

NIGERIA'S BUSINESS ENVIRONMENT MADE EASY



Introduction

In July 2016, the Federal Government established the Presidential Enabling Business Environment Council (“PEBEC”) to address the constraints facing businesses in Nigeria. One key focus area has been improving the ease of doing business, including the process of starting a business. To address these bottlenecks more comprehensively, President Muhammadu Buhari signed the Business Facilitation (Miscellaneous Provisions) Act 2022 (“the Act”) into law on 14 February 2023. The Act aims to create a transparent, efficient, and productive business environment by amending relevant legislation and institutionalizing reforms.

The overarching objective of the Act is to provide for the ease of doing business, ensure transparency, efficiency and productivity in Nigeria. It also seeks to eliminate the bottlenecks and amend relevant legislation and institutionalise all the reforms to ease the implementation of the said legislation.¹

This article will explore the provisions under the Act that promote a more business-friendly environment in Nigeria.

A new era of doing business – Transparency Requirements

Section 3 of the Act outlines specific transparency requirements that Ministries, Departments, and Agencies (“MDAs”) of the Federal Government must adhere to in order to promote fair and transparent business practices. For instance, the Act mandates that MDAs providing products and services must publish a complete list of requirements to obtain the products and services such as permits, licenses, waivers tax related processes, filings, approvals, certifications amongst other requirements.² This list must include all the processes, documents, fees, and timelines required for processing such products and services and must be conspicuously published by the relevant MDA on its website within twenty-one (21) days of the commencement of the Act.³ This provision is a positive step towards promoting transparency in business operations and provides business owners with a clear understanding of the requirements for obtaining MDA products and services.

Furthermore, the Act has established checks and balances through an accelerated application process in order to ensure accountability and transparency in the operations of MDAs. According to Section 4 (1) of the Act, if an MDA fails to communicate the approval or rejection of an application within the timeframe specified in the published list, the application will be deemed approved and granted. The MDA must then issue a certificate or document within fourteen (14) days.⁴ Moreover, the failure of an MDA to act on an application within the stipulated timeline without any lawful reason is considered misconduct and is subject to disciplinary proceedings under the extant civil or public service rules.⁵ These provisions are aimed at promoting informed participation by the public, businesses, and foreign investors while holding MDAs accountable to their stakeholders. It is essential for the public to remain up-to-date and informed of processing timelines and requirements.

¹ Section 1 of the Act

² Section 3 (1) and (2) of the Act

³ Section 3 (a) (b) (i) of the Act

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⁴ Section 4 (5) of the Act

⁵ Section 4 (7) of the Act

Furthermore, the Act introduces a new concept called the “One Government Directive” that encourages cooperation and collaboration among MDAs to enhance the efficiency and effectiveness of delivering goods and services to the public.⁶ To achieve the goal of a unified government, the Act mandates that when an agency offers a service to an individual, it must seek verification or certification from other relevant agencies.

As part of the Nigerian government's efforts to tackle corruption and improve efficiency in the ports and airports, the Act requires MDAs operating at these locations to consolidate their respective arrival and departure interfaces into a single customer interface.⁷ This provision is implemented as the Government's efforts to eliminate touting, soliciting, and bribery, and ensure accurate record-keeping of all goods and shipments arriving and departing from the ports. Additionally, the Act seeks to improve traffic management, particularly at seaports, to prevent truckers from passing on the cost of disorganisation and racketeering to importers, which in turn increases the prices of goods. While the harmonisation of interfaces is a positive step, it must be implemented effectively to simplify and streamline the processes and functions of the various MDAs.

Section 8 of the Act mandates the Registrar General of the Corporate Affairs Commission (CAC) to automate all application processes for business registration, within fourteen (14) days of the Act's commencement. There have been significant strides made in the automation of company registration processes. However, not all application processes at CAC were fully automated until the introduction of the Act. All business registration certificates, renewals, and permits are henceforth consolidated into a single online platform, which is readily accessible to the public.

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This is important as the CAC regulates the formation and operation of business organisations in Nigeria and all business registration applications must be made through the Commission. Therefore, the platform must be designed to accommodate the expected online traffic associated with a fully automated operation and its performance. In addition, user experience must be closely monitored to ensure that everyone accessing the Commission's service online has the minimum standard required attainable for the service to be deemed effective and efficient.

Ultimately, the objectives of the transparency requirements contained in the Act are to improve the ease of doing business in Nigeria, by reducing the administrative burden on businesses, simplifying the process of regulatory compliance and facilitating the exchange of information between businesses and regulatory authorities.

An overview of key amendments to existing laws in the Act

In addition to the aforementioned provisions, the Schedule of the Act amends twenty-three (23) business-related laws in Nigeria. The objective is to improve the efficiency of public service delivery by reducing the time, cost, and procedure for doing business in the country, among other objectives.

