

Business Facilitation Act 2023: A Tool To Enhancing The Ease Of Doing Business In Nigeria

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Introduction

The President, in February 2023, signed the Business Facilitation Bill into law, thus birthing the Business Facilitation Act of 2023 (“the Act” or “BFA”), the first of its kind, which became effective from 8 February 2023. The objective of the Act is to eliminate impediments to the ease of doing business, entrench transparency, efficiency and productivity in the country, via the amendment of certain provisions of relevant extant laws.

The following legislations have been amended via the Act:

- Companies and Allied Matters Act 2020
- Export Promotion 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 Custom Service Board Act
- Nigerian Export Promotion Act
- Nigerian Investment Promotion Commission Act
- Nigerian Oil and Gas Industry Content Development Act
- Nigerian Port Authority Act
- Patents and Designs Act
- Pension Reform Act
- Standard Organization of Nigeria Act
- Trade Marks Act

We have examined the major changes brought about by the BFA as they relate to the above mentioned statutes in the following paragraphs.

A. Companies and Allied Matters Act (CAMA) 2020

- i. Section 127 – A company may now increase its share capital via resolution of the board of directors, subject to the direction laid down in the company's Articles of Association. Prior to now, this could only be carried out at a company's general meeting.
- ii. Section 142 – The BFA clarifies that pre-emptive rights of shareholders, where newly issued shares must first be offered to all

existing shareholders before their allotment to third parties, relates only to private companies. Furthermore, the offer must now either be accepted or declined within 21 days of receipt of such offer, compared to the erstwhile 'reasonable period' contained in the section prior to the amendment.

- iii. Section 149 – This section has been amended to emphasize that the powers to allot shares are vested in the company and may only devolve to the directors where the board has express authority to do so either via the Articles or in a general meeting.
- iv. Section 154 – A shorter timeline of 15 days (previously 1 month) has been introduced for filing notice of allotment of shares at the Corporate Affairs Commission (CAC).
- v. Section 171 – Share certificates issued to allottees of shares may now be represented in electronic forms.
- vi. Section 240 – The option to hold virtual general meetings has now been extended to public companies, provided that such meetings are conducted in line with the company's Articles.
- vii. Section 275 – Public companies now expected to have at least one-third of the total number of directors sitting on the board as independent directors. Before now, the minimum number required was fixed at 3 independent directors.
- viii. Section 572 – The monetary threshold for determining a company's inability to pay its debts which was previously stipulated as ₦200,000 has been deleted and replaced with 'a sum to be determined' by the CAC.
- ix. Section 868 – The definition of 'Insolvency Practitioner' has been deleted as the previous provision was inconsistent with Section 705 of CAMA which outlines the qualifications expected of an insolvency practitioner. The latter provision now subsists and remains in force with no contradictions in the law.

B. Industrial Training Fund (ITF) Act

- i. Section 6 of the ITF Act has been amended to the effect that only employers with at least 25 employees in their establishment are required to contribute 1% of their annual payroll as ITF Levy.
- ii. The previous threshold of a minimum of five (5) employees and the turnover marker of ₦50m have been deleted effective from the commencement of the BFA.
- iii. Employers operating within a free trade zone are also not required to pay the ITF Levy.

C. National Housing Fund (NHF) Act

- i. The minimum threshold for eligibility to contribute to the NHF is pegged at minimum wage, currently ₦30,000.
- ii. The previous base of charging NHF Levy being the basic salary has been deleted and replaced with monthly income.
- iii. Employees in the public sector are now mandated to contribute 2.5% of their monthly income.

- iv. Contribution into NHF by employees in the private sector is now deemed optional, the amended Section 4 of the NHF Act uses the word 'may' compared to 'shall' used in respect of the contribution by employees in the public sector.
- v. Self-employed persons are mandated to contribute 2.5% of their earnings into the Fund.

