

## **EASE OF DOING BUSINESS: A CRITICAL EXAMINATION OF THE BUSINESS (MISCELLANEOUS PROVISIONS) FACILITATION ACT 2023. \*\***

### ***Abstract***

*The need to create a safe and conducive environment for businesses to thrive is one of the hallmarks of a good government for businesses to grow, government committed to removing bureaucratic barriers to trade and investment, will consequently increase government revenue. The aim of this paper is to examine and appraise the Business Facilitation (Miscellaneous Provision) Act 2023 signed into law by President Muhammadu Buhari. The article espoused the innovative changes as well as looking at the previous provisions of the amended laws. The doctrinal method of legal research was adopted. The primary and secondary sources of data were also used. It was found that the Business Facilitation Act 2023 amended twenty-one (21) business related laws, thereby removing bureaucratic constraints to doing business in Nigeria. The paper therefore recommended amongst others, that businesses should adopt these key innovative provisions of the law to further promote the ease of doing business Nigeria.*

**Keywords:** Business Facilitation Act, Omnibus Act, PEBEC.

### **1. Introduction**

Globally, government is committed to providing legal framework that will enhance businesses. Facilitating businesses by way of removal of bureaucratic barriers to trade and investment thereby increases the revenue of government. Most developed countries have simplified and automated administrative procedures, thereby facilitating business operations and alleviating regulatory borders. The pandemic has exposed the benefits of a stronger, flexible, and more responsive government. The Governance Global Practice supports countries to build capable, efficient, open, inclusive, accountable institutions, which are critical for sustainable growth<sup>1</sup>. In July 2016, President Muhammadu Buhari set up The Presidential Enabling Business Environment Council (PEBEC) to make Nigeria an easy place to start and grow a business. PEBEC was aimed at removing critical bottlenecks and bureaucratic constraints to doing business in Nigeria. It is important to note that 90% of all registered businesses in Nigeria are made up of Micro, Small and Medium enterprises (MSMEs).<sup>2</sup> PEBEC is a specialized agency set up in Nigeria in line with global best practice<sup>3</sup> to make the country a progressively easier place to start and grow a business.

PEBEC is an inter-governmental and inter-ministerial body and comprises of 10 ministers, the Head of Civil Service of the Federation, Governor of the Central Bank of Nigeria representatives of Lagos and Kano State Governments, the National Assembly and the private

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\* **Ngozi Chisom UZOKA, PhD, BL**, Lecturer, Department of International Law and Jurisprudence, Nnamdi Azikiwe University, Awka. E-mail: nc.uzoka@unizik.edu.ng or chisongozi@yahoo.com Phone Number: 08063212174. AND

\*\* **Onyeka Christian ADUMA, LLB, BL, PhD**, Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka. E-mail: co.aduma@unizik.edu.ng or onyiinosyke@yahoo.com.

<sup>1</sup> Governance and Institutions COVID-19 Response Resources, Available at <https://www.worldbank.org>. Accessed on 10<sup>th</sup> March, 2023.

<sup>2</sup> Presidential Enabling Business Environment Council (PEBEC) Available at [https:// www.StateCraftinc.com](https://www.StateCraftinc.com) Accessed on 23<sup>rd</sup> February, 2023.

<sup>3</sup> PEBEC Report/Here to Resolve Every Conflict, Available at [https:// www.reportgov.ng](https://www.reportgov.ng) accessed on 23<sup>rd</sup> February, 2023.

sector.<sup>4</sup> The Enabling Business Environment Secretariat (EBEB) is the operational arm of PEDEC, which assists the Ministries, Departments and Agencies (MDAs) of government to implement the reform agenda of the PEDEC<sup>5</sup>. PEDEC provides a legal framework for enabling environment as the policies and interventions made by them facilitates small and medium businesses to thrive in Nigeria. The PEDEC in order to ensure transparency, efficiency and productivity in Nigeria consolidated their reforms, since inception in 2016, via a legislative intervention. PEDEC presented an executive Bill known as Business Facilitation (Miscellaneous Provision) Act, 2023. The new Bill amended twenty-one (21) business related laws in Nigeria. The Bill is an executive bill passed by the National Assembly.<sup>6</sup> The PEDEC in collaboration with the public and private sector stakeholders meetings came up with the Business Facilitation (Miscellaneous Provisions) Bill, also known as the “Omnibus Bill”. The bill was aimed at consolidating and amending outdated legislative provisions towards eradicating bottlenecks for Micro, Small and Medium enterprises. The bill also seeks to ensure the sustainability of the business climate and give statutory force to Executive order 001 of 2017 on the promotion of transparency and efficiency in doing business in Nigeria.<sup>7</sup>

