

## Ship Registration, Cabotage Trading and Inland Shipping in Nigeria



The Maritime activities in Nigeria are *inter alia* majorly regulated by the following laws:

- i. The Merchant Shipping Act 2007;
- ii. The Coastal and Inland Shipping (Cabotage) Act 2003
- iii. The Nigerian Oil and Gas Industry Content Development Act
- iv. The Nigerian Maritime Administration and Safety Agency Act 2007, etc.

The Merchant Shipping Act is the primary law that governs the registration of ships in Nigeria and is administered by the Nigerian Ship Registration Office (NSRO).<sup>1</sup> The NSRO is a department in the Nigerian Maritime Administration and Safety Agency (NIMASA).

Under the Nigerian Merchant Shipping Act, a ship shall not be registered in Nigeria unless the ship is owned wholly by persons of the following descriptions<sup>2</sup>:

- i. Nigerian citizens;
- ii. Bodies corporate and partnerships established under and subject to Nigerian laws, having their principal place of business in Nigeria;
- iii. Such other persons as the Minister may, by regulations prescribed.

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<sup>1</sup> The Nigerian Ship Registration Office was established under section 28(2) of the Nigeria Maritime Administration and Safety Agency Act 2007

<sup>2</sup> Section 18 (1) of the Merchant Shipping Act

Where the Minister has reason to believe that there is some doubt as to the title of any ship registered in Nigeria, the Minister may direct the Registrar at the port of registry of the ship to require that evidence be given to his satisfaction that the ship is entitled to be so registered.<sup>3</sup> If, within such time as may be determined by the Minister, not being less than thirty days, evidence to the satisfaction of the Registrar of the title of the ship to be registered is not given, the ship shall be liable to forfeiture.<sup>4</sup>

Sequel to the above therefore, foreigners can only register their ships in Nigeria by incorporating Nigerian subsidiary companies and vesting ownership of the ships in the subsidiary companies. An application for registration of a ship in Nigeria shall be made formally in writing to the Registrar at a port of registry in Nigeria in such form as the Minister may, from time to time approve.<sup>5</sup> The Registrar of Ships shall be furnished with the following information and documentation before proceeding with the registration of a ship under the Merchant Shipping Act:

- (i) the full names, addresses and occupations of the purchaser(s) of the ship;
- (ii) evidence of ability or experience of the purchasers to operate and maintain the vessel;
- (iii) the ownership of shares in the company applying to register the ship;
- (iv) the apportionment of shares in the vessel;
- (v) in the case of a ship with a previous registration, a bill of sale with warranty against liens and encumbrances from the sellers;
- (vi) the log-book of the ship for inspection by the Registrar;
- (vii) evidence of financial resources sufficient for the operation and maintenance of the ship; and
- (viii) the certificate of incorporation and Articles of Association of the company.<sup>6</sup>

Every ship in respect of which an application for registration is made shall, before it is registered, be marked permanently and conspicuously to the satisfaction of the Minister as follows:

- (i) the name of the ship shall be marked on each of its bows, and the name of the ship and the name of the ship's port of registry shall be marked on the stem of the ship, on a dark background in white or yellow letters, or on a light background in black letters, such letters to be of a length not less than four inches and of a proportionate breadth;
- (ii) the official number and the number denoting the ship's registered tonnage shall be cut in on the main beam of the ship;

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<sup>3</sup> Section 18(3) *ibid*

<sup>4</sup> Section 18(4) *ibid*

<sup>5</sup> Section 21(1) *ibid*

<sup>6</sup> Section 21(4) *ibid*

- (iii) a scale denoting the ship's draught of water shall be marked on each side of the stem and of the stem post of the ship in Roman capital letters or in figures not less than six inches in length, such that the lower line of the letters or figures coincides with the draught line denoted by the scale and those letters or figures shall be marked by being cut in and painted white or yellow on a dark background, or in such other way as the Minister may approve.<sup>7</sup>

