

Highlights of the Key Provisions of the Business Facilitation (Miscellaneous Provisions) Act, 2022

1. Introduction

On 8th February 2023, President Muhammad Buhari signed into law, the Business Facilitation (Miscellaneous Provisions) Act, 2022 (“BFA”). The key objectives of the BFA are to promote the ease of doing business in Nigeria and eliminate bottlenecks and amend relevant legislation to promote the ease of doing business in Nigeria and institutionalize all the reforms to ease implementation. It amended specific provisions of 21 business related laws to remove bureaucratic obstacles to doing business in Nigeria.

In this writeup, we take a look at the salient provisions of the BFA and its impact on the Nigerian business environment.

2. Transparency in the Processes of the Federal Government’s MDAs

Sections 3 to 8 of the BFA should be the most significant provisions of this legislation in terms reinforcing the importance of good customer service by reinstituting the principles of transparency and accountability in the Ministries, Departments and Agencies (“MDAs”) of the Federal Government, thereby ensuring seamless service delivery processes.

The BFA mandates MDAs which provide products and services to the public, to publish on the MDAs’ website and at the customer help desk or other office designated for this purpose, a complete list of requirements for accessing the products and services, within 21 days from the commencement of the BFA. The products and services include permits, licences, waivers, tax related processes, filings, approvals, registration, certification, etc.

Significantly, the BFA, amongst other things, tried to eliminate the usual but unfortunate practice of non-communication by some MDAs, after an application for a service is submitted to the MDA. To this end, it provides in section 4(1) that “where the relevant MDA fails to communicate approval or rejection of an application within the time stipulated in the published list, all applications for products and services not concluded within the stipulated timeline shall be deemed approved and granted. An applicant in this circumstance is entitled to be issued a certificate or document evidencing the grant, within 14 days of notifying the MDA to so do.

3. Consequential Amendments of Business-Related Laws

3.1. Companies and Allied Matters Act, 2020 (“CAMA”)

Some of the amended provisions of CAMA include:

- a. **Increase of Issued Share Capital:** Section 9(2) of the BFA amended section 127 of the CAMA to the extent that a company having a share capital may increase its issued share capital by the allotment of new shares either in a general meeting or by a resolution of the Board of Directors, subject to the conditions or direction that may be imposed in the company's Articles of Association or by the company in general meeting. This has changed the old law which restricted the increase of issued share capital to members in general meeting.
- b. **Pre-emptive Rights of Shareholders:** By the amendment of section 142(1) of CAMA, the pre-emptive right of existing shareholders is now limited to private companies. The said subsection now provides that "a **private** company shall not in any event allot newly issued shares unless they are offered in the first instance to all existing shareholders of the class being issued in proportion as nearly as may be to their existing holdings". In addition, subsection (2) of section 142 is amended to the effect that where a shareholder to whom an offer of shares has been made fails to accept or reject the offer within 21 days of the notice, the offer shall be deemed to have been declined.
- c. **Return of Allotment of Shares:** The period for filing of return of allotment of shares has been reduced from one (1) month to fifteen (15) days by the amendment of section 154(1) of CAMA.
- d. **Place of Meetings:** Section 240(2) of CAMA has been amended to the effect that all companies can now have their meetings electronically. Prior to the amendment, the provision of the subsection was that "a **private** company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company".
- e. **Independent Directors in Public Companies:** Section 275(1) of CAMA which initially prescribed at least three independent directors for a public company now provides that "a public company shall have at least one-third of the total number of its directors as independent directors". In the same vein, subsection (2) of section 275 is amended to the effect that "any person who nominates candidates for the board of a public company, who would comprise a majority of the members of the board shall nominate at least one third number of persons who would be independent directors".
- f. **Form and Content of Individual Financial Statements:** The provision of section 378(1) of CAMA has been substituted with a new subsection (1) which requires that financial statements of a company only comply with the statements of accounting standards issued by the Financial Reporting Council of Nigeria ("FRCN"). The old requirement to comply with both the standards prescribed in the First Schedule of CAMA and those prescribed by the FRCN has now been dispensed with.

3.2. Financial Reporting Council of Nigeria Act No. 6, 2011 (FRCNA)

In line with the amendment referenced in paragraph 3.1(f) above, section 59 of the FRCNA now has a new subsection (3) which also prescribes the use of only the standards issued by the FRCN in preparing financial statements. It provides that “Notwithstanding the provisions of any laws relating to form and content of financial statements in Nigeria, general purpose financial statements prepared by companies, government organizations and corporations shall be prepared in line with standards, regulations, rules and pronouncements issued and adopted by the FRCN”. There is no doubt that this will go a long way in achieving uniformity of standards across board.

