



**REVIEW OF
THE BUSINESS
FACILITATION
(MISCELLANEOUS
PROVISIONS) ACT,
2023**

INTRODUCTION

The Business Facilitation (Miscellaneous Provisions) Bill, 2022 (now referred to as the “Business Facilitation Miscellaneous Provisions Act, 2023” and hereinafter referred to as “The Act”) was signed into law by President Muhammadu Buhari on February 13, 2023.

The Act being the first business facilitation law to be enacted by the Nigerian Legislature is aimed at providing for the ease of doing business, ensuring transparency, efficiency and productivity in Nigeria.

The Act codifies the Executive Order No.001, 2017 and amends 21 (twenty-one) pertinent business-related laws to facilitate conducting business and institutionalize necessary improvements to facilitate implementation. The legislations amended by the Act includes: The Companies and Allied Matters Act, 2020, The Nigerian Export Promotion Council Act, The Customs and Excise Management Act, The Foreign Exchange(Monitoring and Miscellaneous Provisions) Act, Immigration Act, Trade Marks Act, National Office For Technology Acquisition and Promotion Act, Investment and Securities Act, Nigerian Investment Promotion Commission Act, Financial Reporting Council Act, Patents and Designs Act, Industrial Inspectorate Act, National Housing Fund Act, Nigerian Custom Service Board Act, Nigerian Oil and Gas Industry Content Development Act, National Planning Commission Act, Industrial Training Fund Act, Export(Prohibition) Act, Nigerian Port Authority Act, Nigerian Custom Service Board Act, Patents and Designs Act, Standard Organization of Nigeria Act, Pension Reform Act.

This Article highlights the salient changes and implementation introduced by the Act. The provisions of the Executive Order No. 001 codified by the Act include;

1. Transparency Requirements

Ministries, Departments and Agencies (MDA)s of the Federal Government which provide products and services are now required within 21(twenty-one) days of the commencement of the Act to publish a list of requirements to obtain their goods and services such as permits, licenses, waivers, tax related processes, filings, approvals, registration, certification amongst others, conspicuously on their website and make such available at the customer help desk or other office designated for that purpose.ⁱ

2. Default Approvals

MDAs are required to maintain at least two modes of communicating the official decision to applicants and the preferred mode is to be published on their website. Where the MDA fails to communicate approval or rejection of an application within the time stipulated in the published list, all applications not concluded within the stipulated time shall be deemed approved and granted.ⁱⁱ The Act also defines modes of communication to include letters, emails, and publications on the official website.ⁱⁱⁱ





3. One Government Directive

One Government involves the collaboration between MDAs to process and deliver products and services to the public.^{iv} The Act provides that where an applicant requires services from an MDA, the MDA shall include necessary certification from relevant MDAs in respect of the applicant.

4. Service Level Agreements

It is required that an MDA should have a service level agreement published on its official website which shall provide for a list of the products and services rendered, documentation requirements, timelines for processing applications, applicable fees, amongst others.^v

5. Port Operations

The Act prohibits touting in any port in Nigeria. Any official who solicits or receives bribe from any passenger or other users of the port shall be removed from his duty post, subject to disciplinary measures and liable to criminal proceedings in accordance with extant laws and regulations.^{vi}

All staff on duty are to wear their uniform with official identity cards and staff off duty are to stay away from the ports except with the express approval of the head of the MDA.

MDAs at the airports are to merge their respective departure and arrival interface into a single customer interface within 30(thirty) days of the commencement of the Act.^{vii}

All agencies present in Nigerian ports are required within 60(sixty)days of the commencement of the Act to harmonize their operations into one single interface station domiciled in one location in the port and implemented by a single joint task force, which shall capture, track, record, transmit information on all goods arriving and departing from Nigeria to the head of the relevant offices and the head of the relevant offices and the head of the National Bureau of Statistics on a weekly basis.^{viii}

Each port in Nigeria shall assign an existing export terminal dedicated to the exportation of agricultural produce within 30 days of the commencement of the Act. ^{ix}

Some of the other changes made by the Act are discussed under the relevant laws as follows;

1. THE COMPANIES AND ALLIED MATTERS ACT, 2020(CAMA, 2020)

i. Increase of Issued Share Capital

Section 127(1) of the CAMA, 2020 was substituted to empower the Board of Directors of a company to increase its Issued Share Capital by allotting new shares through a board resolution, subject to the direction as may be imposed in the Articles or by the company in General Meeting.^x

ii. Pre-emptive Right

Section 142 of the CAMA, 2020 has been amended by including the word “private” after letter “a” in line 1 making pre-emptive right limited to private companies.^{xi} The Act also amends sub section 2 which provides that any offer not accepted within 21(twenty-one) days of notice, will be deemed declined.