The Business Facilitation (Miscellaneous Provision) Bill passed the first reading at the House of Representatives on June 22, 2022.<sup>8</sup> The Bill also passed second reading in the Senate on July 20, 2022.<sup>9</sup> Consequently, President Muhammadu Buhari assented to the Bill on 10<sup>th</sup> February, 2023. The Business Facilitation (Miscellaneous Provisions) Act 2023 amended relevant legislation targeted at promoting the ease of doing business in Nigeria and institutionalize all the reforms of PEDEC to ease implementation. The Business Facilitation Act is applicable throughout the Federal Republic of Nigeria. The Business Facilitation (Miscellaneous Provisions) Act 2023 also codified Executive Order 001 and amended twenty-one (21) business related laws, to remove bureaucratic constraints to doing business in Nigeria.

## **2. The laws amended by the Business Facilitation Act will be discussed accordingly.**

### **i) Companies and Allied Matters Act 2020**

This is the main legislation that regulates registration, incorporation and dissolution of businesses in Nigeria. It covers the regulation of companies, business name, incorporated trustees, limited partnership, and limited liability partnerships. The sections amended will be discussed hereunder.

- a) **Exemption of Foreign Companies from Incorporation in Nigeria:** Section 78 of CAMA 2020 made provision for foreign companies which before or after the commencement of the Act incorporated outside Nigeria to take steps to obtain incorporation unless and until the foreign company is incorporated, it shall not carry on business in Nigeria or exercise any of the powers of a registered company.<sup>10</sup> However, the section exempted any foreign company which before the commencement of the Act

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<sup>4</sup> Presidential Enabling Business Environment Council. Available at <https://statehouse.gov.ng>. Accessed on 23<sup>rd</sup> February, 2023.

<sup>5</sup> Ibid.

<sup>6</sup> An executive bill is a bill initiated from the executive arm of the government and transmitted to the Senate and the House of Representatives for concurrent passage.

<sup>7</sup> E Ukanwa, Buhari Signs First Business Facilitation Bill into Law. Available at <https://www.vanguardngr.com>. Accessed on 23<sup>rd</sup> February 2023.

<sup>8</sup> Ibid.

<sup>9</sup> Business Facilitation Bill 2022 passes second reading at House of Representatives [www.vanguardngr.com](http://www.vanguardngr.com). Accessed on 23<sup>rd</sup> February, 2023.

<sup>10</sup> L Baiyewu, Buhari signs Business Facilitation Bill into law available [www.punchng.com](http://www.punchng.com). Accessed on 23<sup>rd</sup> February, 2023.

was granted exemption from compliance under the provisions of any previous Companies Act that had been applicable in Nigeria before the commencement of CAMA and exception under any treaty to which Nigeria is a party.<sup>11</sup> Another exemption is inserted under a new paragraph C of Section 78(3)<sup>12</sup>

“where the foreign company is “exempted under any other extant Act of the National Assembly in effect”. This paragraph above was introduced by BFA 2023 as subsection C of Section 78(3) of CAMA.

- b) **Increase of Issued Share Capital by a Resolution:** Section 127 of CAMA provides thus: “A company having a share capital may in general meeting and not otherwise increase its issued share capital by the allotment of new shares of such amount as it considers expedient”. The above section did not create any other room or window on how the issue shared capital of a company can be increased except by the company in general meeting. However, the BFA 2023 amended the above section, to the effect that a company having a share capital may increase its issued share capital by the allotment of new shares of such amount, as it considers expedient either in general meeting or by a resolution of the Board of Directors, subject to the condition or direction that may be imposed in the Articles or by the company in general meeting.<sup>13</sup> It suffices to say that a company need not call a general meeting of the company to increase its issued share capital; a resolution of the Board of Directors with respect to same suffices.

