

The Law Industry Trends

A Review of the Business (Miscellaneous Provisions) Facilitation Act 2022.

On the 14th day of February 2023, the Business Facilitation (Miscellaneous Provisions) Bill of 2022 (the "Omnibus Bill") was assented to by the President of the Federal Republic of Nigeria, President Muhammadu Buhari.

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INTRODUCTION

On the 14th day of February 2023,¹ the Business Facilitation (Miscellaneous Provisions) Bill of 2022 (the "Omnibus Bill") was assented to by the President of the Federal Republic of Nigeria, President Muhammadu Buhari.

By Section 1 of the Business Facilitation (Miscellaneous Provisions) Act of 2023 (BFA), which amends 21 business-related laws, the objectives of the BFA are to promote the ease of doing business in Nigeria, ensure transparency, efficiency, and productivity in Nigeria, and institutionalize all the reforms to ease their implementation.

The BFA is a legislative creation of the Presidential Enabling Business Environment Council (PEBEC), and it also systemized the Presidential Executive Order 001 (E01) on transparency and efficiency in public service delivery in Nigeria. The BFA's principal aim is to reduce the bureaucratic limitations of doing business in Nigeria and build a more transparent business climate while strengthening business developments in Nigeria.

HIGHLIGHTS OF THE BFA

To eliminate the bureaucratic limitations and administrative bottlenecks, the BFA makes it mandatory for the Ministries, Departments, and Agencies (MDAs) of the Federal Government to publish a complete list of requirements to obtain its services (such services include remits, licenses, waivers, tax-related processes, filings, approvals, registration certification, and other products and services)²

It also mandated the MDAs to communicate the approval or rejection of an application within the time stipulated in the Act.³ In addition to this, the BFA also provides for default and deemed approvals for such services⁴

Also, the MDAs are mandated to have and publish a Service Level Agreement (SLA) on their websites which must be complied with within the stipulated timelines provided in the BFA.⁵

In the same spirit, the BFA⁶ exempted certain practices in Port Operations in Nigeria by prohibiting touting in any port and prohibiting certain people from secured areas of the ports (such as staff off duty and non-official staff and officials of the FAAN, Nigerian Immigration Service, a security agency, and the Ministry responsible for foreign affairs, or MDA), except with the express approval of the head of the MDA.

[1]Lake Baiyewu (2023) Buhari Signs Business Facilitation Bill into Law, Punch Newspaper. Available at:<https://punchng.com/buhari-signs-business-facilitation-bill-into-law/>(Accessed:24 March 2023).

[2] Section 3 of the BFA. [3] Section 4 Ibid.

[4] Section 4 Ibid. [5] Section 6 Ibid.

[6] Section 7 Ibid.

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As an extra measure, the BFA merged the departure and arrival interfaces of all relevant MDAs at the airports into a single customer interface and harmonized all agencies present in the Nigeria Port into one single interface station domiciled in one location. Other measures have been implemented by the BFA to achieve its objectives.⁷

Consequential Amendments of the BFA are the: Companies and Allied Matters Act, Customs and Excise Management Act, Nigerian Export Promotion Council Act, Export Prohibition Act, Financial Reporting Council Act, Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Immigration Act, Industrial Inspectorate Act, Industrial Training Fund Act, Investment and Securities Act, National Housing Fund Act, National Office for Technology Acquisition and Promotion Act, National Planning Commission Act, Nigerian Customs Service Board Act, Nigerian Investment Promotion Commission Act, Nigerian Oil and Gas Industry Content Development Act, Nigerian Ports Authority Act, Patents and Design Act, Pensions Reform Act, Standards Organization of Nigeria, and the Trademarks Act.

Some Of The Key Amendments In The BFA Include COMPANIES AND ALLIED MATTERS ACT, 2020 (CAMA)

The BFA amended 20 sections in the CAMA, and some of the notorious highlights of the changes are:

- The BFA now mandates the Registrar-General of CAC to ensure that all application processes at CAC are automated from start to completion. Thus, the BFA allows for the complete automation of the application and registration processes for businesses in Nigeria.⁸
- The BFA expanded the class of foreign companies exempted from the incorporation requirement to include foreign companies granted an exemption under extant National Assembly Acts.⁹
- The BFA provides for an additional method of increasing a company's issued share capital by allotment in section 127(1) CAMA 2020 which is to the effect that a resolution of the board of directors alone would suffice to increase the share capital of a company.¹⁰
- The BFA added a new word "private" before "company" in section 142 (1) of CAMA 2020. Thus, it restricts the enforcement of pre-emptive rights to private companies alone.