iii. Return as to Allotment

Section 154 of the CAMA, 2020 is amended to provide that whenever a company limited by shares makes any allotment of its shares, the company shall within 15 days (not one month) thereafter deliver to the Commission for registration return of allotments in the prescribed form.

iv. Place of Meeting

A company whether private or public may now hold its general meetings electronically and in accordance with the articles of the company.^{xii}

v. Electronic voting

Section 248 of the CAMA, 2020 has been amended to include electronic voting as a procedure for voting during general meetings. Thus, at a general meeting a resolution may be passed by electronic voting.^{xiii}

vi. Requirement of Independent Directors in Public Companies

Unlike the Principal Act which provides that a public company shall have at least 3(three) independent directors^{xiv}, the Amendment introduced by the Business Facilitation MP Act now requires that a public company shall have at least one-third of the total number of its directors as independent directors. Any person who nominates candidates for the board who will comprise “majority of the members of the board” shall nominate at least one- third number of persons as independent directors.

vii. Disqualification from Directorship

The amendment to Section 283 of the CAMA, 2020 provides that a person may be disqualified from directorship where such a person has been removed as a director under section 288 of the CAMA, 2020 on grounds of fraud, dishonesty or unethical conduct. Therefore, only a director removed on any of these grounds is not eligible to be a director, unlike the Principal Act where the provision was wide enough to accommodate any ground.

viii. Definition of inability to pay debts

One of the grounds upon which a company may be wound up by the court is where it is unable to pay its debt. The provision of Section 572 of the CAMA, 2020 which defines “inability to pay debts” was amended to substitute the expression “a sum exceeding 200,000, with the words “A sum to be determined by the Regulations of the Securities and Exchange Commission”.

2. NIGERIAN EXPORT PROMOTION COUNCIL ACT (NEPCA)

Section 2 of the NEPCA was amended to expand the constitution of the governing board of the Council to include representatives from Federal ministries responsible for industry, trade and investment, mines and steel, agriculture and finance, excluding the ministry of commerce formerly included in the Principal Act. The Board is also required to consist of representatives of the Central Bank of Nigeria, and the Bank of Industry. Representatives of the Association of Nigerian Exporters and Farmers Association are no longer required to be members of the Governing Board of the Council.

3. CUSTOMS AND EXCISE MANAGEMENT ACT

i. Introduction of Single Window

It is now required that a single window is established by the Board to enable traders submit documentation or data requirements for importation, exportation, or transit to a single-entry point and utilize information and communications technology to support the single window.

ii. Timeline for Delivery of List of Uncleared Goods

The timeline for delivery of the list of goods offloaded from ship, aircraft, or vehicle is now 5(five) days after the completion of discharge of the importing ship, aircraft or vehicle or at such times as the Board may direct.

Unentered imported goods shall be moved to the Government warehouse or such place as the proper officer may approve at the expiration of 4(four) days from the date of completion of the discharge of the importing ship.

4. EXPORT (PROHIBITION) ACT

The Minister of Finance is empowered by the amendment made to the Principal Act to by order vary the goods prohibited from exportation set out in the Schedule to the Act.

5. FINANCIAL REPORTING COUNCIL ACT

Preparation of General Purpose Financial Statements by companies, government organisations, and corporations shall be in accordance with standards, regulations, rules and pronouncements issued and adopted by the Financial Reporting Council of Nigeria.



6. FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT

The Amendment replaced Section 6 of the Principal Act with a new subsection 1 which outlines reasons for revocation of appointment as authorised dealer or authorised dealer to include; failure to utilise licence within 30(thirty) days, failure to commence its exchange business within 6 (six) months from the date of the licence, provision of false material information, non-compliance with a directive under the Act, amongst others.

Under the old section 6, the only reason for revocation is if the Central Bank of Nigeria has reason to believe that it is not in national interest that the authorized dealer or authorized buyer continues to operate as such under the Act. This reason has been expunged by the amendment.

7. IMMIGRATION ACT

i. Entry visas into Nigeria are now required to be issued or rejected with reason within 48 hours of receipt of valid applications.

ii. The amendment also provides that a comprehensive and up to date list of requirements, conditions and procedures for obtaining visa on arrival as well as other entry visas, including the estimated timeframe shall be published on all immigration- related websites, Embassies and High Commission and all ports of entry.

iii. The power to prohibit departure out of Nigeria is now vested in the Comptroller General of Immigration and not the Minister.

iv. Notice of change to particulars of Business Permit is now required to be given to the Comptroller General.

v. The Service may use any system, using any means of electronic communication to facilitate the automated filing of any document, information or return contemplated by the Act.

vi. The Nigerian Immigration Service can make regulations relating to the standards of operation, accessibility, technical requirements, service quality and fees for the use of the system; declare the system to be the acceptable mechanism for filing any document, information or return instead of any other requirement stipulated in any legislation relating to the filing of that document.

