

## COASTAL AND INLAND SHIPPING (CABOTAGE) ACT (ALTERATION) BILL, 2021. (HB. 1575)



The bill seeks to amend the Coastal and Inland Shipping (Cabotage) Act 2003 (“the Principal Act”), to include oil rigs as a vessel, within the meaning of a vessel under the Act, and subject to every other provision of the Act relating to vessels.

The major proposal contained in the bill is the insertion of the words “oil rigs” in the definition of the word “Vessel” in the Principal Act as including:

“any description of vessel, ship, boat, oil rigs, 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.” (*Clause 2 of the bill*).

<sup>1</sup> In this regard, Section 22(5) of the Principal Act provides that vessels which are eligible for registration include ‘passenger vessels, crew boats, bunkering vessels, fishing trawlers, barges, offshore service vessels, tugs, anchor handling tugs and supply vessels, floating petroleum storage, dredgers, tankers, carriers, and any other craft or vessel used for carriage on, through or underwater of persons, property or any substance whatsoever.’

In the Principal Act, a Rig is not specifically listed as a Vessel eligible for registration<sup>1</sup>. However, the Schedule of fees for Waivers, as contained in the Guidelines on the Implementation of the Cabotage Act (the “Cabotage Guidelines”)<sup>2</sup> lists Rigs as part of the relevant cabotage vessels.

It is worth mentioning that the Nigerian Maritime Administration and Safety Agency (“NIMASA”) has always asserted that Drilling Rigs should be subject to the Cabotage Guidelines. However, this has been fiercely resisted by upstream operators in Nigeria who on the other hand contend that Rigs cannot be regarded as vessels, and to the extent that a Rig is not specifically listed as a Vessel eligible for cabotage registration in the Cabotage Act, the inclusion of same in the Cabotage Guidelines is wrongful and untenable.

The Courts have also attempted to resolve the debate on whether a Drilling Rig should be considered as a Cabotage Vessel.

In the *Seadrill Case*<sup>3</sup>, the Federal High Court (the “FHC”), held that Rigs fall within the scope of the definition of vessels under the Coastal and Inland Shipping (Cabotage) Act, 2003 (the “Cabotage Act”) and drilling operations constitute coastal trade and cabotage, as defined under the Cabotage Act. Based on this judgment, the provisions of the Cabotage Act will now be applicable to Rigs and offshore drilling operations carried on within Nigerian territorial waters.

Furthermore, the Court held<sup>4</sup> that where drilling operations are carried out offshore, such activities will fall within the definition of ‘coastal trade’ and ‘cabotage’ under Section

<sup>2</sup> The Guidelines, first issued in 2003 and subsequently revised in 2007, was issued by the Minister of Transport pursuant to his powers under Section 46 of the Cabotage Act.

<sup>3</sup> *Seadrill Mobile Units Nigeria Limited v The Honourable Minister for Transportation & 2 Others*, Suit No. FHC/L/CS/607/2016. Judgment in this matter was delivered on June 14, 2019.

<sup>4</sup> In arriving at its decision, the court sought to answer the following questions:

2(d)<sup>5</sup> of the Cabotage Act. The Court added that the use of the word ‘include’ in the list of vessels eligible for cabotage registration, as contained in Section 22(5) of the Cabotage Act, implies that “similar crafts within the category listed can be allowed in” and therefore Rigs can be included in the list of Vessels under the Cabotage Act.

However, a contrary decision was subsequently delivered by the FHC in the *Noble Drilling Case*<sup>6</sup> and the Court of Appeal in the *Transocean case*, where it was held that Drilling Rigs do not fall within the scope of definition of a Vessel under the Cabotage Act.

Therefore, the bill proposes to settle the contentious issue surrounding the question of whether drilling rigs should be regarded as Cabotage Vessels.

Should this bill be passed into law, it would significantly impact on drilling operations in the oil and gas industry, especially for the Upstream operators as oil rigs operating on Nigerian waters will now be subject to the provisions of the Cabotage Act.

In this regard, some of the critical requirements would include specific registration of Rigs for cabotage trade at NIMASA; compliance with the cabotage requirements for Rigs to be wholly owned and wholly manned by Nigerian citizens, as well as built and registered in Nigeria; procurement of waivers of the relevant cabotage requirements where same cannot be satisfied by the relevant operator; and payment of 2% of the contract sum performed by Rigs engaged in coastal trade.

Consequently, this bill has significant administrative and cost implications for offshore drilling operations in Nigeria. In addition, this would imply that workers injured on an oil rig will be afforded certain rights and benefits under maritime law.

i. Whether on a proper interpretation of the Cabotage Act – particularly Sections 2, 5 and 22(5) – drilling rigs fall within the definition of ‘vessels’ under the Coastal and Inland Shipping (Cabotage) Act, 2003; and

ii. Whether on a proper interpretation of the Cabotage Act, particularly Sections 2, 5, 22(5), drilling rigs fall within the definition of ‘vessel’ under the Cabotage Act.

<sup>5</sup> Section 2(d) of the Cabotage Act provides that ‘coastal trade’ or ‘cabotage’ means the ‘engaging, by vessel, in any other marine

The bill went through first reading on 15th September 2021.

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transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial nature within the waters of Nigeria.’

<sup>6</sup> In the 2008 case of *Noble Drilling (Nigeria) Limited v NIMASA & The Minister of Transportation (FHC/L/CS/78/2008)* the FHC held that a Rig cannot be regarded as a Vessel considering that it is incapable of marine navigation as required in the definition of a Vessel under the Cabotage Act.

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