



The registration of foreign owned vessel under the Nigerian Cabotage Act 2003

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The primary objective of the Nigerian Coastal and Inland Shipping (Cabotage) Act¹(the Cabotage Act)is to restrict the use of foreign vessels in domestic coastal trade within the Nigerian coastal and inland waters and also promote indigenously built Vessels wholly owned, registered and manned by Nigerians. The Cabotage Act therefore restricts foreign participation in Nigeria's domestic coastal trade.

There are however exceptions to this exclusion of foreigners to trade within Nigerian waters subject to the procurement of a waiver, licence or exemption from the Federal Ministry of Transport (FMOT). Foreign-owned vessels can obtain a licence from the Minister of Transport to qualify for registration in the Cabotage Register. In certain prescribed circumstances, vessels both foreign and Nigerian can be granted a waiver by the Minister of Transport in respect of the prohibitions contained in the Cabotage Act.

Waivers:

The Minister of Transport is empowered to issue the following waivers:

- i. **Waiver on the requirement for the vessel to be wholly owned by Nigerian citizens:** Upon being satisfied that there is no wholly owned Nigerian vessel that is suitable or available to perform the activities specified in the application.

The applicant, typically a joint venture (JV) consisting of a foreign entity and a Nigerian partner who own 60% unencumbered equity of the JV must submit with its application the following documents: certificate of Nigerian Registry; detailed crew list; certificate of minimum safe manning; evidence of registration of JV company with NIMASA; and certified true copies of form CAC 2 and CAC 7².This waiver would typically be applicable for large ocean going tankers (VLCCs)and FPSOs given the substantial capital required by Nigerians to acquire same . The Cabotage Act in Part VIII sections 42 to 45 envisages the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping through the Cabotage Vessel and Financing fund. The fund has hardly been accessed or made available to assist Nigerians with the acquisition of vessels hence the high rates of waivers granted under this category by the FMOT.

¹Coastal and Inland Shipping (Cabotage) Act, 2003; 2003 Act No. 5

²Guidelines on implementation of coastal and inland shipping (Cabotage) Act, 2003. Issued by Federal Ministry of Transportation April 2007.

- ii. **Waiver on the requirement for the vessel to be fully manned by Nigerian citizens:** Upon being satisfied that there is no qualified and available Nigerian officer and crew for the position(s) specified in the application. The applicant must provide certificate of Nigerian Registry; detailed crew list; certificate of minimum safe manning; evidence of registration with NIMASA; and certified true copies of form CAC 2 and CAC 7.
- iii. **Waiver on the requirement for the vessel to be built in Nigeria:** Upon being satisfied that there is no Nigerian ship-building company that has the capacity to construct the particular vessel or that there is no available Nigerian built vessel of the particular type specified. The applicant must provide the following documents: Application form; Copy of certificate of registry; Declaration of ownership certificate; Completed crew declaration form; Cabotage licence; Certificate of tonnage measurement; Passenger ship safety certificate; Cargo ship safety certificate; Ship safety equipment certificate; Certificate of minimum safe manning; International safety management certificate; Load line certificate; Survey certificate; Safety radio certificate; Classification certificate; Certificate of incorporation; Memorandum and article of association; Certified true copy (CTC) of forms CAC7 and CAC2; Current tax clearance certificate; Evidence of registration of shipping company with NIMASA; Proof of payment of registration fees; Undertaking to train a prescribed number of Nigerian cadets to mention but a few. The Egina FPSO to be utilised by Total Upstream Nigeria³ for its operations offshore OML 130 would have required a waiver for it to be built by Samsung Heavy Industries (SHI) in Korea and brought into Nigeria for use. It is, however, noteworthy that **Section 7(1) of the Cabotage Act** provides that foreign built vessels that were entirely rebuilt in Nigeria are eligible for participation in cabotage services without a waiver.

Also under the Cabotage Act, a priority system is established for the grant of waivers as follows:

- i. to wholly owned Nigerian vessels;
- ii. to Joint Venture Owned Vessels; and
- iii. to any vessel registered in Nigeria and owned by a shipping company registered in Nigeria (foreign owned vessels).

It is worthy to note that the validity of waivers granted by the Minister is for a period of one (1) year, subject to annual renewals. Applicants are required to show evidence of improved level of compliance with the requirements of the Cabotage Act on manning, ownership and ship-building for the purposes of the renewal.

