A presentation by

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CABOTAGE IN THE APAC REGION

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Introduction

- Cabotage laws and rules in:
  1) Australia
  2) Indonesia
  3) Malaysia

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What is cabotage?

RESERVED

- Law affecting "coasting trade" – the movement of cargoes by ship between ports of the same country
- Reservation of the coasting trade of a country to ships operating under the flag of that country
- Cabotage policies can be particularly significant for the oil and gas industry especially where the oil and gas fields are located offshore but still within a country's territorial waters

Cabotage in Australia

Executive summary

- Australian cabotage legislation enacts a licensing system – if required, a one-year temporary licence is the only realistic option

- Offshore industry vessels are exempted, but in practice some vessels are likely to be caught

- A concurrent regulatory framework enacts stringent safety and compliance regulations, where applicable

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Key legislation

- Coastal Trading (Revitalising Australian Shipping) Act 2012 (Commonwealth) (Cth)
- Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments) Act 2012 (Cth)
- Shipping Registration Amendment (Australian International Shipping Register) Act 2012 (Cth)
- Marine Safety (Domestic Commercial Vessels) National Law Act 2012 (Cth)
- Navigation Act 2012 (Cth)

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Licensing system

- New 3-tier licensing system
- Application to “coastal trading”
- Longest-lasting licence effectively reserved for domestic operators
- Foreign-flagged vessels not excluded
- One-year Temporary Licence the most appropriate option for foreign owners, but there are difficult requirements involved

Application to offshore / oil & gas industry

- "Offshore industry vessels" are specifically excluded from the operation of the new licensing regime
  - Vessels that are used wholly or primarily in, or in any operations of activities associated with or incidental to exploring, or exploiting the mineral and other non-living resources of the seabed and its subsoil.
- Offtake tankers not covered
- Question mark in relation to construction vessels

Simultaneous legislation

- Navigation Act 2012 (as a rewrite of Navigation Act 1912)
- Offshore Petroleum and Greenhouse Gas Storage Act 2006
- Application where a vessel is not a "facility"
- Does the Navigation Act 2012 apply?

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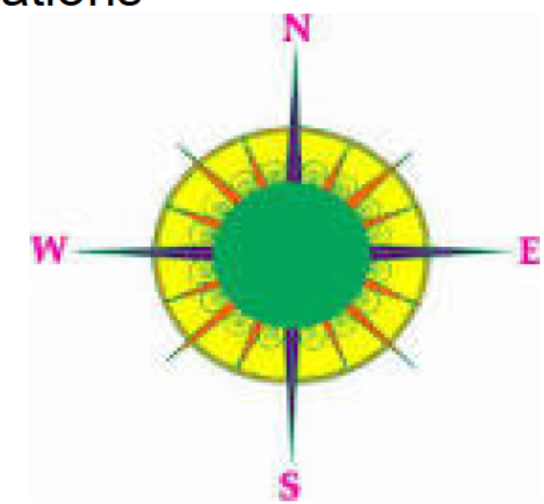
If the Navigation Act 2012 applies

- Large regulatory framework for offshore operators to comply with

- Elements like safety regulations, employment regulations and pollution prevention

- Risk of inspection and subsequent penalties



The future

- Australian government considering change
- Impact not as desired: in fact harmful


Cabotage in Indonesia

Executive summary

- Indonesian cabotage law provides that only Indonesian-flagged vessels can operate in domestic waters
- Foreign ownership in an Indonesian company limited to 49%
- Exemptions for oil and gas sector, but some caveats
- Recent enactment of more stringent content requirements

Key legislation

- No. 5 of 2005 Presidential Instruction on National Shipping Industry Development (28 March 2005)
- Article 8, Law No. 17 of 2008 Shipping Law
- Foreign Investment Restrictions Initiative

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What activities are caught?

