

7 October 2020

Dear \_\_\_\_\_,

We are writing to alert yourselves and your members of the latest development in the Coastal Trade business in Nigeria.

Recently, the NIMASA issued a Notice (copy attached) directing all Vessels engaging in coastal trading in Nigeria to ensure compliance with the relevant laws by ensuring that their licenses are up to date within three (3) months, or apply for licenses/waivers, as or where necessary.

Please note that this does not affect Vessels bringing in cargoes from outside the country, but to only those carrying cargoes from one point in Nigeria to another point in Nigeria.

Nigerian Cabotage and its obligations:

The Cabotage Act, 2003 prohibits the employment of foreign vessels in domestic coastal trade within Nigerian waters whether for commercial gain or not. Under the Act, a vessel other than a vessel wholly owned, manned by a Nigerian citizen, built and registered in Nigeria shall not engage 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 (EEZ) of Nigeria. In essence, only Vessels satisfying the following conditions would be eligible for coastal trade:

- a) A Vessel registered in Nigeria;
- b) A Vessel wholly owned by Nigerians;
- c) A Vessel wholly manned by Nigerian citizens; and lastly
- d) A Vessel built in Nigeria.

Section 21 of the Cabotage Act provides that:

**“a foreign owned and foreign crewed vessel shall not participate in the domestic coastal trade without the licence and authorization required by the provisions of this Act.”**

Please note that Vessels engaged for salvage operations; engaged with the approval of the minister; engaged for ocean research; sponsored by a foreign government with consent of the Minister for marine research are exempted. All other Vessels must obtain waivers to engage in coastal trade.

b. Exemptions to the Rules:

In respect of a duly registered Vessel the Minister may waive the requirements of Nigerian Ownership, manned and built to engage in coastal trade upon receipt of an application stating that there is no wholly owned Nigerian Vessel that is suitable and or available to provide the services or perform the activities described in the application as regard ownership. Where there is no qualified Nigerian Officer or crew for the position specified in the application for waiver in respect of manning, the Minister may also waive the requirement for wholly manned Vessels. Lastly, where there is no Nigerian ship building Company that has the capacity to construct the particular type size of the Vessel specified in the application, the Minister may waive the requirement of 'built in Nigeria' Vessels.

A foreign Vessel is defined as a Vessel other than a Nigerian Vessel and may be issued a **restricted license** to engage in coastal trade in appropriate cases.

The conditions for the restricted license are as specified in Section 15 of the Cabotage Act, which provides that:

“Where the Minister is satisfied that-

- a) Any of the circumstances in section 9-12 is applicable;
- b) The foreign owned vessel is eligible to be registered in Nigeria;
- c) The owning company of the foreign Vessel has a representative office in Nigeria;
- d) All applicable duties, levies and tariffs imposed by the relevant authorities applicable to foreign Vessels with respect to its participation in the Coastal trade have been paid;
- e) The foreign Vessel possesses all certificates and documents in compliance with international and maritime conventions; and lastly,

f) The foreign Vessel meets all safety and pollution requirements imposed by Nigerian law and any international conventions in force.”

The license issued to foreign Vessels shall not exceed one year. The Act permits temporary registration in the Nigerian registry of foreign owned Vessels engaged in domestic trade and shall cover the duration of the contract for which the vessels are employed.

Such an application (for a waiver) ought ordinarily be made by the charterer or the local counterpart of the owners acting on behalf of the foreign owned Vessels. The law also provides that a foreign Vessel trading within Nigerian waters without the waiver and or necessary licenses commits an offence and on conviction shall be liable to a fine of between **N100'000 (One hundred thousand Naira - abt USD265)** to **N15'000'000 (Fifteen million Naira - abt USD40,000)**, depending on the nature of the violation. In addition, the vessel could be detained and or forfeited to the Federal Government.

c. Overreaching obligations that can be placed on the owners by obtaining this exemption/license.

We are of the view that a main factor to be considered while deciding to apply for a waiver is the potential obligation that could be placed on owners to pay Nigerian tax as they would be deemed to be deriving income from Nigeria by engaging in coastal trade. Furthermore, Section 105 of the Local Content Act empowers the Nigerian Content Monitoring Board in conjunction with NIMASA to enforce compliance with the relevant provisions of the Cabotage Act in relation to matters pertaining to Nigerian Content Development. It also provides that 1% (one percent) is to be deducted from all contract sums and Nigerians must be trained to develop capacities in the areas reserved for foreigners due to lack of capacity.

In the circumstances, we would advise that your members whose Vessels engage in coastal trading in Nigeria should, as a matter of urgency, obtain the necessary waivers and licenses to prevent a potential infraction of local laws and potential forfeiture of their assets.

We hope your members will find this useful.

Best Regards,

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