

BUSINESS LAWS AMENDED BY THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) ACT (BFA) 2023.



Dear Valued Partner,

We had in our first newsletter to you on the Business Facilitation (Miscellaneous Provisions) Act (BFA), which was signed into law in February 2023, highlighted the reforms, now codified into law, which the Act stipulates. In this newsletter, we provide a breakdown of the various amendments made to 21 business-related laws.

The BFA amended 21 business related laws. Some of the amendments were to correct inconsistencies, others were to update some of the provisions of the Act to match current realities, and others were to empower the Federal MDAs in their enabling acts to effect the various policies established by the PEBEC.

The amendments to the various Acts are highlighted below:

COMPANIES AND ALLIED MATTERS (CAMA) 2020

SN	AMENDED PROVISIONS	NEW POSITION
1.	<p>Foreign company carrying on business in Nigeria (Section 78)</p> <p>Except for foreign companies exempted pursuant to the Act, all foreign companies intending to do business in Nigeria must incorporate as a separate entity in Nigeria for that purpose.</p> <p>This provision (restriction from carrying on business in Nigeria without local incorporation) does not however apply to companies previously granted exemption prior to the effective date of CAMA 2020 and those exempted under any treaty to which Nigeria is a party.</p>	<p>Apart from the inapplicability of the provision to companies previously granted exemption prior to the effective date of CAMA 2020 and those exempted under any treaty to which Nigeria is a party, the BFA also included any company exempted under any other Act of the National Assembly.</p> <p>This would mean that the National Assembly may pass an Act exempting a class of foreigners from this provision, and thereby allowing them to carry business in Nigeria without local incorporation.</p>
2.	<p>Power to increase share capital of a company (Section 127 (1) and 149)</p> <p>Only a company by its general meeting could increase the share capital of the company with the directors exercising limited rights in this regard.</p>	<p>The board of directors of a company can now increase the share capital of the company.</p> <p>The board may exercise this right where:</p> <ul style="list-style-type: none">• It is empowered by the company in a general meeting; or• It is empowered by the articles of association of the company.

3. Pre-emptive rights to newly issued shares (Section 142)

The shareholders of companies were granted pre-emptive rights over newly issued shares in the same class as the shares they hold.

The pre-emptive rights of shareholders over newly issued shares in their class has been restricted to private companies.

Shareholders in public companies, therefore, do not automatically or by operation of law, enjoy this right.

4. Shares certificates (Section 171)

This section provides for the issuance of share certificates by companies

The BFA included a new subsection that defines "certificate" as either being in physical or electronic form, thereby legally recognizing electronic share certificates.

5. Venue of general meetings (Section 240(2))

CAMA 2022 permits a private company to hold its general meetings electronically.

The restriction of this provision to private companies has been revised. All companies may hold their general meetings electronically.

6. Notice of meetings (Section 244)

Under CAMA 2020, companies may give notice of meetings by electronic mail *"in addition to the notice given personally or by post."*

Sending notices of meetings electronically is now one of the recognized means of sending notices.

<p>7. Voting at general meetings (Section 248)</p> <p>CAMA 2020 recognizes voting in general meetings by either a show of hands or by a poll.</p>	<p>The BFA included electronic voting. This brings further consistency to the provisions permitting companies to hold their general meetings electronically.</p>
<p>8. Number of independent directors for public companies (Section 275)</p> <p>A public company was mandated to have at least three independent directors under CAMA 2020.</p>	<p>The number of independent directors for public companies has been revised to one-third of the total number of its directors.</p>
<p>9. Disqualification for directorship (Section 283)</p> <p>One of the classes of persons disqualified from being a director is a person who has been removed or suspended from his position as a director.</p>	<p>The BFA further qualifies this to a person who has been removed or suspended from his position as a director <i>"on grounds of fraud, dishonesty or unethical conduct."</i></p>
<p>10. Standards of financial statements (Section 378(1))</p> <p>Under CAMA 2020, financial statements must, in their form and content, comply with both the requirements of the Act (CAMA) and the accounting standards issued by the Financial Reporting Council of Nigeria (FRCN). The requirements of</p>	<p>The standard of financial statements by companies has been restricted to compliance with the accounting standards issued by the FRCN.</p>

the Act however superseded the standards as issued by FRCN when there is a conflict.

