International Journal of Criminal, Common and Statutory Law

E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2024; 4(1): 18-24
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www.criminallawjournal.org
Received: 22-12-2023
Accepted: 06-01-2024

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Advancing indigenous ship building in Nigerian maritime industry: Strategies for bridging the gap

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Abstract
It is the desire of every maritime nation to harness to the fullest the enormous benefits that accrues from the maritime industry. Maritime administration encompasses the regulation of trade to security and safety of lives and properties (investments) in the industry. By the provisions of Nigerian law, ship building is an exclusive reserve for Nigerian nationals. This is in recognition of the importance of this aspect of the maritime industry, especially in terms of accruable economic benefits and employment generation potential to the nation. This paper in discussing the concept of ship building and indigenous ship building gap found that Nigerian nationals are confronted with a number of challenges bedeviling the growth of ship building industry in Nigeria, the capital intensity and density contributes to the dearth of indigenous capacity. However, lack of government support is what accounts for the insufficiency in domestic ship building capacity. Contracting therefore can become a strategic tool, in the meantime, to galvanise, bridge and link the gap created. Amongst other things, the paper however recommended a legislative intervention to regulate the use of special purpose vehicles in the industry to preserve maritime policy expectations and not to be used as conduit to dissipate industry policy aspirations.

Keywords: Ship building, contract, special purpose vehicles, legislative intervention

1. Introduction

Beyond the global question of safety of lives at sea owing to breach of ship building requirements, and the maritime states obligation to ensure the proper monitoring and enforcement of internationally recognized maritime rules, Nigeria has a peculiar domestic challenge of ship building capacity deficit. There has been a general consensus that Nigeria has no sufficient domestic capacity in both the ownership and infrastructural aspects of ship building. Only foreign nationals and corporations have been able to cope with the vicissitudes of intensive capital and technological know-how, for a venture that is ever changing.

Nigeria's attempt at fleet development dates back to colonial times. The period during the First World War in 1914, brought about a shortage of shipping tonnage and a near end to the commercial life of the country. After the war, the situation improved and with expanding trade, the Dutch, Americans and Brazilians, among others, entered the Nigerian shipping trade. The increasing trade that was witnessed after the First World War suffered a setback from 1939, as hostilities of the Second World War ensued. The British government requisitioned its flag vessels in the Nigerian trade to aid war efforts, bringing about another decline in the supply of shipping services [1].

The post war period, however, was marked by significant achievements in the Nigerian shipping scene. The Nigerian Ports Authority and the Government Coastal Agency were established in 1954. The Authority took over provision and maintenance of ports and other related services, while the coastal agency provided clearing and forwarding services to the Federal, Regional and Provincial administrations. It also arranged for protocol, passages and handling of the baggage of colonial officers on vacation. There was a sharp increase in the European demand for Nigerian raw materials, and the ports of Sapele, Burutu, Warri, Degema, Calabar, Port Harcourt and Lagos were either developed or improved during the period [2].

In 1959 the Nigerian Government in association with Elder Dempster and Palm Lines established the Nigerian National Shipping Line. It also joined the West African Liner Conference in the same year, but was restricted to handling of only 2.5% of Nigeria's total export [3]. The Federal government after independence in 1961 bought the remaining shares from the technical partners and became the sole owner of the National Shipping Line. It must be recalled that the Nigerian government as far back as 1958 made policy for indigenous participation in the maritime industry by having a subsidised purchase of five ships by Nigerian National Shipping Lines.

These steamships were manned by British crewmen as there were no qualified Nigerians. Another nineteen were also acquired by the government and added to NNSL fleet in 1970. The latter acquisition was however done at a period when world cargo demand and capacity changed from dry/bulk to wet cargo thereby making the vessels redundant. The NNSL was later liquidated in September 1995 due to mismanagement and corruption. In 1996, a new line was created called the National Unity Line (NUL) fully owned by the Nigeria Maritime Authority and having just one ship called MV Abuja. However, like its predecessor it died a natural death. This has left a gap in the market where international shipping lines now dominate and suffocate competition in the indigenous maritime industry.