There has been some debate on the application of the Cabotage Act or otherwise to drilling rigs and FPSO vessels. An FPSO is generally known as a converted oil tanker or purpose built vessel, designed to receive oil and gas produced from nearby platforms or subsea template, process and store same until offloaded onto a tanker or transported through the pipeline for shipment. It is pertinent to note that FPSOs are recognised as a registrable vessel by virtue of **Section 22(5) (i)** of the Cabotage Act. Moreover, an FPSO ordinarily possesses all the characteristics of a vessel as defined in Section 2 of the Cabotage Act.

Section 2:

“vessel” includes 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;

By this definition, it can be discerned that the FPSO capable of being partly used for marine navigation; it does receive and carry oil or gas on, through or under water even though lacking propulsion which was often the argument posited against the need for registration. In addition, a cursory look at the Merchant Shipping Act, No. 27 of 2007 defines a ship in **Section 445** as ***“a vessel of any type whatsoever not permanently attached to the seabed including dynamically supported craft, submersibles or any other floating craft which shall include but not limited to Floating Production Storage and offloading (FPSO) platform as well as Floating Storage and***

³ CNOOC, Petrobras, and South Atlantic Petroleum are partners with 45%, 16% and 15% respectively. Total Upstream Nigeria has 24%.

Offloading (FSO) platform”. Thus the contention that an FPSO being stationary does not qualify as a vessel for the purposes of registration the Cabotage Act is further diminished.

With respect to drilling rigs, there have been various views as to whether they are also vessels for the purposes of registration under the Cabotage Act. In the case of **Noble Drilling (Nigeria) Limited v The Nigerian Maritime Administration and Safety Agency (NIMASA) & The Minister of Transportation**⁴ the court held, *inter alia*, that drilling rigs and its operations did not fall within the definition of Coastal Trade or Cabotage. Flowing from this decision, drilling rigs may have been exempted from the category of vessels which are subject to Cabotage registration. However on appeal, NIMASA and the Minister of Transportation (as Appellant) appealed the decision of the Federal High Court and the Court of Appeal without considering the crux of the judgment delivered by the lower court held that the originating summons with which the matter was initiated at the Federal High Court was not properly issued and served as it fell short of the stipulations of the provisions of Order 7 rule 7(i) of the Federal High Court (Civil Procedure) Rules 2000 (the applicable Rules then) and sections 96, 97, 98 and 99 of the Sheriffs and Civil Process Act. The Court of Appeal therefore set aside the judgment of the lower court as a nullity, and consequently struck out the suit. By this development, it appears that NIMASA is empowered to make regulations affecting drilling rigs and its operations within our coastal waters.

Licence:

A licence issued by the FMOT is a necessary requirement for the registration of a foreign owned vessel in the Cabotage Register. The FMOT Cabotage Trade Form 3 must be duly completed and submitted to the Ministry of Transport with the applicant's corporate documents, certificate of waiver and vessel documents as specified in the Guidelines on Implementation of the Coastal and Inland Shipping (Cabotage) Act in 2003.⁵

The validity of such issued licence is for one (1) year subject to annual renewal. For renewal purposes, applicants are expected to show evidence of an improved level of compliance with the provisions of the Cabotage Act on manning, ownership and shipbuilding requirements.

In addition, **Section 27 of the Cabotage Act** provides that foreign-owned vessels presently engaged in cabotage trade may be granted a temporary registration in the Cabotage Register for the duration of the contract for which the vessels are employed. This provision is applicable only to foreign vessels doing business before the commencement of the Act.

Exemptions:

Vessels (both foreign and Nigerian owned) engaged in certain activities are exempted from the provisions of the Act. These activities are:

- i. Commercial Salvage Operations;**
- ii. Activities related to Marine Pollution Emergency;**
- iii. Ocean Research Activity;**
- iv. Marine Scientific Research; and**
- v. Humanitarian Salvage Operations.**

Vessel Operators that intend to engage in the above activities, except humanitarian salvage operations are required to apply for exemption from the Minister of Transport.

In conclusion, foreign participation in the cabotage trade within Nigerian waters particularly as it relates to drilling rigs and foreign registered support vessels utilised in the oil and gas industry is permissible subject to the procurement of the necessary licences and waiver.

⁴Suit No. FHC/L/CS/78/2008. The decision of the Court was influenced by the definition of vessel in Section 2 of the Cabotage Act.

⁵ The guideline was issued in April 2007 by the Federal Ministry of Transportation.