- c) **Pre-emptive Rights of Existing Shareholders**

Section 142 of CAMA<sup>14</sup> provides that a company shall not in any event allot newly issued shares unless they are first offered in the first instance to all existing shareholders of the class being issued in proportion as nearly as may be to their existing holdings. The offer to existing shareholders shall be by notice specifying the number of shares to which a shareholder is entitled to subscribe, the price and a reasonable time period after the expiration of which the offer, if not accepted will be deemed to be declined.<sup>15</sup> This pre-emptive right from the above section seems to apply both to private and public companies and no time frame was also provided within which the offer is to be accepted. It was not clear from the section whether both private and public companies can exercise this pre-emptive right.

The Business Facilitation Act however introduced the word “private” in subsection 1 of Section 142 of CAMA. By this amendment, it became visibly clear that only private companies can exercise pre-emptive rights. The BFA also introduced a new paragraph under sub-section 2(c) by stating that: “if the offer is not accepted within 21 days of the notice, the offer shall be deemed declined. This makes the time frame for accepting/declining the offer definite and not speculative or discretionary<sup>16</sup>.

- d) **Authority to Allot Shares:** Section 149(1) of CAMA<sup>17</sup> provides that the power to allot shares is vested in the company and in relation to a private company; this power may

<sup>11</sup>CAMA 2020, Section 78(1).

<sup>12</sup> CAMA 2020, Section 78 (3) a & b.

<sup>13</sup> BFA, 2023, Section 3.

<sup>14</sup> CAMA 2020.

<sup>15</sup> CAMA 2020, Section 142 (2) a-c.

<sup>16</sup> BFA 2023, Section 4 (a & b).

<sup>17</sup> CAMA 2020.

be delegated to the directors subject to any condition or direction that may be imposed in the articles or by the company in general meeting. The above sub-section was completely removed and substituted with a new provision that the powers to allot the shares of a company are not exercised by the directors of a company unless express authority to do so has been vested in the board of directors either by the company in general meeting or the company's articles.<sup>18</sup> It is pertinent to note that sub-section 3 of section 149 CAMA which is a replica of the above newly inserted subsection was deleted from the CAMA 2020.<sup>19</sup>

- e) **Return as to Allotment:** Under Section 154 (1) of CAMA<sup>20</sup> whenever a company limited by shares makes any allotment of its shares, the company shall within one month deliver to the Corporate Affairs Commission for registration some prescribed documents pertaining to the allotment. However, the time frame within which the documents are to be delivered to CAC for registration has been changed to fifteen (15) days. This is aimed at facilitating and completion of the process of allotment of shares.<sup>21</sup>
- f) **Electronic Share Certificates:** Section 171 of CAMA<sup>22</sup> deals with the issuance of share certificates within two months after the allotment of its shares and within 3 three months after the date on which a transfer of any such shares is lodged with the company. However, the above section was not clear as to what type of share certificate is to be issued. The BFA came to the rescue and provided that the certificate envisaged under this section may be in either physical or electronic form”, by inserting an additional sub-section 7 to Section 171 of CAMA.<sup>23</sup>
- g) **Instrument of Transfer:** Section 181 of CAMA<sup>24</sup> provides for issuance of Certificate of transfers. Thus, subsection of the above section was replaced with the provision that when the holder of any share of a company wished to transfer to any person only a part of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates shall be delivered to the company with a request that the instrument of transfer be recognized and registered and the instrument of transfer shall include certificates issued in electronic form.<sup>25</sup>
- h) **Preferential Payment to Debenture Holders in Certain Cases:** Section 207 of CAMA<sup>26</sup> makes provision for preferential payment to debenture holders secured by a floating charge in certain cases. However, sub-section 4 of the said section was amended to read thus, “Notwithstanding any provision in this Act or any other law to the contrary, and without prejudice to the provisions of Section 204, the holder of a fixed charge shall have priority over other debts of the company including preferential debts.”<sup>27</sup> Thus, debenture holders are to be given utmost preference in repayment of debts by the company.

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<sup>18</sup> BFA 2023, Section 5(a).

