



SHIPPING BULLETIN¹

Nigerian Cabotage Tides Are Turning – Good or Bad?

It is no longer news that Coastal Trade or Cabotage² within Nigerian waters is restricted to only Nigerian vessels. However, it appears that change is on the horizon, particularly with regard to drilling operations in the Nigerian oil and gas industry which may soon become regulated by the Coastal and Inland Shipping (Cabotage) Act, Cap. C51, Laws of the Federation of Nigeria, 2004 (the “**Cabotage Act**”).

The Cabotage Act provides a non-exhaustive list of vessels that are required to be registered with the Nigerian Maritime Administration and Safety Agency (“**NIMASA**”), the agency responsible for enforcing the provisions of the Cabotage Act, in order for such categories of vessels to be deployed in Cabotage operations in Nigerian waters. Although the said list does not specifically include drilling rigs, NIMASA contended with force that the Cabotage regime applied to every commercial activity on, in or under Nigerian territorial waters and as a result, required all operators of all drilling rigs operating in Nigerian territorial waters to register with it. On the contrary, one of the affected drilling rig operators, Noble Drilling (Nigeria) Limited, contended with equal force that its drilling operations within Nigerian territorial waters did not amount to Coastal Trade or Cabotage and therefore sought a determination from the court, *inter alia*, whether drilling operations fall within the definition of Coastal Trade or Cabotage.

In the case of ***Noble Drilling (Nigeria) Limited v The Nigerian Maritime Administration and Safety Agency (NIMASA) & The Minister of Transportation*** (“the Noble Case”), the court held, *inter alia*, that

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² Section 2 of the Cabotage Act defines “**Coastal Trade**” or “**Cabotage**” as:

- a. The carriage of goods by vessel, or any other mode of transport, from one place in Nigeria or above Nigeria waters to any other place in Nigeria or above Nigeria 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;
- b. The carriage of passengers by vessel from any place in Nigeria situated on lake or river to the same place, or to any other place in Nigeria, either directly or 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;
- c. 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
- d. 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.



drilling operations did not fall within the definition of Coastal Trade or Cabotage.³ Pursuant to the court's decision in the Noble Case, drilling rigs have been exempted from the category of vessels which are subject to Cabotage registration.⁴

However, this position may soon change, where the Coastal and Inland (Cabotage) Act (Amendment) Bill (the "**Bill**"),⁵ currently before the House of Representatives, is passed into law by the National Assembly, in its current form. This bulletin highlights the provisions of the Bill and analyses its potential implications.

The Bill

The Bill essentially seeks to amend certain provision of the Cabotage Act and expand its scope to cover all offshore operations in the Nigerian coastal and inland shipping waters. Section 2(a) of the Cabotage Act (as quoted above) which partly defines 'Coastal Trade' or 'Cabotage' is specifically amended by the Bill to read as:⁶

2(a) *The carriage of persons or goods by vessels 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 persons or goods is in relation to the exploration and or exploitation of mineral or non-living resources in or under Nigerian waters.*

Section 2(c) of the Cabotage Act is replaced (by the Bill) with a new section 2(c) as follows:⁷

2(c) *The carriage of persons or goods by vessels from any place in Nigeria to any place in Nigeria, or from a place above Nigerian waters whose carriage of persons or goods is in relation to the exploration and or exploitation of the Mineral or no-living resources in or under Nigeria waters.*

Further, the Bill proposes to replace the word '**passengers**' appearing in Section 2(b) of the Cabotage Act with the word '**persons**' while the word '**transportation**' appearing in Section 2(d) of the Cabotage Act so that the concept "Cabotage", under the Bill, will encapsulate all 'marine activities' of a commercial nature in Nigerian waters and will not be restricted to only 'marine transportation activities' of a commercial nature, as presently provided for under the Cabotage Act.

³ Suit Number FHC/L/CS/78/2008 – Please see this link for a case review of the Noble Case: (<http://www.banwo-ighodalo.com/downloads/NIGERIAN%20COURTS%20CONTINUE%20TO%20DEVELOP%20THE%20LAW%20IN%20RELATION%20TO%20CABOTAGE%20-%20B&I.pdf>).

