



PaulUsoro&Co

LEGAL PRACTITIONERS

Managing Legal Risks in a Public Private Partnership Port Operations

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Managing Partner



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Modern Ports

- Ship/shore interface - area with facilities for:
 - Berthing or anchoring ships;
 - Cargo handling equipment for transfer of cargo from shore to ship or ship to ship;
 - International trade – customs;
 - Intermodal interface - platforms
 - Distribution centre;
 - Industrial zone;
 - Repair;
 - Commercial trading centre (banks, traders, insurance et);
 - Urbanization centre

- **Western ND**

- Apapa port
- Tin Can port
- RoroPort
- Container Terminal Port
- Kirikiri Lighter Terminal (I&II)
- Ikorodu Lighter Terminal

- **Eastern ND**

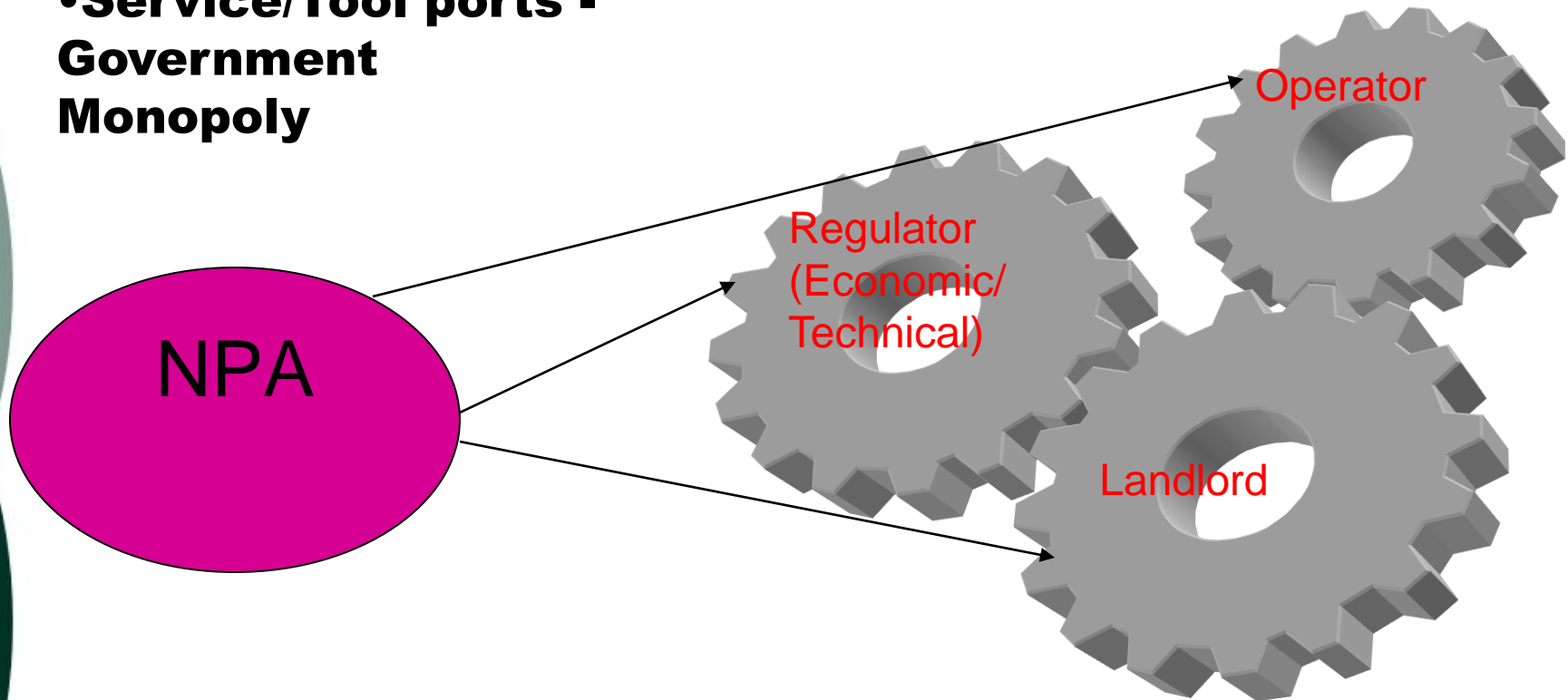
- Port Harcourt
- Onne Ports (Federal Ocean Terminal, Federal Lighter Terminal)
- Warri
- Calabar
- Burutu
- Oil terminals