<sup>19</sup> *ibid*, Section 5(b).

<sup>20</sup> CAMA 2020.

<sup>21</sup> BFA 2023, Section 6.

<sup>22</sup> CAMA 2020.

<sup>23</sup> BFA 2023, Section 7.

<sup>24</sup> CAMA 2020.

<sup>25</sup> BFA 2023, Section 8(b).

<sup>26</sup> CAMA 2020.

<sup>27</sup> BFA 2023, Section 10.

- i) **Inspection of Register of Debentures:** Section 222 of CAMA<sup>28</sup> deals generally with inspection of register of debentures of a company. In the interpretation sub-section 131 the following additional interpretations were added.  
 “Cash” means money in any currency, credited to an account, or a similar claim for repayment of money and includes money market deposits and sums due or payable to or received between the parties in connection with the operation of a financial collateral arrangement or a close-out netting provisions.  
 “Financial Collateral” means cash or financial instruments.  
 “Financial Instruments” includes (a) shares in company and other securities equivalent to shares in companies (b) bonds and other forms of instruments giving rise to or acknowledging indebtedness if these are tradable on the capital market; and (c) any other securities which are normally dealt in and which give the rise to acquire any such shares, bonds, instruments or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment).  
 “Security Interest” means a pledge, mortgage, fixed charge or charge created as a floating charge, where the financial collateral delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or a person action on its behalf.<sup>29</sup>
- j) **Virtual/Electronic Meetings for all Companies:** By virtue of Section 240(2) of CAMA<sup>30</sup> only a private company is permitted to hold its general meeting electronically. However, with the coming into effect of Business Facilitation Act 2023,<sup>31</sup> all types of companies can now hold its general meeting electronically. This provision will in no small measure facilitate the decision making process of companies and increase greater efficiency.
- k) **Electronic Voting at Annual General Meeting:** The provision of Section 248(1) of the CAMA<sup>32</sup> was amended to include electronic voting as a valid way of voting at general meeting.<sup>33</sup> Before now, the only valid means of voting was by show of hands or a poll. Electronic voting also known as e-voting is using electronic systems to aid casting and counting of votes. The pandemic has accelerated digitization in all sectors. Thus, electronic voting will put an end to the age long tedious face-to-face events thus saving resources and time significantly.
- l) **Minimum Number of Independent Directors in Public Companies:** Section 275 (1)<sup>34</sup> provides that every public company must now have atleast three independent directors<sup>35</sup> Presently, the SEC Code of Corporate Governance and the Nigerian Code of Corporate Governance,<sup>36</sup> provides that Companies should have a minimum of one

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<sup>28</sup> CAMA 2020.

<sup>29</sup> Business Facilitatiin Act 2023, Secion 11.

<sup>30</sup> CAMA 2020.

<sup>31</sup> BFA 2023, Section 12.

<sup>32</sup> CAMA 2020.

<sup>33</sup> Section 13 of BFA 2023 (2020).

<sup>34</sup> N C Uzoka, An Overview of the Companies and Allied Matters Act 2020: Prospects and Challenges” (2020) *NAUJCPL* Vol. 7 No. 2.

<sup>35</sup> Rule 5.5 (C) Code of Corporate Governance for Public Companies. Available at <https://www.sec.gov.ng>. Accessed on 11<sup>th</sup> August, 2022.

<sup>36</sup> *ibid*.

independent director. The provision of CAMA 2020 created a higher threshold for this requirement in 2020. However, the BFA revised Section 275(1) of CAMA for the effect that the minimum number at independent directors of a public company would no longer be three but one-third of the Board. The implication of this is that any person who nominates candidates for the Board should nominate at least one-third of the number of persons to be independent as opposed to the previous requirement of three persons.

