Highlights of the Changes to the Ease of Doing Business introduced by the Business Facilitation Act, 2023

G. ELIAS

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1. Introduction

1.1 On February 14, 2023, President Muhammadu Buhari gave his executive assent to the Business Facilitation Act (Miscellaneous Provisions) Act, 2022 (the "**BFA**"). The purpose of the BFA is to promote the ease of doing business in Nigeria by eliminating bottlenecks, amending relevant legislation, and institutionalizing all the reforms to ease implementation.

1.2 The BFA makes amendments to twenty-one (21) business-related laws. Notable amendments are set out below.

2. Companies and Allied Matters Act, 2020 ("CAMA")

2.1 **Recognition of exempted Foreign Companies:** The BFA exempts from incorporation foreign companies that have already been exempted under an existing legislation that is in force in Nigeria.

2.2 **Increase of share capital by the Board:** The Board of Directors of a company are now permitted to increase a company's issued share capital, subject to prior authorization of the company's articles of association ("**Articles**") or if authorized by the company in a general meeting.

2.3 **Pre-emptive rights:** Pre-emptive rights are now limited to existing shareholders of private companies. Furthermore, where an offer relating to pre-emptive rights is made to existing shareholders in private companies, the shareholders now have a period of twenty-one (21) days to accept such offer after which the offer will be deemed declined.

2.4 **Power to allot shares:** Directors now have power to allot the shares of a company if so authorized either by a general meeting or in the company's articles. Companies are also required to file returns on allotment of shares at the CAC within fifteen (15) days of allotment.

2.5 **Priority of Fixed Charges**: Fixed charges have priority over all other debts of the company (including preferential debts). This, however, does not affect floating charges with terms prohibiting a company from entering a later charge giving such later charge priority over the floating charge.

2.6 **Directors of public companies:** A person cannot be a director in more than five (5) public companies. If this is the case, he must resign as a director at the next annual general meeting of the companies to limit his/her directorship to five (5) companies or less. Furthermore, public companies are required to have a third of their directors as independent directors and enables a person entitled to nominate the majority of the company's directors to nominate such independent directors for appointment.

2.7 **Definition of inability of a company to pay its debts**: The BFA has deleted the ₦200,000 monetary threshold for an insolvent company and has saddled the Corporate Affairs Commission with the responsibility of determining, by a regulation, the sum that will classify a company to be unable to pay its debts.

2.8 **Fraudulent preference**: The period for determining whether a contract entered into by a company can be invalidated for being a fraudulent preference has now been specified to be two (2) years. The exact period was previously omitted in CAMA.

3. Investment and Securities Act, 2007

3.1 **Public Offer:** A private company may make a public offer of its securities through any lawful means approved by the Securities and Exchange Commission.

4. Industrial Training Fund Act, 2004 (the "ITFA")

4.1 **Employee Contribution:** The BFA amended the ITFA by exempting Free Trade Entities from Industrial training fund ("**ITF**") contributions. The BFA also provides that ITF payment are now applicable to suppliers, contractors, or consultants having more than twenty-five employees in their establishment bidding or soliciting contracts, business, goods and services from any federal government ministry, department, agency, commercial industrial and private entity.

5. National Housing Fund Act, 2004 ("NHF Act")

5.1 **NHF Contribution:** The amendment provides that employees earning the national minimum wage and above in the public sector or that are self-employed shall contribute 2.5% of their monthly income to the national housing fund ("**NHF**"). However, employees in the private sector may choose to contribute 2.5% to the NHF.

6. Nigerian Investment Promotion Commission Act, 2004

6.1 **Foreign Participation Acquisition:** Nigerian companies, which subsequently acquire foreign participation after the commencement of their business are mandated to register with the Nigerian Investment and Promotion Commission within three (3) months of such acquisition.

7. National Office for Technology Acquisition and Promotion Act, 2004

7.1 **Registration of Agreements:** Companies, in their first two (2) years of operation, are exempt from paying late registration fees if the contract was entered into before the second year of their business operation.

8. Pension Reform Act No. 4, 2014

8.1 **Pension assets:** Subject to the approval of the National Pension Commission ("**NPC**"), pension assets are now eligible for securities lending and the Pension Fund Administrator may, subject to guidelines issued by the NPC, apply a percentage of pension assets in the retirement savings account for the purpose of securities lending.

G. Elias has been advising leading global and national clients on the ease of doing business in Nigeria and ancillary regulations for more than 20 years. If you have any questions about business structure and ancillary regulations, please contact Segun Omoregie (segun.omoregie@gelias.com) or corporate@gelias.com.

LOCATIONS

LAGOS OFFICE
6 Broad Street
Lagos, Nigeria

T: +234 (1) 460 7890
E: gelias@gelias.com

ABUJA OFFICE
2nd Floor, Abia
House,
Plot 979, First
Avenue,
Central Business
District
F.C.T, Abuja.

T: +234 (1) 888 8881

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