GEPLAW Focus

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A REVIEW OF THE MARINE DEVELOPMENT BANK BILL

INTRODUCTION

The Bill for an Act to establish the Nigerian Marine Development Bank (NMDB) was introduced in the House of Representatives on the 6th of June 2016 by Hon. Mohammed Garba Gololo representing Bauchi State Constituency.

The proposed bill is officially identified as "A Bill For An Act To Establish The Nigerian Marine Development Bank With Power, Among Other Things, To Carry On The Business Of Marine Credit Insurance, And For Related Matters" (hereafter referred to the Bill) and as the name implies, seeks to establish a Nigerian marine development bank with the power to carry on the business of marine credit insurance.

This report will consider the provisions of the Bill in relation to the realities of the maritime industry in Nigeria and proffer a considered opinion on the relevance of the various provisions of the Bill.

THE PROSPECTS OF NIGERIA'S MARITIME SECTOR

Nigeria requires a buoyant maritime sector as a littoral state with aspirations of cementing its position as Africa's largest economy. While the Federal Government has repeatedly expressed its intention to boost manufacturing and promote export, Nigeria presently remains a consumer nation relying on heavy importation of foreign goods. The maritime industry is therefore an important sector of the economy which also holds the prospect for further growth. The Nigerian Maritime Administration and Safety Agency (NIMASA), the industry's major regulator, has in recent times reiterated its commitment to grow the industry and position Nigeria to, quickly and effectively, take control of maritime activities along the West African coastline.

Notwithstanding the significant amount of activity in the maritime sector, with an estimated export and import of over

100 million tons of general cargo on a yearly basis, there is limited participation of Nigerian entities in international maritime. There is presently no Nigerian flagged ship plying international routes and Nigeria is the only oil producing nation without a national fleet. The implication of this set of facts is that while Nigeria for instance exports about 900 million barrels of crude oil annually which constitutes over 90 percent of Nigeria's external trade, only foreign vessels earn the freight of about $2.25 billion, invariably resulting in capital flight due to the absence of a national fleet or indigenous cargo operators.

THE IMPORTANCE OF AND NEED FOR MARINE CREDIT INSURANCE

A major inhibition for the participation of Nigerian entities in ship acquisition is inadequate funding. Past efforts to address this concern includes the introduction of the Cabotage Vessel Financing Fund (CVFF) under the Cabotage Act of 2003, to provide financial assistance to indigenous operators in ship acquisition and others. The fund is designed to assist participants in the local maritime sector but has been plagued by allegations of inefficient management and disbursement.

To address the challenge of long-term funding required by the sector, investors and lenders need to be assured of returns on investment and the certainty of repayments. This necessitates credit insurance and it is to this end that the establishment of the NMDB to be established by the Marine Development Bill becomes noteworthy and commendable.

Section 5 of the Bill which enumerates the 'Objects of the Bank' empowers the NMDB in the business of marine credit guarantee and marine credit insurance; design and implement schemes of marine credit guarantee; undertake and guarantee the insurance of marine credit; accept re-insurance of all kinds and to enter into re-insurance agreements; enter into guarantee agreements with other parties to guarantee payment in specified circumstances; and provide insurance against loss whether on the marine boats or the provision of services or on loans made to facilitate the investment in marine services.

The NMDB is further empowered to play a credit-lending role to participants in the maritime sector on terms it deems appropriate, and to further facilitate payments in foreign currency as well as accept money for remittance to all countries where such services are required by maritime operators.

Section 6 of the Bill which provides for the 'Functions of the Bank' gives the NMDB necessary powers to recover money owed to it by retaining, selling or investing any assets mortgaged to it as collateral for loans or unpaid premium. The inclusion of this clause is vital to the continued liquidity of NMDB as whatever sums given out as loans are guaranteed and recovered. The NMDB is similarly empowered under Section 6(2) to recover fees and commissions agreed upon for providing credit guarantee or under-writing services.

The NMDB is further allowed to invest unspent funds earned from varied sources; establish and manage funds connected with the objects of the bank; hold and dispose of movable and unmovable property; cooperate with other development finance institutions and manage credit information for the purpose of credit verification as well as exchange information with similar organizations on a reciprocal basis.

The areas of cooperation between the NMDB and other organizations provided for under the law include credit information, debt collection, re-insurance, training and maintaining a foreign exchange revolving fund with the aim of making available loans in foreign exchange to marine investors who need boats, ship, spare part and other services.

It is intriguing to note that the Bill in Section 6(3) (b) also empowers the NMDB to guarantee and insure credits involving non-resident external mariners between any two countries other than Nigeria. This provision should allow Nigerians in the diaspora looking to invest in the maritime sector do so while also giving the NMDB the legal backing to play in the international scene, perhaps starting with the West African maritime market which Nigeria is looking to dominate.