- m) **Multiple Directorships:** Section 307 of CAMA<sup>37</sup> made provisions for multiple directorships. The Business Facilitation Act introduced an entirely new sub-section 3 of Section 307 of the CAMA. The Business Facilitation Act provides that a person can be a director in only five public companies and any person who before the commencement of the Act was already a director in more than five public Companies is required to resign as a director of all but five, of the companies before the next annual general meeting of the companies, following two years from the commencement of the Act<sup>38</sup>.
- n) **Modification of the Threshold for Determination of a Company's Inability to Pay Debt:** Section 572(a) of CAMA in defining a company that is unable to pay its debt provides that such company must have a due debt to a person of a sum exceeding N200, 000. However, the Business Facilitation Act amended the provision and replaced the N200, 000 requirements with "a sum to be determined by a regulation issued by the Commissioner."<sup>39</sup>
- o) **Qualification of Small Company:** Section 394 of the CAMA provides for qualifications of a small company. Sub-section provides that a company qualifies as small in relation to a subsequent financial year of the qualifying conditions.
  - (a) are met in that year and the preceding financial year;
  - (b) are met in that year and the company qualified as small in relation to the preceding financial year; or
  - (c) were met in the preceding financial year and the company qualified as small in relation to that year.

The above sub-section was substituted by a new subsection "2" which reads thus, a company qualifies as a small company in relation to a subsequent financial year if the conditions qualifying it as a small company are met in that year and the preceding financial year<sup>40</sup>.

**ii) The Nigerian Export Promotion Council Act<sup>41</sup>**

The representation on the Governing Board of the Council under subsection 2 of section 2 of NEPCA was adjusted to include representatives from the Ministries of Mines and Steel, Agriculture and Finance and representatives from the Central Bank of Nigeria and the Bank of Industry. It excluded representatives from the Farmers Association<sup>42</sup>.

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<sup>37</sup> CAMA 2020.

<sup>38</sup> Business Facilitation Act 2023, Section 14.

<sup>39</sup> *ibid*, Section 19.

<sup>40</sup> *ibid*, Section 18.

<sup>41</sup> Cap N108, Laws of the Federation of Nigeria 2004.

<sup>42</sup> Business Facilitation Act 2023, Section 23.

**iii) Financial Reporting Council Act<sup>43</sup>**

*Section 59* of the Financial Reporting Council Act had a new sub-section added to it. The new sub-section now made it mandatory for every financial statement prepared by companies, government organizations and corporations to be in line with standards, rules and pronouncements issued and adopted by the Financial Reporting Council of Nigeria.<sup>44</sup>

**iv) Investment and Securities Act<sup>45</sup>**

*Section 43* of the Business Facilitation Act amended *Section 67(1)* of the ISA. The substitute sub-section prescribes that no allotment can be made unless certain conditions are met, which differ depending on whether the company is a public or private company. For a public company, the minimum amount stated in the prospectus, as determined by the directors, must be subscribed, and the sum payable on application for the amount must be paid to and received by the company before any allotment can be made. With respect to a private company, the conditions for allotment are to be laid down via regulation by the Commission.<sup>46</sup>

**v) National Office for Technology Acquisition and Promotion<sup>47</sup>**

*Section 5(2)* of NOTAP Act was amended by including a proviso exempting companies in their two (2) years of business operations from penalties for non-registration of their technology transfer agreement where the agreement in question was registered before the end of the second year of their business.<sup>48</sup>

**vi) Customs and Excise Management Act<sup>49</sup>**

This Act was also amended by the Business Facilitation Act 2023. It made changes to goods that are uncleared or missing from vessels, aircraft, ships and other vehicles. The BFA 2023 now requires that a list of goods uncleared should be reported on the fifth (5<sup>th</sup>) day after clearing of such vessels<sup>50</sup>. This is contrary to the former provision of *Section 31* which allows for fifteen days (15). Additionally, the Business Facilitation Act provides for four (4) days instead of fourteen (14) days after unloading, for which a customs officer is to transfer uncleared goods to a government warehouse.<sup>51</sup> Under *Section 25* of Business Facilitation Act, the principle of a single window was introduced by inserting section 18A and 18B. The Act defines a “single window” to mean a platform or facility that allows parties involved in trade and transport to lodge trade-import, export or transit date required by government departments, authorities or agencies through a single-entry point interface to fulfill all import, export, transit-related and other regulatory requirements.

The Business Facilitation Act under *Section 18(a)* mandated the Board of Customs and Excise to establish and maintain a single window that allows traders to submit all necessary documentation and information relation to the import, export or transit of goods through a single-entry point. Relevant agencies may make use of the data in the window. The

<sup>43</sup> Act No. 6 2011.

