Nigeria’s extensive coastline measures approximately 872 sq/km and its inland waterways span over 3,000km, making its maritime sector attractive to potential investors. Of primary concern to any potential investor is the prevailing legal and regulatory framework that would govern activities in the sector.

The Nigerian maritime sector is governed by four (4) principal legislations namely the Merchant Shipping Act 2007 (MSA); the Coastal and Inland Shipping Act 2003 (Cabotage Act); the Nigerian Oil and Gas Industry Content Development Act 2010 (The Nigerian Content Act) and the Nigerian Maritime Administration and Safety Agency Act 2007 (NIMASA Act).

The Merchant Shipping Act 2007 was enacted to regulate the ownership of vessels and shipping operations in Nigeria and provides that a ship cannot operate commercially in Nigerian waters unless the ship is owned wholly by persons who are:

a) registered;
b) provided with a certificate of foreign registration or any other document similar or equivalent to that required by the MSA;
c) registered by the laws of a country other than Nigeria as a ship of that country and is by the law of that country exempted from registration;
d) exempted from registration under the MSA; and
e) a licensed Nigerian ship operating solely within the waters of Nigeria.

The MSA provides further, the qualifications for ship ownership in Nigeria and these include:

a) must be Nigerian citizens;
b) bodies - corporate and partnerships established under and subject to Nigerian law and having their principal place of business in Nigeria; and

c) such other persons as the Minister of Transport may by regulations prescribe (otherwise known as persons qualified to own a Nigerian registered ship).

The Coastal and Inland Shipping Act 2007 ("Cabotage Act") on its part seeks to restrict the use of foreign vessels in domestic coastal trade and encourages indigenous ownership of vessels for the carriage of goods within the territorial waters of Nigeria.

The Act restricts the type of vessels that can engage in coastal trade in Nigeria to vessels which are wholly owned and wholly manned by Nigerian citizens. Not only must the vessels be wholly owned and wholly manned by Nigerians, they must also be built and registered in Nigeria. These rules however have their exceptions and these include the ability of foreign owned vessels to procure a restricted licence from the Minister of Transport to enable such foreign registered vessel to partake in coastal trade in Nigeria. Upon the procurement of such licence, the operator of a foreign registered vessel can seek a waiver to participate in coastal trade where they do not
meet the other requirements of the Cabotage Act. The Minister may grant waivers to foreign vessels who do not meet the requirements as to Nigerian ownership, manning and building of the vessel where he is satisfied that:

a) there is no Nigerian wholly owned vessel that is suitable and available to provide the services or perform the activity described in the application;

b) there is no qualified Nigerian officer or crew for the position specified in the application; and

c) No Nigerian shipbuilding company has the capacity to construct the particular type and size of vessel specified in the application.

The Cabotage Act also requires cabotage vessels to be registered by the Registrar of Ships in the Special Cabotage Register, domiciled with Nigerian Maritime Administration and Safety Agency (NIMASA).

All Shipping companies carrying on business in Nigeria must register with NIMASA. NIMASA’s guidelines on registration requires that for the purposes of registration at the Corporate Affairs Commission, any company intending to carry on shipping business in Nigeria must have a minimum share capital of N25,000,000 (Twenty –Five Million Naira) and the company must be 60% per cent owned by Nigerian citizens.

The legal framework as discussed above has been clearly designed to ensure the growth of indigenous maritime operators by restricting foreign participation. The non-availability of indigenous ship building capacity and dearth of indigenous owned sea worthy vessels to support the International Oil Company’s activities in the oil and gas industry has seen the indiscriminate usage of the waiver process as provided for under the Cabotage Act, thereby rendering the objective of the Act nugatory.

The single most challenging factor to the realization of the objectives of the cabotage regime is finance. To this end, an intervention fund known as the Cabotage Vessel Financing Fund (CVFF) was introduced in 2006, for the purposes of promoting and increasing indigenous ship acquisition capacity, by providing financial assistance to Nigerian operators in the domestic coastal shipping trade. Indigenous companies were to submit an application for the fund and beneficiaries of the fund were to be selected by the Minister upon the recommendations of NIMASA. However, several years after the CVFF was established there has been no known beneficiary of the fund.

Given the inability to access financing for the acquisition of vessels, the Nigerian maritime industry has experienced no significant growth since the advent of the Cabotage Act when compared to other emerging or developing maritime markets that have also implemented cabotage policies. In Malaysia for instance, the government introduced and implemented a national cabotage policy with the aim of protecting and promoting a strong national ship-owning industry. Its principal maritime legislation the Merchant Shipping Ordinance 1952 (“MSO”), was amended and Part IIB which deals with cabotage was introduced. The policy ensured that domestic trade between any two ports within the country were carried out by Malaysian-owned shipping companies. The objective of this policy is similar to the Cabotage Act in Nigeria which is to encourage local participation in the shipping industry whilst still permitting limited foreign participation in coastal trade. Under the Malaysian policy, foreign vessels are only permitted to be temporarily licensed by the Domestic Shipping Licensing Board to carry on coastal trade where the Malaysian Ship-owners Association [MASA] confirms in writing that there are no available Malaysian vessels to carry the cargo concerned. This is quite distinct from the Nigerian cabotage policy which allows for the discretionary grant of waivers by the Minister to foreign owned vessels for a period of one year.

The Malaysian government has also over the years introduced various incentives and institutional support to promote the maritime industry and encourage participation of local players. Some of such incentives include:

- blanket tax exemption for revenues earned from shipping activities - statutory income of shipping companies derived from transporting cargoes and passengers using sea-going Malaysian-flagged merchant ships are exempted from tax, as is any dividend paid out on such an account.

- capital allowance on merchant ships - An initial first year capital allowance of 40% comprising an initial allowance of 20% and annual allowance of 20%.

