

NIGERIA TANKER BAN LIFTED?

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The Nigerian National Petroleum Corporation (NNPC) has apparently lifted its earlier imposed ban of approximately 100 crude tankers from operating or moving within Nigerian territorial waters. The ban had been severely criticised by the shipping industry and international and local lawyers alike. Not only was it of questionable jurisdiction, the NNPC lacking the power constitutionally speaking, to control the movement of ships in Nigerian waters, but the sheer lack of explanation or information provided by the NNPC for the ban resulted in general uncertainty and speculation as to the reasons for it.

The recent NNPC letter, dated 8 September 2015, which supposedly lifts the ban is a step in the right direction but, unfortunately, does not completely clarify the status of the vessels on the 15 July 2015 list. The recent letter refers to the ban and states that the newly-elected president has now approved all vessels subject to receipt of a "letter of comfort". Terminal operators and companies looking to load crude oil are required

to issue a letter of comfort "*guaranteeing that nominated vessels ... will not be utilized for any illegal activity whatsoever*". The letter goes on to state that the "*President has directed a review of activities of all the affected vessels to determine culpability or otherwise in illegal operations within our territorial waters*".

While this 8 September 2015 letter is a positive development, probably at the instigation of the new management at the helm of the NNPC, it unfortunately leaves some questions unanswered and will not completely assuage the concerns of tanker operators, particularly those whose tankers were prohibited by the letter of 15 July 2015.

In the first place, terminal operators and charterers are being asked to guarantee the future acts of parties beyond their control. It looks as though the required guarantee is probably more of a formal assurance that the nominated vessel will not engage in illegal activity than a guarantee in the strict legal sense of the word, which would impute some form of obligation on the guarantor in the event of default by a nominated vessel.



Nevertheless, it puts terminal operators and off-takers in a quandary, and potentially leaves them vulnerable in the event that they issue a letter of comfort and a nominated vessel becomes involved in illegal activity.

It is not yet clear whether terminal operators or charterers will be happy to provide such letters.

The significance of the required letters of comfort is also questionable. Letters of comfort are rarely legally binding and will almost always be unenforceable, certainly from an English law perspective. Indeed one of the principal objectives of these letters is to avoid enforceable obligations. If the Nigerian authorities and courts adopt the same approach, then what is the true worth of the required letters of comfort?

Although the recent NNPC letter may calm some nerves in the industry, it does not do enough to address the uncertainty brought about by

the ban. Tanker owners, operators and charterers are recommended to exercise caution. Tankers intending to call at Nigerian terminals should, in advance of their entry into Nigerian waters, try to secure the provision by the relevant terminal operator, charterers, or other appropriate party, of a letter of comfort as required by the NNPC.

These letters should be appropriately drafted to protect the issuers' position in the event of default.

Where possible, tankers should obtain satisfactory reassurance from the NNPC or the Nigerian authorities that they are cleared to operate in Nigerian waters. It remains to be seen whether, in practice, the requirement of a letters of comfort would be dispensed with.

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