The BFA merged the departure and arrival interfaces of all relevant MDAs at the airports into a single customer interface and harmonized all agencies present in Nigeria Port

[7] Section 7 Ibid.

[8] Section 8 Ibid.

[9] Section 2 of Part 1 of the Schedule to the BFA.

[10] Section 3 Ibid.

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Also, by this same provision of the BFA, the existing shareholders of a private company receiving an offer of shares from the company based on their pre-emptive rights now have a maximum of 21 days within which the offer of shares must be accepted by existing shareholders or deemed declined.¹¹

- The BFA adjusted the time frame for the return on allotment from 1 month to 15 days.¹²
- The BFA now recognizes electronic voting as a valid way of voting at general meetings.¹³ Thus, the recognized mode of voting in a general meeting is by show of hands or a poll, or by electronic voting.
- The BFA also adjusted the time frame for the return on allotment from 1 month to 15 days.¹⁴
- The BFA also recognizes an electronic share certificate.¹⁵
- The BFA now allows all types of companies to conduct virtual meetings.¹⁶
- The BFA mandates public companies to have at least one-third of the total number of its directors as independent directors.¹⁷ Thus, the minimum number of independent directors of a public company would no longer be three (3).
- The BFA amends section 307 of the CAMA to emphasize that a person can be a director in only five public companies, and any person who, before the commencement of the Act, was already a director in more than five public companies is required to resign as a director of all but five of the companies before the next annual general meeting of the companies, following two years from the commencement of the Act.
- The BFA provides that a company's financial statements should comply with the accounting standards prescribed in the statements of accounting standards issued by the Financial Reporting Council of Nigeria.¹⁸
- On the qualifications of a small company, the BFA states reflect that a company qualifies as a small company (in relation to a subsequent financial year) if the conditions qualifying it as a small company is met in that year and the preceding financial year.¹⁹
- The BFA replaced the ₦200,000 requirement of a company being unable to pay its debt with a sum to be determined by "a regulation issued by the Commission"²⁰

[11] Section 4 Ibid.

[12] Section 5 Ibid.

[13] Section 13 Ibid.

[14] Section 6 Ibid.

[15] Section 7 Ibid.

[16] Section 11 Ibid.

[17] Section 14 Ibid.

[18] Section 17 Ibid.

[19] Section 18 Ibid.

[20] Section 19 Ibid.

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CUSTOMS AND EXCISE MANAGEMENT ACT (CEMA)

- The inserted the definition of "single window" to mean a platform or facility that allows parties involved in trade and transport to lodge trade-related import, export, or transit data required by government departments, authorities, or agencies through a single-entry point interface to fulfill all import, export, transit-related, and other regulatory requirements.²¹
- The Act provides for the establishment and documentation of a "single window" and for the examination and inspection of goods by any officer or other relevant authorities.²²
- The BFA reduced the time frame for delivery of uncleared or missing goods after the discharge of the importing vehicle from 15 days to 5 days. It also reduced the time frame in subsection 4 where the proper officer can move the said uncleared or missing goods to the government warehouse or such other place as may be approved from 14 days to 4 days.²³
- The BFA reduced the time frame in Paragraph 13 of the First Schedule by substituting the expression of 7 days for the expression of 3 days, 21 days to 7 days, 14 days to 5 days, 10 days to 4 days, and 14 days to 5 days.²⁴

FINANCIAL REPORTING COUNCIL ACT (FRCA)

- The BFA mandates the preparation of financial reports to be in accordance with standard regulations, rules, and pronouncements issued and adopted by the Financial Reporting Council of Nigeria.²⁵

Barristers, Solicitors, Arbitrators & Notaries

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT (FEMMA)

- The BFA stated new grounds on which the Central Bank of Nigeria may revoke the appointment of an authorized dealer or authorized buyer.²⁶

IMMIGRATION ACT (IA)

- The BFA²⁷ provides that entry visas to Nigeria shall be issued or rejected with reason within 48 hours of receipt of valid applications", and also states that the comprehensive and up-to-date list of requirements, conditions, and procedures for obtaining a visa on arrival as well as all other entry visas, including the estimated time frame, shall be published on all immigration-related websites, Embassies and High Commissions, and all Nigerian ports of entry.
- The BFA²⁸ substituted the word "Minister", with the words "Comptroller General of Immigration", and inserted new subsections (4), (5), (6), and (7) in Section 36 of the IA.

[21] Section 25 of Part 3 of the Schedule to the BFA, (Section 2 of the CEMA).

[22] Section 26 of Part 3 of the Schedule to the BFA.

[23] Section 27 of Part 3 of the Schedule to the BFA, (Section 31 of CEMA).

[24] Section 28 of Part 3 of the Schedule to the BFA.