It should be recalled that the period between 1967 and 1970 during the Nigerian civil war had devastating impact on the commercial maritime activities in the country, as the Port Harcourt port was closed to foreign traffic for security reasons, thereby inundating the Lagos port. However, things normalised following the aftermath of the war, with petroleum exploration and exploitation activities topping the chart of maritime activities. More so, with oil being the focus, piracy and militancy took its reigns crippling maritime economic activities perpetuated by armed men in the creeks of Niger Delta and the seas.

Indigenous companies have been unable to compete favorably even today despite legislative regulation. Ship building under Nigerian law is the exclusive preserve of Nigerian nationals, save where it is shown that no Nigerian ship building company has capacity to construct the particular type and size of vessel. The negative narrative in Nigeria is increasingly changing with the creation of Special Purpose Vehicles established to drive foreign direct investments. Are the policy aspirations fulfilled? What is the way forward? This paper attempt to elucidate on contracting models and ship building questions in the Nigerian maritime industry and gives a considered perspective on the issues confronting contracting and ship building legal regime in Nigeria.

2. Construction of Ships in Nigeria

Every ship constructed in Nigeria must comply with the requirements for ship building in Nigeria [4]. The Minister of Transport is empowered by law to make Construction Rules prescribing requirements as to the hull, equipment and machinery of a Nigerian ship for any class of coastal or inland water. Moreover, the law requires an annual survey on constructed ships to keep tab on the construction requirements. These provisions are in tandem with the International Convention for the Safety of Life at Sea [5].

In the construction of ships, a ship builder in Nigeria is under an obligation to prepare and submit proposed ship building plans and specifications of the ship to the Minister of Transport for approval prior to the commencement of the construction. A ship may be detained pending when the builder performs the conditions prescribed. This includes the Minister's directive as to alterations of building plans and specifications [6]. A surveyor of Ships in Nigeria is by virtue of section 253(1) [7] charged with the responsibility to undertake ship inspection for the purpose of ensuring that the ship is properly provided with lifesaving appliances. A surveyor is empowered at all reasonable time to go onboard ship and carry out inspection of the machinery, equipment or any part of a ship. This means that where necessary the hull of the ship may also be inspected. Accordingly, the surveyor issues a certificate of survey in respect of the matters of the inspection.

3. Legal Obligations of a Ship Builder

A ship builder in Nigeria is under obligation of law to prepare and submit a ship building plan for approval by the Minister. The ship builder must accompany the proposed plans with a fee to be determined by the Minister of Transport for the purpose of carrying out the due examinations of the proposed plans and specifications of a given ship.

It is an offence to build a ship in Nigeria without prior approval by government. The offence is aggravated where an unseaworthy [8] ship is allowed to sail where the condition of the ship hull, equipment or machinery is defective, such a ship is liable to be detained. However, the federal government will be held liable where a detention is held to be wrongful by a determination of court. Consequently, the payment of all costs and compensation for any loss arising under such wrongful detention is borne by the government. The board responsible may also require a ship builder to pay cost of survey and other cost incidental to the detention where it finds that the detention was reasonable and that in fact the ship was unsafe.

4. The Nature of a Ship

A ship has been defined as a vessel of any kind used or constructed for use in navigation by water, however it is propelled or moved, and includes;

1. A barge, lighter or other floating vessel including a drilling rig.
2. A hovercraft
3. An offshore industry mobile unit and
4. A vessel that has sunk or is stranded and the remains of such vessel but does not include a vessel under construction that has not launched [9].

A ship has also been defined as a vessel of any type whatsoever not permanently attached to the sea bed, including dynamically supported craft, submersibles of any other floating craft which shall include but not limited to floating production storage and offloading (FPSO) platform as well as floating storage and offloading (FSO) platform. Section 22 (5) Cabotage Act 2003 highlights registrable vessels to include: passenger vessels, crew boats, bunkers, trawlers, barges, tugs, dredgers, tankers, floating petroleum storage, carriers, anchor handling tugs and supply and any other craft or vessel used for carriage on, through or underwater of persons, property or any substance whatsoever.

The definition of vessel under section 2 the interpretation section of the Cabotage Act 2003 is reproduced hereunder:

Any description of vessel, ship, boat, 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.