The Bill also makes provisions for investment guarantee and insurance facilities which may be issued by the NMDB to local maritime operators. This is expected to address the funding concerns of ship owners and operators within the cabotage industry who have often complained of their inability to build capacity due to paucity of funds and lack of support from mostly foreign marine insurers presently operating in the country.

To ensure the NMBD maintains its focus on credit insurance for acquisition of assets crucial to the growth of the maritime sector, Section 7 of the Bill prevents the NMDB from providing insurance cover for "any risk which can be insured or is normally insured in commercial insurance market such as fire and similar risk."

ADMINISTRATION

The NMDB being a federal government institution, its administration is vested in persons partly to be appointed by the President of the Federal Republic of Nigeria (FRN) and others nominated by public institutions like the CBN and federal ministries. Section 8 of the Bill establishes a 9-man Board to manage the affairs of the NMDB. The Board comprises the deputy governor responsible for the monetary and banking policy at the Central Bank of Nigeria who shall act as chairman; one other person to represent the central Bank of Nigeria; one person to represent the federal ministry of finance; one person to represent the federal ministry of commerce; two persons to represent private marine interests; the managing director of the Bank; and two Executive Directors of the Bank.

It is however curious that the Bill makes no provision for the appointment of any official of the National Insurance Commission (NAICOM) which is the body already saddled with powers, under the Insurance Act of 2003 and the National Insurance Commission Act of 1997, to regulate the insurance industry. There is similarly no representative from the Chartered Insurance Institute of Nigeria (CIIN) empowered by the Chartered Insurance Institute of Nigeria Act to determine the standards of knowledge and skills of insurance practitioners.

CONCERNS

The authorized share capital of the NMDB shall be N500 million, by the provision of Section 2 of the Bill. The share capital is to be subscribed equally by the Federal Government and the CBN. There may be some cause for concern about the share capital of the NMDB as it is significantly lower than that of other insurance providers in the country regulated by NAICOM. Companies involved in life insurance are required to have N2 Billion share capital, general insurance companies are required to have N3 Billion share capital while reinsurance businesses are required to have N10 Billion share capital. Considering that NMDB is being established to provide both lending and credit insurance facilities to a capital-intensive sector as well as provide under-writing, reinsurance and other services, having a N500 million share capital does not appear very comforting.

Yet another concern lies in the exemptions contained in Section 14 of the Bill which excludes the Bank from the operation of the Bank and other Financial Institutions Act (BOFIA); the insurance Act; and the Personal Income Tax Act (PITA). While exclusion from BOFIA might be understandable seeing that CBN which enforces BOFIA is a subscriber to the share capital of NMDB and may be expected to ensure the bank meets all necessary standards, the absence of NAICOM from the NMDB's Board coupled with the exemption from the provisions of the Insurance Act may suggest that there may be an insurance industry knowledge gap. This may unwittingly create a situation where the NMDB formulates or implements policies that may otherwise not have been approved by an external regulator.

In addition to the above, the exclusion of the NMDB from PITA suggests that members of staff would be exempted from paying taxes which is against the current revenue drive of FRN and its efforts to widen the tax net. The related exclusion of export credit instruments from payment of stamp duties may however serve as an incentive for new investors in the maritime sector as well as exporters just as the grant of tax allowance on premiums paid by maritime operators to NMDB may be expected to encourage more operators to approach the NMDB for insurance cover.

CONCLUSION

The Bill when passed into law and implemented will help address the financing challenge of the maritime sector and will fuel the growth of the sector. The operations of the NMDB may serve as a basis for the establishment of a national fleet and the indigenous acquisition of cargos capable of plying the international route for export of Nigeria's crude oil and other manufactured goods.

A great amount of jobs can be created if the NMDB attracts necessary investment into the maritime sector through the provision of marine credit insurance which can intensify participation in international seaborne trade. This may also enhance Nigeria's bid for a Category C council membership in the International Maritime Organization (IMO) and subsequently aspire to Category B reserved for countries with the largest interest in providing international seaborne trade.

Recent events in the industry such as the arrival of Total Upstream Nigeria Limited (TUPNL)'s Floating Production Storage Offloading (FPSO) unit, NIMASA's plan to take delivery of the 5th largest modular floating dockyard in Africa, LADOL's intention to build West Africa's largest dry dock in Lagos and Saipem's $5.42 billion contract for the chartering, operations and maintenance of a FPSO for the Zabazaba and Etan Development Project, among others, are bright indicators for the maritime industry. The establishment of the NMDB will therefore be a welcome addition to the infrastructure investment drive in the sector. Concerns about certain provisions in the Bill identified above however need to be reviewed and addressed.

We are available to provide clarifications on any portion of this review of the Bill as well as guide on any related matters.

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