

## **Opportunities in Nigeria's Cabotage: Foreign Investors to get a Piece of the Cake!**

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### **Intro**

Nigeria made a bold attempt to change the face of maritime business within its coasts when it enacted the *Coastal and Inland Shipping (Cabotage) Act 2003*.

The *Guidelines on Implementation of Coastal and Inland Shipping (Cabotage) Act 2003* was issued in April 2004 to facilitate implementation of cabotage.

The Act became enforceable May 2004.

Though designed to restrict foreign participation in Nigeria's domestic coastal trade, nevertheless a lot of opportunities exist for foreign involvement.

### **Part 1A**

#### **Understanding Nigeria's Cabotage Regime**

##### **Definitions**

Cabotage has been defined as follows:

"the carrying on of trade along a country's coast; the transport of goods or passengers from one port or place to another in the same country. The privilege to carry on this trade is usually limited to vessels flying the flag of that country." – **Black's Law Dictionary (8<sup>th</sup> Ed.) pg. 215.**

"the navigation and movement of ships in coastal waters; restriction of the use of coastal waters and airspace by a country to its own domestic traffic" - **The Webster Dictionary.**

*Section 2 of Coastal and Inland Shipping (Cabotage) Act 2003* incorporates the above definitions and in addition defines cabotage as:

- the carriage of goods and passengers by vessel from any place above or under Nigerian waters to any place above or under Nigerian waters in relation to the exploration, exploitation or transportation of mineral or non-living natural resources;
- engaging, by vessel, in any other marine transportation activity of a commercial nature in Nigerian waters;
- carriage of any goods or substances whether or not of commercial value within Nigerian waters.

A "place above Nigerian waters" as used in the definition above means – "*any vessel, offshore drilling unit, production platform, artificial island, sub-sea installation, living accommodation, storage structure, loading or landing platform, dredge, floating crane, pipe laying, barge, pipeline and any anchor cable or rig pad used in connection therewith.*"

##### **Aims**

Nigerian Cabotage Regime aims to:

- Restrict the use of foreign vessels in domestic coastal trade;
- Promote development of Indigenous tonnage;
- Establish cabotage vessel financing fund;
- Reserve the bulk of coastal trade for vessels built, owned, registered in Nigeria and manned by qualified Nigerian seafarers.
- Stimulate and expose Nigeria's indigenous shipping firms to shipping business in the coasts as a stepping stone to deep sea/international shipping;
- Encourage acquisition of shipping technology by creating and diversifying employment opportunities in the industry;
- Improve environmental safety;
- Protect the nation's security interests;
- Enhancing domestic waterborne transportation;
- Increase national fleet/tonnage;
- Develop ship building and repair capability;
- Create opportunities for employment;
- Conserve foreign exchange;
- Protect national economy and security, etc.

#### **High Points of the Cabotage Act**

Reservation of cabotage trade for Nigerians – **Sections 3-8;**

Allowance of limited foreign participation in areas where Nigerians lack capacity through grant of waivers – **Sections 9 - 14;**

Restricted licence for foreign vessels to be registered for participation in cabotage trade – **Sections 15 – 21;**

Special register for vessels and ship owning companies engaged in cabotage – **Sections 22 – 28;**

Establishment of a special cabotage enforcement unit under the National Maritime Authority (NMA) – **Sections 30 – 32;**

Creation of Cabotage Vessel Financing Fund (CVFF) to promote development of indigenous ship acquisition capacity by provision of financial assistance to Nigerian operators – **Sections 42 – 45;**

Vessels operating under a valid coastal trade licence under the Merchant Shipping Act (MSA) or Sea Fisheries Act will continue till expiration of licence – **Section 52.**

#### **Part 1B**

## **Cabotage Implementation In Nigeria**

### **Legal Regime**

The main instruments regulating cabotage are:

- The Cabotage Act 2003;
- The Cabotage Guidelines 2004;

Additionally the following laws are relevant in so far as they are consistent with the Cabotage Act:

- Merchant Shipping Act;
- Admiralty Jurisdiction Act;
- Admiralty Jurisdiction Procedure Rules;
- Companies & Allied Matters Act;
- Nigerian Enterprises Promotion Act;
- Any other existing law.

### **Implementation Agencies**

The following government agencies are responsible for implementing cabotage:

- Federal Ministry of Transport;
- National Maritime Authority –
  - Registrar of Ships;
  - Cabotage Enforcement Unit;
  - Collecting Agency for Cabotage Vessel Fund;
  - Seafarers Training & Certification Dept;
- Nigerian Inland Waterways Authority;
- Joint Maritime Labour Industrial Council;
- Nigerian Ports Authority;
- Nigerian Customs, Police, & Navy.

### **Cabotage Trade**

The Cabotage Act reserves for Nigerians and Nigerian vessels the carriage of goods and passengers in the following circumstances:

- cargo and passengers originating from one port or point in Nigeria to another within Nigeria carried on, through or under Nigerian waters;

- Cargo originating from Nigeria destined for Nigerian ports/market but carried via port outside Nigeria;
- Cargo carried from one point in Nigeria to another whether or **not of commercial value.**

#### **Cabotage Trade Areas**

The cabotage law is enforceable against any vessel trading and lying in or along the following areas in Nigeria:

- Nigerian Inland Waters
- Nigerian Coastal Waters
- Nigerian Territorial Waters
- Nigeria's Exclusive Economic Zone
- Islands (natural/artificial) within Nigerian Waters

The Cabotage Enforcement Unit has so far identified the following facilities within the cabotage trade area for cabotage enforcement:

- 6 major Seaports;
- 10 oil terminals;
- 168 jetties; and
- all offshore oil installations and structures.

