

ENFORCING THE CABOTAGE ACT WITHIN NIGERIA'S TERRITORIAL WATERS

IMPLEMENTING THE AGENCY'S MANDATE ON OFFSHORE DRILLING UNITS, FPSO AND FSO

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INTRODUCTION

- The Coastal and Inland Shipping (Cabotage) Act (the Cabotage Act) was enacted in 2003 and came into force on 1st May 2004.
- The Cabotage Act is administered by the Nigerian Maritime Administration and Safety Agency (NIMASA), which is the regulatory agency for Nigeria's maritime industry.
- The main objectives of the Cabotage Act are to increase indigenous participation in the Nigerian maritime industry, encourage/empower Nigerians to acquire cabotage vessels and increase Nigerian tonnage.

RESTRICTIONS IN THE CABOTAGE ACT

- Under the Cabotage Act only Nigerian registered vessels, built in Nigeria, wholly owned and manned by Nigerian citizens may engage in coastal trade or cabotage within the waters of Nigeria.
- The Cabotage Act defines waters of Nigeria to include inland waterways, territorial waters and exclusive economic zone

DEFINITIONS

The Cabotage Act defines “cabotage or coastal trade” as follows:

- The carriage of goods by vessel or any other mode of transport, from one place in Nigeria or above Nigerian waters to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters
- the carriage of passengers by vessel from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place above Nigerian waters to the same place or to any other place above or under Nigerian waters where the carriage of passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and

DEFINITIONS CONTI'D

- the carriage of passengers by vessel from any place in Nigeria situated on a lake or river to the same place, or to any other place in Nigeria, either directly or via a place outside Nigeria to the same place without any call at any port outside Nigeria or to any other place in Nigeria, other than as an in transit or emergency call, either directly or via a place outside Nigeria;
- the engaging, by vessel in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substance whether or not of commercial value within the waters of Nigeria;
- The Cabotage Act defines vessel as “any description of vessel, ship, boat, hovercraft or craft, including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage on through or under water of persons or property without regard to method or lack of propulsion”.

DRILL SHIPS

- Drill ships fall within the definition of vessel under the Cabotage Act
- A drill ship's movements from one point on Nigeria's cabotage area to another point on the cabotage area with personnel and/or equipment on board for the purpose of exploration or exploitation of "the mineral or non-living natural resources in or under Nigerian waters" fall within the definitions of cabotage/coastal trade under the Cabotage Act.

FPSOS AND FSOS

- Section 22 of the Cabotage Act lists “floating petroleum storage” in the class of vessels eligible for registration in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage (Cabotage Special Register)
- Where an FPSO or FSO detaches from its location within Nigeria’s cabotage area and moves with cargo, partly or fully, loaded at its location to another point within Nigeria’s cabotage area, either under routine or emergency conditions such movements fall within the definitions of cabotage or coastal trade;
- FPSOs and FSOs fall within the definition of vessel under the Cabotage Act particularly when used for carriage of cargo

VESSELS EXEMPT FROM APPLICATION OF THE CABOTAGE ACT

- Foreign vessels engaged in salvage operations provided such salvage operation is determined by the Minister to be beyond the capacity of Nigerian owned and operated salvage vessels and companies;
- Foreign vessels engaged with the approval of the Minister or any other relevant government agency in activities related to marine pollution emergency or to any threatened risk thereof;
- Foreign vessels engaged in any ocean research activity commissioned by the Department of Fisheries or any other department of the government responsible for such research; or
- Foreign vessels operated or sponsored by a foreign government that has sought and received the consent of the Minister of Foreign Affairs to conduct Marine Scientific Research.

WAIVERS

Some or all three main specifications of the Cabotage Act may be waived in the following circumstances:

- Where there is no Nigerian wholly owned vessel suitable and available to perform the specific function needed
- Where no Nigerian shipbuilder has the capacity to construct a vessel of a particular type and size needed
- Where there is no qualified Nigerian officer or crew available for the specific positions needed

ORDER OF PRIORITY FOR GRANT OF WAIVERS

- Nigerian vessels owned by cabotage joint venture Nigerian companies
- Nigerian vessels owned by any shipping company registered in Nigeria
- Foreign vessels

LICENSE TO FOREIGN VESSEL

- In addition to the waivers, foreign vessels wishing to participate in the Nigerian coastal trade require licences from the Minister of Transport. The licence, like the waiver, must be carried on board the vessel at all times.

REGISTRATION IN THE SPECIAL CABOTAGE REGISTER

- Every vessel engaged in cabotage, notwithstanding the nationality, is required to be registered in the Special Cabotage Register kept by the Registrar of Ships

CABOTAGE BAREBOAT CHARTER REGIME

- A foreign vessel on bareboat charter to a Nigerian citizen, corporate or natural, for a minimum period of five years, which is under the full control and management of the Nigerian bareboat charterer would be eligible to participate in the Nigerian coastal trade upon satisfaction of conditions set out in the Bareboat Charter Regulations.
- In the case of a corporate body, 100% of its equity shares must be held by Nigerian citizens free of trust or obligations in favour of non Nigerians
- The vessel will be regarded as Nigerian owned by contract and be registered in the Nigerian ship register to fly the Nigerian flag for the period of the charter
- Foreign registry of the vessel will be suspended for the period of registration in Nigeria

PENALTIES AND ENFORCEMENT

- Penalties upon conviction for violations of the Cabotage Act include fines as listed below and sometimes forfeiture of vessels:
 - ❖ NGN10,000,000 (ten million Naira) for operating without waivers;
 - ❖ NGN15, 000,000 (fifteen million Naira) for foreign vessels operating without license
 - ❖ NGN5,000,000 (five million Naira) for operating without being registered in the special cabotage register

CABOTAGE VESSEL FINANCING FUND (CVFF)

- The Cabotage Act established the CVFF for the purpose of providing financial assistance to Nigerian operators in the domestic coastal trade for the acquisition of cabotage vessels.
- The sources of this fund include a 2% surcharge on contract sums performed by vessels engaged in cabotage, all fees payable under the Cabotage Act including waivers and license fees

THANK YOU

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