- "activities of domestic sea transportation"

- On the face of it, significant elements of offshore oil and gas operations caught

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Corporate structures

- Some common structures that are used to comply with the Indonesian laws:
  - Nominee structures
  - Ordinary/ Preference share structures
  - Sale and leaseback structures
  - Venture capital structures

Exemption for oil and gas sector

- Regulation Number 22 of 2011 delays implementation
- Domestic industry not yet at sufficient capacity
- Caveat in Regulation Number 48 of 2011
- Exemptions only for a limited time

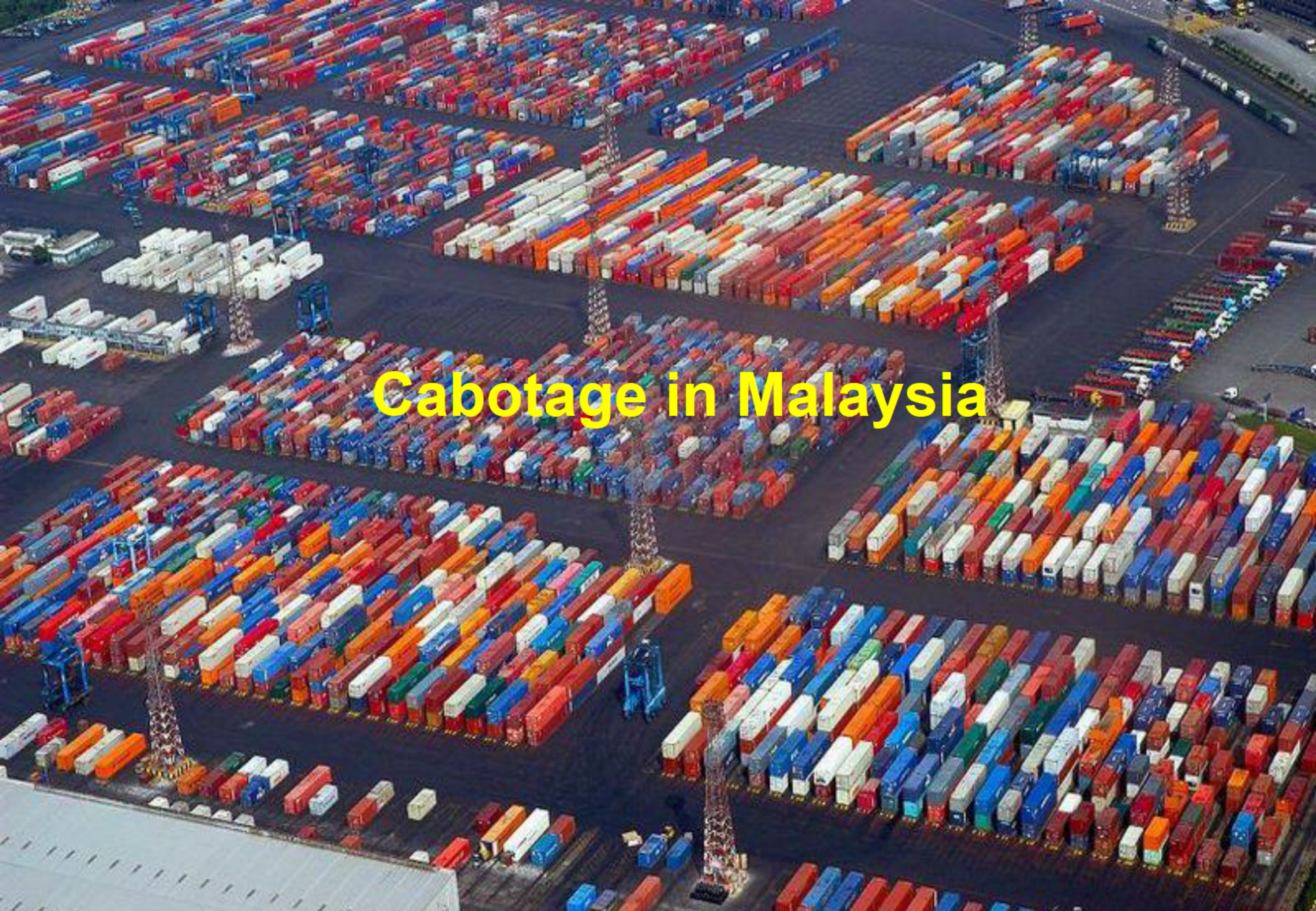
Oil and gas: Regulation 15

- New regulations on local content requirements for upstream oil and gas procurement (MEMR Regulation No. 15 2013 ("Reg 15", effective May 2013).
- New regulations codify oil and gas local content guidelines in PTK 007.

Regulation 15 cont.

- Requirement for “Domestic Company”
- 2/3 board representation, voting and management rights attaching to shares
- Greater monitoring powers to SKK MIGAS – increased focus on compliance
- New Local Content Targets set – shipping up from 35% to 75% (target of end 2013), offshore EPCI and Drilling both up from 35% to 45% by 2016, but offshore seismic target held at 35%
- Payments from SKK contractors must be through Indonesian “National Public Banks”

Cabotage in Malaysia



Executive summary

- Only Malaysian-flagged vessels can take part in offshore activities in Malaysian waters
- However, it is not particularly difficult for foreign owners to register in Malaysia (although it is not ideal)
- As a result, a significant element of global offshore fleet working in Malaysia
- Comparatively relaxed situation is only temporary

Key legislation

Government first introduced cabotage policy 1 Jan 1980.

Policy reserved domestic shipping to Malaysian registered vessels.

Implementation:

Merchant Shipping Ordinance 1952 ("MSO") established Domestic Shipping and Licensing Board ("DSLB").

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Exemptions

- Vessels exempted under section 65L include:
  - Boats of less than 500gt that ply within Malaysian rivers which are navigable by sea-going vessels or within the coastal waters extending up to the outer limits of Malaysia's territorial waters.