11. **Insolvency Threshold (Section 572)**

A company was said to be unable to pay its debt as a ground upon which a creditor can ask for it to be wound up if the company is indebted in a sum exceeding N200, 000.00 (Two hundred thousand Naira).

The sum of the debt, which qualifies a company to be regarded as unable to pay its debt, is now to be determined by regulations issued by the CAC.

NIGERIAN EXPORT PROMOTION COUNCIL ACT

Composition of the governing board of the Council (Section 2)

The composition of the Board has representatives from:

- Ministry of Foreign Affairs
- Ministry of Commerce;
- Ministry of Culture and Tourism
- Nigerian Customs Services
- Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture

The composition of the Board has been amended and the new composition has representatives from:

- Federal Ministry of Foreign Affairs
- Federal Ministry of Industry, Trade and Investment
- Federal Ministry of Mines and Steel
- Federal Ministry of Agriculture
- Federal Ministry of Culture and Tourism
- Federal Ministry of Finance

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| <ul style="list-style-type: none">• Manufacturers; Association of Nigeria• Association of Nigerian Exporters• Farmers; Association• Private sector with practical experience in industry, commerce, finance and export promotion to be appointed by the Minister of Commerce.• The executive director of the council. | <ul style="list-style-type: none">• Nigerian Customs Service• Bank of Industry• Central Bank of Nigeria• Manufacturers Association of Nigeria (Export Group)• Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture (NACCIMA)• Private sector with practical experience in industry, commerce, finance and export promotion to be appointed by the Minister of Commerce• The executive director of the Council. |
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CUSTOMS AND EXCISE MANAGEMENT ACT (CEMA)

Single window and one process (Sections 2, 18A and 18B)

The BFA inserts additional provisions into the CEMA mandating the Board of Customs and Excise to establish and maintain a single window to enable traders submit documentation or data requirements for importation, exportation or transit to a single-entry point.

The single window is defined as "a platform or facility that allows parties involved in trade and transport to lodge trade-import, export or transit-data required by government departments, authorities or agencies through a single-entry point interface to fulfil all import, export, transit related and other regulatory requirements."

Upon the submission of the documentation or data requirements, on or through the single window, no authority or agency can request for them except in urgent circumstances and other limited exceptions.

The Act also provides² that inspection or examination of goods are to be scheduled to ensure that such inspection or examination is carried out by all relevant authorities in a coordinated manner, and if possible at the same time.

EXPORT PROHIBITION ACT (EPA)

Power to vary list of goods prohibited from export (Section 1)

The EPA absolutely prohibited the export of the goods listed in the schedule.

The BFA amended Section 1 by including provisions³ that empower the Minister of Finance to vary the goods set out in the schedule, i.e., the goods banned from export.

FINANCIAL REPORTING COUNCIL OF NIGERIA ACT

Standards for the Preparation of Financial Reports (Section 59)

The BFA provides for the supremacy of the standard of financial reporting as prescribed by the FRCN by amending the Act to include a subsection 3 which states:

"Notwithstanding the provisions of any laws relating to form and content of financial statements in Nigeria, general purpose financial statements prepared by companies, government organizations and corporations shall be prepared in accordance with standards, regulations, rules and pronouncements issued and adopted by the Financial Reporting Council of Nigeria."

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT

Revocation of appointment of authorized dealer (Section 6(1))

The Central Bank of Nigeria (CBN) could revoke the appointment of authorized dealers on grounds that it was not in the national interest for such authorized dealer to be appointed.

The BFA amended the wide grounds upon which the CBN could revoke the appointment of an authorized dealer or buyer to certain grounds such as where the authorized dealer:

- Fails to utilize the license for 30 days
- Fails to commence its exchange business within six months from the date of the license
- Fails to disclose in his application any material information known to the licensee or reasonably expected to have been known to the licensee
- Provides false material information
- Does not comply with the directives of the Act
- Ceases to qualify for the license
- Found to be in malpractice or irregularity in the management of the business of dealing in foreign exchange
- Enters into bankruptcy, receivership or liquidation
- Conducts business in a manner that threatens the interest of customers or potential customers.
- Any of its shareholders apply for the liquidation of the Company.
- Has a judicial receiver or manager appointed to manage or take over the undertaking
- Has a bankruptcy order or judgment against him.

IMMIGRATION ACT

1 Visa applications timeline and publication of requirements (Section 20)

In line with the overriding objectives of the BFA with respect to transparency and efficiency of operations in Federal Government MDAs, additional provisions 4 are added to mandate that entry visas into Nigeria be issued or rejected with reason within 48 hours of receipt of valid applications.