⁴ This is the position of the law pending the determination of NIMASA's appeal currently before the Court of Appeal ("COA") or amendment of the Cabotage Act.

⁵ HB.12.03.256 - Read for the first and second time at the House of Representatives on March 15 and April 26, 2012 respectively. It has now been referred to the House Committees on Marine Transport and Justice for further deliberations.

⁶ Emphasis in the quotation are ours

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The interpretation of various words or phrases used in the Cabotage Act⁸ has also been proposed for amendment by the Bill. For instance, the interpretation of **"in-transit call"** has been amended to read as follows:

"In-transit call" means any call, other than an emergency or technical call, by a vessel at any place where persons or goods go ashore temporarily but re-load the vessel before the vessel leaves that place or through land to another location to re-load or re-load the same vessel or another and include cargo not discharge at the transit call.

Also, the phrase **"place above Nigerian Waters"** has been amended (though it was never defined under the Cabotage Act) to read as follows:

"in the context of Coastal trade to include any vessel, offshore drilling unit, production platform, artificial island, subsea installation, pumping station, living accommodation, storage structure, loading or landing platforms, dredge, floating crane, pipe laying or other barge or pipe, rigs, floating, production, storage and offloading platform (FPSO), floating, storage and offloading platforms (FPSO) and any other anchor cable or rig pad used in connection therewith."

Finally, the Bill seeks to amend the definition of a **"vessel"** as well as the list of vessels eligible for registration under the Cabotage Act. The definition of a vessel has been expanded with the introduction of the following underlined words:

"Vessel" includes any description of vessel, ship, boat, hovercraft or craft, including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage on through or under water of persons or property without regard to method or lack of propulsion and includes rigs, floating, production, production, storage and offloading platform (FPSO), floating, storage and offloading platforms (FPSO).

In line with the proposed amendment to the definition of a **"vessel"** as stated above, section 22 (5) of the Cabotage Act, which provides a list of vessels eligible for registration, has been amended with the introduction of new paragraphs (m), (n), (o),⁹ as follows:

(m) Floating, Storage and Offloading platforms (FPSO);

(n) Floating, Production, Storage and Offloading platforms (FPSO);

⁸ Under section 2 of the Cabotage Act.

⁹ And the existing paragraph (m) of the Cabotage Act becomes paragraph (p) of the Bill.



(o) Rigs

Comments

A holistic review of the proposed amendments to the Cabotage Act clearly shows that the Cabotage regime would change when, and if the Bill is passed in its current form. Drilling rigs, FPSO, FSO and other 'vessels' that are stationary and engaged in vertically operations and currently exempted, would become eligible for registration under the 'new' Cabotage regime.

The implication of the foregoing, therefore, would be that operators like Noble would have a pyrrhic victory if the COA upholds the decision of the FHC in the Noble Case. Drilling rig operators would therefore be required to register their companies with NIMASA¹⁰ and have at least sixty per cent (60%) of their shares held by Nigerian citizens and a minimum share capital of Twenty Five Million Naira (₦25,000,000)(circa USD 156,250).

Most importantly, these operators will need to comply with the Cabotage requirements for their 'vessels' to be Nigerian owned, built and manned and registered in Nigeria. Although, where these strict requirements cannot be met, the applicable waivers can also be sought. It is thus imperative that operators be mindful of the cost and administrative implications of the Cabotage Amendment Bill as it relates to the operations of rigs and oil platforms in Nigerian coastal waters before same is passed into law and becomes fully operational in Nigeria.

It is relieving to note that the Bill does not seek retrospective application on rigs already in operation in Nigeria. It is however likely that NIMASA may swiftly issue regulations which will set a timeline for full compliance by all the operators of oil rigs and platforms in Nigeria pursuant to the 'new' regime given the clog to its revenue as a result of the Noble Case.

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¹⁰ In compliance with the NIMASA Act 2007.