

You Have a Port Concession. But Who Controls the Economics?

*What the NPORA Act 2026 Means for Port Concessionaires,
Terminal Operators and Private Investors in Nigeria*

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If you own or operate a port concession in Nigeria, there is one question you are likely to have following the enactment of the Nigerian Ports Economic Regulatory Agency Act, 2026 (the “NPORA Act” or the “Act”): What does this actually change for my business?

The short answer is: quite a lot, particularly if your business depends on regulated tariffs, charges or long-term concession rights. The Act does not simply replace the Nigerian Shippers’ Council with a new name. It establishes the Nigerian Ports Economic Regulatory Agency (“NPORA”) as the economic regulator for the sector and gives it express powers over tariffs, charges, regulated services and compliance with port concession arrangements.¹

For the private sector, however, the most important change is this: the economics of a port concession can no longer be considered solely through the lens of the concession agreement. The contractual bargain remains important, but it now operates within an express statutory economic regulatory framework.

WHAT CHANGES IF I ALREADY HAVE A CONCESSION?

The first point is reassuring: ***the NPORA Act does not, on its face, replace the NPA as the contractual counterparty under existing concessions.*** If your company has a concession agreement with the Nigerian Ports Authority (“NPA”), that agreement remains the starting point for determining your contractual rights and obligations.

The Act does, however, give NPORA a direct regulatory role in relation to concessions. Section 4(1)(e) empowers NPORA to monitor compliance by regulated service providers and users with approved port concession agreements, contracts, service-level agreements and other arrangements relating to regulated services.² For a concessionaire, this is significant.

¹ Nigerian Ports Economic Regulatory Agency Act, 2026 (“NPORA Act”), ss. 1–4.

² NPORA Act, s. 4(1)(e).

Your concession is no longer only a matter between your company and the NPA. To the extent the concession relates to regulated services, compliance with it falls within the statutory economic regulator's oversight.

This means that the private sector should think about the concession in two dimensions (i) what does my contract require me to do? and: (ii) what does the economic regulatory framework now require me to do? In most cases, the two should operate together. But where they do not, the point of tension needs to be identified early.

THE BIGGEST PRACTICAL CHANGE: TARIFFS

For most private-sector operators, this is likely to be the most important part of the Act. If your business model depends on what you are permitted to charge customers, the NPERA Act changes the regulatory environment in which those charges are determined. Sections 26 to 29 give NPERA extensive powers in relation to tariffs, rates and charges. NPERA may establish tariff guidelines, including minimum and maximum tariff levels; monitor and review tariffs; establish service standards; and publish applicable tariffs and charges³.

More importantly, regulated service providers must file their tariffs or range of tariffs with NPERA and must not impose tariffs, rates, levies or charges that do not conform with NPERA's guidelines. A service provider may also not depart from a prescribed maximum tariff without NPERA's approval.⁴ Section 29 goes further by providing that NPERA shall, *"to the exclusion of any other body or authority,"* issue guidelines on the determination and publication of tariffs, rates and charges for regulated services.⁵

For a private operator, the practical message is straightforward. It can no longer be assumed that the tariff provisions in the concession agreement are the only rules that determine what you may charge. That does not mean that the tariff provisions in the concession cease to matter. It means that the contractual tariff mechanism must now be considered alongside the statutory regulatory framework. This will be particularly important where an existing concession contains a formula for periodic tariff increases. If, for example, your concession provides for an annual adjustment based on inflation or another agreed formula, you will need to consider how that adjustment interacts with NPERA's tariff guidelines and filing requirements. The commercial question is therefore *"what does my concession allow me to charge, and how does that entitlement operate within NPERA's regulatory framework?"*

DOES THE ACT APPLY TO EXISTING PORT CONCESSIONAIRES AND OPERATORS, OR ONLY TO NEW ENTRANTS?

The Act is not limited to businesses entering the port sector after its commencement. Section 31(5) expressly provides that the registration provisions apply to **existing regulated service providers**.⁶ Section 32 also addresses service providers already licensed by relevant government agencies. Existing operators therefore need to determine whether their businesses fall within NPERA's registration framework and what additional requirements may apply.

³ NPERA Act, s. 26(1).

⁴ NPERA Act, s. 27(1)–(2).

⁵ NPERA Act, s. 29(1).

⁶ NPERA Act, s. 31(5).

This is particularly important for businesses that may already hold licences, approvals or concessions from other government agencies. The fact that a company has an existing licence does not necessarily mean that there is nothing further to do under the NPERA regime.

WHAT HAPPENS IF NPERA'S REQUIREMENTS AFFECT MY PROJECT ECONOMICS?

A long-term concession is normally structured around an economic model. The private party invests capital today on the expectation that it will recover that investment over time through the project's permitted revenue streams. The parties may therefore have negotiated detailed provisions dealing with tariffs, operating costs, investment obligations, changes in law and, in some cases, economic rebalancing or compensation.

The NPERA Act introduces a new regulatory framework into that long-term relationship. Suppose, for example, that a concessionaire's financial model assumes a particular tariff trajectory. If a subsequent regulatory requirement constrains that tariff, requires a different methodology or otherwise affects the concessionaire's ability to generate projected revenue, the issue becomes more than one of regulatory compliance and becomes a project economics issue.