8. INDUSTRIAL INSPECTORATE ACT

Prior to the amendment made by the Business Facilitation MP Act, 2023, it was required that notice of intention to incur capital expenditure or additional capital expenditure by a new undertaking is to be given to the Director where the capital expenditure or additional capital expenditure is not less than twenty thousand naira.^{xv}

However, Section 3(1)(a) of the Industrial Inspectorate Act was amended to the effect that, the notice of intention to incur capital expenditure by a new undertaking is to be given to the Director where the capital expenditure to be incurred is not less than five million naira or as the Minister may by regulations prescribe.

9. INVESTMENTS AND SECURITIES ACT(ISA)

Section 67 of the ISA was amended to allow offer for subscription to be made not only to public companies but to private companies through any lawful means and as the Commission may by regulations prescribe.

10. NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT

Section 5(2) of the NOTAP Act relating to application for registration of contracts and agreements for transfer of foreign technology was amended to the effect 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 operations.

11. NIGERIAN INVESTMENT AND PROMOTION COMMISSION ACT

Section 20 of the NIPC Act has been amended by inserting a new sub-section 3 which provides that an enterprise registered in Nigeria which subsequently acquires foreign participation after the commencement of business shall within three months of such acquisition, register with the Commission.

12. TRADEMARKS ACT

Section 67 of the Trademarks Act has been amended to include the definition of goods and also to substitute the definition of trademark with another definition which encapsulates services, shape of goods, their packaging and combination of colours.

13. NATIONAL HOUSING FUND ACT

The Act now provides that any employee in the “public sector or in the private sector” in Nigeria is required to contribute 2.5% of his monthly income to the fund. This provision is not compulsory for employees in the private sector but it can be taken advantage of for their benefit.



CONCLUSION

The Business Facilitation Miscellaneous Provisions Act, 2023 has introduced salient changes thereby creating additional responsibilities for Ministries, Departments and Agencies (MDA)s of the Federal Government which necessitates that they assess their operations in light of the amendments, in compliance with the Act.

Without doubts, the amendments embedded in the Act (some of which were highlighted above) are primarily to promote efficiency and the ease of doing business in Nigeria. It makes room for an effective harmonization of processes at MDAs, provides consequences where public officials fail to adhere. It makes room for the growth of micro, small and medium enterprises (MSMEs), it promotes Public Private Partnership within a regulatory framework which encourages transparency.

The amendments and new provisions of the Business Facilitation Miscellaneous Provisions Act, 2023 are commendable especially the adoption of technology and introduction of the single window concept. Yet, issues such as implementation of the provisions of the Act, accessibility of websites, Information technology illiteracy amongst others are possible bottlenecks that may obstruct the efficacy of the innovations of the new Act.

Concerned stakeholders such as Companies, Federal Government Agencies and Ministries, etc should ensure they carefully review the various amendments and seek necessary professional guidance in ascertaining the overall implication of the recent amendments on their operations.



REFERENCES

- i Section 3 of the Business Facilitation Miscellaneous Provisions Act, 2023.
- ii Section 4 of the Business Facilitation Miscellaneous Provisions Act, 2023.
- iii Section 10 of the Business Facilitation Miscellaneous Provisions Act, 2023.
- iv Section 5(3) of the Business Facilitation Miscellaneous Provisions Act, 2023.
- v Section 6 of the Business Facilitation Miscellaneous Provisions Act, 2023.
- vi Section 7(1)(2)(3)(8) of the Business Facilitation Miscellaneous Provisions Act, 2023.
- vii Section 7(9) of the Business Facilitation Miscellaneous Provisions Act, 2023.
- viii Section 7(10)(11) of the Business Facilitation Miscellaneous Provisions Act, 2023
- ix Section 7(12) of the Business Facilitation Miscellaneous Provisions Act, 2023
- x Section 9 of the Business Facilitation Miscellaneous Provisions Act, 2023
- xi Section 9 of the Business Facilitation Miscellaneous Provisions Act, 2023
- xii Section 9 of the Business Facilitation Miscellaneous Provisions Act, 2023
- xiii Section 9 of the Business Facilitation Miscellaneous Provisions Act, 2023
- xiv Section 275 of the Companies and Allied Matters Act, 2020
- xv Section 3 of the Industrial Inspectorate Act



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