



WHY DUE PROCESS SHOULD BE FOLLOWED IN DISBURSING CABOTAGE VESSEL FINANCING FUND BY MIKE IGBOKWE SAN

1. Read online in December 2019 the argument that the Federal Minister of Transportation should use Cabotage Vessel Financing Fund (CVFF) as seed money for Maritime Development Bank. I disagree for the following reasons: -
2. The CVFF is a **statutory Fund** created by the National Assembly under **Section 42 of the Cabotage Act, 2003** for **specific purposes** namely, **“to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping.”**
3. The beneficiaries of CVFF are Nigerian citizens and shipping companies wholly owned by Nigerians. **See Section 45 CA.**
4. The revenue of the CVFF is from sources stated under the CA, viz: surcharge of 2% of the contract sum performed by a vessel engaged in cabotage; money determined and approved by the National Assembly (NASS); revenue collected under the Cabotage Act including tariffs, fines, fees for licences and waivers and interest on the Fund. **See Section 43 Cabotage Act.**
5. CVFF is collected by NIMASA and deposited in commercial banks and **administered** under **Guidelines** proposed by the Minister and **approved by the National Assembly. See Section 44 CA.**
6. Pursuant to Section 44 CA, **CVFF Guidelines 2006** (proposed by the Minister and **approved by the National Assembly**), was issued by which the disbursement of the Fund shall be subject to the approval of the Min of Transportation on the recommendation of NIMASA.
7. So, there are a **structure** involving the FMT, NIMASA and Primary Lending Institutions, and a **process** (including provision of security) in place, for **disbursing** the CVFF at interest rates and fees below the existing commercial or market rates; equity contribution of not less than 15% of project cost, and fund management and reporting. The process is totally different from the process for the disbursement of the then Ship Building and Ship Acquisition Fund created under the 1987 National Shipping Policy Act. The CVFF cannot go the same way as the SBSA Fund if the CA and the CVFFG are strictly followed in its disbursement.
8. Both the CA and NIMASA Act are Acts of NASS.



9. The revenue or other moneys (including the 2% surcharge on contracts) payable under the Cabotage Act, **being revenue or funds payable under the Cabotage Act of the NASS into the CVFF, which is a public fund of the Federation established for a specific purpose (of promoting the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping)**, is not a part of the revenue or fund payable into the **Consolidated Revenue Fund**. Paying it into TSA is unconstitutional.
10. Even though established for a specific purpose, CVFF being a public fund of the Federation, by **Section 80(3) and Section 80(4) of the 1999 Constitution**, no **money can be withdrawn** from the CVFF unless the issue of the money in the CVFF **has been authorized by an Act of the NASS** or except **in the manner prescribed by the NASS**, respectively.
11. Using CVFF as seed money for Maritime Development Bank (no matter how well meant), will **not have been authorized by an Act of the NASS** or in **the manner prescribed by the NASS** will therefore be contrary to the purpose for which it was set up and will be wrong, illegal and unconstitutional. Before CVFF can be used as seed money for Maritime Development Bank, the NASS must have amended the purpose of the CVFF in the Cabotage Act to such purpose.
12. The CVFF being a Fund in an Act enacted by the NASS and administered by NIMASA by **Section 22(1)(I) of the NIMASA Act**, the administration of the CA and CVFF is by **Sections 88 and 89 of the 1999**, subject to the **oversight functions** of both Houses of the NASS which can carry out investigations into the conduct of affairs of any person or authority Ministry or government department that is charged with the duty of or responsible for executing or administering the Acts e.g. NIMASA & Federal Ministry of Transportation.
13. CVFF must be disbursed for the specific purposes for which it was created by the NASS in the CA and as in the CVFF Guidelines. That is **how to follow the Constitution, due process and rule of law**.
14. Bear in mind, that the Constitution is **supreme** and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. **See 1(1) 1999 Constitution. Any act that violates the constitution cannot stand.**