The enumeration above and the definition of vessel under the interpretation section of the Act have been met with judicial intervention to exclude drilling rigs as provided in clause 9.1.1 of the Guidelines made by the Minister pursuant to the Act. In *Noble Drilling Nigeria Ltd V NIMASA and anor* [10] the court held that for a vessel to come under section 22(5) it must be 'designed, used or capable of being used solely or partly for marine navigation for the carriage of persons or property through, on and under water.' The court stressed that

the phrase 'marine navigation' is crucial to the definition of vessel under the Act. It is submitted that the position of the court accords to sound reason and unimpeachable. However, this has been overtaken by legislative review which made specific provision for rigs. See the Admiralty Jurisdiction Act 2011. S 26.

A vessel therefore is anything constructed or used for carriage on, through or under water of persons or goods and includes a hovercraft, rigs and aircraft when water borne. It will also be safe to refer to a ship as a property or chattels of any structure, whether completed or in the course of completion, launched or intended for use in navigation and not propelled by oars or paddle.

5. Nature of a Ship Building Contract

The general principle of sale and purchase of goods and chattels are applicable to a ship building contract [11]. A ship building contract is complete and binding where the element of a valid contract are available. That is, the establishment of a valid offer and acceptance, intention to enter into legal relations and the presence of consideration. The jurisprudence for contract law is lex contractus. Contracting parties are availed wide discretionary freedom to create obligation by contract provided such obligations are not tainted with illegality or against public policy. While a sale of a ship may involve an outright acquisition, owing to difficulty of sourcing capital, it has now become a regular practice to acquire ships on deferred payment terms. The result is that though, legally, the ownership may pass to the buyer, the latter has to mortgage the ship either to the shipyard in the case of a new ship or to the seller [12] in the case of a second hand ship, or even a third party such as a bank or financier, in order to obtain the credit facility for acquiring a new or second hand ship [13].

Commercial banks, a mortgagor or other financier are necessary parties to a ship building contract. The seller may be a ship owning company and the buyer on the other hand may be a natural person or an artificial personality. A broker, though not a party to the deal, plays an important role in the transaction from start to finish. In this set up, the contract may have some attributes of a complex nature, where it may involve right of lien, assignment and novation.

A broker is usually appointed to bid and counter bid until the broker wins the bid where consensus ad idem is reached and the ship is sold. A broker is also involved in the negotiation of the contract. There are basically three stages, the negotiation and contract stage, the inspection stage and the completion stage.

However, a ship building contract is a proper contract of sale of goods whether the vessel is in existence or yet to be constructed. The ship which forms the subject of the contract of sale may be either existing, owned or possessed by the seller, or to be manufactured or acquired by the seller after the making of the contract of sale, i.e. future goods [14]. Therefore, a ship building contract will operate as contract for sale, where it is in the process of building or in the course of completion. Ships under construction are to be registered in the Register established by section 171 [15].

It must be emphasized that acquisition of ship contract *strictu sensu* may not be a ship building contract [16]. While ship building contract operates as an agreement to sell, a contract of ship acquisition may actually be a ship purchase agreement. An outright ship acquisition contract differs from a ship building contract in that a ship building project in the course of completion would envisage eventualities and exigencies, and these are what is reduced into writing as terms of the contract. The sale of a second hand ship may be by use of standard sales form. We have the Nippon Ship Sale Form and the Norwegian Ship Sale Form. The Baltic and International Maritime Council have adopted the later in 1956. The form is now revised and replaced in 2012.

6. Terms of a Ship Building Contract

As earlier noted, under the law of contract there exists freedom to contract. Parties are at liberty to agree on whatever terms they employ into their contract as binding between them as far as such terms are not illegal or contrary to public policy. Terms can be expressly in writing and may even be implied by law, from parties' conduct and industry practices. Generally, the basic terms are offer, acceptance, consideration and intention to create binding obligations etc. we shall briefly discuss the following key terms of a ship building contract:

Consideration: This is usually the purchase price. A good draftsman would state the amount both in words and figure. Most importantly, the currency of the price must be stated. The value may be expressed in Naira, Dollar or Crypto currency. The furnishing of consideration may involve the lodgment of deposit as security for the timeous performance of the contract before final payment is made on delivery. This is important where time is of the essence in the contract. Parties may decide to lodge the agreed percentage of the contract as deposit in an interest yielding account. The parties may jointly become the account holders. An order in writing for joint instruction of the parties may also be required and both parties may also borne chargeable fees.

