



Regulatory Alert



Highlights of the Business Facilitation (Miscellaneous Provisions) Act 2022

Background

The Business Facilitation (Miscellaneous Provisions) Act 2022 (the "Act") was signed into law on 14 February 2023. The Act is a legislative intervention of the Presidential Enabling Business Environment Council ("PEBEC").

PEBEC is an Intergovernmental Council set up to remove the bureaucratic constraints to doing business in Nigeria. The Act codifies the Executive Order 001 and primarily aims to promote the ease of doing business in Nigeria, eliminate bottlenecks and improve transparency and efficiency in Nigeria.

This publication highlights some of the key changes/amendments introduced by the Act.

1 Publication of list of requirements for processing licences/permits

Ministries, Departments and Agencies ("MDAs") of the Federal Government providing products and services have been directed to publish the requirements for procuring/processing such products/services on their websites/customer help desk. The list of requirements must include processes, documents, fees and timelines required for processing the product/service. All applications not concluded within the stipulated timeline will be deemed granted.

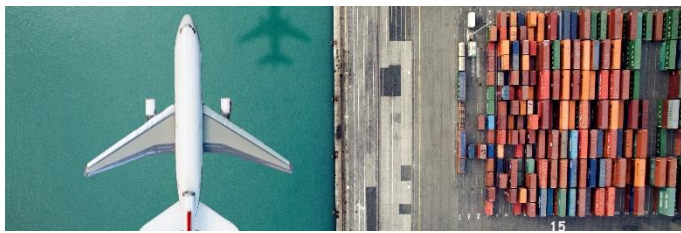
Specifically, the Corporate Affairs Commission ("CAC") has been directed to fully automate its application processes within 14 days of the commencement of the Act.

2 Ports & Aviation Operations

The responsibility of enforcing port and aviation provisions in the Act is vested in the Federal Airports Authority of Nigeria ("FAAN"), Aviation Security ("AVSEC") and Nigeria Ports Authority ("NPA").

All Agencies at Nigerian Ports have been directed to harmonise their operations into one single interface station domiciled in one location at the Port and implemented by a single joint task force at all times. The new single station at the Port will track and record information on all goods arriving and departing from Nigeria. The information is required to be transmitted weekly to the Heads of the relevant offices and National Bureau of Statistics.

The MDAs at the airports are also required to merge the departure, arrival and operation interfaces into a Single Customer Interface.



3 Immigration Act

Non-Nigerian(s) seeking to practise a profession or establish a trade/business must obtain the consent of the Comptroller General of Immigration. Prior to the Act, it was the Minister of Interior that granted such approval.

4 The Companies and Allied Matters Act ("CAMA"), 2020

Some of the key changes/amendments are:

- **Exemption from incorporation in Nigeria**- In addition to the companies qualified to seek exemption under s. 78 CAMA 2020, the National Assembly may legislate on exemptions from incorporation in Nigeria.

- **Increase of share capital and allotment of shares**- The Board of Directors ("BoD") may increase a company's share capital subject to any conditions stipulated by the General Meeting or the Articles of Association ("Articles"). However, the BoD cannot allot shares without express authority or delegation by the General Meeting or Articles. This restriction ensures the shareholders are not diluted without their approval/consent.
- **Registration of allotment**: New allotments by a company must be registered with CAC within 15 days of allotment, no longer one month.
- **Pre-emptive rights**: Pre-emptive rights are applicable in private companies only. The Act has replaced 'reasonable time period' with 21 days for exercising pre-emptive rights. This has brought a uniform interpretation on the timeline for exercising pre-emptive rights.
- **Inclusion/expansion of the definition of cash, financial collateral, financial instruments and security interest for charges**: New definitions or expansions of these terms have been introduced in line with business practices.
- **Electronic/Virtual General Meetings**: Public companies can now hold General Meetings virtually. Electronic voting and share certificates are also permitted/recognised.
- **Independent Directors**: The requirement of a minimum of three independent directors for a public company has been amended to one-third of the total number of directors. This new threshold is more efficient as it will apply regardless of board size. This will enhance Corporate Governance and strengthen the independence of the Board.

5 Financial Reporting Council Act

The Act provides that general purpose financial statements prepared by companies and organisations must be prepared in line with standards, regulations, rules and pronouncements issued and adopted by the Financial Reporting Council of Nigeria ("FRCN").

This amendment does not expand FRCN's regulatory powers to non-public interest entities, therefore it cannot be used as the basis of enforcing FRCN's directives on non-public interest entities i.e. companies that file routine returns at the CAC and Federal Inland Revenue Service.

6 Investment and Securities Act

Public companies can no longer allot their securities unless the minimum amount required to be raised as stated in the Prospectus has been subscribed and paid for.

7 Nigerian Investment Promotion Commission Act

Nigerian companies who subsequently acquire foreign participation (through investments) are required to register with the Nigerian Investment Promotion Commission ("NIPC") within three months of such acquisition. Before this amendment, registrations were being conducted only for foreign participation at incorporation.

8 National Office for Technology Acquisition and Promotion Act

Companies or persons that enter contract with foreigners in their first two years of business operation will not be liable to late registration penalties (NGN 100,000 circa \$215) if the contracts are registered before the end of the second year of their business.

9 National Office for Technology Acquisition and Promotion Act

To qualify to apply for a Certificate of Acceptance on Fixed Assets ("CAFA"), the minimum capital expenditure (for new or existing businesses) has increased from NGN 20,000 to

NGN 5,000,000 or as may be prescribed by the Minister of Ministry of Industry, Trade and Investment.

10 Industrial Training Fund Act

All Employers (except those who operate in the Free Trade Zones) with 25 or more employees in their establishment must contribute one per cent (1%) of their annual payroll cost each calendar year to the Industrial Training Fund. This amendment will affect annual contributions from 2023 due to be paid by 1 April 2024.

11 National Housing Fund Act

Employees earning the national minimum wage and above in the private sector may contribute 2.5% of their monthly income to the National Housing Fund ("NHF"). Employees in the public sector and self-employed persons earning above the minimum wage are mandated to contribute.

The interest rate applicable to NHF contributions have been reduced from 4% to 2% per annum, or as may be determined by the Bank.

Private sector employers will need to proactively engage their employees on the option of contributing from February 2023 onwards. As there are tax benefits with the contribution, the impact should also be assessed properly before exiting.

The reduction in interest rate however, makes the scheme less attractive.

12 Nigerian Oil and Gas Industry Content Development Act 2010

The Act defines "Nigerian Independent Operators" as a Nigerian Company. Based on the principal Act, Nigerian Independent Operators will be given first consideration in the award of contracts in the Nigerian Oil and Gas industry.

Takeaway

Overall, the Act is a step in the right direction towards improving the ease of doing business in Nigeria. It is notable that where MDAs fail to give a decision on applications within stipulated timelines, such application shall be deemed approved and granted. This should promote prompt decision-making and increase the overall efficiency of MDAs. We look forward to seeing this implemented in practice.

It is also important that the respective MDAs invest in technology/structure that would ensure implementation is seamless and achieves the spirit of the law.

PwC's Regulatory Business Solutions team help clients to monitor, assess and comply with regulatory requirements by providing Regulatory Advisory, Compliance services and Company Secretarial Services.

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