

# TNP Insights



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## Quick Commentary - Key Changes Introduced by the Courier and Logistics Services (Operations) Regulations 2020

The Minister of Communications and Digital Economy has just issued the Courier and Logistics Services (Operations) Regulations 2020 (the "Regulations"). The Regulations repealing the Courier Service (Operations) Regulations 1992, have significantly amended the courier and logistics business model by restructuring the licensing regime. Essentially, four (4) licence categories have been created in addition to the existing (national and international) courier licence categories, and the licence fees for these categories have also been reviewed. In addition to this, the Minister has now made it mandatory (through the Regulations) for courier service operators to contribute 2% of their total annual revenue to a Postal Fund established under the Nigerian Postal Service Act 1992 - a contribution stream which was not envisaged under the Nigerian Postal Service Act 1992.

See the major highlights of the Regulations as well as our commentaries on some of the provisions below. Also, look out for our comprehensive review of the Regulations.

### New Licensing Regime

The 2020 Regulations have added four (4) licence categories to the existing licence (national and international) categories. Details of these are provided below:

| Category of Licence                  | New Licence Fee (₦) | Renewal Fee (₦) | Scope of Operation  |
|--------------------------------------|---------------------|-----------------|---|
| <b>International Courier Licence</b> | 20, 000, 000.00     | 8, 000, 000.00  | Suitable for operators who perform courier and logistic services across international borders.                      |
| <b>National Courier Licence</b>      | 10, 000, 000.00     | 4, 000, 000.00  | Suitable for operators who perform courier and logistics services nationwide.                                       |
| <b>Regional Courier Licence</b>      | 5, 000, 000.00      | 2, 000, 000.00  | Suitable for operators who perform courier and logistic services within a particular geo-political zone in Nigeria. |
| <b>State Courier Licence</b>         | 2, 000, 000.00      | 800, 000.00     | For operators who perform courier and logistic services within a particular state and no more.                      |
| <b>Municipal Courier Licence</b>     | 1, 000, 000.00      | 400, 000.00     | Suitable for operators who perform courier and logistics services within a particular city and no more.             |
| <b>Special SME Courier Licence</b>   | 250, 000.00         | 100, 000.00     | Suitable for municipal operators having not more than five (5) motorbikes.  |

### Other Key Changes

We have outlined the various other significant changes introduced by the Regulations below.

| Category of Licence    | New Licence Fee (₦)                                    | Scope of Operation   |
|------------------------|--|--|
| <b>Regulation 2(4)</b> | <b>De-registration of a licensee</b>                   | A courier and logistics licensee may be de-registered under the following circumstances: <ul style="list-style-type: none"> <li>Where the licensee is in breach of the conditions attached to the licence and fails to rectify the breach within fourteen (14) days after being notified.</li> <li>Where the licensee requests in writing to surrender the licence.</li> <li>Where the licensee carries on an activity outside the scope of its licence.</li> <li>Where the licensee is unable to pay its debts in accordance with section 409 of the Companies and Allied Matters Act, goes into liquidation or is otherwise declared insolvent or convicted of any fraudulent activity by a court of competent jurisdiction.</li> </ul>  |
| <b>Regulation 3(4)</b> | <b>Licence requirement – Evidence to show capacity</b> | Before considering an application for a courier licence, the Minister will now require the applicant to provide evidence or information to show capacity to operate courier and logistics services including the following: <ul style="list-style-type: none"> <li>Evidence of payment for the specific category of licence</li> <li>Evidence of leasehold interest in real property</li> <li>Business Plan</li> <li>Submission of professional indemnity insurance policy</li> <li>Evidence of the prescribed minimum share capital or a bond of that value</li> <li>Submission of sample documents</li> <li>Evidence of tax clearance for the last three (3) years (where applicable)</li> <li>Audited accounts and annual report of the previous year (where applicable).</li> <li>Evidence of staff training and manpower development for the previous year (where applicable); and</li> <li>Delivery analysis report for the previous year (where applicable).</li> </ul> |