Inspection: The purchasing party must have access to inspect the ship. Inspections usually covers vessel deck, engine log book, and under water inspection. Where this is done successfully, a written notice of acceptance of the vessel is then handed over to the seller.

Anti-Gazumping: The contracting parties may specify an exclusivity period which ensures both parties to comply with their obligations and excludes variation of terms in relation to price and other terms already agreed upon by the contracting parties.

Representation and warranties: Parties are at liberty to import representations and warranties. Usually, the parties may require certain terms as fundamental to the execution of the contract. Assurances such as financial good standing, authority to contract and absence of encumbrances are prerequisites to a binding agreement. Parties may decide to agree on such other terms like Right of lien**,** Compliance with governmental requirements**,** Insolvency**,** Governing law and arbitration**,** Insurance**,** Name and marking**,** Notice of readiness/cancelling date/delivery**,** Definitions of terms, Encumbrances, Default etc.

In addition, shipbuilding contract may involve on-sell agreements. That is, where a purchaser decides to sell an already purchased ship to a second buyer. In this case, an on-sale agreement must be structured to flow with the ship building/head agreement.

7. The Problem of Lack of Indigenous Ship Building Capacity

It cannot be overemphasised that the shipping industry requires huge capital investment as such several shipping nations have devised means of providing a support system to boost their cabotage industries. In Nigeria, for example, prior to the establishment of the Cabotage Vessel Finance Fund, the Nigerian government in 1958 had policies which encouraged the sector by way of financial assistance schemes in the purchase of five NNSL fleet which was later increased to 24 in 1970. Furthermore, at the inception of the Nigerian Shipping Policy in 1987 another attempt was made to implement the UNCTAD 40.40.20 liner code policy of 1974. Hence, section 13(1) established the Ship Acquisition and Building Fund to assist Nigerians in the development and expansion of Nigerian national fleet [17]. However, the scheme was suspended in 1996 due to inadequacy of the fund to achieve much success and the inability of beneficiaries to effectively service loans under the scheme.

By a strict implementation of cabotage regime, all vessels operating in the country's territorial waters must be owned by Nigerians, crewed by Nigerians, built in Nigeria and maintained in Nigeria [18]. The United States of America's Merchant Marine Act of 1920 also known as the Jones Act is acclaimed as major jurisdiction implementing strict cabotage regime. The law stipulates that all goods transported by water between US ports should be carried in US flag ships, constructed in the US, owned by US citizens and crewed by US citizens [19]. However, nations such as Nigeria and Brazil practices liberal cabotage policy, wherein foreign participation is allowed by relaxing strict implementation or by a waiver regime or relaxation of restrictions. In Nigeria, the country has no sufficient capacity to build and maintain ships, in recognition of this reality the drafters of the Cabotage Act ensures a waiver regime to serve as transition mechanism for the development of indigenous tonnage capacity, and manpower development.

7.1 The Advent of Waiver Policy as a Cure?

The history of the Nigerian maritime industry could be traced to the era wherein the entire institutions revolving round the sector depended on English maritime laws and decisions of English courts for guidance and as authority. In the past there was absolutely no statutory provision reserving the provision of marine transport service to only Nigerians or Nigerian owned vessels. This necessitated the foreign dominance which still has its strings today. Foreigners were involved in maritime industry both as service providers and as intermediaries such as pilots, engineers, freight forwarders, crewmen, bunkerers etc. in fact, there was active restriction by the colonial government against indigenous participation.

Foreign dominance and exclusion of indigenous participation took its root during the colonial times; efforts by indigenes to venture into ocean shipping were prevented by the British officials. For instance, King Jaja of Opobo was actually exiled for his successful competition against foreign merchants on the Qua Iboe River. Similarly, the effort of King Eyo Honesty of Calabar to charter vessels and transport cargo to England for direct sale was prevented by the British Consul. The Consul claimed that he acted to ensure that King Eyo and his subjects paid peculiar trusts supposedly owed to British merchants [20].