The owner of the ship or an Applicant who is applying for the registration of a ship shall on or before making the application, cause the ship to be surveyed by a Surveyor of Ships and the tonnage of the ship to be ascertained in accordance with the Tonnage Regulations made pursuant to the Merchant Shipping Act. The Surveyor shall, upon making the survey, deliver to the owner or applicant, a tonnage certificate signed by the Surveyor and the certificate shall be delivered to the Registrar before the ship is registered. A Surveyor's tonnage certificate shall be in a form approved by the Minister, and shall specify the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as the Minister may, from time to time, require.<sup>8</sup> Once the application and the relevant supporting documents are submitted, NIMASA will thereafter assess the fees payable and upon acceptance of the application and payment of the statutory fee, the ship will be registered and a certificate of registration issued by the Nigerian Ship Registration Office.

It should be noted that a person shall not be registered as the owner of a ship, or of a share of the ship, until the person or in the case of a corporation, the person authorised under the Merchant Shipping Act to make declarations on behalf of the corporation makes and signs a declaration of ownership referring to the ship as described in the surveyor's tonnage certificate and containing the required particulars.<sup>9</sup>

The Nigerian Merchant Shipping Act does not recognize dual registration of ships. A ship is required to fly the flag of only one country at a time. The law made provisions for a ship already registered under a foreign flag or Registry to be deregistered prior to registration in Nigeria. However, the Nigerian Ship Registration Office allows a provisional registration of a ship for about six months to enable the ship sail into Nigeria with the Nigerian flag before completing a full registration on arrival.

As part of the requirements for Nigerian ship registration, an applicant is required to provide a current certificate from an approved international classification society. In this regard, NIMASA has established

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<sup>7</sup> section 23(1) *ibid*

<sup>8</sup> Section 22 *ibid*

<sup>9</sup> Section 24 *ibid*

collaborative links with some leading classification societies by signing memoranda of understanding with them and has issued marine notices to this effect.<sup>10</sup>

### **Cabotage Trade and Inland Shipping in Nigeria**

The Coastal and Inland Shipping (Cabotage) Act defined coastal trade or cabotage as follows:

- (i) the carriage of goods by vessel, or by vessel and 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;
- (ii) 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;
- (iii) 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 the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and
- (iv) the engaging, by vessel, in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria.<sup>11</sup>

The Cabotage Act restricts the use of foreign ships in domestic coastal trade and inland<sup>12</sup> shipping, promotes the development of indigenous tonnage and establishes a Cabotage Vessel Financing Fund (CVFF). The Cabotage regime provides that a ship other than a ship wholly owned and manned by a Nigerian citizen, built and registered in Nigeria is prohibited from engaging in the domestic coastal carriage of cargo and passengers within the coastal, territorial, inland waters, island or any point within the waters of the Exclusive Economic Zone of Nigeria.<sup>13</sup>

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<sup>10</sup> Adedoyin Afu, The Shipping Law Review: Nigeria, 08 June 2021, The Law Review available at <https://thelawreviews.co.uk/title/the-shipping-law-review/nigeria> and accessed on 23/6/2021

<sup>11</sup> Section 2 of the Coastal and Inland Shipping Act 2003

<sup>12</sup> Section 29 of the National Inland Waterways Authority Act defined "Inland waterways" to include all waterways, river, creeks, lakes, tidelands, lagoons below the low water baseline

<sup>13</sup> Section 3, Coastal and Inland Shipping Act

Under this regime, a tug or vessel not wholly owned by a person who is a Nigerian citizen is prohibited from towing any vessel from or to any port or point in Nigerian waters, or tow any vessel carrying any substance whatsoever whether of value or not or any dredge material whether or not it has commercial value from a port or point within Nigerian waters.<sup>14</sup> However, foreign registered ships rendering assistance to persons, other ships or vessels or aircraft in danger or distress in Nigerian territorial waters are not precluded from doing so.<sup>15</sup>

