

Highlights of the Business Facilitation (Miscellaneous Provisions) Act, 2023



Introduction:

Nigeria currently ranks 131 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The rank of Nigeria improved to 131 in 2019 from 146 in 2018.¹ In order to create an enabling environment for doing business, the Business Facilitation (Miscellaneous Provisions) Act, 2022 (“BFA”) was signed into law in February 2023. The objective of the BFA is to promote the ease of doing business in Nigeria and eliminate bottlenecks. To realise this, the BFA amends 21 business-related legislations to promote the ease of doing business, eliminate bottlenecks and institutionalise all the reforms to ease implementation.

See below some of the highlights of these amendments made by the BFA.

Companies and Allied Matters Act (“CAMA”)

The following are some of the notable amendments proposed by the Bill:

1. The BFA amends section 78 of CAMA by expanding the class of foreign companies exempt from the requirement of incorporating a separate entity in Nigeria in order to carry out business in Nigeria to include foreign companies granted an exemption under extant Acts of the National Assembly.

2. The BFA amends section 127 of CAMA to allow a company’s Board of Directors increase its issued share capital in a general meeting or by a board resolution subject to conditions or directions contained in the company’s articles or a general meeting.

Previously, a company could only increase its share capital in a general meeting. As a result, companies may now amend their articles to give the Board of Directors the powers to increase its issued share capital without need for a general meeting.

3. The BFA amends section 142 of CAMA by limiting preemptive rights of existing shareholders to only private companies with a 21-day time limit within which an offer of newly issued shares to existing shareholders can be accepted.

4. The BFA amends section 149 of CAMA to provide that the Board of Directors can now allot shares in public and private companies where express authority was granted by company in a general meeting or by the company articles.

5. Section 154(1) of CAMA was amended to reduce to timeframe for return of allotment of shares from one month to 15 days.

6. Section 275 (1) of CAMA was amended to provide that public companies are now expected to have at least one-third of the total number of its directors as independent directors as opposed to previous minimum requirement of 3 independent directors. As such public companies who have independent directors constituting less than one-third of the board of directors should appoint more directors to meet the new minimum requirement.

7. Section 283 (c) of CAMA was amended to provide that one is only disqualified from being a director where the grounds for their removal as a director under section 288 of CAMA are fraud, dishonesty or unethical conduct. Prior to this amendment, it seemed that removal from directorship pursuant to section 288 resulted in automatic disqualification from future directorship, regardless of the reason for removal.

1. <https://tradingeconomics.com/nigeria/ease-of-doing-business>

8. Section 171 of CAMA was amended to include a new subsection (7) which provides that share certificates can be issued physically or electronically.

9. Section 240(2) of CAMA was amended to allow all companies (and not just private companies) to hold general meetings electronically provided that such meetings are conducted in accordance with the articles of the company. Thus, where there is need to, a company's articles should be amended to accommodate electronic general meetings.

10. Section 244 (1) of the CAMA was amended to provide that notice of general meeting can be given by the company to a member electronically.

11. Section 248 (1) of CAMA was amended to recognise electronic voting as a means by which a resolution can be put to vote

12. Section 378 (1) of CAMA was amended to simply require that the annual financial statement of companies need only comply with the requirements of the accounting standards prescribed in the statements of accounting standards issued by the Financial Reporting Council of Nigeria ("**FRCN**"). Formerly, annual financial statements required compliance with the accounting standards issued by FRCN as well as the accounting standards provided in the First Schedule of CAMA.

13. Section 572 (a) of CAMA was amended to change the minimum indebtedness of companies. Previously, a company was deemed unable to pay their debts if they owed a sum exceeding Two Hundred Thousand Naira (N200,000) for 3 weeks after demand by the creditor. The BFA amends the minimum indebtedness to a sum to be determined by a regulation of the Corporate Affairs Commission.



Nigerian Export Promotion Council Act (NEPCA)

1. The BFA amends section 2 of NEPCA which provides for composition of the governing board by including the following:

- A representative from the Federal Ministry responsible for Agriculture;
- A representative from the Federal Ministry responsible for Industry, Trade and Investment;
- A representative from the Federal Ministry responsible for Mines and Steel;
- A representative from the Federal Ministry responsible for Finance;
- A representative from Central Bank of Nigeria;
- A representative from Bank of Industry;
- A representative from the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture (**NACCIMA**).

It further amends the constitution of the governing board by removing the following:

- A representative from the Federal Ministry responsible for Commerce,
- A representative from the Farmers' Association,
- A representative from the Association of Nigerian Exporters

Nigerian Export Promotion Council Act (NEPCA)

1. The BFA introduces the concept of a single window and provides for the establishment and operation of the single window.

A single window is a single-entry platform established in line with the One Government Principle which is aimed at promoting trade facilitation via ease of the dissemination of trade documents within Ministries Departments and Agencies ("**MDAs**"). It eases the submission of data requirements by exporters and enhances transparency and accountability within the system.