Perhaps, it will suffice to say that MacGregor Laird, who formed the Royal African Steamship Company in 1849, with British subsidy and cargo support could be the veritable foundation for cabotage support for fleet expansion. This is because it led to an increased trade and shipping activities and the consequent attraction of other ship-owners in the maritime industry. For instance, the British and African Steam Navigation Company was established. Both companies later merged to become Elder Dempster [21].

Record has it that in 1906, orders were placed for dredgers to work at the bar and approval was given for construction of the first length of the East Mole, in Lagos Lagoon to kick start port activities. This resulted in the development of Apapa Port and Port Harcourt Port which followed in quick succession [22]. In the same year the Nigerian Maritime Department (NMD) was established for administrative purposes, including the provision of port and ferry services, mail runs and the regulation of shipping activities. Accordingly, the Marines were also used for law enforcement and suppression of resistance to British colonial rule, which comprised of English officers and indigenous ratings. According to Ugochukwu, it was also the foundation for the Nigerian Ports Authority and the Inland Waterways Department [23].

A recent study [24] in Nigeria has indicated that principal components constraints to ship yards performance and development of ship building in Nigeria include financial constraint with Eigen value of 31.23%, infrastructural constraint with Eigen value of 26.35% and poor skill and technical know-how with Eigen value of 16.23%. This implies that financial constraints, poor skill and lack of technical know how and infrastructural constraints contribute a cumulative Eigen value of 74.259% and thus constitute the major component and dominant challenges/constraints impeding the performance and development of ship yards and ship building and repair sector in Nigeria. This further confirms and reiterates the need for a tactical way out.

8. The Way Forward to Bridging the Ship Building Gap

As far back as four hundred years ago, vessels that were seen on the Bonny and Calabar Rivers were noted for being capable of carrying 80 men, 70 feet in length and 7 to 8 feet wide [25]. Prior to the advent of the Europeans, the canoe merchants of ancient Ghana (gold Coast), who traded as far as Angola were, probably, the first foreigners who visited Nigerian waters [26]. The first British ship to visit Nigeria, reached Benin River in 1553 [27], despite the efforts of Portugal to monopolise the Nigerian Cabotage trade on items such as pepper and palm produce being the major products as at then and subsequently to trans-Atlantic slave trade and later to palm oil after slave trade was abolished in the 19th century.

In this 21st century, despite the hydra headed and self inflicted challenges, contracting models can be used to transform the apparent lack of ship building and repair capacity. Ship building and repair remains one area where investments should be encouraged and grant of waiver made in the interest of the development of local capacity. It is common knowledge that Nigeria [28] lacks the necessary capacity for ship building thereby attracting new investments. The concern here is the content and quality of the memorandum of understanding entered in order to develop this area. The objectives of any such memorandum of understanding such as ABG Indian shipyard [29] should be able to achieve the following in order to prevent losing an average of N26bn annually to foreign dry docking companies [30]:

i) Accelerate industrialization of maritime infrastructure in line with cabotage policy of indigenisation.

ii) Promote and support a private sector-led economy,
iii) Attract both local and foreign direct investors to the country,
iv) Provide gainful employment opportunities for Nigerians, and
v) Strengthen international cooperation.

In pursuance of the aforementioned objectives, an investor should be engaged for developing ship building and maintenance complex project with the following obligations:

a. Creation of Special Purpose Vehicles (SPV) for the purpose of realizing the objectives of the projects.
b. The evaluation of proposed project and determination of same by a comprehensive feasibility study, cash flow analysis and final stake holders meeting to determine the actual liabilities of the projects.
c. The determination of exact recoupment of investment period after proper evaluation; which may be between 25-30 years.
d. The projects to be executed with the funds sourced through Treasury Bills/Public and Foreign Direct Investment (FDI) provided under agreement and supported by Public Private Partnership (PPP) Build Own Operate and Transfer (BOOT) and other related JV Agreements.

Respective parties should undertake to source and secure the requisite funding required for the planning, construction, development, completion, commissioning and operation of the projects in accordance with the terms and conditions as may be agreed upon. Nigerian partners should have access to credit facilities.