<sup>44</sup> Business Facilitation Act 2023, Section 32.

<sup>45</sup> No. 29, 2007.

<sup>46</sup> Business Facilitation Act 2023, Section 43.

<sup>47</sup> CAP N62 Laws of the Federation of Nigeria 2004.

<sup>48</sup> Business Facilitation Act 2023, Section 48 (a).

<sup>49</sup> Cap C45 Laws of the Federation of Nigeria, 2004.

<sup>50</sup> Business Facilitation Act 2023, Section 27 (a).

<sup>51</sup> *ibid*, Section 27 (b).

inspection or examination of goods under the Act or any other law shall be scheduled to ensure that the inspections or examination by any officer and other relevant authorities are co-ordinated and if possible carried out at the same time<sup>52</sup>

**vii) The Export Prohibition Act<sup>53</sup>**

Section 1 of the Export Prohibition Act was amended to the effect that power is now vested in the Minister of Finance to vary the goods set out in the schedule as export prohibited goods in Nigeria.<sup>54</sup>

**viii) Nigerian Investment Promotion Commission Act<sup>55</sup>**

By virtue of the provisions of Section 54(3) of BFA, businesses in Nigeria are to register with the Commission within three (3) months of acquiring foreign participation after commencement of their operations. This is targeted at bridging the gap that before now existed between the Commissions' registration of all companies with foreign involvement and the registration at the NIPC of just Companies having foreign shareholding at the time of incorporation. The above, amended *Section 20* of NIPC Act by inserting a new sub-section 3. Under the new Business Facilitation Act the Commission is given the power to specify priority areas of involvement and their applicable benefits and incentives and negotiate specific, incentive packages for strategic investments in addition to the incentives available to any enterprise under the laws.<sup>56</sup> This replaced the erstwhile *Section 20* of NIPC Act by inserting a new sub-section 3. This replaced the erstwhile *Section 22* of the NIPC Act.

Additionally, the Commission is now required to publish in the Federal Gazette and on its website the criteria for determining strategic investment and designate an investment that satisfies the criteria as a strategic investment, and details of special incentives awarded through negotiation<sup>57</sup>.

**ix) Nigerian Oil and Gas Industry Content Development Act<sup>58</sup>**

Section 106 of the Nigerian Oil and Gas Industry Content Development Act was amended by altering the definition of Nigerian Independent Operators to mean a 'Nigerian company'.

**x) National Housing Fund Act<sup>59</sup>**

The extant *section 4* of this Act was amended with a new section to the effect that any employee earning the national minimum wage and above in the public sector in Nigeria must contribute 2.5% of his monthly income while in the case of private sector the employee may contribute 2.5% of his monthly income to the fund.<sup>60</sup> It further provided that, any self-employed person earning the equivalent of the national minimum wage and above shall contribute 2.5% of his monthly to the fund. An interest rate of 2% per annum or as may be determined in the fund<sup>61</sup>. Additionally, the expression "a basic salary of N3,

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<sup>52</sup> Section 18 (b) of Business Facilitation Act 2023, Section 18 (b).

<sup>53</sup> Cap E22, Laws of the Federation of Nigeria 2004.

<sup>54</sup> Business Facilitation Act 2023, Section 30.

<sup>55</sup> Cap N117, Laws of the Federation of Nigeria 2004.

<sup>56</sup> Section 55(1) Business Facilitation Act 2023, Section 55(1).

<sup>57</sup> *ibid*, Section 55(2).

<sup>58</sup> No. 2 2010.

<sup>59</sup> Cap N45 Laws of the Federation 2004.

<sup>60</sup> Section 4(1) (a) & (b) Business Facilitation Act 2023, Section 4(1) (a) &(b).

<sup>61</sup> *ibid*, Section 45 (2) & (3).