The key question will then be whether the concession agreement contains mechanisms for dealing with changes of this nature. This is why private investors should now review their concession agreements specifically for:

- tariff adjustment provisions;
- change-in-law provisions;
- economic equilibrium or rebalancing provisions;
- compensation mechanisms;
- government support obligations;
- termination provisions; and
- provisions dealing with regulatory approvals and changes in regulatory requirements.

The existence of these provisions does not automatically mean that a concessionaire is entitled to compensation whenever regulation changes. But they determine where the parties originally agreed that regulatory risk should sit. That allocation becomes particularly important under the NPERA regime.

WHAT DOES THE ACT MEAN FOR INVESTORS AND LENDERS?

The implications of the Act extend beyond existing operators. If you are considering investing in a port concession, the NPERA framework should now form part of your initial due diligence. For an investor, the important questions include: *What can the concessionaire charge? How can those charges change?*

Who regulates those charges? Does the concession provide protection if the regulatory framework changes? What happens if a regulatory decision materially affects project revenues?

For lenders, the issue is even more direct. A project's ability to service debt depends on its cash flows. Where those cash flows depend on regulated tariffs, the regulatory framework is part of the project's bankability. The NPERA Act therefore makes tariff and regulatory risk a financing consideration, not merely a compliance consideration. A lender should understand not only the concessionaire's contractual right to generate revenue, but also the regulatory framework governing the exercise of that right.

WHAT IF NPERA AND MY CONCESSION APPEAR TO POINT IN DIFFERENT DIRECTIONS?

This is likely to be one of the more difficult questions to emerge under the new regime. The NPERA Act expressly gives NPERA regulatory authority over tariffs and the monitoring of concession compliance. At the same time, section 4(2) requires NPERA to perform its functions in a manner that does not contravene legal instruments implemented by other government agencies and to comply with obligations arising under those instruments.⁷ This is important because a concession does not exist in a vacuum. The NPA and other government agencies may have statutory responsibilities relevant to the same project. The practical implication is that private-sector participants should be cautious about assuming that a new regulatory requirement automatically extinguishes an existing contractual right—or, conversely, that a contractual right automatically places the concessionaire outside the new regulatory framework.

The answer will depend on the particular concession, the nature of the regulated service, the applicable statutory provisions and the regulations and guidelines issued under the NPERA Act. That uncertainty is precisely why existing concessions should be reviewed now rather than when a dispute arises.

COMPLIANCE IS NOW AN OPERATIONAL ISSUE

The NPERA Act gives NPERA significant powers to monitor compliance, obtain information and inspect regulated service providers and their operations. Sections 36, 38 and 39 empower NPERA to monitor regulated services, require information and inspect relevant facilities and records.⁸ These powers mean that compliance cannot be treated as a matter for the legal or regulatory affairs team alone. For a port operator, the regulatory framework may have direct implications for pricing, customer contracts, reporting, operational standards, service delivery, revenue projections and financing arrangements. The consequences of non-compliance may also be significant: section 30 provides for penalties and enforcement measures, including the suspension, revocation, cancellation or withdrawal of relevant registrations, certificates or permits in specified circumstances.⁹ Economic regulation can therefore become an operational and financial risk, and should be reflected in the company's compliance framework, financial model and broader risk management processes.

⁷ NPERA Act, s. 4(2).

⁸ NPERA Act, ss. 36 and 38–41.

⁹ NPERA Act, s. 30.

WHAT THIS MEANS FOR THE FUTURE OF PORT PPPS

The NPERA Act also has a broader significance for Nigeria's PPP market. A long-term infrastructure project cannot be structured on the assumption that its regulatory environment will remain unchanged for the duration of the concession. Indeed, the Act expressly recognises the regulatory relationship with existing concession arrangements by empowering NPERA to monitor compliance with approved port concession agreements and other agreements relating to regulated services under section 4(1)(e). Its tariff provisions under sections 26 to 29 further demonstrate how regulatory decisions can affect the commercial economics of port projects. What matters, therefore, is whether the PPP provides a credible mechanism for managing regulatory change. For government, the challenge is to retain sufficient flexibility to protect users and respond to changing market conditions. For the private sector, it is to ensure that the commercial bargain is robust enough to accommodate regulatory change without undermining the project's viability. For lenders, the focus is on understanding how regulatory intervention may affect project cash flows and debt repayment.

Ultimately, the objective should be a regulatory framework that protects the public interest while providing sufficient certainty to support long-term private investment. The NPERA Act provides an opportunity to establish that balance in the Nigerian port sector. Its success, however, will depend substantially on implementation—particularly the tariff guidelines developed under sections 26 to 29, the application of the registration framework to existing service providers under sections 31 and 32, coordination with other government agencies as contemplated by section 4(2), and how NPERA approaches existing contractual arrangements.

TAKEAWAY

For a private-sector stakeholder, the NPERA Act ultimately raises a broader question: how resilient is the commercial bargain underlying the concession? For existing operators, that means understanding whether the project can continue to deliver its expected returns as the regulatory environment evolves. For new investors, it means assessing regulatory risk as part of the investment decision from the outset. For lenders, it means considering whether the regulatory framework provides sufficient predictability for the project's cash flows and repayment structure.

The real significance of the NPERA Act, therefore, may not be the creation of another regulatory layer, but the extent to which economic regulation becomes an integral part of how port PPPs in Nigeria are structured, financed and managed. For government and the private sector alike, getting that balance right will be critical to sustaining long-term investment in the country's port infrastructure.

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