Area of Cooperation of the Parties: In furtherance of the objectives of MOU, the parties should spell out areas they agree to cooperate for instance. The investor should construct the project for the purpose of reducing the state's dependence on foreign vessels and serve as a complement to existing facilities as well as the development of indigenisation drive and to also create market for African region and in international markets. The Investor is granted the right to review existing feasibility study to determine whether the development, construction and operation of the project is viable. If the development of such facilities proves to be feasible, the investor through the SPV be granted the exclusive right (either by a lease hold for 25-30 years or free and unencumbered clear title) to the property or any agreeable arrangement to manage the engineering, procurement, fabrication, construction, refurbishing, installation, commissioning, management and operation of the complex and for the operation of the facilities.

Autonomy: The investor should have full rights to autonomously operate as a strict business concern in accordance with acceptable international standard, including the ability to set prices and charges for installation of utilities, services, products, and such other consideration as customary with the industry in which the project operates. The investor should include a minority membership from public and other local partnership who should be involved in the procurement, commissioning and decision making process. The financial institutions and the investor will take engineering and construction decisions based on industrial standard principles only, and no other basis.

Ownership Structure: The structures of ownership should be determined in a meeting with all the stakeholders and should be shown in ratio. Representation of the parties on the board of the SPV should be in the same proportion as the shareholding of the parties thereto.

Dispute Resolution/Applicable Law: The MoU should be governed, construed and enforced in accordance with the laws of Nigeria, and relevant International Convention. In the event of any dispute arising from the breach of or any question of any of the terms of the MOU, the parties should in the first instance negotiate in good faith to settle the matter amicably and if the parties are unable to settle the matter within three months of the occurrence of dispute, the matter should be submitted to arbitration panel with each party appointing one arbitrator, and a third arbitrator appointed jointly by the consultants. The Arbitral Proceeding should be held in accordance with the Arbitration and Conciliation Act, or any successor.

The provisions in sections 12 – 21 of Cabotage Act represent the true extent of inclusion of Nigerians in the participation of the domestic maritime trade under the cabotage Act. Section 12 determines that in the granting of waiver, the minister shall in the first instance consider a joint venture with Nigerians holding an equity participation of 60% free from any trust or obligation whatsoever in favour of non Nigerians. However, it is submitted that while joint venture is a panacea to the participation of indigenous shipping firms, it does not *ipso facto* guarantee or favour indigenous participation in view of the fact that 60% equity shareholding is not just a meagre 15% cabotage vessel finance contribution (as envisaged by the law) which in reality is ordinarily herculean for local operators, how then does the Nigerian businessman effectively source for his participation when one considers that the capital in dollar equivalent cannot effectively be obtained from financial institutions in Nigeria and when one considers the difficulty in servicing loans amidst scarcity and irregularity of job opportunities?

Ohio [31] rightly said, foreigners can safely frustrate the restriction provision by focusing on registration based on suitability of their vessels by virtue of section 12 (b) provided it has an office in Nigeria, it complies with the demands of relevant authorities, has all required valid certifications in line with international standards, and obeys all safety and pollution regulations. Therefore, section 12 (a) and (b) are ambiguous and of no meaningful help to indigenous operators because any vessel registered in Nigeria is either a vessel which is a Nigerian vessel or a foreign vessel. Foreigners can frustrate the restriction provision by refusing to partner with Nigerians under joint venture agreement and rather focus on satisfying the requirements which are demanded for their own registration under the Act.

Section 13 determines that the grant of waiver at anytime shall not be more than one year. In the same vein section 17 determines that a license under the Act shall not exceed one year. These provisions are for all intent and purposes purely revenue generation save in their requirements of valid certificates and documents. Section 14 also provides that:

(1) The Minister shall immediately after the commencement of this Act, establish and publish the criteria and guidelines for the issuance of waivers under this Act.
(2) The waiver system provided for under this Act may be reviewed after five (5) years from the commencement of this Act by the National Assembly.

The 2007 Guidelines makes provisions for the issuance of waivers, these Guidelines also provides for the criteria and

guidelines for the issuance of licence [32]. However, it submitted that the operation of the regime now merits review since the prohibition regime is unlikely to neither assure local transport capability nor inhibit excessive foreign influence in domestic transport services due to the flexibility that has been attached to the restriction. Consequently, it is argued that the abuse of the waiver system may continue unabated, in the absence of review by the legislature.