3.3. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, Laws of Federation of Nigeria 2004 (“FEA”)

Unlike the previous provision of section 6(1) of the FEA which gives the Central Bank of Nigeria (“CBN”) the power to revoke the appointment of Authorised Dealer¹ or Authorised Buyer² “if it has reason to believe that it is not in the national interest that the Authorised Dealer or Authorised Buyer shall continue to operate as an Authorised Dealer or Authorised Buyer”, the BFA has now specified the circumstances under which such appointment may be terminated. The new Section 6(1) provides that the CBN may revoke the appointment of an Authorised Dealer or Authorised Buyer, where the Authorised Dealer or Authorised Buyer:

- a. Fails to utilize the licence within 30 days;
- b. Fails to commence its exchange business within six months from the date of the licence;
- c. Fails to disclose in their application, any material information known to the licensee or reasonably expected to have been known by the licensee;
- d. Provides material information, which is false;
- e. Has not complied with a directive under the Act;
- f. Following the issue of the licence ceased to qualify for the licence;
- g. Is found to be in malpractice or irregularity in the management of the business of dealing in foreign exchange;
- h. Is placed under liquidation, receivership or is adjudged bankrupt;
- i. Conducts or intends to administer its business in a manner that threatens the interest of customers or potential customers;

¹ Authorized Dealer means any bank licensed under the Banks and Other Financial Institutions Act, and such other specialized bank and issued with licence to deal in foreign exchange.

² Authorised Buyer means any bureau de change, hotel or other corporate body appointed as such by the Central Bank under the provisions of the Act.

- j. Or any of its shareholders apply for the liquidation of the company;
- k. Has a judicial receiver or manager or any similar officer appointed to manage or take over his undertaking; or
- l. Has a bankruptcy order or judgment against him.

3.4. Industrial Training Fund Act, Cap. I9, Laws of the Federation of Nigeria, 2004 (ITF)

The main amendment on the ITF Act is the substitution of its section 6 with a new provision which states that (1) Any employer having 25 or more employees in his establishment and not operating within a free trade zone shall, in respect of each calendar year or prescribed date, contribute to the Fund, one per centum (1%) of his annual payroll; (2) Any supplier, contractor or consultant having more than 25 employees in his establishment bidding or soliciting contracts, businesses, goods and services from any Federal Government ministry, department, agency, commercial, industrial and private entity shall fulfil statutory obligations of his employees with respect to payment of training contribution to the Fund; and (3) The Minister may, with the approval of the Federal Executive Council by order published in the Federal Government Gazette, vary the rate of contribution prescribed in subsection (1). Prior to the amendment of the promulgation of the BFA, an employer is obligated to contribute to the industrial training fund if he has 5 or more employees or having less than 5 employees but with an annual turnover of N50m and above. Also, companies operating within a free trade zone were required to contribute to the fund.

3.5. Other Amended Legislations

The following legislations were also amended by the BFA:

- a. Nigerian Export Promotion Council Act, Cap. N108, Laws of Federation of Nigeria, 2004 (LFN)
- b. Customs and Excise Management Act, Cap. C45, LFN
- c. Export (Prohibition) Act, Cap. E22 LFN
- d. Immigration Act, No. 8, 2015
- e. Industrial Inspectorate Act, Cap. I8, LFN
- f. Investment and Securities Act, No. 29, 2007
- g. National Housing Fund Act, Cap. N45, LFN
- h. National Office for Technology Acquisition and Promotion Act, Cap. N62, LFN
- i. National Planning Commission Act, Cap. N66, LFN
- j. Nigerian Customs Service Board Act, Cap. N100, LFN
- k. Nigerian Investment Promotion Commission Act, Cap. N117, LFN
- l. Nigerian Oil and Gas Industry Content Development Act, No. 2, 2010
- m. Nigerian Ports Authority Act, Cap. N126, LFN
- n. Patents and Designs Act, Cap. P2, LFN
- o. Pension Reform Act, No. 4, 2014
- p. Standards Organization of Nigeria Act, No. 14, 2015

q. Trademarks Act, Cap. T13, LFN

4. Conclusion

Indeed, if the relevant provisions of the BFA are not observed in breach by the MDAs, we will definitely see a significant improvement in the ease of doing business in Nigeria.

No part of this article should be relied upon as legal advice. It is only intended as a general guide on the subject and as such, we advise that you consult a lawyer where legal advice is desired.

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