs clearance nearer to consumption and production centers;
- Generation of inter-regional trade;
- Development of rail and road transport infrastructure;
- Transit storage facilities
- Increased containerization of imports and exports;
- Overall reduction in freight rates and cost of goods.

#### Implementing the Cabotage Act : The Role of Lawyers

- Role of lawyers is not different from that of any other legislation;
- Lawyers must study and understand the law -
- Note the statutory requirements for eligibility of vessels and shipping companies to participate in coastal shipping under the 5 types of registration categories;
- Nationality requirement mandatory for ownership of vessels and ship owning company under the Wholly Nigerian owned and Joint Venture category;
- Nationality refers to citizenship as defined in the Constitution not corporate citizenship of companies under CAMA;
  - Emphasis is on beneficial ownership of vessels and ship owning companies by Nigerians;
  - Note further the stringent proof of ownership and control of companies;
- Affidavits sworn to by the individuals;
- Stiff penalties both criminal and civil.
  - Foreign participation allowed where non-availability of Nigerian owned vessel or crew is established through grant of Ministerial waivers;
  - Act did not create a different liability regime. Liability for loss or damage arising from carriage governed by -
- COGSA, Admiralty Jurisdiction Act, Merchant Shipping Act and Admiralty Jurisdiction Procedure Rules

#### Conclusion

- The Paper has within the short time provided highlighted the issues that should be of concern to transport lawyers in particular and general practice lawyers as well. As you may have noticed, it is hoped that this will trigger more interest from lawyers on the ICD project and hopeful encourage in-depth discourse on the issues.
- I apologize again most sincerely for my inability to deliver this presentation in person which I had looked forward to with great excitement.
- I received a summons from BPE only on Monday to attend the inauguration of an inter-ministerial committee on Port Reform by the President at the Presidency today at the same time for this lecture. It was

immediately communicated to the seminar organizers who regrettably and understandably could not re-schedule my presentation.