“Commerce is a game of skill which everybody cannot play and few and few can play well”

-Ralph Waldo Emerson
• creation of Shipping Fund – this is managed by Bank Pembangunan. The fund is for local shipping companies to finance the purchase of vessels and as venture capital for equity participation in local shipping companies.
• seafarers- there is a full tax exemption on seafarer’s wages.

The incentives have certainly contributed to the growth of local shipping companies and ports in Malaysia, as it has allowed them to purchase vessels, expand and upgrade their fleet thereby retaining healthy levels of profits to expand their businesses. This growth is evidenced by the increase in national tonnage, the investment forays made by local shipping companies globally and the increasing throughput volumes at leading Malaysian ports.

Similarly, in Indonesia the government introduced Cabotage policies following the near collapse of its domestic shipping industry due to the dominance of foreign vessels engaged in coastal trade. Indonesia’s shipping and offshore marine industry experienced major changes since the introduction of the Maritime Law No 17 of 2008 which came into effect in May 2011. This Law is aimed at providing business opportunities and greater market share to Indonesian companies. The law specifically restricts coastal trade to Indonesian shipping companies, Indonesian flagged vessels and vessels manned by Indonesian crew. However, due to lack of Indonesian vessels capable of servicing the needs of the oil and gas sectors, exemptions were created in 2011 which allowed foreign registered ships to continue to operate in Indonesian waters. These exemptions are contained in Regulation No.22 of 2011 and the Minister of Transport Regulation No.48 of 2011, which provides that foreign vessels operating in the oil and gas sector may be exempted from cabotage policies where it is satisfied that there are no Indonesian flagged vessels available or sufficiently available to carry out the required services. A formal exemption is granted by the Ministry of Transport and such are valid for a period of 3 months, renewable on expiration if no suitable Indonesian flagged vessel has become available.

With the introduction of the cabotage policies in Indonesia, its maritime sector has experienced significant growth which has been largely achieved through a strict application of the cabotage and waiver policies. Indonesia’s shipbuilding industry has been able to construct 19 types of offshore vessels with its growing local expertise. In 2014, the government proposed a number of incentives to promote domestic shipping capacity in Indonesia and in 2015 a revised tax-holiday regulation was introduced to further boost the growth of the industry.

There has been several calls by stakeholders in the Nigerian maritime industry for the review of the Nigerian Cabotage Act on the grounds that it has failed to achieve the objectives for which it was enacted. Haphazard implementation of the policy, indiscriminate grant of waivers to foreign owned vessels, financial constraints, inadequate enlightenment of stakeholders, lack of incentives to aid and empower indigenous stakeholders, multiplicity of agencies with over-lapping regulatory and supervisory functions and dearth of human capacity have been identified as some of the challenges. Industry stakeholders have suggested a number of amendments to the Cabotage Act and these include:

• ship building provisions in the Act should be categorized;
• cabotage jurisdictions in Nigeria should extend to shipping services to and from oil rigs/platforms with towage services;
• the utilization scope of the Cabotage Vessel Financing Fund (“CVFF”) should be expanded to give access to shipbuilders and repair yards to develop their yards as well as training personnel for the country’s maritime industry;
• the Act should be amended to exclude fishing trawlers from cabotage jurisdiction.
• establishment of a Maritime Development Bank

From a practical perspective, the review of the Cabotage Act might have a minimal effect in proffering a lasting solution to the prevailing challenges of the maritime industry. Implementation and enforcement of the Nigerian Cabotage laws would require the necessary co-operation of the Nigerian Transport/shipping administrative Authority and the indigenous industry operators in creating practical workable guidelines on how the cabotage regime should best be administered. It is recommended that practical steps such as those below be taken to address the identified challenges of the sector:

• implement a transparent procedure for the selection of the beneficiaries of the CVFF. A monitoring mechanism should be put in place to prevent the
beneficiaries of the CVFF from diverting such funds into other businesses as well as ensuring that it is utilized for acquiring vessels that are still in class.

- efforts should be made to build the capacity of NIMASA’s cabotage department to enable them effectively monitor the regime.

- provision of significant fiscal incentives for indigenous operators in this sector to enable shipping companies purchase vessels, expand and upgrade their fleets. Nigerian shipyards and dockyards should also be given fiscal incentives in the form of tax breaks and duty exemptions on importation of equipment and spare parts.

- merging of some regulatory agencies in the industry that perform the same functions.

- thorough implementation of the Cabotage policy as well as ensuring that the grant of waivers to foreign owned vessels is restricted to exceptional circumstances as contained in the Cabotage Act. A limitation period for the waivers should also be introduced.

- enforcing the patronage of local shipyards by giving them the right of first refusal on construction of vessels.

- rigorous enforcement of the cabotage rules by offering “right of first refusal” to Nigerian-flagged vessels for both coastal and international trade.

- provision of adequate training for crewmen and other seafarers so as to promote human capacity development in the sector.

- additional financing for the acquisition and servicing of vessels by indigenous companies should be made available through the provision of long-term financing by commercial banks.

- encourage the participation of foreign shipping companies through collaborative ventures with Nigerian companies and encourage skills transfer.

- Nigerian shipping companies should be given priority in the transportation of technical aid/bilateral and African regional petroleum cargo.

- ensuring that foreign vessels do not participate in coastal trade in Nigeria without first obtaining waivers.

- a gradual phasing out of the waiver regime and foreign companies granted waivers under the Cabotage Act must be mandated to provide for the training of Nigerian seafarers, until the waiver regime is completely phased out.

Nigeria has the potential of becoming one of the world’s largest shipping markets if the inherent opportunities are adequately harnessed and proper structures are put in place to give full effect to the provision of the Cabotage Act and other laws regulating the sector.

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