

KEY PROVISIONS OF BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) ACT, 2023



1.0. BACKGROUND AND OBJECTIVES OF THE ACT

- 1.1. On 13 February 2023, President Muhammadu Buhari, signed the Business Facilitation (Miscellaneous Provisions) Act, 2023 (“Act”) to law. The Act codifies Executive Order 001 of 2017 on the Promotion of Transparency and Efficiency in the Business Environment. It also amends 21 critical business-facilitation laws.
- 1.2. The objectives of the Act are: (i) promotion of ease of doing business in Nigeria, and elimination of bottlenecks; and (ii) amendment of relevant laws to engender ease of doing business and institutionalise reforms for easier implementation. This article highlights key provisions of the Act.

2.0. PROMOTION OF TRANSPARENCY AND EFFICIENCY IN THE BUSINESS ENVIRONMENT

Transparency Requirements

- 2.1. Section 3 makes it mandatory for Government ministries, departments and agencies (MDAs) to publish a complete list of requirements (e.g. fees, timelines, processes, documents etc.) for obtaining their products and services (e.g. permits, licences, approvals, tax processes, filings, registration, certification etc.). This must be conspicuously published on websites and available at help-desks within 21 days of the commencement of the Act. Applicants are entitled to rely on the published list in making application. Where there is any discrepancy between the actual practice and published list, the latter will prevail. The list must be kept up-to-date at all times.

Default Approvals

- 2.2.** Section 4 provides that where relevant MDAs or officials fail to communicate approval or rejection of an application within the stipulated time in the published list, they shall be deemed approved and granted. After an application is deemed granted, the applicant may notify the MDA for issuance of a certificate or document in evidence of the grant and the MDA is obligated to issue same within 14 days. Furthermore, where an application is rejected, it must be accompanied by reasons for the rejection. MDAs are to maintain at least two modes of communication which shall be published on their websites.

One Government Provisions

- 2.3.** Section 5 of the Act seeks to facilitate coordination and synergy among MDAs in performing regulatory functions in the business environment. For instance, where an application requires services from an MDA, that MDA must conduct the necessary verification and certifications from other MDAs in respect of that applicant. Furthermore, a copy of any document submitted by an applicant in respect of an application shall be prima facie proof of the content of such document.

Service Level Agreements

- 2.4.** Section 6 requires MDAS to have Service Level Agreements (SLAs) with contents such as list of products and services rendered, documentation requirements, timelines for processing applications, application fees, summary of procedure of application, redress mechanisms etc. The SLAs shall be binding on the MDAs in the processing of applications. MDAs are required to conspicuously publish their SLAs with relevant details on their website. Failure by officials to act within timelines stipulated in SLAs without lawful reason amounts to misconduct.

Port Operations

- 2.5.** Section 7 outlaws touting in Nigerian ports. On-duty staffs must be in official uniform with identification cards, whilst off-duty staffs must stay away from the ports unless otherwise authorized. Non-officials are banned from secured areas of airports. Any official caught soliciting or receiving bribes shall be immediately removed from duty post and disciplined/prosecuted. MDAs are to, within 30 days of the commencement of the Act, merge their arrivals and departure interfaces into a single customer interface. MDAs at ports are to, within 60 days of commencement of the Act, harmonise their operations into a single interface station in the port.

Registration of Businesses

- 2.6.** Section 8 provides for the Registrar General of the Corporate Affairs Commission to, within 14 days of the commencement of the Act, ensure that all application processes at the CAC are automated from start to finish.

3.0. AMENDMENTS TO EXTANT LAWS

3.1. Parts 1 to 21 of the Schedule to the Act contain amendments to 21 business-facilitating laws.

- 1.** Part 1 amends 20 provisions of the Companies and Allied Matters Act, 2020 (CAMA 2020). These are sections 78, 127, 142, 149, 154, 171, 181, 207, 222, 240, 244, 248, 275, 283, 307, 378, 394, 572, 658 and 868.
- 2.** Part 2 amends section 1 of the National Export Promotion Council Act, 1988.
- 3.** Part 3 amends section 59 of the Customs Excise and Management Act, 1958.
- 4.** Part 4 amends section 1 of the Export (Prohibition) Act, 1989.
- 5.** Part 5 amends section 59 of the Financial Reporting Council Act, 2011.
- 6.** Part 6 amends section 6 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995.
- 7.** Part 7 amends sections 20 and 36 of the Immigration Act, 2015.
- 8.** Part 8 amends section 3 of the Industrial Inspectorate Act, 1970.
- 9.** Part 9 amends section 6 of the Industrial Training Fund Act, 2011.
- 10.** Part 10 amends section 67 of the Investments and Securities Act 2007.
- 11.** Part 11 amends sections 4 and 9 of the National Housing Fund Act, 2011.
- 12.** Part 12 amends section 5 of the National Office for Technology Acquisition and Promotion Act, 1979.
- 13.** Part 13 amends section 3 of the National Planning Commission Act, 1993.
- 14.** Part 14 amends section 3 of the Nigerian Customs Service Board Act, 1992.
- 15.** Part 15 amends sections 20 and 21 of the Nigerian Investment Promotion Commission Act, 1995.
- 16.** Part 16 amends section 106 of the Nigerian Oil and Gas Industry Content Development Act, 2010.
- 17.** Part 17 amends sections 7 and 40 of the Nigerian Ports Authority Act, 1999.
- 18.** Part 18 amends the First Schedule to the Patent and Design Act, 1971.
- 19.** Part 19 amends section 89 of the Pension Reform Act, 2014.
- 20.** Part 20 amends sections 5 and 29 of the Standard Organization of Nigeria Act, 2015.
- 21.** Part 21 amends section 67 of the Trade Marks Act, 1967.

4.0. POSTSCRIPT

- 4.1.** The Act is a reformative legislation with the potential of enhancing transparency and certainty in regulatory processes. It also has the potential of eliminating bottlenecks, tardiness and inordinate delays in regulatory approvals.
- 4.2.** The Act has also showcased a cost-effective, swift and pro-active way of undertaking law reforms involving multiple statutes. In this case, 21 business-related laws have been amended in one fell swoop.

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