Other Notable Changes

- i. An amendment to the Pension Reforms Act; now qualifying pension assets as eligible securities for lending as approved by the regulator.
- ii. A Nigerian entity which acquires foreign participation post-commencement of business is required to register with the Nigerian Investment Promotion Commission within three months of such acquisition.
- iii. The definition of 'goods' is now extended to include services under the Trademarks Act.
- iv. Companies in their first 2 years of business operations are exempted from incurring late registration penalties where eligible contracts are registered with the National Office for Technology Acquisition and Promotion (NOTAP) Act before the end of the second year of business operations.
- v. The Investment and Securities Act (ISA) has been amended to the effect that private companies can only allot their shares offered to the public through means prescribed by the Securities & Exchange Commission.
- vi. The Central Bank may revoke the licence of any authorized dealer, i.e. a bank, or any authorized buyer, such as bureau de change, hotels, etc., where such dealer or buyer fails to utilize the licence within 30 days of obtaining same, ceases to qualify for the licence, applies for its liquidation, provides false material information, amongst other contraventions.
- vii. The Registrar-General of CAC is now charged to ensure that all application processes at the CAC are fully automated from start to completion.

Requirements for Ministries, Departments & Agencies (MDAs)

The BFA also provided for new administrative regulations for MDAs which provide products or services to the public. The following are now required of such MDAs:

- i. All MDAs are now mandated to publish on their websites, a comprehensive list of requirements to obtain the products and/or services they provide, as well as a service level agreement which shall include the following:
 - a list of products and services rendered.
 - documentation requirements
 - applicable fees
 - timelines for processing applications
 - summary of the procedure for application
 - redress mechanisms, etc.

- ii. The hard copy version of the list is also required to be kept updated all at times and made available at the offices of the MDAs.
- iii. Where there is a conflict between a published list of requirements and an unpublished one, the provisions of the published list will prevail.
- iv. The timeframe for every application as well as at least two modes of communicating official decisions to applicants, are to be included in the publication.
- v. Where any MDA fails to communicate an approval or rejection of any application within the specified timeline, such application will be deemed approved and granted.
- vi. All notices of rejection must be communicated with grounds of rejection to the applicant within the stipulated timeline.
- vii. All MDAs are required to work collaboratively under a 'one government' directive, to ensure the seamless delivery of products and services to the public.

Our Comments

The enactment of the BFA is a welcome development for all companies doing business in Nigeria. It is not surprising that the majority of the changes are contained in CAMA, being the primary legislation that deals with the administration of companies in Nigeria. Therefore, it is only logical that the changes necessary to bring about efficiency in the regulatory environment of companies to ensure ease of doing business start from the amendment of the core statute.

Embracing technology by giving a nod to electronic share certificates, meetings, delivery of notices, voting and an end-to-end automation of processes at the CAC, is a laudable step in the right direction to ensuring that the administration of companies is seamless and in tune with global best practice.

Many companies will be gratified with the amendment of the ITF Act by the BFA. In effect, the ITF Act has been stripped of provisions that were introduced in 2011 which sought to make virtually every company a contributor to the Fund to the chagrin of many. However, it is important to note that this amendment of the ITF Act may not affect contributions already due as at February 2023 when the BFA was signed, irrespective of the fact that the payment deadline is March 31 of every year.

Employers in the private sector must now take note of the option allowed by law in respect of deduction of NHF Levy. Employees must now be made to confirm their desire to continue contributing or otherwise, and for those that choose to continue contribution, the 2.5% will now be based on the monthly gross salary instead of the 2.5% of previously charged on basic salary.

Also, it is important to note that while the amendment to the ISA suggests that private companies may now offer their shares to the



public for subscription, there is still a need to reconcile this provision with Section 22 of CAMA which restricts private companies from doing so, to avoid uncertainties in the business space. In the same vein, while the deletion of the monetary threshold for determining a company's inability to pay its debts in CAMA will enable quick updates via Regulations in view of fast-changing economic realities, care must be taken to avoid arbitrary upward adjustments of this amount so as not to make doing business even more tedious especially for small businesses. That is, small businesses may suffer unduly where this amount is increased beyond what is fair and reasonable, thus making it more difficult for these businesses to thrive.

The success or otherwise of the BFA will largely depend on the compliance of MDAs to the requirement for them to publish their list of requirements and having this list updated whenever changes occur. The willingness and ability of agencies to collaborate effectively in delivering services and providing oversight to businesses will also go a long way in seeing to the success of the Act.

Finally, the general public, especially owners and managers of businesses are urged to seek professional advice in respect of any of the changes brought about by the BFA to ensure compliance and full enjoyment of attendant benefits of the new provisions of the extant laws.



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