

**Realisation of Cabotage Opportunities: Joint Venture
Partnerships and Acquisition of Ships
NATIONAL WORKSHOP ON CABOTAGE LAW
ORGANIZED BY THE
MARITIME ACADEMY OF NIGERIA**

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4 Pillars of Nigerian Cabotage Regime

- Reserves the bulk of the coastal trade to vessels owned by Nigerian citizens;
- Vessels used for coastal trade must be manned by Nigerian citizens;
- Vessels used for coastal trade must be built in Nigeria;
- Restricted participation of non - Nigerians in the coastal trade. permitted.

Existing Indigenous Capacity

- Characterized by gross inadequacy
- Tonnage
- 2002 data from the Registrar of Ships indicated only 98 and 26 cargo vessels;
- Number of actual ownership by Nigerian citizens not certain.
- Manning capacity
- Sizeable number of Officers and crew but not sufficient.
- Shipbuilding capacity
- Virtually non-existent;
- Only ship repair yards, about 19 repair yards(85% not operational);
- (dry docking/afloat repair, refurbishment, maintenance)
- A few capable of building small vessels e.g. barges and tug boats

Investments Opportunities Under Cabotage Regime

- Major areas for investment
- Ship Acquisition (ship purchase, ship brokers);
- Human Capital Development (Training);
- Shipbuilding and repair (repair yards, emergency repair facilities in anchorage);
- Maritime auxiliary services (freight forwarding, victualling, warehousing/depot);
- Major areas for investment contd.

- Port services (dredging, pilotage, bunkering garbage/ballast waste disposal);
- Fishing industry;
- Maritime insurance (credit for fleet expansion).

Ship Acquisition and Joint Venture Partnerships

- Available options for Ship Acquisition
- Outright purchase of new build or old bottom;
- Purchase of vessels to be sold by Order of Court;
- Charterparty
- Bareboat charter permitted
- Long term (not less than 3 years)
- Available options for Ship Acquisition
- Standard Forms
- New build - "SAJ" i.e. Shipbuilding Contract of Shipowners' Association of Japan;
- Second hand - Norwegian Sale Form incorporated in Memorandum of Agreement (MOA).
- Ship Acquisition
- Enormous capital usually in millions of Dollars
- Small vessels not too expensive;
- Tankers are expensive;
- Nigerian banks characterised by short term loan;
- Shipping typically requires long term loan.
- Joint Venture is an attractive option
- Techniques and Procedure for Joint Venture (Nigerians and Foreigners)
- JV permitted by the underlying law governing establishment of businesses in Nigeria (S.20(4) CAMA);
- General Requirements
- Identify the object of the Business i.e. shipping company;
- Market survey;
- Identify prospective investors;
- Negotiate and sign a JV Agreement;
- Name/particulars of partners, place of business, purpose and term of JV;
- Financing – equity/debt, initial contribution;
- Managing JV Partner, management structure;
- Accounts – allocation of losses and profit;
- Termination and dissolution of JV;
- Register at the CAC.
- Joint Venture under the Cabotage Law
- Specific requirements under Cabotage in addition to CAMA

- Purpose is to ensure true indigenous ownership;
- Cure endemic mischief in Nigerian business practice;
- Ownership (S.12 Cabotage Act)
- Nigerian JV Partner(s) must own 60% of the equity in the company;
- Foreigners permitted to own a maximum of 40% equity shareholding;
- Nigerian JV partners must be the legal and beneficial owner of the 60% equity shares;
- % ownership applies to both the company and the vessels;
- Nigerian Citizenship.
- Management (S.23 (2) and (3) CA)
- Controlling interest in JV must be owned by Nigerians;
- Factors to determine controlling interests in sub (3) e.g.
- Majority of voting power in coy must be held by Nigerians;
- Management contract must not transfer control howsoever to foreign JV partners;
- 60% shares must not be held in trust for foreigners.
- Registration (Section 12(a), S. 23(1)(c), (2))
- JV company must be registered at the CAC;
- The vessel must be registered in the National Flag Register (Registrar of Ships);
- JV company and vessels must be registered in the "Special Register for Vessels and Ship Owning Companies engaged in Cabotage"
- Registration contd (S.24)
- Stringent proof of ownership
- Ownership of shares in the JV;
- Apportionment of shares in the vessel;
- Affidavit sworn at the Federal High Court by owners (not agents or reps)
- State shares and capacity in which shares are held

Conclusion

- Several countries jumpstarted development of indigenous capacity by enacting similar laws;
- Today they are shipping giants exporting their skills to Nigeria e.g Norway and Malaysia;
- Government has created a protected market for Nigerians;
- Investors should seize the golden opportunity and invest in shipping.