

**SUSPENSION OF WAIVERS FOR THE MANNING REQUIREMENT OF THE
COASTAL AND INLAND SHIPPING (CABOTAGE) ACT, 2003 AND DETENTION
OF VESSELS AS A RESULT**

On 19th April 2018, the Assistant Director (Western Zone), Maritime Labour Department of the Nigerian Maritime Administration and Safety Agency (“NIMASA”), informed stakeholders that following the suspension of the grant of waivers from the manning requirement of the Coastal and Inland Shipping (Cabotage) Act 2003 LFN 2004 CAP. C51 (“Cabotage Act”), vessels with foreign seafarers working onboard will be detained with effect from 1st June 2018. The suspension of the grant of waivers from manning requirements of the Cabotage Act was initially communicated to stakeholders through Marine Notices published by NIMASA on 24th March 2017 and 26th July 2017 respectively.

Affected stakeholders were advised to immediately apply to the Director General of NIMASA for temporary waivers of the cabotage manning requirement for the positions of Captain, Chief Engineer and Chief Mate in order to ensure that the applications are processed before the 1st June 2018 deadline. The temporary waivers are valid for a period of six months.

The Cabotage Act regulates the participation of vessels in Nigeria’s coastal trade and is administered by NIMASA. Principally, it aims to increase indigenous participation in the Nigerian coastal trade. The Cabotage Act, among other things, restricts the manning of vessels engaged in Nigerian coastal trade to Nigerian citizens. The Cabotage Act however provides for a waiver system whereby the manning requirement of the Cabotage Act can be waived where the Minister of Transportation is satisfied that there *“is no qualified Nigerian officer or crew for the position specified in the application for waiver”*.

Undoubtedly, NIMASA’s decision to suspend the grant of waivers was borne out of a desire to accelerate achievement of the objectives of the Cabotage Act. It is however, debatable that NIMASA can legitimately do so. The suspension of the grant of waivers is essentially a modification of express provisions of the Cabotage Act on waivers. The Cabotage Act is an Act of the Nigerian National Assembly and cannot be amended by NIMASA, an administrative agency.

It is also doubtful that NIMASA can enforce the detention of vessels without first recourse to court. This is because, even though Section 32 of the Cabotage Act empowers a NIMASA Enforcement Officer to detain a vessel without recourse to court, such action can only be undertaken in *“exigent circumstances.”* An ordinary construction of the phrase *“exigent*

circumstances” contemplates situations relating to threat to life and property or damage to the environment.

In addition, it is interesting to note that the Marine Notice of 26th July 2017 referred to by the Assistant Director stipulated a temporary suspension of manning waivers. The temporary suspension was to be in effect for a period of six months from 26th July 2017, the date of the Marine Notice. The period has since expired.

It would appear from the irregularities in NIMASA’s actions, some of which we have mentioned above, that the suspension of the grant of waivers and/or detention of a vessel in enforcement of the same can be successfully challenged in court.

Nonetheless, and based on commercial considerations, operators may find it more practical to replace foreign seafarers on board vessels engaged in Nigeria’s coastal trade, with Nigerians to avoid detention of their vessels and the attendant losses.

Qualifications

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