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Administration of Cabotage Vessel Financing Funds (CVVF) in Nigeria: Issues for Legislative Consideration

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Overview

Recently, there has been concerns with the administration of the Cabotage Vessel Financing Fund (CVFF) in Nigeria. Section 44 of the Cabotage Act provides that the fund shall be collected by the National Maritime Authority (NMA) and deposited in commercial banks and administered under guideline that shall be proposed by the Minister and approved by the National Assembly. While the Act provides that the fund shall be collected by the NMA, the NMA has been replaced by Nigerian Maritime Administration and Safety Agency (NIMASA). The NMA is the predecessor of NIMASA. There is therefore need to amend section 44 of the Cabotage Act to replace National Maritime Authority with Nigerian Maritime Administration and Safety Agency. Furthermore, whereas the Act allows for money accruing to the CVVF to be deposited in more than one commercial bank, this may undermine transparency in the management of the Fund. This brief examines the issues underlining the administration of the CVVF in the context of the Cabotage Act. It concludes by highlighting aspects in the Cabotage Act that requires legislative attention in order to ensure transparency and openness in the administration of the Fund.

1.0 Introduction

1. The importance of the maritime sector to the Nigerian economy cannot be overemphasised. The sector contributes to GDP[1] and also aids sea-borne trade. The sector also has the potential to drive the Nigerian economy relative to the fluctuating and uncertain role of the petroleum sector. This is in addition to the major role of the sector in national sovereignty and security. However despite the potentials of this sector for the national economy and sovereignty, it is dominated by foreign companies, with significantly limited participation by domestic companies. This has been attributed to the lack of financial and technical capacities of domestic companies, inadequate infrastructure, and ineffective implementation of local content policies, among other factors, and perpetuated the state of underdevelopment of local operators.

[1] Jamoh, B. Y. (2018). Harnessing Nigeria's maritime assets: Past, present and future.

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2. This situation has been aggravated by the poor attitude of financial institutions towards long term financing to operators in the sector. To address the limited participation of domestic companies and enhance their participation in the maritime sector, the Cabotage Act, 2003 was enacted. The main objective of the Act is to give first priority to Nigerian shipping companies in domestic coastal trade and develop indigenous tonnage. To achieve this objective, the Act makes some key provisions aimed at enhancing the capabilities of domestic shipping companies.

3. To address the issue of financial constraints faced by domestic shipping companies, Section 42(1-2) of the Act provides that there shall be established a fund known as the Cabotage Vessel Financing Fund which shall be used to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping. Although the Fund has accumulated to billions of Naira, there have been disagreements among stakeholders over the non-disbursement of the fund and the manner in which it should be disbursed.

4. The Cabotage Vessel Financing Fund is currently domiciled in the NIMASA and has become a controversial issue as past administrations of the Agency were not able to disburse it amidst some allegations of misappropriation of the Fund. The present administration, which has grown the Fund, also seems not disposed to disbursing it, partly over fears of mis-management. The Director General of the Nigerian Maritime Administration and Safety Agency (NIMASA), Dr. Dakuku Peterside, is quoted as saying[2] that while there are ongoing efforts to disburse the funds, there is need for stakeholders to comply with the prescribed way of accessing the fund. More so, rather than emphasize the condition for which the disbursement should be made, efforts should be directed towards growing tonnage and creating employment in the sector.

5. Available reports as at December 2017 shows that the CVVF has accrued to N100 billion. The CVFF is a two per cent contribution by indigenous ship-owners for every contract ship-owners execute and is meant for the development of cabotage fleet and local shipping capacity. Despite complaints by the indigenous ship-owner over the non-disbursement of the funds, the minister had told them at their end of year workshop and dinner with the theme: "Giving Critical Lifeline to the Nigerian Maritime Industry," that he will not release the funds[3].

6. While the debates over how and when the Fund should be disbursed are ongoing, there is need to revisit the Cabotage Act in order to

[2] https://www.vanguardngr.com/2017/10/cabotage-fund-hits-n100bn-house-committee-laments-non-disbursement/;
[3] https://www.vanguardngr.com/2017/12/cvff-accrued-100m-not-100bn-dg-nimasa/

identify areas that need to be strengthened. More so, as the administration has expressed its resolve to disburse the Fund, it is important to examine the modalities for disbursing the Fund with a view to ensuring that the necessary provisions of the law are followed and mitigate the possibilities of misappropriation and mismanagement.

2.0 Issues from the Cabotage Act

7. In section 43, the sources of the Fund are provided as follows: there shall be paid into the Fund (a) a surcharge of 2 per centum of the contract sum performed by any vessel engaged in the coastal trade; (b) a sum as shall from time to time be determined and approved by the National Assembly; (c) monies generated under this Act including the tariffs, fines and fees for licences and waivers; (d) such further sums accruable to the fund by way of interests paid on and repayment of the principal sums of any loan granted from the Fund. This implies that the National Assembly only has knowledge of monies appropriated to the Fund, and a transparent means of ascertaining the accrued amount in the Fund is non-existing.