2. The BFA amended Section 31(1) of CEMA by reducing the timeframe within which a customs officer shall deliver an imported ship or vehicle to the person administering the area within which the discharge took place from fifteen (15) days to five (5) days. Similarly, the timeframe within which a customs officer may remove an uncleared ship vehicle in section 31(4) of CEMA has been amended from fourteen (14) days to four (4) days.



3. Paragraph 13 of the First Schedule of CEMA is amended to the effect that in a buyer/agent disgruntled with the valuation of his good may appeal to the Customs Area Comptroller within 3 days (formerly 7 days); the Customs Area Comptroller must within 7 days (formerly 21 days) of receiving the appeal, communicate the result of the appeal to the buyer/agent. Where the buyer/agent is not satisfied with the result of the appeal, he must send an appeal to the Comptroller-General of Customs within 5 days (formerly 14 days); after which the Comptroller-General must within 4 days (formerly 10 days), communicate the result of the appeal to the buyer/agent. Where the buyer/agent is not satisfied with the result from the Comptroller-General, he may within 5 days (formerly 14 days) institute an action in court.

Export (Prohibition) Act

1. The BFA amends section 1 of the Export (Prohibition) Act by granting the Minister of Finance the power to make orders varying the prohibited goods set out in the Schedule to the Act .

Financial Reporting Council Act (FRCA)

1. Section 59 of the FRCA was amended to provide that general purpose financial statements shall be prepared in line with standards, regulations, rules and pronouncements issued and adopted by the Financial Reporting Council of Nigeria.

Foreign Exchange (Monitoring and Miscellaneous Provisions) Act

1. Section 6 of the Foreign Exchange Act was amended to expand the grounds under which the Central Bank may revoke the appointment of an Authorized Dealer or Buyer. They include:

- failure to utilize the license within 30 days;
- failure to commence its exchange business within six months from the date of the license;

- failure to disclose material information in their application;
- providing false information;
- failure to comply with a directive; failure to qualify for the license;
- being guilty of malpractice or irregularities in dealing in foreign exchange;
- being placed under liquidation, receivership or is adjudged bankrupt;
- conducts or intends to administer its business in a manner that threatens the interest of customers or potential customers;
- if any of its shareholders apply for the liquidation of the company;
- has a judicial receiver or manager or any similar officer appointed to manage or take over his undertaking;
- has a bankruptcy order or judgment against him.

Immigration Act, 2015

1. Entry visas into Nigeria will now be issued or rejected with reason within 48 hours of receipt of valid application and a comprehensive and updated list of requirements and procedures for obtaining entry visas will be published on all immigration websites.

2. The BFA amends the section 36(1)(b) of the Immigration Act to provide that the Comptroller-General of Immigration is to grant consent to foreign nationals for the establishment of trade, businesses, company or a profession of a foreigner. This was formerly under the purview of the Minister of Interior.

Similarly, the Comptroller-General must be notified of all changes in the particulars of a business permit.

3. The Nigerian Immigration Service (NIS) has been encouraged to establish electronic means of filing documents, and make regulations relating to the standards of operation, accessibility, technical requirements, service quality and fees.

Industrial Inspectorate Act

1. The BFA amends section 3 of Industrial Inspectorate Act by providing that a person proposing to start a trade or business for the production of goods and services using industrial machinery with an expenditure of not less than N5,000,000² (formerly N20,000) and to incur additional capital expenditure of not less than N5,000,000³ (formerly N20,000) in respect of an existing undertaking must give the Director of Industrial Inspectorate Division notice of his intention. This provision affects all new and existing undertakings involving any proposed capital expenditure.

2. Or as the Minister of Industries may prescribe by regulations

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Industrial Training Fund (“ITF”) Act

1. Section 6 (1) of the ITF Act was amended to provide that employers having 25 employees or more and not operating in a free trade zone shall on an annual basis contribute 1% of its annual payroll to the Industrial Training Fund. Previously, it was employers who had 5 or more employees or employers with less than 5 employees but with a turnover of N50,000,000 and above per annum that were to contribute to the Industrial Training Fund.

2. Similar to above, section 6(2) of the ITF Act was amended to provide that contractors and consultants with more than 25 employees shall fulfil statutory obligations of their employees with respect to payment of training contribution to the fund. This provision affects contractors, suppliers, consultants bidding or soliciting contracts, businesses, goods and services MDAs, commercial, industrial and private entities.

Investment and Securities Act (“ISA”)

1. Section 67 (1) of the ISA was amended by the BFA to permit private companies to offer their shares to the public where same was done via a lawful process the Securities and Exchange Commission prescribed in a regulation.

National Housing Fund (“NHF”) Act

1. Section 4 of the NHF Act was amended as follows:

- Employees in the public sector and self-employed persons earning the minimum wage and above are required to contribute 2.5% of their monthly income to the National Housing Fund.



- Employees in the private sector now have the discretion of contributing 2.5% of their monthly income to the National Housing Fund.
- Furthermore, the interest rate payable on contribution to the NHF was reduced from 4% per annum to 2% per annum.

