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Non-Resident Marine and Shipping Taxation

Section 14 of the Companies Income Tax Act (as amended), provides that any non-Nigerian owned or controlled sea company, that calls at any sea port in Nigeria, shall be liable to have its profit or loss arising from its carriage of passengers, mails, livestock or goods shipped to Nigeria, charged to Nigerian tax.

Profits arising from the carriage of passengers, mails, livestock or goods, solely for trans-shipment through Nigeria, or for transfer from one ship to another ship going out of Nigeria, are not however liable to bear Nigerian income tax.

The minimum tax payable by any non-Nigerian Company, engaged in transportation by sea business, shall not be less than Two per cent (2%) of the total sum receivable in respect of the carriage of passengers, mails, livestock or goods shipped to Nigeria.

Coastal and Inland Shipping (Cabotage) Act

To encourage the development of indigenous ownership of vessels for the carriage of goods by ships within the territorial waters of Nigeria, and to establish a Cabotage Vessel Financing Fund, the Coastal and Inland Shipping (Cabotage) Act ("Cabotage Act") was passed into Law in 2003.

Prohibition of Non-resident Vessels, Tugs or Barges in Domestic Coastal Trade.

Any vessel, other than a vessel wholly owned and manned by a Nigerian Citizen, built and registered in Nigeria, shall not engage in the domestic coastal carriage of goods and passengers within the coastal, territorial, inland waters, island or any point within 200 nautical miles seawards from the coast of Nigeria.

Also, any tug or vessel not wholly owned by a Nigerian Citizen shall not tow any vessel from or to any port or point within the Nigerian Exclusive Economic Zone, which is an area extending up to 200 nautical miles seawards from the coast of Nigeria.

This restriction shall not however preclude a foreign-owned and registered vessel from rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian territorial waters.

A vessel, tug or barge of whatever type other than a vessel, tug and barge whose beneficial

ownership resides wholly in a Nigerian Citizen or legal entity shall not engage in the carriage of materials or the supply of services to and from oil rigs, platforms and installations whether offshore or onshore, or within any port or points in Nigerian waters.

A further prohibition is the inhibition of non-Nigerian built and registered vessels, of whatever type or size, engaging in any domestic trade of any kind in the inland waters of Nigeria.

In the case of rebuilding a vessel, such a vessel shall be eligible for cabotage services rendition if the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected in Nigeria.

Exceptions to Indigenous Cabotage Trade

Any foreign-owned vessel that is engaged in salvage operations, marine pollution emergency services and oceanic maritime scientific research that is beyond the capacity of Nigerian-owned and operated salvage vessels and companies are exempted from the above prohibitive domestic cabotage trade rule.

The prior approval of the Minister for Transportation ("the Minister") is however required before a foreign-owned vessel can engage in any of the above-mentioned exempted activities. Such prior approval will not however be required for a foreign-owned vessel engaged in salvage operations that renders assistance to a person, vessel, or aircraft that is in danger or distress in Nigerian coastal waters.

Ministerial Waivers

Where the Minister is satisfied that no vessel that is wholly owned by Nigerians is available to provide the cabotage services required under the Cabotage Act, the said Minister may grant a waiver to a duly registered non-Nigerian owned vessel to provide cabotage services within 200 nautical miles seawards from the coast of Nigeria, for a limited period.

Also, where the Minister is satisfied that no Nigerian-owned ship building company has the capacity to construct a particular type and size of vessel specified in a waiver application, the Minister may grant a waiver to the statutory requirement for such a vessel to be built in Nigeria, by Nigerians.

Lastly, the Minister is authorised to, on the receipt of an application to grant a waiver to a duly

registered vessel, on the requirement for such a vessel to be wholly and exclusive manned by Nigerian Citizens, grant such a waiver where he or she is satisfied that there is no qualified Nigerian officer or crew to man the position specified in the waiver application.

Priority in Granting Waivers

The sequential order for the Minister to consider whether to grant a waiver to non-Nigerian owned vessel or ship to engage in the restrictive domestic cabotage trade in Nigeria is that such Applicant non-resident companies that have Nigerian partners who own 60% unencumbered equity, from any secret trust or otherwise, will have the first option to the grant of the Ministerial waiver.

The next group of Applicants that may be granted Ministerial waiver, where no party exist under the first group, are any vessel or ship registered in Nigeria and owned by a shipping company duly registered under Nigerian Law.