In the case of rebuilding, a ship is said to be built in Nigeria and qualified or eligible for cabotage trade and inland shipping, if the entire rebuilding, including the construction of any major components of the hull or superstructure of the ship is effected in Nigeria. Furthermore, a ship built in a foreign yard but forfeited to any Nigerian Governmental authority for breach of any laws of Nigeria or captured as war prizes are exempted from the requirements of being built in Nigeria.<sup>16</sup>

Granted that only ships wholly owned and manned by Nigerian citizens, built and registered in Nigeria that qualify to engage in cabotage trade and inland shipping in Nigeria, the underlisted ships are exempted from the Cabotage requirements;

- (i) Foreign ships engaged with the approval of the Minister or any other relevant government agency in activities related to a marine pollution emergency or to any threatened risk thereof;
- (ii) Foreign ships engaged in any ocean research activity commissioned by the Department of Fisheries or any other department of the government responsible for such research; or
- (iii) Foreign ships 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.<sup>17</sup>

The requirement for ministerial determination does not apply to any vessel engaged in salvage operations for the purpose of rendering assistance to person, vessels or aircraft in danger or distress in Nigerian territorial waters.<sup>18</sup> In addition to the above, the Minister may on the receipt of an application grant a waiver to a duly registered ship on the requirement for a ship to be wholly owned by Nigerian citizens, manned by Nigerian citizens and to be built in Nigeria. For such a waiver to be granted, the Minister of Transportation must be satisfied that;

- (i) there is no Nigerian wholly owned vessel that is suitable and available to provide the services or perform the activity described in the application;<sup>19</sup>

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<sup>14</sup> Section 4(1) *ibid*

<sup>15</sup> Section 4(2) *ibid*

<sup>16</sup> Section 7 *ibid*

<sup>17</sup> Section 8 *ibid*

<sup>18</sup> Section 8(2) *ibid*

<sup>19</sup> Section 9 *ibid*

- (ii) there is no qualified Nigerian officer or crew for the position specified in the application;<sup>20</sup> and
- (iii) No Nigerian shipbuilding Company has the capacity to construct the particular type size of vessel specified in the application.<sup>21</sup>

Where the Minister of Transportation is satisfied that a waiver be granted, the order for granting the waiver shall be in the following order of priority: -

- (a) In the first instance, to a shipping company and ships owned by a joint venture arrangement between Nigerians citizens and non-Nigerians: -
  - (i) the equity shareholding of the Nigerian(s) joint venture partner in the vessel and the shipping company shall not be less than 60 per centum; and
  - (ii) the percentage so determined to be held by Nigerian joint venture partner is held by Nigerian citizen(s) free from any trust or obligation in favour of non-Nigerians
- (b) In the second instance, to any ship registered in Nigeria and owned by a shipping company registered in Nigeria provided that the applicant shall comply with all the relevant provisions of the Nigerian Cabotage Act<sup>22</sup> and a waiver granted by the Minister of Transportation shall not exceed one.<sup>23</sup>

Notwithstanding that the Nigerian Cabotage Act restricts the use of foreign owned ships in coastal trade and inland shipping in Nigerian territorial waters, a foreign owned ship may engage in coastal trading in the territorial waters of Nigeria and inland shipping by procuring a restricted licence from the Minister of Transportation if the Minister is satisfied that;

- (i) any of the circumstances for granting of waiver as discussed above exist;
- (ii) the foreign owned ship is eligible to be registered in Nigeria;
- (ii) the owning company of the foreign ship has a representative office in Nigeria;
- (iv) all applicable duties, levies and tariffs imposed by the relevant authorities applicable to the foreign ships with respect to its participation in the coastal trade have been paid;
- (e) the foreign ship possesses all certificates and documents in compliance with international and regional maritime conventions whether or not Nigeria is a party to the conventions and that such certificates and documents are current and valid; and

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<sup>20</sup> Section 10 ibid

