

FREQUENTLY ASKED QUESTIONS AND ANSWERS ON NIGERIAN CABOTAGE TRADE.

In the course of our registration of local and foreign ships for cabotage trade, we have discovered that there are some frequently asked questions by local and foreign clients and others intending to partake in the trade. Consequently, we have provided brief answers to help current and intending participants in understanding some of the complex provisions of the Coastal and Inland Shipping (Cabotage) Act, 2003 and the Guidelines for its implementation, although by way of disclaimer, we advise that more detailed legal advice or opinion and assistance should be sought and obtained from maritime lawyers/experts, since the intention here is mainly to give eye-opening answers to some of the frequently asked questions.

Readers or persons interested in getting more information can also get vital information from some of the papers on cabotage that were written by **Mr. Mike Igbokwe, SAN** and can be found on the website www.mikeigbokweandco.com.

Q1. What are the four main requirements to be fulfilled by a shipping company in order to have its vessel registered for participation in Nigerian cabotage trade?

A1. According to the Coastal and Inland Shipping (Cabotage) Act, 2003 the vessel must be (1) wholly-owned by Nigerians and (2) wholly-crewed by Nigerians, (3) built in Nigeria and (4) registered in Nigeria, but if it is a foreign-owned vessel, it must also obtain a restricted licence from the Minister of Transport through an application filed by an agent resident in Nigeria.

Q2. Are the requirements absolute and if not, why?

A2. No, because where any of the first three of the four main requirements cannot be fulfilled, a shipping company or ship owner may apply for and obtain from the Minister, a waiver of its non-compliance with any of the three requirement(s).

Q3. When is a ship taken as built or rebuilt in Nigeria?

A3. A ship is built in Nigeria when all the major components of its hull and superstructure are fabricated and assembled in Nigeria and it is rebuilt in Nigeria when the entire rebuilding and major components of its hull or superstructure are rebuilt in Nigeria.

Q4. What are the limits of the operation of the Coastal and Inland Shipping (Cabotage) Act?

A4. Carriage of cargo and passengers from port to port or point to point within the Nigerian coastal, territorial and inland waters including island(s) within Nigerian waters or any point within the waters of the Exclusive Economic Zone, (that is to say 200 nautical miles from the baselines) and any carriage in or under or on Nigerian waters.

Q5. Does the Cabotage Act require a ship to be Nigerian-flagged before it can participate in Nigerian cabotage trade?

A5. No. For any ship to participate in cabotage trade in Nigeria, it must be registered by the Registrar of Ships in the (second) Special Register for Vessels and Ship Owning Companies engaged in Cabotage (“Special Register”) after meeting all the conditions for eligibility in the Cabotage Act and the provisions of the Merchant Shipping Act that are not inconsistent with or repealed by, the Cabotage Act.

The ship does not have to fly Nigerian flag or be 100% Nigerian owned, 100% Nigerian crewed and Nigerian-built in order to participate in the cabotage trade. A ship that is 100% Nigerian owned, 100% Nigerian crewed and built in Nigeria but flagged in a foreign country, still has to be registered in the Special Register but unlike a foreign-owned ship, it would not require to apply for and obtain a restricted licence, before it can lawfully participate in cabotage trade.

Q6. Has the Special Register superseded the Nigerian Ship Register?

A6.No. It only supplements it. There are now two Registers, namely, the Nigerian Ship Register for registering Nigerian-flagged vessels or vessels owned by persons qualified to own a registered Nigerian ship under the Merchant Shipping Act and the (second) Special Register for Vessels (whether or not foreign-owned or foreign-flagged) and Ship Owning Companies engaged in Nigerian cabotage trade.

Q7. When will it be necessary for a ship to obtain ministerial waiver before participating in cabotage?

A7. If a ship does not meet any of the first three requirements of 100% ownership and 100% manning by Nigerians and building in Nigeria, it can apply to the Federal Minister of Transport for and obtain a ministerial waiver of any of the said three requirements it cannot meet. However, the Minister cannot waive the requirement for registration of a ship in Nigerian in the Special Register for cabotage trade.

Q8. Can a foreign-owned vessel be granted a waiver if it does not comply with Section 23(1) a, b, c of the Act?

A8. Yes. This is because waiver to the foreign-owned vessel can be granted on 100% Nigerian ownership requirement. The participation of a foreign-owned vessel is first by obtaining a restricted licence from the Minister to be registered for participating in cabotage trade and after being duly registered in the Special Register, the foreign-owned vessel can then apply for waiver. That is the purport of a combined reading and construction of sections 9, 12,15, 22 and 23 of the Cabotage Act, although there is nothing stopping a foreign ship intending to be registered for cabotage trade to apply for and obtain ministerial waivers of the requirement of place of construction or ownership or crewing, before applying for the registration of the ship in the Special Register.

Q9. Are the procurements of ministerial waivers applicable to only 100% foreign-owned vessels?

A9. No, waivers will also be needed for Nigerian-owned vessels or joint-venture-owned vessels, which are built abroad and/or manned by foreigners.

Q10. What is the duration of the term of the waiver?

A10. One year. But it is renewable upon fulfilment of certain requirements.

Q11. What is the Order of priority of granting ministerial waivers?

A11. First, it is to a 100% Nigerian-owned vessel (which is merely implied but expressly so stated in the Ministerial Guidelines for the implementation of the Act), second, to a joint-venture owned (60/40 by Nigerians and foreigners) vessel and lastly a vessel registered in Nigeria and owned by a shipping company registered in Nigeria as stated in section 12 of the Act.

Q12. Are there exemptions from registration in the Special Register for small-sized Vessels as in the case if registration under the Merchant Shipping Act?