000” was substituted with “minimum wage” under Section 9 of the National Housing Fund Act.<sup>62</sup>

**xi) Immigration Act<sup>63</sup>**

The Immigration Act was amended strategically to facilitate of ease doing business in Nigeria. Firstly, entry visas to Nigeria shall be either issued or rejected with reason within 48hours or receipt of valid applications.<sup>64</sup> The Business Facilitation Act made it mandatory that a list of requirements and procedures for obtaining visas on arrival and other entry visas, including estimated time frames, be published on all immigration –related websites, embassies, high commissions and Nigerian ports of entry.<sup>65</sup> The power to make a departure prohibition order now vests on the comptroller general of immigration instead of the minister. The BFA further gave power to the comptroller general of immigration to change particulars of business permits. The immigration service is mandated to accredit and use an electronic communication system to enable the automated submission of any document, information, or return required by the Act.<sup>66</sup> The service is also to make regulations with the regards to the standards of operation and quality of any chosen system.

**xii) The Nigerian Ports Authority<sup>67</sup>**

The Business Facilitation Act expanded the function of Nigerian Ports Authority to include the provision of facilities for the use of information and communication technology for operations within the ports. This amended *section 7* of the Nigerian Ports Authority<sup>68</sup>. In addition, the BFA extended the power of the Authority to control pollution arising from oil or any substance from ships using the port limits or their approaches to include: removal of all unauthorized personnel from the ports; provision of facilities for the establishment and maintenance of a single window through which all the operations required by the law of all government authorities and agencies in any part of Nigeria can be undertaken; ensure that the operations required by the law of all government agencies in any part in Nigeria are harmonized through the single window domiciled within the ports.<sup>69</sup>

**xiii) Patents and Designs Act<sup>70</sup>**

The Business Facilitation Act amended the first schedule to the Act to confer powers to the Minister to prescribe the procedure for the application, grant, use and withdrawal of compulsory licenses under this paragraph.<sup>71</sup>

**xiv) Trade Mark Act<sup>72</sup>**

The definition section of the Trade Mark Act with regards to wherever the term “goods” are used in the Trade Mark Act, it shall mean both goods and services as the case may be.<sup>73</sup>

<sup>62</sup> *ibid*, Section 46.

<sup>63</sup> No. 8 2015.

<sup>64</sup> BFA 2023, Section 36. A new subsection (8) and (a) were inserted in Section 20 of Immigration Act 2015.

<sup>65</sup> Immigration Act 2015, Section 20.

<sup>66</sup> BFA 2023, Section 37 (a) & (b).

<sup>67</sup> Cap N126 Laws of the Federation of Nigeria 2004.

<sup>68</sup> Business Facilitation Act 2023, Section 59(a).

<sup>69</sup> *ibid*, Section 59 (b). Section 36 of Immigration Act, was amended to add new sub-section 4, 5, 6, and 7 after sub-section 3 of 36.

<sup>70</sup> Cap P2 Laws of the Federation of Nigeria, 2004.

<sup>71</sup> Business Facilitation Act 2023, Section 62.

<sup>72</sup> Cap T13 Laws of the Federation of Nigeria, 2004

<sup>73</sup> Section 69 (a) & (b) Business Facilitation Act 2023, Section 69(a)&(b).

This implies that all registration requirements for trademarks classified as goods under NICE classification as applicable in the Trade Marks Registry will now statutorily apply to services listed within the NICE<sup>74</sup> classification as well and rights accruable to a trade mark proprietor would not be applicable also to proprietors of service mark in Nigeria. It is pertinent to note that trademarks is now defined under the Business Facilitation Act to include service marks, laying to rest the debate as to whether a trademark includes a service mark.<sup>75</sup>

**xv) Pension Reform Act<sup>76</sup>**

The Business Facilitation Act amended the Pensions Reform Act to mandate the Pension Fund Administrator to apply a percentage of the pension assets in the retirement savings account towards payment of equity contribution for payment of residential mortgage by a holder of retirement savings account, with a new *section 89(2)*. This now permits the Pension Fund Administrator to apply a percentage of the pension assets in the retirement savings account towards payment of equity contribution for payment of residential mortgage by a holder of retirement savings account and for the purposes of securities lending, subject however to the guidelines issued by the National Pension Commission.<sup>77</sup>

**xvi) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act<sup>78</sup>**

*Section 6 (a-b)* of the Foreign Exchange (Monitoring and Miscellaneous Provisions Act) provides for revocation of license of an authorized dealer or buyer.<sup>79</sup> The right to revoke license was before now within the prerogative of the Central Bank if it has reason to believe it is in the national interest. Thus, revocation of license was at the discretion of Central Bank having in mind the interest of the nation. However, the Business Facilitation Act has enumerated specific instances in which an authorized buyer or dealer may be stripped of her appointment under the Act.