<sup>21</sup> Section 11 ibid

<sup>22</sup> Section 12 ibid

<sup>23</sup> Section 13 ibid

- (f) the foreign ship meets all safety and pollution requirements imposed by Nigerian law and any international conventions in force.<sup>24</sup>

The waiver certificate once issued by the Minister, must be carried on board the vessel at all times and the waiver system as provided for is reviewable after five years from the commencement of the Act by the National Assembly.<sup>25</sup> Sequel to the above, NIMASA has started implementing the cessation of the cabotage waiver regime for foreign owned ships to operate in coastal trade and inland shipping in Nigeria. The stoppage of the waiver regime is to build local capacity, competence and facilities and to allow cabotage to flourish in Nigeria.

Speaking at a Stakeholders' Consultative Meeting for Cessation of Cabotage waivers in Lagos, the Director General of NIMASA, Dr. Dakuku Peterside, said;

"Today is a very special day, for a very long-time indigenous operators that have been very concerned about cabotage waivers, their concerns coming from the fact that it appears that waivers is now a norm instead of exception and since they have been wondering when are we going to come to the end of this cabotage waivers regime. I want to say to them NIMASA has ended your cry. NIMASA is on the same page with you, we have determined to bring to an end the waivers regime so that cabotage will flourish in Nigeria and Nigerians will benefit from coastal trade. "We have taken a number of preliminary steps to give the Nigerian operators a strong footing in the cabotage regime. Sometimes in 2017, we published marine notice of the new cabotage compliance strategy and in that marine notice, we informed operators that we shall no longer entertain any form of application for manning waivers save for captains and chief engineers.

At the time, it was for six months. It was a trial run and we noticed that on six months we literally double the numbers of Nigerians onboard vessels by simply publishing and enforcing the new cabotage compliance strategy. "Also in 2018, we decided to extend it. After then, we have series of engagement with stakeholders to stop the waivers regime in the cabotage trade, today is an important step in that direction. As you know, it is the desire of every operator that we end the regime of waivers in the cabotage trade. And a lot of our people are concerned that we have not been able to build vessels in this country. But at NIMASA, we have taken strategic steps in the area of ship building, the country is looking at Ajaokuta steel mill again and I

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<sup>24</sup> Section 15 ibid

<sup>25</sup> Section 14(2) ibid

believe that once Ajaokuta come on stream, it will remarkably improve our fold in ship building.

Those engagements are going on. It is even going on at the highest level of government. We are engaging the office of the Vice President to look at the possibility of creating a number of incentives for those who can build vessels in this country and we believe if that is done, a number of persons and entrepreneurs will invest in building vessels in this country. We are even working in partnership with the Nigerian Content Development Monitoring Board (NCDMB), to that extent, we have commissioned a survey and audit of all building yards in this country with a view to identify a level of support we can give to enable them come back on stream fully.

A bigger picture is that in the next five years, we want certain category of vessels to be built in the country so that we will put an end to bring literally all vessels we need from outside the country and create jobs outside the country, whereas we are creating unemployment by patronising foreign built vessels. That is strategic steps we have taken in the area of owning vessels. We have also taking a number of steps to support local players so that they can own more vessels. We have engaged the Ministry of Finance and Customs to create a special tax regime to Nigerians who will bring in vessels into the country.”<sup>26</sup>

As part of cessation of the Cabotage waiver regime for foreign owned ships, NIMASA had in 2017 published Marine Notice of the new Cabotage Compliance Strategy and in that Marine Notice, informed operators of the Agency’s strategic plans to fully implement the Cabotage Act.

I hope you find this article insightful and helpful. For detail information and inquiry including ship registration and cabotage trade and inland shipping in Nigeria, kindly contact the undersigned.

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<sup>26</sup> NIMASA’s Move to End Cabotage Waivers, Eromosele Abiodun, ThisDay April 19<sup>th</sup> 2019 available at <https://www.thisdaylive.com/index.php/2019/04/19/nimasas-move-to-end-cabotage-waivers/> but accessed 25/6/2021