Furthermore, it provides that a comprehensive and up to date list of requirements, conditions, timeframe and procedure for obtaining visa on arrival and other entry visas are to be published on all immigration-related websites, embassies, high commissions and all Nigerian ports.

2 Powers of the Comptroller General of Immigration (Section 36)

The BFA increased the purview of the powers to be exercised by the Comptroller General of Immigration.

The power to issue business permits, which was vested in the Minister, has been amended in the BFA and is now vested in the Comptroller General of Immigration.

Notification of any change relating to the particulars of the Business Permit is to be submitted to the Comptroller General.

The BFA further empowered the Immigration Service to automate their systems and processes, either by establishing a system or accrediting an established system.

INDUSTRIAL INSPECTORATE ACT

Notice of intention to incur capital expenditure (Section 3)

Subsection 1(a) and (b) were amended

The duty to notify the inspectorate of any new undertaking that would incur capital expenditure or incur additional capital expenditure of not less than twenty Naira has been amended to capital expenditure of five million or as the minister may prescribe by regulation.

INDUSTRIAL TRAINING FUND ACT

Exemption from contribution to the Industrial Training Fund (ITF) (Section 6)

The BFA exempts businesses and establishments operating within a free trade zone from the liability of businesses and establishments with more than 25 employees to contribute 1% of their annual payroll.

INVESTMENT AND SECURITIES ACT

Public Offer or Sale of Securities (Section 67)

The power to invite the public to subscribe for securities of a company was restricted to public companies and statutory bodies or banks established by an act of the National Assembly.

The BFA has amended the Act to enable

“private company, through any lawful means, as the Commission may by regulation prescribe” to invite the public to subscribe for securities.

NATIONAL HOUSING FUND ACT

Contribution to the Fund (Section 4)

Under the National Housing Fund Act, Nigerian workers earning an annual income of Three Thousand Naira, in both the public and private sectors are liable to contribute 2.5% of his basic monthly salary to the Fund. An interest rate of 4% is payable on the contributions.

The BFA amended the provisions by increasing the band of persons liable to make the contribution to any employee in either the public or private sector or any self-employed person earning the national minimum wage and above. The rate of contribution is still 2.5% but of monthly salary as opposed to basic monthly salary. The interest rate on the contributions has been reduced to 2%.

NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION (NOTAP) ACT

Registration of Transfer of Technology Agreements or Contracts (Section 5)

The NOTAP Act mandates the registration of any contract or agreement for the transfer of foreign technology to Nigerian parties with NOTAP, within sixty (60) days of the execution of such agreement or contract.

The BFA amends the Act to exempt companies who are within two years of business operations from penalties for failing to register such contract or agreement if the contract or agreement is registered before the end of the second year of their business operations.

NATIONAL PLANNING COMMISSION ACT

Membership of the National Planning Commission (Section 3)

The BFA amended the membership of the National Planning Commission by including the Director-General of the Infrastructure Concession Regulatory Commission as one of the part-time commissioners. Other part-time commissioners under the National Planning Commission Act include: the Minister of Finance, the Minister of Petroleum Resources, the Minister of Agriculture and Rural Development, the Minister of Industry, the Permanent Secretary, State and Local Government Affairs Office; and the Governor of the Central Bank of Nigeria.

NIGERIAN CUSTOMS SERVICE BOARD ACT

Duty to modernize operations (Section 3)

The BFA amends the Act by including a provision mandating the Board to "adopt modern means of operationalization and develop regulations for the carrying out of the activities of the Service."

NIGERIAN INVESTMENT PROMOTION COMMISSION (NIPC) ACT

1. Registration of enterprise with foreign participation (Section 20)

The Act mandates any enterprise with foreign participation to register with the NIPC before commencing business.

The BFA amends this provision by including any enterprise that subsequently acquires foreign participation in the mandatory requirement. Thus, any enterprise, which acquires any form of foreign participation in its business, must register with the NIPC within three months of such acquisition.

2. Priority areas of investment (Section 22)

The Act mandates any enterprise with foreign participation to register with the NIPC before commencing business.

The BFA places an obligation on the NIPC to specify priority areas of investment and their applicable benefits and incentives, as well as negotiate specific incentive packages for strategic investments in addition to the incentives available to any enterprise under other laws. This is for the purpose of promoting identified strategic or major investments.