#### **Registration of Cabotage Vessels**

The Cabotage Act requires the following vessels to be registered by the Registrar of Ships in a Special Cabotage Register before they can engage in cabotage trade:

- passenger vessels
- Crew boats
- Bunkering vessels
- Fishing trawlers
- Barges
- Off-shore service vessels
- Tugs

- Anchor handling tugs and supply vessels
- Floating petroleum storage and Offtake facilities
- Dredgers
- Tankers
- Carriers; and
- Any other craft or vessel used for carriage on, through or under water of persons property or any substance whatsoever.

The requirement for registration affects:

- Wholly Nigerian owned vessels;
- Joint Venture owned vessels;
- Bareboat chartered vessels;
- Foreign owned vessels; and
- Vessels requiring temporary registration.

#### **Waivers & Licences**

Vessels not eligible to participate in the Cabotage trade must obtain waiver before registration in the Special Cabotage Register.

Vessels requiring waiver include:

- Vessels not wholly owned by Nigerians, that is:
  - Joint Venture owned vessels;
  - Chartered vessels other than a Bareboat charter;
  - Wholly Foreign owned vessels;
- Vessels not wholly manned by Nigerians;
- Vessels not built in Nigeria; and
- Vessels not registered in Nigeria i.e. a foreign flag.

Foreign vessels must first obtain a licence to trade in the coastal and inland waters before registration in the Special Cabotage Register.

Waivers are granted on the basis of non-availability and lack of capacity by Nigerians in the area the waiver is required.

In granting waivers, priority is given to vessels and shipping companies owned by Nigerians and foreigners under a Joint Venture arrangement followed by vessels registered in Nigeria and owned by a shipping company registered in Nigeria.

### **Cabotage Vessel Financing Fund**

NMA is required to collect the Cabotage Fund and deposit it in commercial banks;

The Fund is to be generated from:

- 2% surcharge of contracts performed by vessels engaged in cabotage;
- Tariffs, fines and fees for licensing and waivers;
- Interest paid on and repayment of principal sum of loans granted from the Fund;
- Any other sum approved by the National Assembly.

The Guidelines for administration of the Fund is still being awaited.

### **Cabotage Fees & Tariffs**

The following fees are payable in respect of cabotage:

- Waiver on manning – from N50,000 – N100,000;
- Waiver on ship building – USD1,000;
- Waiver on ownership -
  - Foreign vessel – USD50,000;
  - JV Vessel – USD5,000;
  - Bareboat Vessel – N100,000;
- Temporary Registration – USD2,000;
- Registration of ship Mortgage – N50,000;
- Exemption Fees – N50,000;
- Ship Registration –
  - 1 - 1,000gt –
    - Foreign vessel – USD1,000;
    - Nigerian – N50,000.
  - 1,000 – 10,000gt –
    - Foreign vessel – USD1,500;
    - Nigerian – N75,000.

- Every subsequent 1,000 –
  - Foreign vessel – USD250;
  - Nigerian – N15,000.

## **Part 2**

### **Opportunities In Nigeria's Cabotage Regime**

#### **Cabotage Opportunities**

Cabotage will create opportunities for investments in the following areas:

- Fishing industry;
- Passenger ferry services;
- Towage & Salvage operations;
- Dredging (coastal and inland waterways);
- Liquid bulk carriage e.g. chemicals, oil and its derivatives;
- Dry bulk carriage e.g. iron ore, coal, grains;
- General cargo (feeder and inland transport);
- Container trade;
- Marine engineering spare parts supplies;
- Shipbuilding and repair (ship yards, repair yards, emergency repair facilities & anchorage);
- Maritime auxiliary services (freight forwarding services, storage and warehousing, maritime agency services, container/depot services);
- Ship, Port and boat supplies (bunkering, garbage and ballast waste disposal, victualling, communications and electrical supplies);
- Maritime insurance and finance sector (credit facilities for fleet and business expansion);
- Training /Technical Assistance;

There are also opportunities for investors who can set up facilities in Nigeria to build specialized vessels (e.g. flare knockout vessels; slug catchers; surge vessels; pressure vessels) and marine structures (e.g. buoys, piles, jackets, & other mobile units) to support various oil & gas installations.

#### **Foreign Participation In Cabotage**

Cabotage is a means to an end & not an end itself. The ultimate end of cabotage are;

- Enhancing domestic waterbourne transportation;
- Increase national fleet/tonnage;
- Develop ship building and repair capability;
- Create opportunities for employment;
- Conserve foreign exchange;
- Protect national economy, environment and security;

The above objectives can not realistically be achieved without the injection of foreign investments in terms of technology, financing, and expertise;

Recognizing this need, the cabotage regime has been designed to allow foreign participation in areas where Nigerians lack capacity. Nigeria presently lack the technology, finance, and expertise for ship building and acquisition;

So far there is no definite policy and plan in place to develop capacity for ship building, repair and acquisition or for training qualified Nigerian seafarers which are the bedrock of cabotage;

It is not unreasonable in the circumstances to posit that waivers will continue to be issued to foreigners so long as Nigerians do not show sufficient capacity in these areas;

The Cabotage Vessel Finance Fund cannot in the short term meet the huge financial outlay required for acquisition of vessels and establishment of ship building and repair facilities;

The Cabotage Fund is overshadowed by its predecessor, the Ship Acquisition & Ship Building Fund which was a massive failure;

Pending release of the guidelines for disbursement of the Fund, the pertinent questions to ask is:

- Will banks lend at commercial terms or rates?
- If yes very few Nigerians will meet the requirements for obtaining credits especially regarding provision of securities.

The best chance Nigerians have to participate in cabotage for now remains to enter into a Joint Venture arrangement with foreign investors.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*