



REVIEW OF THE COASTAL AND INLAND SHIPPING (CABOTAGE) ACT OF 2003.

INTRODUCTION

The Cabotage Act is the first comprehensive Nigerian legislation with regards to carriage of goods by sea and other incidental matters related thereto. Prior to its existence, it was mainly International Treaties, which had been adopted that governed this regime. This Act essentially reserves the Carriage of goods by sea and participation in other specified maritime activities within Nigerian waters;

- ☒ To vessels and shipping companies beneficially owned by Nigerians,
- ☒ Manned by Nigerian officers and crew, vessels built or, fabricated or assembled in Nigeria; and finally to
- ☒ Vessels and shipping companies registered in Nigeria.

The Act makes allowance for the present inadequacy of indigenous capacity by permitting the Minister of Transport to grant waivers of a year's duration on any or all of the first three requirements in the mandatory order of priority: first, to a 100% Nigerian owned vessel or company; second, to a Joint Venture owned vessel and lastly, to a fully foreign owned vessel. The waiver is strictly based on non-availability of Nigerian owned vessel and crew.

The Act also establishes a Cabotage Vessel-Financing Fund.

RESTRICTIONS IN DOMESTIC COASTAL TRADE

The Act prohibits all vessels not wholly owned and manned by a Nigerian citizen, built or registered in Nigeria; to engage in domestic coastal carriage of passengers or goods within the Coastal, Territorial, Inland waters, Island or any point in the Exclusive Economic Zone in Nigeria. This same restriction is placed on towage vessels or tugs irrespective of what they carry; but dispenses with the need for the



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vessel to be manned by a Nigerian citizen. This provision does not apply to foreign vessels rendering assistance in situations of danger or distress. A vessel not wholly beneficially owned by a Nigerian citizen, can neither engage in the carriage of petroleum product, nor engage in ancillary services like carriage of materials, supply of services etc.

In the event of rebuilding a vessel, such vessel is eligible for Cabotage Services, if the entire rebuilding (including construction of any major component of the hull) is effected in Nigeria. This requirement is dispensable where the foreign built vessel is forfeited in breach of any laws of Nigeria or captured as a war prize.

The restriction of foreign vessels in domestic coastal trade does not apply to foreign vessels belonging to the classes listed below:

- ⚓ Vessels operating in salvage operations, beyond the capacity of its Nigerian counterpart, as determined by the Minister,
- ⚓ Vessels engaged, with the approval of the Minister, in activities relating to marine pollution emergency or any threatened risk thereof;
- ⚓ Vessels engaged in ocean research as commissioned by the Department of Fisheries or any other appropriate authority.

WAIVERS

The Minister is empowered to grant waivers, upon application by duly registered vessels under certain conditions. With respect to the “wholly owned Nigerian vessel” requirement, the Minister must be satisfied that there is no suitable Nigerian counterpart capable of providing or performing the services or activities listed in the application.



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The requirement that Nigerians wholly man the vessel is waived upon satisfaction that there is no qualified Nigerian officer or crew for the position specified in the application.

For the Minister to waive “the wholly built in Nigeria” requirement, he must be satisfied that no ship building company has the capacity to construct the particular type and size specified in the application.

The consideration for the granting of waivers is prioritized: first, to a vessel or shipping company owned by joint agreement between Nigerians and Non-Nigerians where the equity share holding by Nigerians is not less than 60% and is free from trust or obligation in favor of Non-Nigerians; next, to any vessel registered in Nigeria and owned by a shipping company registered in Nigeria.

The waiver should specify its validity period, which should not exceed one year.

LICENCES

The Minister may issue restricted licenses to foreign owned vessels, on application on its behalf by a person resident in Nigeria upon payment of fees and satisfaction that:

- ☒ it is eligible for waiver,
- ☒ it is eligible for registration,
- ☒ the owning company has a representative office in Nigeria,
- ☒ payments, with respect to its participation in coastal trade have been made,
- ☒ all certificates and documents in compliance with International and Regional maritime conventions are current and valid,
- ☒ it meets all safety and pollution requirements imposed by Nigerian laws and International conventions.



The license issued in this regard should be carried on board the vessel at all times. The terms and conditions governing the issuance of the license should not restrict the generality of terms with respect to the service to be performed, or places where such services may be performed.

The Minister may suspend, cancel or vary the terms and conditions of an issued license where:

- ☒ the master or owner is convicted of an offence,
- ☒ there has been a failure to comply with the terms or condition to which the license is subject to, or
- ☒ It is expedient to do so on the grounds of national or public interest.

REGISTRATION

Every vessel intended for use under this Act must be duly registered by the Registrar of ships in the Register for Vessels and Ship Owning companies and should meet the requirements under this Act and the Merchant Shipping Act.

The requirement for registration; subject to the provisions for waivers; include the following:

- ☒ The vessel is wholly and beneficially owned by Nigerians and free from trust and obligation in favor of a non-Nigerian.
- ☒ The vessel on bare boat charter to Nigerians is under the full control and management of Nigerians.
- ☒ The vessel is owned by a company registered in Nigeria with 60% of its shares owned by Nigerians.
- ☒ If it is a foreign vessel, it is licensed in compliance with the provisions of this Act.



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- 🏢 Nigerian officers or citizens exclusively man it.
- 🏢 The vessel possesses all certificates and documents in compliance with International and Regional Maritime Conventions and all safety and pollution requirements.

Where required certificates and documentation have expired, or a subsequent change in ownership structured of the vessel occurs, or a contravention of this Act or the Merchant Shipping Act occurs, registration of such a vessel shall be deleted from the registry.

ENFORCEMENT

Enforcement of the provisions of this Act is to be done by the Enforcement Unit Officers of the National Maritime Authority. These officers may stop, board, detain the vessel, and with a warrant search and seize anything believed to evidence the contravention of any provision of this Act. The requirement for a search warrant may be dispensed with on grounds of impracticability.

The Act provides for penalties varying from financial payments, to forfeiture of the vessel; to be meted out to contraveners of the Act. The Act stipulates that where it is the vessel that is in non-conformity, the shipping company responsible for it or its Captain is deemed to have committed the offence. In the case of a Ship owning company or a body corporate, every director or officer of the company is deemed to have committed the offence. In the case of a Partnership, every partner or officer is deemed to have committed that offence.

Where there is no prescribed penalty for an offence, the Act provides for a strict liability of not less than N500, 000.

It is the Federal High Court that has jurisdiction to entertain matters and offences referred to in this Act.



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The purpose of the Cabotage Vessel Financing Fund is to promote the development of ship acquisition capacity by providing financial assistance to Nigerian operators in domestic coastal shipping. It is to be funded as thus:

- ☒ 2% of the contract sum performed by any vessel engaged in coastal trade.
- ☒ Monies generated under this Act including tariffs, fines, and fees for licenses and waivers.
- ☒ A sum determined and approved by the National Assembly.
- ☒ Monies accruable to the fund.

The fund is to be collected by the National Maritime Authority, deposited in commercial banks and administered under a guideline proposed by the Minister and approved by the National Assembly.

The beneficiaries of the fund are Nigerian citizens and Shipping Companies wholly owned by Nigerians.

Conclusively, the drafters of this Act expect that a proper implementation of this Act would have the effect of transforming Nigeria into a Maritime nation and enable it to rank favorably with its counterparts.