[25] Section 32 of Part 5 of the Schedule to the BFA, (Section 59 of the FRCA).

[26] Section 34 of Part 6 of the Schedule to the BFA.

[27] Section 36 of Part 7 of the Schedule to the BFA.

[28] Section 37 Ibid.

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INVESTMENTS AND SECURITIES ACT (ISA)

- By the BFA²⁹ no allotment shall be made of any securities of a company offered to the public for a subscription unless in the case of a –
 - a) a public company, the amount stated in the prospectus as the minimum amount, which, in the opinion of the directors, is required to be raised by the issue of share capital in¹ order to provide for the matters specified in paragraph 2 of the Third Schedule to this Act, has been subscribed and the sum payable on application for the amount so stated has been paid to and received by the company; or
 - b) a private company, through any lawful means, as the Commission may by regulation prescribe.

NATIONAL HOUSING FUND ACT (NHFA)

- The BFA³⁰ now mandates that employees earning the national minimum wage and above in the public and private sectors contribute 2.5% of their monthly income to the Fund. By subsection (2), any self-employed person earning the equivalent of the national minimum wage or above shall contribute 2.5% of the employee's monthly income to the Fund. Subsection (3) states that the interest rate payable on contributions to the Fund shall now be 2% per annum, or as may be determined by the Bank, as opposed to 4%.
- The BFA substituted the expression "a basic salary of 3,000" with the word "minimum wage" in section 9 of the NHF.

NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT (NOTAP ACT)

- The BFA³¹ states that companies in their first two years of business operation shall not be liable to late registration penalties where such contracts are registered before the end of the second year of their business operation.

NIGERIA INVESTMENTS PROMOTIONS COMMISSION ACT (NIPCA)

- The BFA now gives enterprises the flexibility to complete registration with CAC within 3 months after the commencement of business or acquisition.³²
- The BFA³³ now extends the scope of purpose by which the commission shall promote identified strategic or major investments.

[29] Section 43 of Part 10 of the Schedule to the BFA.

[30] Section 45 of Part 11 of the Schedule to the BFA, (Section 4 of NHFA).

[31] Section 48 of Part 12 of the Schedule to the BFA, (Section 5(2) of the NOTAP).

[32] Section 54 of Part 15 of the Schedule to the BFA., (Section 20 of the NIPCA).

[33] Section 55 of Part 15 of the Schedule to the BFA.

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NIGERIAN PORTS AUTHORITY ACT (NPAA)

- By the BFA³⁴ provides for the use of information and communication technology for the operations within the ports.
- The BFA authorized the removal of all unauthorized personnel from ports, for the provision of facilities for the establishment and maintenance of a single window through, which all the operations required by the law of all government authorities and agencies in any part of Nigeria can be undertaken; and ensure that the operations required by the law of all government agencies in any port in Nigeria are harmonized through the single window domiciled within the ports.³⁵
- In section 40 of the NPAA, the BFA inserted after the word "authority of" the word "unauthorized personnel".

THE PATENT AND DESIGNS ACT (PDA)

- The BFA³⁶ now provides that the Minister shall by regulation prescribe the procedure for the application, grant, use, and withdrawal of compulsory licenses under this paragraph. Thus, it allows the Minister to regulate the process for application and grant of compulsory licenses to the products referred to in section 13.

THE TRADEMARK ACT (TMA)

- The BFA³⁷ expanded the definition section by including the definition of "goods" to include "services".
- It also provides for a new definition of "trademark" which means "a mark used or proposed to be used in relation to goods or services for the purpose of indicating a connection between the goods or services and a person having the right, either as a proprietor or as a registered user, to use the mark, whether with or without any indication of the identity of that person and may include the shape of goods, their packaging, and combination of colors"; and in relation to a certification trademark, a mark registered or deemed to have been registered under section 43 of this Act".

[34] Section 59 of Part 17 of the Schedule to the BFA.

[35] Section 59 Ibid.

[36] Section 62 of Part 18 of the Schedule to the BFA.

[37] Section 69 of Part 21 of the Schedule to the BFA, (Section 67 of the TMA).

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CONCLUSION

The new BFA could be a big boost to the ease of doing business in Nigeria. This is because the aims of the new BFA, which include ensuring efficiency in public service delivery, improving transparency, updating outdated business-related laws, providing incentives to encourage Micro, Small, and Medium Enterprises (MSMEs) participation in business, easing the mode of doing business in Nigeria, and upgrading the business practices in Nigeria, are in tandem with the needs of the Corporate Best Practices.

In conclusion, it is hoped that the practical implementations of the new BFA will help erase the bureaucratic limitations and burdens of doing business and achieve the aims and objectives of the new BFA.

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