2. Section 9 of the NHF Act was amended to increase the minimum earning threshold for employee contribution from N3,000 to the minimum wage (which is currently N30,000).

National Office for Technology Acquisition and Promotion Act (“NOTAP Act”)

1. The BFA amends section 5(2) of the NOTAP Act by giving a two-year grace period to new business entities to exempt them from late registration penalties for failing to register foreign technology transfer agreements, provided that the registration is done within those first two years of business.

National Planning Commission Act (“NPC Act”)

1. Section 3(2) of the National Planning Commission Act is amended to include the Director General of the Infrastructure Concession Regulatory Commission in the membership of the National Planning Commission as a part-time Commissioner.

Nigerian Customs Service Board Act (“NCSB Act”)

1. The functions of the Nigerian Customs Service Board, as provided in section 3(b)(iii) of the NCSB Act, are expanded to include the role of adopting modern means of operationalization and developing regulations for carrying out the activities of the Nigerian Customs Service.

Nigerian Investment Promotion Commission Act (“NIPC Act”)⁷

1. Section 20 of the NIPC Act is amended to provide that when an enterprise which is registered and operational in Nigeria subsequently gets foreign participation, it is required to register with NIPC within 3 months of the acquisition.

2. The BFA amends section 22 of the NIPC Act to provide details on how specific incentive packages for promotion of

Nigerian Oil and Gas Industry Content Development Act (“NOGICD Act”)

1. The interpretation section (section 106) of the NOGICD Act is expanded to include the definition of “Nigerian Independent Operators” which is defined to mean a Nigerian Company. This means that in line with section 3(1) of the NOGICD Act, Nigerian companies shall be considered first in the award of oil blocks, oil field licences, oil lifting licences and all projects for which contracts are awarded in the Nigerian Oil and Gas Industry. The Nigerian Companies also need to satisfy requirements set by the Minister of Petroleum Resources to get these awards and contracts.

Nigerian Ports Authority Act (“NPA Act”)

1. Section 7 of the Nigerian Ports Authority Act is amended to include the following as functions of the Nigerian Ports Authority:

- removing unauthorised personnel from the ports.
- providing facilities for the establishment and maintenance of a single window for all operations required by law for all government authorities and agencies to be undertaken.
- harmonising all operations of government agencies that are required to be done at the port through a single window.
- providing facilities for the use of ICT for operations within the ports.

Patents and Design Act (“PDA”)

1. The BFA amends Paragraph 13, Schedule 1 of the PDA to provide that the Minister for Commerce is now required to prescribe, via regulations, the procedure for the application, grant, use and withdrawal of compulsory licenses granted under paragraph 13, Schedule 1 of the PDA.



Pension Reform Act, 2014

1. Section 89 (2) of the Pension Reform Act was amended to provide that pension assets are now eligible for securities lending as the National Pension Commission (“PENCOP”) may approve. It further provides that subject to guidelines issued by PENCOP, a Pension Fund Administrator may use a percentage of the pension assets in the retirement savings account for payment of the residential mortgage of a retirement savings account holder, and for the purpose of securities lending.

Standards Organisation of Nigeria (“SON”) Act, 2015

1. Section 5 of the SON Act, which provides for the functions of SON, is amended as follows:

- Section 5 (b) was amended to provide that a function of SON is to undertake investigations as necessary into the quality of facilities, materials and products imported into Nigeria, and **establish a quality assurance system including certification of factories, products, and laboratories.**
- Section 5 (e) was amended to include the publication of an inventory of products requiring standardisation as a function of SON. This is in addition to the already established function of compiling an inventory of products.
- Section 5 (l) was amended to provide that a function of SON is the registration of all regulated products specified under section 5(e).

2. Section 29 of SON Act is amended to provide that where the Director General (“DG”) of SON is satisfied that the quality, purity or potency of any product is detrimental or hazardous to life, property, and the national economy, the DG can make an ex parte application to the court for an order to:

- Seize and detain the products for a reasonable time not exceeding 30 days and before the initial 30 days expires, the Organisation can make a further ex parte application to the court for the same purpose for a further period not exceeding 30 days.
- Prohibit any person from selling the product or offering it for sale,
- Forfeit such product,

- Seal up the premises where such product is being manufactured or stored,
- Direct the person to rectify the deficiency in the case of a substandard, mis-described, or hazardous product, subject to such provisions as may be imposed.

Trademarks Act


1. The BFA amends section 67 (Interpretation section) of Trademark Act as follows:

- Inclusion of the definition of “goods” which is defined to include services.
- Expansion of the definition of trademark to cover services and to also include shape of goods, their packaging and combination of colours.

In doing so, the Trademark Act now recognises the use of trademarks to protect services which are not physical products. The implication is that the previous practice of registering trademarks for goods separately from that of services is no longer necessary. Thus, a single trademark registered for goods will cover the services rendered by an entity/trademark holder.

CONTACT US


Phone Number

 +234(0) 12771400-5

Email Address

 partners@detailsolicitors.com

Website

 www.detailsolicitors.com



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