The combined provisions in sections 15 and 16 are to effect that grant of licence to foreign vessels must adhere to terms and conditions stipulated. Foreign vessels must also adhere strictly to anti pollution and safety regulations. The Minister under section 18 also wields the power to suspend or cancel or vary the terms and conditions of a licence in the following instances:

a) The owner or master of the licensed vessel is convicted of an offence under this or any other Act of the National Assembly relating to navigation or shipping;
b) There has been a contravention of or failure to comply with any term or condition to which the licence is subject to; or
c) It is expedient to cancel, suspend or vary the licence or permit for reasons of national or public interest.

Section 19 provides that where in the determination of the Minister it is deemed expedient to grant a licence in conformity with the Act, a tariff shall be imposed. The tariffs are subject to annual review by the Minister. The figures may be reviewed to introduce punitive and deterrent parameters as may be found necessary. See also Clause 9 of 2007 Implementation Guidelines. Finally, section 21 further prohibits foreign owned and crewed vessels from participating in domestic coastal trade without licence and due authorisation.

The current situation of indigenous ship owners has led many to canvass for review of the waiver system and to replace it with right of first refusal which is expected to give indigenous companies considerable advantage when bidding processes are undertaken. Stakeholders have also recently considered the adoption of Cost Insurance and Freight (CIF) instead of Free On Board (FOB) which will enable and boost indigenous ship owners to lift crude in Nigeria instead of foreigners [33]. The National Shipping Policy Act formulated national insurance policy under section 14 (3) restricting export and import on C and F terms and FOB respectively to government or public sector contracts alone to which Nigerians or a Nigerian registered companies while all private sector contract are excluded from benefit of the policy. The intervention by stakeholders would avert grave challenge hitherto posed to indigenous companies to compete with foreign companies who are by far better placed in the market. Shell Nigeria in her 2016 report published in 2017 announced it awarded 94% of their total number of contracts to Nigerian in 2016. However, the report conceded that the targets can prove challenging in a technical industry in which skills and capacity usually take time to acquire [34].

9. Conclusion

Ship building remains one area where investments need to be encouraged. The content and quality of memorandum of ship building contract should be able to accelerate industrialization of maritime infrastructure in line with cabotage policy in Nigeria. An investor should however thoroughly evaluate and determine his or her investment by a comprehensive feasibility study, cash flow analysis and actual liabilities if any. A competent solicitor cum broker/analyst is also very key in driving all interrelated processes involved leading to the eventual outright and definite contract of sale. The legal bill of sale must transfer title to the ship and delivery of all relevant documents such as certificate of registry /certificate of deletion, declaration of class, copy of seller’s letter to their satellite communication provider cancelling the ships communication contract and any additional documents that may be required by buyer intended flag state.

The above, notwithstanding, to fill in the ship building deficit, government must encourage foreign direct investment by creating the necessary investment environment where businesses can thrive. Public private partnership can be very beneficial, in this regard maritime bank should be floated to assist indigenous companies to grow in the industry and also partner shoulder to shoulder with their foreign counterparts. These agreements must be monitored to ensure compliance with the extant laws giving headway to indigenous partners and interest holders to avoid Nigerians being used as corporate conduits holding interests in trust for foreign nationals.

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29. Ship building and repair companies from India and South Africa have indicated partnership interest in Nigeria. Pp 82-84.
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31. Ohio O. 'Restrictions of Vessels for Domestic Trade under the Nigerian Cabotage Act: Extent and Scope.' In Epiphany Azinge and Osatohanmwen O. Eruaga (eds), Cabotage Law in Nigeria, Nigerian Institute of Advanced Legal Studies, 2012, Pp 86-106, p 99.
32. Cabotage Act S. 20. See also Clause 4.5 of the Revised Guidelines, 2003, 2007.
33. Solomon Epele, 'Crude Lifting: Indigenous Ship Owners' Rising Hope' http://www.dailytrust.com.ng/crude-lifting-indigenous-ship-owners-rising-hope.html accessed on 18/01/2018.
34. Shell Nigeria, Briefing Notes, Edition; c2017. p.9, 29.