|                           |   |  |                        |  |   |
|---------------------------|---|--|------------------------|--|---|
|                           |   | <p>Comment: <i>Please note that these requirements (except for the delivery analysis report) are actually not new as they were part of the courier licence application requirements under the previous regulations. However, they have just been codified in the 2020 Regulations.</i></p>   | <b>Regulation 8(6)</b> | <b>Request for general free delivery service from courier service operators</b>  | <p>The Regulations provide that the Minister may request any courier service operator through the Postmaster General to undertake free delivery service for the purpose of the universal postal service obligations or any social service delivery in the national interest. Where so requested, the operator is required to carry out such service.</p> <p>Comment: <i>This is also another interesting introduction, particularly as the terms “universal postal service obligations” and “social service delivery” are not defined or qualified in anyway.</i></p>   |
| <b>Regulation 3(7)</b>    | <b>Penalty for late submission of renewal application</b>     | <p>Failure to apply for renewal of licence within three (3) months before the expiration of the licence now attracts a penalty of fifty percent (50%) of the prescribed renewal fee in addition to the renewal fee or may constitute a ground for revocation of the licence.</p> <p>Comment: <i>Please note that under the previous regulations, failure to apply for renewal within the stipulated period constituted a ground for revocation of a licence without any monetary penalty. Accordingly, the introduction of the penalty now gives a broader option notwithstanding that this appear to be at the discretion of the regulator.</i></p>   | <b>Regulation 8(7)</b> | <b>Requirement for referral of specific items to the Nigerian Postal Service (“NIPOST”) for processing and delivery.</b> | <p>Items/articles such as Rights Issues, Share Certificates, Statements of Accounts, Cheques, Letters or Offer documents etc. weighing below 0.5kg sent to courier service operators for delivery must be recorded and referred by such operators to the nearest post office of the NIPOST for processing and delivery. Any operator that fails to comply with this requirement will be liable to pay a penalty of 90% of the amount charged on the item by such operator.</p> <p>Comment: <i>It is important to state here that the Regulations have deleted the provisions in the previous regulations that prohibited employees of a courier service company from unlawfully opening a sealed article entrusted to the courier service company for conveyance.</i></p> <p><i>In addition, this provision raises a lot of question and perhaps in fact, liability for a courier service operator who is tasked with and given the responsibility by its customer, to deliver its item. Such operator is now being mandatorily required to submit the same to the NIPOST. Apart from restricting a customer’s freedom to contract, there is also the question about whether the NIPOST assumes all of the obligations owed by the original courier service operator to the relevant customer. Notably, the Regulations is also silent on this point.</i></p> |
| <b>Regulation 4</b>       | <b>Payment of mandatory inspection and administrative fee</b> | <p>An applicant for a licence is required to pay a mandatory inspection and administrative fee as a pre-condition for the grant of a licence.</p> <p>Comment: <i>This is also not a new requirement as it has always been a part of the courier licence application process.</i></p>   | <b>Regulation 9</b>    | <b>Ethics and discipline requirements</b>  | <p>specific ethics and discipline requirements in the conduct of their business. These requirements include submitting proposals for partnership, acquisition, takeover, merger and alliance to the Postmaster General (“PMG”) for approval (and filing copies of the terms of partnership with the PMG) among others.</p> <p>In addition to the above, the Regulations sets out certain unethical practices, which may constitute a ground for revocation or refusal to grant or renew a licence. These unethical practices include:</p> <ul style="list-style-type: none"> <li>the continued provision of courier/ logistics service by a licensee after deregistration or suspension of a licence; and</li> <li>acquiring and maintaining a controlling interest in another licensee, where it is discovered that anti-competitive issues may likely arise in the event that such license is granted.</li> </ul> <p>Comment: <i>It would appear from the above provisions on anti-competitive practices that the NIPOST is looking to regulate Mergers and Acquisitions in the courier and logistics industry, a matter, which is within the purview of the Federal Competition and Consumer Protection Commission.</i></p>  |
| <b>Regulation 5</b>       | <b>Provision for surrender of a licence</b>                   | <p>The Regulations make provisions for the surrender of a licence by a licensee.</p>   |                        |  |   |
| <b>Regulation 8(4)(a)</b> | <b>Operational requirements for courier service operators</b> | <p>National and International Courier Service Operators are now required to have and maintain operational offices, secured infrastructure and warehouses in at least six (6) states of the federation, (one of which must come from each of the six geo-political zones of the country). This is an amendment to the requirement of having offices in at least five (5) states of the federation under the previous regulations.</p> <p>Also, domestic and municipal licence holders are only required to have a verifiable operational office and warehouse in their various locations.</p>   |                        |  |   |
| <b>Regulation 8(5)</b>    | <b>Mandatory contribution to the Postal Fund</b>              | <p>There is now an obligation on a courier operator to contribute a sum equal to 2% of its total annual revenue to the Postal Fund, which will be used for postal development and delivery of postal services in rural and underserved areas.</p> <p>Comment: <i>We consider this to be the most radical introduction to the rules regulating courier operations in Nigeria, as it raises a whole bunch of concerns centered around the constitutionality of this provision, whether the Minister can impose a tax such as this, and or whether the Minister can by subsidiary legislation introduce this tax.</i></p> <p><i>In addressing the above concerns, we must bear in mind that the principal legislation, which is the Nigerian Postal Service Act was clear about the sources of funds to be paid into the Postal Fund and this was a closed list, being expressly:</i></p> <ol style="list-style-type: none"> <li>money allocated to the Nigerian Postal Service by the Federal Government; and</li> <li>such revenues from postal and non-postal services rendered by the Nigerian Postal Service.</li> </ol> |                        |  |   |