

# NIMASA'S FIRM STANCE ON CABOTAGE ACT VIOLATIONS & PROMOTION OF INDIGENOUS PARTICIPATION IN CABOTAGE TRADING

## BACKGROUND

MT Navigator Capricorn, a Liberian-registered vessel which is on lease to the Nigerian Liquefied Natural Gas (NLNG) Limited (the Vessel), began operation in Nigeria in October 2018. The Vessel supplies Liquefied Petroleum Gas (LPG) to Lagos for the licensed off-takers appointed by NLNG for distribution within the domestic market. The operation of the Vessel is crucial to the supply of cooking gas in Nigeria given that it supplies LPG to the Apapa axis from where more than 80 per cent of LPG supply to Nigeria is distributed to depots across the country.

In furtherance of its mandate/powers under the Cabotage Act 2003 (the Act), the Nigerian Maritime Administration and Safety Agency (NIMASA) sometime in October 2018 informed the owner/charterer of the Vessel of its non-compliance with certain requirements the Act, and gave a 90-day grace period for the owners/charterers of the Vessel to bring it in compliance with the provisions of the Act. The Vessel's non-compliance was not cured within the grace period and despite the Vessel's crucial operations, its detention was ordered by NIMASA.

Whilst the general applicability and enforceability of the Cabotage Act, particularly by NIMASA is currently being tested in Nigerian courts, the drive by NIMASA to promote indigenous participation in cabotage trade in Nigeria, pursuant to the Act, has also received some light.

## SALIENT PROVISIONS OF THE

## CABOTAGE ACT

Specifically, by Sections 3, 9, 10, 11 of the Act, the operation of commercial transportation of goods and services within Nigerian coastal and inland waters is reserved for vessels; (x) flying the Nigerian flag; (y) owned and crewed by Nigerian citizens; and (z) built and registered in Nigeria. Relatedly, Under the Act (Section 21), a foreign owned vessel is required to obtain a licence to participate in coastal trade. Additionally, all vessels intended for use under the Act must be registered in compliance with the requirements prescribed by the Act and the Merchant Shipping Act (Section 22 of the Act).

Whilst the Minister or any person so authorised under the Act is empowered to grant waivers with respect to the foregoing where there is; (x) no Nigerian owned vessel suitable for the specified purpose; (y) no Nigerian crew qualified for the specified position; and (z) no Nigerian ship building company capable of building the desired vessel, NIMASA's stance, in a bid to engender and sustain local participation in Nigerian cabotage trade, is that there is no basis anymore for those waivers.

Consequently, in exercise of its powers under Section 22 of Nigerian Maritime Administration and Safety Agency Act 2007, NIMASA has in a press statement released in February 2019, indicated that it is commencing a clampdown on vessels that are non-compliant with Cabotage Compliance Strategy 2018, introduced to ease the implementation of the Act in Nigeria.

## TOWARDS LOCAL PARTICIPATION IN CABOTAGE TRADING

Other steps being taken to increase local participation in the Nigerian maritime industry, include (i) Graduate training under the Nigeria Seafarers Development Programme which occasioned a 58.9% increase in the number of Nigerian seafarers employed by half year 2018; (ii) Policy on joint venture and joint vessel ownership on a 60-40 basis which has encouraged more new Nigerian-flag flying vessels and an increase in the number of wholly Nigerian owned vessels on the Nigerian Cabotage register; (iii) Engagement of the Central Bank of Nigeria (CBN) to negotiate a special single digit interest facility for

indigenous ship owners/operators; and (iv) Partnering with the Nigeria Customs Service, the Federal Ministry of Finance and relevant authorities to create a special tariff and tax regime for the importation of maritime assets.

## CONCLUSION

Whilst the enforcement of the Act and compliance directives issued thereon have the potential to momentarily disrupt economic activities, it appears that NIMASA is insistent on pressing ahead. It is, therefore, hoped that more Nigerians will take advantage of NIMASA's drive and policies by stepping into Nigerian cabotage trade for the much desired increased local participation.

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