

A REVIEW OF THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) ACT (BFA) 2023



Dear Valued Partner,

The Business Facilitation (Miscellaneous Provisions) Act (BFA) was signed into law in February 2023.

The main objects of the Act are to:

1. Institutionalize the reforms on ease of doing business in Nigeria carried out by the Presidential Enabling Business Environment Council (PEBEC) and thereby ease implementation and ensure continuity. These reforms as prescribed in the Act promote efficiency in Federal Ministries, Departments and Agencies (MDAs) of government in their interaction with private enterprises.
2. Provide consequential amendments to certain provisions of some of the business laws (21 laws).

We have in this newsletter highlighted the reforms now codified into law in the Act, which prescribes an efficient and transparent system for applications and other engagements with MDAs. As these processes are implemented with innovations such as the default/deemed approvals and the single user interface, business processes and engagement with government parastatals will become easier and more certain.

The notable obligations, rights and responsibilities created by the Act in dealing with MDAs are:

FEDERAL GOVERNMENT MDA PROCESSES

- **Transparency on Processes ¹**

All Federal MDAs are mandated to publish a complete list of requirements (processes, documents, fees and timelines) to obtain products and services (permits, licenses, waivers, tax related processes, filings, approvals, registration, certification, etc.) from the MDA. The MDAs must, at the minimum, publish this list on their websites and at their customer help desk or other office designated for that purpose. The MDAs are bound by this published list as it prevails over any unpublished list of requirements. Heads of MDAs are responsible for ensuring that the published list is verified and kept up to date at all times.

MDAs are also required to maintain, at least, two modes of communication of their official decisions to applicants; and to publish these two preferred modes of communication on their websites. ² Also in keeping with transparency, MDAs are mandated to maintain a register of applications for their products and services. The Act does not however provide for a minimum number of years for the MDAs to keep this register. Until this is rectified, MDAs must from the effective date of the Act maintain a register of all applications.

- **Default/ Deemed Approvals ³**

MDAs are required to communicate rejection of applications to the applicants within the stipulated timeline published in their list of requirements. They are also required to state the grounds of such rejection. Where the stipulated timeline passes without an MDA communicating either an approval or rejection of an application, the application shall be deemed approved and granted. Such applicant may then notify the MDA, upon the expiration of the stipulated timeline, for the issuance of the certificate or document evincing the grant applied for. The MDA is required to provide it to the applicant within 14 days.

For all purposes, the notification to the MDA to provide the certificate or document evincing the grant applied for shall be construed as the certificate or document.

It is noteworthy that the Act does not prescribe or provide for any exceptional ground(s) upon which an MDA may reject or communicate the rejection of an application after the stipulated timeline.

- **Service Level Agreements (SLAs) 4**

MDAs are required to create and publish their Service Level Agreements (SLAs) on their websites. The SLAs shall bind them in the processing of applications. The SLAs are required to provide for similar items as contained in the list of requirements such as a list of products and services rendered, documentation requirements, timelines for processing applications, applicable fees, summary of procedure of applications, redress mechanisms and other requirements as the MDA considers necessary. Although not specifically provided, the prescription of this extra layer of SLAs connotes an intention for MDAs to be contractually bound to applicants in the processing of applications. It would be interesting to consider a judicial interpretation of this provision of the Act as to whether SLAs created in compliance of this provision grants contractual rights to applicants. The Act, however, provides that the failure of an appropriate officer to act within the stipulated timeline as stated in the SLA, without lawful reason, amounts to misconduct; and exposes such officer to disciplinary proceedings under the applicable civil and or public service rules.

- **Single Application Process 5**

The Act encourages collaboration between MDAs to process and deliver products and services to the public such that one MDA can conduct the necessary verification or certification from relevant MDAs in respect of the applicant, using the set of documents submitted by the applicant.

- **Specific Provisions on activities in Ports in Nigeria.** ⁶

The Act makes specific provisions with respect to all ports in Nigeria with obligations on the Federal Airports Authority of Nigeria (FAAN), Aviation Security (AVSEC) and Nigeria Ports Authority (NPA) security and all other relevant MDAs to ensure compliance.

- **Touting/Bribery**

The Act prohibits⁷ and criminalizes touting in all ports in Nigeria. It is an offence punishable by a fine of not less than N1 million or not less than 6 months imprisonment or both.⁸ Touting is defined as “carrying out unlawful activity for personal gain.”⁹ The Act also prohibits the solicitation and or the receiving of bribes from passengers and other users of the ports. Any officer who contravenes the provisions may be removed from his or her duty post, subject to disciplinary measures and liable to criminal proceedings.¹⁰

- **Single Customer Interface** ¹¹

The Act mandates relevant MDAs to create single customer interface for users, thereby putting an end to engagement with the different MDAs at different portals or intersections at the different ports. For airports, the Act directs all the relevant MDAs to merge their different departure and arrival interfaces into a single customer interface within 30 days of the commencement of the Act.¹² With respect to other ports, all the agencies present at the ports are required to harmonize their operations into one single interface station domiciled in one location in the port and implemented by a single joint task force within 60 days of from the commencement of the Act.¹³ This new single interface station is to capture, track and record information on all goods arriving and departing from Nigeria and transmit this information to the head of the relevant offices as well as to the head of the National Bureau of Statistics (NBS) on a weekly basis. ¹⁴

We will provide a breakdown on the laws amended by the Act in a subsequent newsletter.

¹ Section 3 BFA 2023

² Section 4(2) Ibid

³ Section 4 Ibid

⁴ Section 6 Ibid

⁵ Section 5 Ibid

⁶ Section 7 Ibid

⁷ Subsection (1) Ibid

⁸ Subsection (14) Ibid

⁹ Section 10 BFA 2023

¹⁰ Section 7(8) Ibid

¹¹ Section 7 Ibid

¹² Subsection (9) Ibid

¹³ Subsection (10) Ibid

¹⁴ Subsection (11) Ibid

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