Preconcession Port Regime

• **Service/Tool ports -
Government
Monopoly**





Preconcession Port Regime

- Negatives of that regime
 - Obsolete infrastructure,
 - Slow turnaround time,
 - Poor service, insecurity,
 - Monopoly, absence of competition
 - High tariffs,
 - Over bloated labour force,
 - Bureaucracy,
 - Jurisdictional conflicts among Government Agencies,
 - Inefficiency,
 - cargo flight - capital flight,
 - Slow economic development



Port Reform - Objectives

- Promote efficiency and productivity in ports.
 - Faster turnaround time,
 - Lower tariffs/greater flexibility in pricing,
 - Intra and inter ports competition - improved productivity, competitive pricing,
 - Modern infrastructure and superstructure,
 - Modern management systems,
 - More disposable income,
 - More spending, more business, more jobs, robust economy



Port Reform - Objectives

- Reduce financial commitments/cost to government for provision of port services.
 - Stop investment in ports infrastructure;
 - Limit commercial risk to Government;
 - Free resources for investment in other key sectors.
- Decentralize government control
 - consolidation of regulatory functions by multiple government agencies.
- Reduced bureaucracy



Ports Reform - Objectives

- Institute effective economic regulatory system,
- Ensure operators' performance and compliance with technical and safety obligations.
- Encourage private sector investment in provision of port services.
 - Enabling legal framework, clarity of roles, certainty, protection of investments,



Targets of Port Reform

- Window for economic development
 - Improvement of institutional/administrative and operational performance of ports.
 - Institutional and Administrative –
 - ownership model,
 - traffic control - in and out,
 - safety and security,
 - Immigration, customs
 - Flag and port state control,
 - Health, Supply of common utilities,
 - Environmental protection, Labour



Targets of Port Reform

- Operational performance
 - Services and facilities for ships
 - Navigational aids, port approaches/channels, pilotage, berths, VTS,
 - Services and facilities for cargo
 - Cargo handling capabilities, transport to and from storage, warehousing, cargo tally/marking, survey, surveillance, receiving and delivery of cargo



Targets of Port Reform

– Value Add

- Multimodal platforms
- Packaging, repackaging, labeling, consolidation;
- Logistics network,
- Semi processing,
- IT facilities
- Warehouses,
- Quayside processing factories,
- Fabrication plants,
- Victualling,
- Water, road, electricity etc



Port Reform Models

Models	Functions		
	Regulator	Landlord	Operator
1st	public	public	private
2nd	public	private	private
3rd	private	private	private



Port Reform Models

Models	Port Authority Functions		
	Infrastructure	Superstructure	Stevedoring
Landlord	Yes	No	No
Service	Yes	Yes	Yes
Tool	Yes	Yes	No

Infrastructure: paved terminal, access to channel, roads etc

Superstructure: cranes and other cargo handling equipment



Port Models Adopted

Model	Ownership and Administration				
	Land	Infra structure	Super structure	Steve doring	Regulatory
Land lord	Govt	Govt	Private	Private	Govt
Total PPP	Private	Private	Private	Private	Govt



PPP Port Models Adopted

- Landlord Govt – port land and port sea approaches owned by government
- Concessioneing –partial port privatization
 - a new development of the Public-Private Partnership model
 - one of the most effective methods of private sector participation in developing port facilities.
 - grant by government or port authority to private firms for the provision of port services.
 - It gives the private firm (usually called the Concessionaire) the right to build, operate, manage and finance a piece of land.



PPP Port Models Adopted

- BOT: Build, Operate and Transfer
- BOOT: Build, Own, Operate and Transfer
- Private sector involvement in building, financing and operating the port for an agreed period of time
 - Long enough to realize return on investment;
- PS large role in planning, developing and operating new port capacity.