This section will highlight the significant changes made to some of the extant laws that particularly focus on facilitating ease of doing business.

a. The Companies and Allied Matters Act (“CAMA”)

Some of the key highlights from the amendment of the Companies and Allied Matters Act include:

- i. Increase in company's share capital:** Under Clause 3 of the Schedule, companies now possess the capacity to increase its issued share capital by the allotment of new shares vide a resolution² of the Board of Directors, or as authorised

⁶ Section 5 of the Act

⁷ Section 7 (9) of the Act

at a General Meeting.⁸ The implication of this is that the long-standing requirement for the increases in share capital and allotment vide a special resolution, has been abolished.

ii. Reduction in the timeline for filing returns of allotment and issuance of share certificates:

The timeline for the return in allotment filing has been reduced from one month to fifteen (15) days. Furthermore, upon the conclusion of any allotment or share transfer, shareholders may be issued either physical or electronic share certificates. With these amendments in place, corporate filing processes have been made easier and faster.⁹

iii. Definition of Cash:

Clause 10 of the Schedule provides a clear definition of what constitutes “cash”, “financial instruments”, “financial collateral” or “security instrument”. Under the extant law, these terms were not defined, nor was it stipulated the appropriate forms cash could exist in. Given the current economic climate, this amendment is a welcome development as it has made it possible for cash to be described in various specific forms.¹⁰

iv. Electronic voting in meetings and notice circulation:

Notice of meetings can now be circulated to any member personally, electronically, or by sending it by post to their registered address, or in the case where the member has a registered address within Nigeria, to the address provided by them to the Company for the purpose of receiving notices.¹¹

Additionally, electronic voting in meetings is now permitted.¹² These amendments will facilitate expedited notice dissemination to company members and enhance participation in company meetings.

v. Number of Independent directors of a public company:

The Act has abolished the requirement that a public company must have at least 3 independent non-executive directors. Clause 14 stipulates that at least one-third of the total number of directors in a public company must be independent.¹³

b. Customs and Excise Management Act

The Act introduces a platform known as “single window” which allows parties involved in trade and transport to lodge trade-import, export or transit data required by MDAs through a single-entry point interface.¹⁴ This is similar to the ‘One Government Directive’ thus a harmonised interface will enhance transparency and accountability in the trade process, reduce the time and cost of compliance with regulatory requirements, and improve the overall efficiency of trade operations. The platform will allow importers and exporters to submit all the necessary data required by multiple government agencies through a single interface, reducing the need for manual data entry and eliminating the duplication of effort.

c. Immigration Act

The Act amends the Immigration Act, 2015 with respect to the issuance of entry visas and the availability of information on visa application requirements and estimated timeframes.

Under the Immigration Act, the Nigeria Immigration Service (NIS) is responsible for the issuance of entry

⁸ See Amendment of section 127(1) of CAMA

⁹ See Amendment of section 154 and 171 of CAMA

¹⁰ See Amendment of section 222 of CAMA

¹¹ See Amendment of section 244 of CAMA

¹² See Amendment of section 248 of CAMA

¹³ See Amendment of section 275 of CAMA

¹⁴ See Amendment of section 2 of the Customs and Excise Management Act

visas and the regulation of the entry and exit of persons into and out of Nigeria. Under the Act, the NIS is required to establish a timeframe for the issuance of entry visas and provide the public with the necessary information required to submit valid applications for entry visas, visas on arrival, and the estimated timeframe for visa processing¹⁵.

The amendment is aimed at improving transparency and accountability in the visa application process, reducing the time and cost of visa processing, and promoting foreign investment in Nigeria. By fixing a timeframe for the issuance of entry visas, applicants will be able to plan their travel schedules and avoid unnecessary delays in the visa processing process. Additionally, by making information on visa requirements and processing times readily available to the public, the NIS will be able to promote Nigeria as an investment destination and enhance the ease of doing business in the country.

d. Industrial Inspectorate Act

The Act amends the Industrial Inspectorate Act by increasing the minimum capital expenditure required for the notification of the Director of the Industrial Inspectorate Division from Twenty Thousand Naira (N20,000) to Five Million Naira (N5,000,000) or as the Minister may by regulation prescribe¹⁶.

This amendment is aimed at reducing the burden of regulatory compliance on businesses, especially small and medium-sized enterprises (SMEs), while still ensuring adequate oversight of industrial activities. Under the previous threshold of twenty thousand naira, companies were required to notify the Director of the Industrial Inspectorate Division of every capital expenditure they intended to undertake, which could create a significant administrative burden for businesses.

With the new threshold of five million naira, companies can undertake capital expenditures below this amount without the need for notification, allowing them to operate more efficiently and flexibly.

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However, the Minister may prescribe a different threshold by regulation, depending on the economic realities and the need for oversight of industrial activities.

This amendment is commendable, as it promotes ease of doing business in Nigeria and encourages investment in the country. It also aligns with the government's efforts to streamline regulations and promote a business-friendly environment, especially for SMEs, which are the backbone of the Nigerian economy.

e. Industrial Training Fund Act

The Act has substituted subsections (1) (4) of the Industrial Training Fund Act. As a result, employers operating within the free trade zone are now exempted from making contributions to the Industrial Training Fund ("the Fund"). Additionally, compliance timelines have been removed.¹⁷

This means that employers within the free trade zone can make contributions to the Fund at any time without incurring any penalties. Furthermore, by removing compliance timelines, the amendment reduces the burden on employers and eliminates the need for them to keep track of deadlines for contributing to the Fund. This saves time and resources and allows them to focus on their core business activities.

Additionally, exempting employers within the free trade zone from contributing to the Fund serves as an incentive for them to set up operations within the zone. This helps to attract more investment and promotes economic growth and development in the country.

Conclusion

In conclusion, the Act is a welcome development that will significantly improve the ease of doing business in the country. The Act contains provisions that will make it easier for businesses to start, operate, and expand by reducing bureaucratic bottlenecks,

¹⁵ See Amendment of section 20 of the Immigration Act, 2015

¹⁶ See Amendment to Section 3(1)(a) &(b) of the Industrial Inspectorate Act, 2004, Paragraph 39 of the Schedule to the Act.

¹⁷ See Paragraph 39 of the Schedule to the Act.

streamlining processes, and providing greater certainty and confidence to businesses. It is hoped that the implementation of this Act will lead to an increase in business activity, job creation, and economic growth in the country.

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