**xvii) Industrial Training Fund Act.<sup>80</sup>**

Before now, the Industrial Training Fund Act under Section 6 required an employer with five (5) employees or more or having less than 5 employees but with an annual turnover of N50 million and above shall be liable to contribute to the Industrial Training Fund one percentage of her total annual payroll. The employee required above has now been raised to 25 employees. Furthermore, employers with less than 25 employees are no longer liable for the requirement of paying one percent of their annual payroll to Industrial Training Fund.<sup>81</sup>

**xviii) Industrial Inspectorate Act<sup>82</sup>**

The Business Facilitation Act changed the minimum capital expenditure threshold for both new and existing firms from not less than twenty thousand naira to N5 million naira or as the Minister of Industry may specify through regulation<sup>83</sup>. This is required to process and

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<sup>74</sup> NICE is an International classification of goods and services for the purpose of registering trademarks and service marks.

<sup>75</sup> *ibid.*

<sup>76</sup> No. 4 2014.

<sup>77</sup> Business Facilitation Act 2023, Section 64(a) &(b).

<sup>78</sup> Cap F34 Laws of the Federation of Nigeria.

<sup>79</sup> Business Facilitation Act 2023, Section 34.

<sup>80</sup> Cap 19 Laws of the Federation of Nigeria, 2004

<sup>81</sup> Business Facilitation Act 2023, Section 41.

<sup>82</sup> Cap 18 Laws of the Federation of Nigeria, 2004.

<sup>83</sup> Business Facilitation Act 2023, Section 39.

receive a Certificate of Acceptance of Fixed Assets<sup>84</sup>, businesses will now only need to process and acquire CAFA for fixed asset additions valued at 5 million naira or more.

**xix) Standards Organization of Nigeria Act.<sup>85</sup>**

The Business Facilitation Act amended some of the functions of Standard Organization of Nigeria to include; undertaking necessary investigations into the quality of facilities, materials and products imported into Nigeria, establish a quality assurance system and publish an inventory of products requiring standardization to undertake the registration of all specified regulated products.<sup>86</sup> The Director General is empowered to make ex parte application to the court to enforce any of its powers under the Act.<sup>87</sup> This section amended Section 29 of the Standards Organization of Nigeria Act. Examples of such powers include; power to seize and detain, prohibit from selling or offering for sale, forfeiture of products, seal up premises where such products is manufactured or stored, or direct a person to rectify the deficiency in a sub-standard, mis-described or hazardous product, if it is satisfied that the quality, purity or potency of the product is hazardous to life, property and national economy.

**3. Conclusion and Recommendations**

The Business Facilitation (Miscellaneous Provisions) Act is particularly geared towards ease of doing business in Nigeria. It is a major step in the right direction aimed at improving the nation's business environment. The Act seeks to address the bureaucratic bottlenecks, regulatory burdens, and as well promote transparency in government agencies. The resultant impact of this will attract foreign and local investors, create more job opportunities, and boost economic growth in the country.

It is often said that a problem identified is half solved. We have espoused in this paper the very laudable provisions of the Business Facilitation Act and its importance to the ease of doing business in Nigeria. This cannot be achieved without effective and efficient implementation of the provisions of the Act by relevant authorities. The success or failure of the notion of ease of doing business in Nigeria depends largely on the commitment of our country Nigeria to give effect to the letters and intendment of the Act. Enforcement by government agencies is vital to actualization of the successful impact of the Act.

It is no doubt that the Business Facilitation (Miscellaneous Provisions) Act 2023 is a welcome development. It is hoped that businesses will take advantage of these provisions to improve the ease of doing business in Nigeria.

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<sup>84</sup> Hereinafter referred to as CAFA.

<sup>85</sup> No. 14 2015.

<sup>86</sup> Section 66 of Business Facilitation Act 2023.

<sup>87</sup> Section 67 of Business Facilitation Act 2023.