PPP Brief Overview

- PPP is contractual in nature. imperatives therefore include
 - Competing demands on public-sector funds; and
 - Need to introduce private sector innovations, technical and commercial skills and managerial expertise
- Significant advantages include
 - Private sector funding and cost savings (particularly where private-sector funding is utilised)
 - Expedited project completion – tied to commercial imperatives based on private sector funding
 - Efficiency of design and management of project
 - Injection and development of specialised human capital
- Parties are of course Government and Private Sector



Legal and Regulatory Issues

- Approvals and Consents Generally
 - Some of the Infrastructural Projects fall under Exclusive Legislative List and require Federal Government approvals and consents
 - Govt partner will need to provide enabling environment and procure all required approvals, consents and land allocations
- PPP Contractual Issues
 - PPP Contract Models include
 - Concessions
 - Build-Own-Operate-Transfer
 - Build-Operate-Transfer
 - Joint Ventures
 - Technical Management Arrangements



Legal and Regulatory Issues

- Most applicable model may depend on the type of port and the needs of the parties
- Being contractual in nature, terms would depend on what the parties can negotiate
- Note of warning for Govt:
 - private sector negotiators and businessmen are very bullish, savvy and focused on their bottom line;
 - Govt needs to engage negotiators with skill and experience that can match the competence of the private-sector negotiators and businessmen.



Legal and Regulatory Issues

- Predictability in legal regime and enforcement
 - Guarantee or safeguard from regulatory somersaults
- Security of lives and property
 - This is a major issue with potentials to truncate the entire PPP
 - Private capital only goes to where there is security of lives and property
 - Responsibility of the Government



Legal Regulatory Risks

- Regulatory initiatives aimed at minimizing risks
- Search for balance between risk and regulatory policies,
- International conventions and codes which have been transformed into national laws, regulations.
 - Solas Chapter XI-2 – ISPC Code
 - Establish 3 security levels (normal, heightened, exceptional)
 - Flag and port authorities
 - Port facility security plan, AIS



Legal Regulatory Risks

- Supply chain policies – centres of commercial, industrial and distribution activities, integration of ports in supply chain –securing the entire process from the manufacturing
 - Preparation of gds for shipment/shipment from production site
 - Transportation of goods;
 - Forwarding of goods
 - Warehousing storage and inland ports operations



Legal Regulatory Risks

- Identification of high risk containers
- Prescreen/evaluation of containers before loading
- Review of port state control practices
- Therefore development of series of codified legal text on company specific rules standing orders and practices
- Growing number of global regulatory codes cos maritime practice is transboundary



Legal Regulatory Risks

- Challenges regarding Cost implications for implementation
 - Allocation of implementation cost
 - Finding a uniform method of financing implementation
 - how to incorporate costs into pricing and marketing strategy while remaining competitive
 - 3 approaches
 - Entire cost financed by terminal operation and offloaded to customers
 - Port authority covers cost of implementation
 - Cost shared between port authority and port operator



Managing Legal Risks

Converting Risks into Opportunities

- Identify risks
- Assess impact of risk
- Likelihood
- Risk profile
- Project time for containment of risk to acceptable level
- Develop risk management action plan
- Integrate RMAP into overall port business plan



Types of Risks

Risk Type	Examples
Political risks	Political instability, war
Regulatory risks	Tariff control by government, jurisdictional conflicts, no laws or inadequate laws, reversion of policies, history of commitment or lack of to contracts, status of domestication and implementation of international laws/codes
Competition risks	New ports, expansion of existing ports, price wars
Technology risks	Obsolete equipments
Customer risks	High concentration of business with few shipping lines or cargo interests
Environment risks	Natural disasters, protests from community, current and siltation
Macro-economic	Inflation, economic instability, GDP



Existing Safeguards and Risk Profile

Risk	Existing Safeguards	Profile of Risk
Tariff control by government	2 years contract with top lobbyists	Exposure acceptable but further action required
Inconsistency in government policies, predictability in legal regimes	None	Exposure unacceptable – urgent action required
jurisdictional conflicts, no regulatory interface	Intergovernmental relations/regulatory dept	Exposure unacceptable – urgent action required
Status of international conventions and enforcement	Legal dept regular assessment of implementation guidelines	Exposure acceptable – but needs further action
Lack of economic regulatory authority	None	Exposure unacceptable - urgent action required
Lack of clear investment laws	None	Exposure unacceptable
Inadequate laws for PPP	None	Exposure unacceptable