The NIPC is further obligated to publish the criteria for determining and designating strategic investment that satisfies the criteria, and details of special incentives awarded through negotiations in the federal government gazette and its website.

NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT ACT

Definition of Nigerian Independent Operators (Section 106)

The Act provides that Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects for which contract is to be awarded in the Nigerian oil and gas industry subject to

The BFA corrects this omission by adding the definition of 'Nigerian Independent operators' as a 'Nigerian Company'.

The NOGCDA defines a Nigerian company as a company formed and registered in Nigeria in accordance with the provision of Companies an Allied Matters Act with not less than 51 % equity shares by Nigerians.

the fulfilment of such conditions as may be specified by the Minister. (Section 3(1))
The Act, however, does not define 'Nigerian independent operators'.

NIGERIAN PORTS AUTHORITY ACT

Functions of the Authority (Section 7 and 40)

The BFA added to the functions of the Authority in order to empower it to act in compliance with the overriding objective of the BFA including the single application process and single customer interface.

Thus, the BFA added the following functions to the functions of the Authority:

- Provide facilities for the use of information and communications technology for operations within the ports.
- Remove all unauthorized personnel from the ports.
- Provide facilities for the establishment and maintenance of a single window through, which all the operations required by law of all government authorities and agencies in any part of Nigeria can be undertaken.
- Ensure that the operations required by law of all government agencies in any port in Nigeria are harmonized through the single window domiciled within the ports.

The BFA also empowers the Authority to make regulations for the purpose of excluding and removing unauthorized personnel from its premises.

PATENT AND DESIGNS ACT

Compulsory Licences for Patents of Vital Importance (Paragraph 13 of First schedule)

Under Paragraph 13 of the First Schedule of the Act, a Minister of the Federation by order in the Federal Gazette may provide that, for certain patented products and processes (or for certain categories thereof) declared by the order to be of vital importance for the defence or the economy of Nigeria or for public health, compulsory licences may be granted before the period permitted for such grants under the Act and may permit importation.

The BFA further added that the minister of commerce shall prescribe the procedure for applying, granting, using, and withdrawing compulsory licenses under the Paragraph 13.

PENSION REFORM ACT

Restriction on application of pension fund assets (Section 89)

Generally, pension fund administrators (PFAs) are prohibited from applying pension fund assets under their management by way of loans and credits or as collateral for any loan taken by the holder of a retirement savings account (RSA) or by any person at all. A PFA may however, subject to regulations issued by the National Pension Commission (PENCOM) 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 a RSA.

The BFA has expanded the application of pension assets to include securities lending subject to PENCOM's approval and guidelines issued in that regard.

STANDARD ORGANIZATION OF NIGERIA (SON) ACT

1 Functions of the Organization (Section 5)

The BFA included the following functions of the SON:

- Conducting necessary investigations into the quality of facilities, materials and products imported into Nigeria.
- Establishing a quality assurance system.
- Certifying factories, products and laboratories.
- Compiling and Publishing an inventory of products requiring standardization and registering all such regulated products so published.

2 Powers with respect to hazardous products

The powers of the Director-General of the Organization with respect to hazardous products were further qualified by the BFA. The BFA amended the erstwhile provisions of the Act to the effect that the Director-General, may, upon being satisfied that the quality, purity or potency of any product is detrimental or hazardous to life, property and the national economy, make an ex parte application to the court for an order to —

(a) seize and detain such products for such a time as may be reasonable, but not exceeding 30 days, for the satisfaction of, and compliance with this Act, provided that before the expiration of the initial 30 days, the Organization may make further ex parte application to the court for an order to detain such products for a further period not exceeding 30 days ;

- (b) prohibit any person from selling or offering for sale the suspicious product ;
- (c) forfeit such product ;
- (d) seal up the premises where such product is manufactured or stored ; or
- (e) direct the person to rectify the deficiency in the case of a sub- standard, mis-described or hazardous product, subject to such prohibitions as may be imposed.

TRADE MARKS ACT

Definition of Goods and Trademark (Section 67)

The BFA included the definition of 'goods' under the Trade Marks Act to include services.

It further amended the definition of 'trademark' to include shape of goods, their packaging and combination of colours.

¹ Section 2 CEMA

² Section 18B Ibid

³ Creation of new subsections 2 and 3

⁴ As subsections (8) and (9)

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