A12. No, there are no exemptions. Whatever, the size of the vessel intending to participate in Nigerian cabotage trade; it must be registered in the Special Register.

Q13. Does the Cabotage Act require ship owners to register their shipping companies as well as their vessels for taking part in cabotage trade?

A13. Yes.

Q14. Does “ownership” refer to the beneficial owner or disponent owner of a ship?

A14. It is submitted that beneficial ownership of a ship is meant by the Act. However, a bareboat chartered-in vessel can be registered for cabotage trade in Nigeria if certain conditions are met including its having a charter for not less than three years and if the vessel is on such charter to Nigerian citizens and under the control and management of Nigerian citizens or a company wholly and beneficially owned by Nigerian citizens free from any trust or obligation in favour of foreigners.

Q15. When will a vessel require a licence before registration for cabotage?

A15. Only when it is a foreign-owned vessel. So, it is not just every vessel, but only a foreign-owned vessel that requires to be licensed.

Q16. What is the duration of the term of the licence or waiver?

A16. Not more than one year, but another licence or waiver can at the end of the term of each be applied for and obtained after the payment of the necessary fees. Once a vessel has been registered in the Special Register, its registration continues to be valid until

deregistered, although it could be penalized for non-compliance with the waiver and licensing provisions.

Q17. If a foreign-owned vessel applies for and receives a licence under part IV of the Act, does it have to comply with the provisions of section 23 and is the reference to section 23(d) to “licensed in compliance with Part II” correct, or should this in fact refer to “Part IV”?

A17. A foreign-owned vessel licensed under part IV does not still have to comply with section 23 of the Act. Section 23(1)(d) merely amplifies and buttresses sections 15 and 22 of the Act concerning the licensing and registration of foreign-owned vessels for cabotage trade. However, it appears that there is some confusion and an error in the expression “licensed in compliance with Part II of this Act” since Part II exempts some foreign vessels from other cabotage eligibility requirements. It is more appropriate for Section 23(d) to have been a reference to Part IV.

Q18. Does the expiry of the licence or waiver granted a foreign-owned vessel already registered for cabotage and having a running charter, automatically invalidate or terminate its registration?

A18. No. The expiry of the licence or waiver granted a foreign-owned vessel already registered for cabotage and having a running charter, does not automatically invalidate or terminate its registration.

Q19. What are the penalties for operating in Cabotage trade without a licence or waiver?

A19. For instance, by virtue of sections 21 and 35(1)(b) of the Act, a foreign-owned vessel operating without a licence is liable to be fined not less than N15m or more or forfeited by a court’s order whereas under section 40 of the Act, where no specific penalty is prescribed, a fine of N500,000 is imposed for a violation of any provision of the Act which includes the waiver provisions. A foreign-owned vessel operating without a licence is liable to be fined not less than N15m or more or forfeited by a court’s order.

Q20. Is the whole cabotage compliance process in the Act specific to a particular vessel for a particular charter or contract?

A20. No. Generally, there is nothing like “the whole cabotage compliance process is specific to a particular vessel for a particular charter or contract” in the Act. However, in respect of temporary registration of a foreign vessel under section 27, registration for cabotage trade will be for the duration of the contract for which the vessel is employed. In the case of a foreign-owned vessel, because the duration of the licence granted it to be registered for participation in the coastal trade shall not exceed one year (or less if the licence is for a lower term or any of its certificates or documents expire before the one year term) or is cancelled or varied, it can obtain a fresh licence after the expiry of the earlier one year licence even though its charter had not yet expired. A waiver obtained by a vessel registered for cabotage is for not more than one year but the vessel can get a fresh waiver thereafter, even if its charter has not expired at the time. So, as long as the

vessel has a valid licence and a valid waiver, it can perform as many contracts and charters as possible during its valid licence and waiver.

Q21. Can a chartered vessel be registered in Nigeria for cabotage trade?

A21. A vessel under just any charter is not registrable either in the Nigerian Ship register or in the Special Register for cabotage trade, but a vessel is registrable for sabotage trade in Nigeria if it is under a bareboat charter to Nigerians (and not foreigners or both foreigners and Nigerians) and if it is under the full control and management of Nigerians and among other terms, its charter is for a term not less than three years.

Q22. Who are the beneficiaries of the Cabotage Vessel Financing Fund?

A22. Only Nigerian citizens and shipping companies wholly owned by Nigerians. So, shipping companies owned by foreigners and/or joint-venture arrangements between foreigners and Nigerians, cannot benefit from the Fund.

Q23. Are the Cabotage Act and its Guidelines the only Nigerian law and Guidelines regulating coastal and inland shipping trade in Nigeria?

A23. No. There are other laws and regulations governing different aspects of Nigerian coastal and inland shipping trade.

Q24. What effect does the Cabotage Act have on the application of the other Nigerian laws relevant to coastal and inland shipping trades in Nigeria?

A24. It preserves the provisions of the laws and regulations in force prior to its commencement that are consistent with it but it repealed the provisions of any existing law on the registration, ownership, size, type of vessels and participation in coastal and inland waters trade that are inconsistent with it.

Q.25. Does the Cabotage Act totally bar foreign-owned and foreign-built vessels, foreign shipping companies and foreign seafarers from trading or operating within Nigerian cabotage zone?

A25. No. They are merely restricted and upon fulfilling certain conditions and obtaining licences and waivers, they are allowed to operate.

Q26. Is it true that the Cabotage Act is anti-foreign investment in Nigerian Cabotage trade?

A26. No. In fact, through joint-venture cabotage ship ownership between Nigerian and foreigners and waivers of the requirements of cabotage trade permitted by the Act, an immense foreign element and presence in the trade are still liberally retained by the Act unlike the Jones Act and other laws governing the US Cabotage trade which do not permit such.

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