Converting Risks into Opportunities

Risk	Proposed Safeguards
Tariff control by government	
Inconsistency in government policies, predictability in legal regime and enforcement	Encourage specialized admiralty courts for speedy resolution of matters
jurisdictional conflicts, no regulatory interface	
Status of international conventions and implementation	
Lack of economic regulatory authority	
Lack of clear investment laws	
Inadequate legal framework for PPP	Sponsor legislative reform



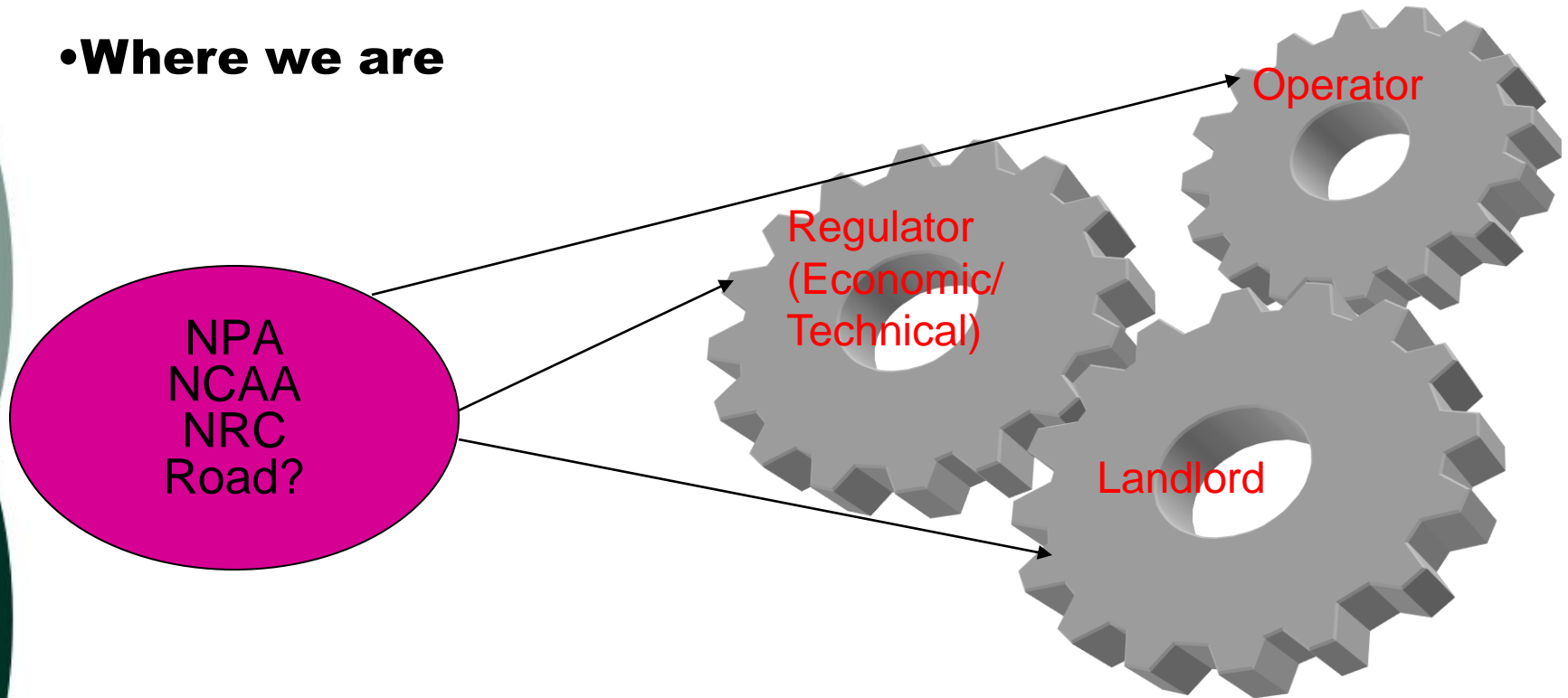
Legislative Reform

- Issues to be covered
 - Provides appropriate institutional framework for the ownership, management, operation, and control of ports and harbours.
 - Encourages private investment in port infrastructure and in the provision of port services.
 - Clarity on ownership and restrictions if any
 - Degree of independence or autonomy
 - Provide economic regulatory framework for Ports industry
 - Independent Economic Regulator