- Section 5 of the Merchant Shipping (Amendment) Act 1998 ("MSA") amends the MSO:
  - Every such boat below 500gt that plies any port, river or place in Malaysia for "trade or business" must obtain a licence under section 475 of the MSO.

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Registration

- Part IIA: Ownership of domestically flagged vessel is restricted to Malaysian citizens or corporate entities incorporated in Malaysia whose principal office is in Malaysia.

- Part IIC: A non-Malaysian can own a Malaysian-registered vessel, provided that it is owned by a Malaysian-incorporated entity with an office established in Malaysia.

Foreign ownership

- Foreign individuals/entities can register at the Malaysian International Shipping Registry

- Foreign companies can therefore either appoint a local agent to register and get the necessary licence or set up a joint venture with a Malaysian company for the same purpose

- Agency approach favoured, as setting up JVs mean that the foreign company loses half of its control over the vessel

Foreign ownership requirements

- If registering first vessel, must have a minimum paid-up share capital of 10% of vessel's value or RM 1million, whichever is greater
- Vessel needs to meet a number of technical specifications
- Note: power to refuse registration/attach criteria
- Policy: strengthen domestic shipping and reduce reliance on foreign ships

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Offshore / oil and gas industry

- Malaysia’s oil and gas fields all located offshore so cabotage developments are particularly important
- Possible for foreign owners to get into Malaysia, making it attractive to foreigners
- Easier for foreign oil companies to charter, purchase or own vessels that fly a domestic flag (when compared to Indonesia)
- Malaysia has become the APAC country with the largest forecast for investment in the offshore oil and gas industry

Offshore / oil and gas industry cont.

- Situation is likely to be only temporary
- Domestic OSV industry is not yet sufficiently developed
- Opportunities for foreign-flagged vessels still available to fill up short- and mid-term demand
- Economic Transformation Programme and domestic growth
- Malaysia and Indonesia are expected to reserve most oil and gas work for domestically-flagged OSVs by 2020

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