3.0 Comments on the Act

Section 44 of the Principal Act provides that:

The fund shall be collected by the National Maritime Authority and deposited in commercial banks and administered under guideline that shall be proposed by the Minister and approved by the National Assembly

Implications

- The Fund is domiciled with the National Maritime Authority (NMA).
- The Fund can be deposited in more than one commercial bank.
- The Fund is administered by guidelines that shall be proposed by the Minister and approved by the National Assembly.

Issues and recommendation

- The National Maritime Authority (NMA) is the predecessor of the Nigerian Maritime Administration and Safety Agency (NIMASA). There is need to amend section 44 of the Cabotage Act to replace National Maritime Authority with Nigerian Maritime Administration and Safety Agency.
- Allowing the money accruing to the Fund to be deposited in more than one commercial bank may undermine transparency in the management of the Fund. This is even more critical as several media reports have reported different amounts.
- The provision that the Fund is administered by guidelines proposed by the Minister and approved by the National Assembly could be abusive. It should be amended as follows: "The Fund is administered by guidelines proposed by a Board chaired by the Minister and reviewed and approved by the National Assembly". Such amendment would avoid a situation where the power to provide the guidelines rest solely with the Minister. It would also avert a situation that suggests that the guidelines proposed by the Ministers must be approved by the National Assembly.

Section 45 of the Principal Act provides that:

The beneficiaries of the fund shall be Nigerian citizens and shipping companies wholly owned by Nigerians.

Implications

- Section 45 conflicts with the purpose of the Fund as provided in section 42. The purpose of the Fund as contained in section 42(2), is that, the Fund shall be used to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping.
- The provision in section 45, however, states that the beneficiaries of the Fund shall be Nigerian citizens and shipping companies wholly owned by Nigerians. The question is: what is the existing modality put in place to disburse the Funds to Nigerian citizens? Furthermore, section 45 also provides that the beneficiaries of the Fund shall be shipping companies wholly owned by Nigerians. If the purpose in section 42(2) is to promote the development of indigenous ship acquisition, but section 45 provides that the Funds will be available to shipping companies wholly owned by Nigerians, then some Nigerians can come together to register shipping companies and apply for the Funds. This emphasizes the need to develop a clear and transparent guideline for disbursing the Fund.

Issues and recommendations

- There is need to further act on Section 42(2). It calls for a framework to be put in place through which the Funds can be used to promote the development of indigenous ship acquisition. One way would be to disburse the Funds through the Development Bank of Nigeria or establish a Maritime Bank.
- Section 45 should be amended by providing that the beneficiaries of the Fund shall be fully Nigerian-owned companies involved in businesses concerned with the development or acquisition of ships to be used for growing the nation's tonnage and creating employment in the sector.

Other Issues with the Act

- There is no indication in the Act as to when the Fund should be disbursed. This is solely left to the discretion of the Minister. This is a major source of conflict between the Minister and the potential beneficiaries, as ship owners claim the Fund has not been disbursed since the enactment of the Act in 2003 despite their continuous contribution to the Fund. More so, neither the Minister nor NIMASA has given any reason why the Fund is yet to be disbursed despite the increase in the Fund over the years.
- The Act needs to state the conditions for the disbursement of the Fund as well as the penalties for operators who do not use the Fund for the intended purposes. This will ensure that operators who benefit from the Fund conforms to the rules and effectively and efficiently utilise the Fund.

4.0 Conclusion and Recommendation

8. The National Maritime Authority (NMA) is the predecessor of the Nigerian Maritime Administration and Safety Agency (NIMASA). There is need to amend section 44 of the Cabotage Act to replace National Maritime Authority with Nigerian Maritime Administration and Safety Agency.

9. The provision that the Fund should be administered by guidelines

proposed by the Minister and approved by the National Assembly could be abusive. It should therefore be amended as follows: the Fund shall be administered by guidelines proposed by a Board chaired by the Minister, and reviewed and approved by the National Assembly. The Board may consist of representatives of major stakeholders in the maritime sector such as NIMASA, Nigeria Shippers' Council (NSC), Nigeria Ports Authority (NPA), Shippers' Workers Union, etc.

10. Section 45 conflicts with the purpose of the Fund as provided in section 42. Section 45 should be amended by providing that the beneficiaries of the Fund shall be fully Nigerian-owned companies involved in businesses concerned with the development or acquisition of ships to be used for growing the nation's tonnage and creating employment in the sector.

11. There is the need to act further on Section 42(2). There is need for a framework to be put in place through which the Funds can be used to promote the development of indigenous ship acquisition. This can be done by establishing a National Maritime Bank or expanding the scope of the Development Bank of Nigeria to include maritime financing.

12. The Act should state at what point the Fund should be disbursed and what are the conditions that the operators must meet before they can access the Fund. The penalties for not using the Fund for the intended purposes should also be stated.

The views expressed in this Research Issue Brief are those of the author(s) and do not necessarily represent the views of the Institute and its Management.

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