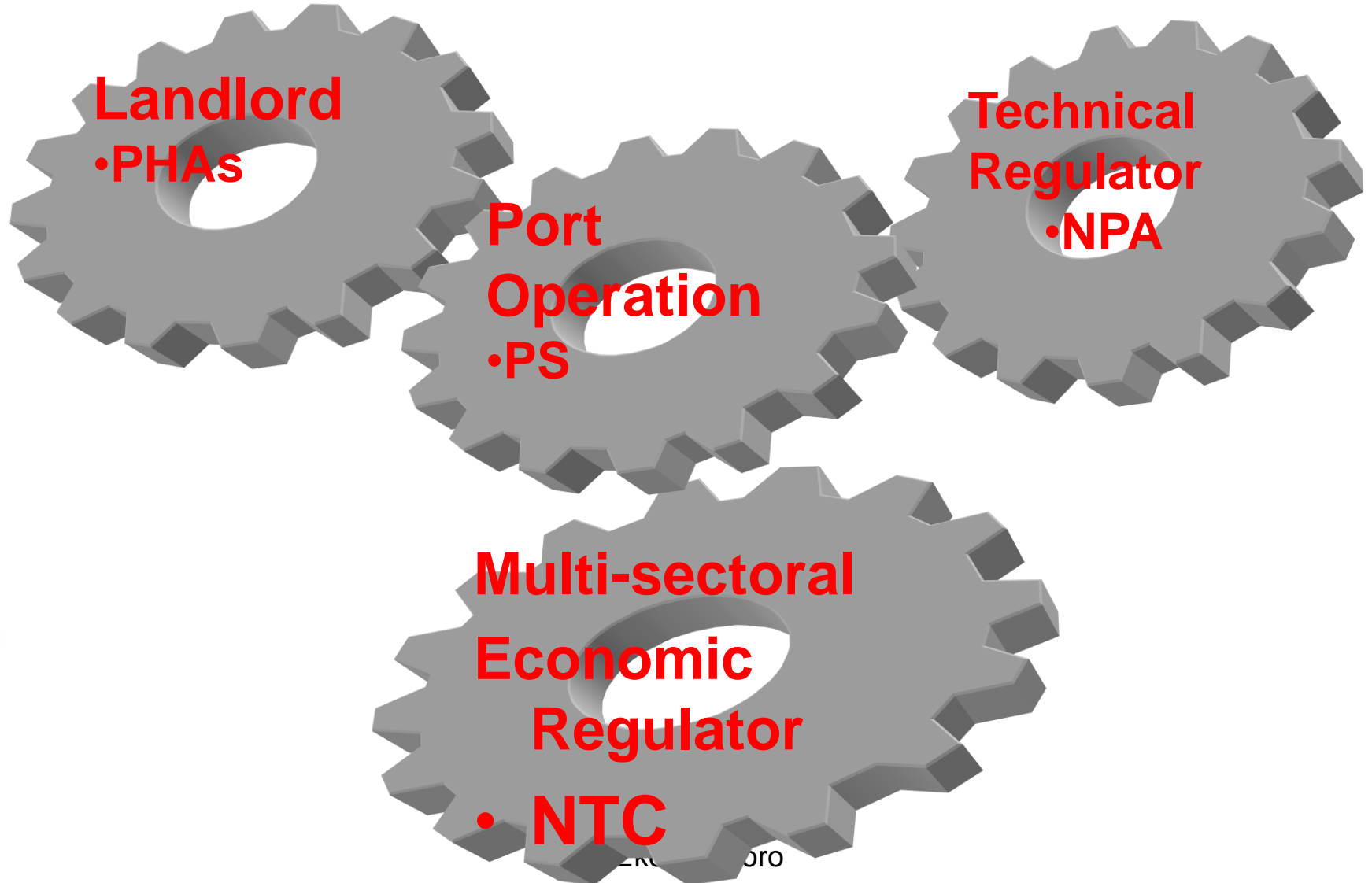
Current Regulatory Regime in Transport Sector

•Where we are





Proposed Institutional Reform





- *Fix it!*



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