Duration of Ministerial Waivers

A Ministerial waiver granted under this Cabotage Legislation must specify the duration of the waiver, which in any circumstance must not exceed One (1) year.

Guidelines for Waiver

The Cabotage Act requires that all applications for a waiver licence, by a foreign owned vessel, must be submitted on behalf of the non-resident vessel owner by a person resident in Nigeria acting on behalf of the non-resident foreign vessel owner.

The Minister is authorised to grant a waiver licence subject to any terms or conditions as may be appropriate, where he or she is satisfied that any of the conditions in the preceding section of this paper are applicable; and the foreign owner of the vessel who has a representative office in Nigeria, has paid all the applicable duties, levies, and tariffs; and the foreign-owned vessel possesses all the required international certificates and compliance operational documents.

The Minister is also authorised to suspend, cancel or vary the terms and conditions of a domestic Cabotage trade waiver licence, where the owner of the benefitting vessel is convicted of an offence; or where any of the terms or conditions of the licence are contravened; or where it is expedient to cancel, or suspend, or vary the terms of the waiver licence (or permit) for overriding national or public interest.

Registration of Ships

Every ship or vessel that meets the registration eligibility requirements under the Merchant Shipping Act, and that is wholly and beneficially owned by a Nigerian Citizen, and is intended for

use under the Cabotage Act, must be duly registered by the Registrar of Ships in the Special Register for vessels or ships permitted to engage in domestic cabotage business.

However, any provision in the Merchant Shipping Act (as Amended) or any amendments to it that is or are inconsistent with the provisions of the Cabotage Act, including the registration of ships involved in such trade, shall not apply to the domestic cabotage trade in Nigeria.

All operating licences must be carried on board all vessels at all times.

Ownership Requirements

All vessels or ships shall be eligible for registration to engage in the domestic cabotage trade in Nigeria only if such a vessel is among other things wholly and beneficially owned and controlled by a Nigerian Citizen; or by a company whose shares are wholly and beneficially owned and controlled by Nigerian Citizens free from any trust or obligation in favour of any person who is not a citizen of Nigeria; or the vessel is on a bareboat charter to Nigerian Citizens, and under the full control and management of the chartering Nigerian Citizen.

Any vessel that is granted domestic cabotage licence or permit on the basis of Nigerian ownership shall have such a licence or permit revoked if there is a subsequent change in the ownership structure of the vessel owner.

Penalties and Liabilities under the Cabotage Act

Any owner of a foreign-owned and or foreign-crewed vessel that engages in domestic cabotage trade without a waiver authorisation or licence commits an offence which on conviction attracts a fine of not less than N10,000,000 in cases of non-licence for domestic coastal trade; N15,000,000 in cases of operating without a licence; and or forfeiture of the offending vessel.

Section 35 of the Cabotage Act authorises the Federal High Court to impose a higher monetary fine where the Court deems such a higher fine appropriate to the offence committed.

Under the Cabotage Act, Ship owners, their Directors and company officers are also individually liable for offences committed under the Cabotage Act.

Cabotage Vessel Financing Fund

The Cabotage Act established the Cabotage Vessel Financing Fund, which Fund promotes the development of indigenous ship acquisition and manning capacity, by providing financial assistance to wholly owned Nigerian operators with domestic coastal shipping businesses.

The Cabotage Vessel Financing Fund is financed by among other things, a surcharge of Two per cent (2%) of the contract sum received by any vessel engaged in domestic coastal trade. Other

avenues for financing the Cabotage Fund include tariffs, fines and fees received for licences and waivers under the Cabotage Act. The Cabotage Act also authorises the Nigerian National Assembly to appropriate funds to assist in the promotion of a domestic cabotage trade.

Merchant Shipping Act

Section 53 of the Cabotage Act repealed and amended the provisions of other existing legislations which are inconsistent with the Cabotage Act. One of such repealed provision is Section 5 of the Merchant Shipping Act, 2007 which had forbidden Nigerian and non-Nigerian owned vessels or ships from trading in Nigerian coastal waters except such vessel or ship is registered in Nigeria or in another Country or is exempted from registration under Nigerian Law.

Regulation 1 of the Merchant Shipping (Licensed Ships) Regulations is also repealed under the Cabotage Act.

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