

G. ELIAS

**Highlights of the Key Changes
Introduced by the Business
Facilitation Act, 2022**



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 legislations, 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.¹

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, if so authorized either by a general meeting or in the company’s articles.²

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.³

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.⁴

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.⁵

2.6 **Electronic Meeting:** Both public and private companies can now hold their general meetings electronically. Also voting at general meetings can either be done by show of hands or electronic voting.⁶

2.7 **E-Certificates:** The electronic version of company’s share certificates are now recognizable as valid share certificates.⁷

2.8 **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 the BFA enables a person entitled to nominate the majority of the company’s directors to nominate such independent directors for appointment.⁸

2.9 **Financial Statements:** Companies are no longer required to prepare their financial statements in compliance with the First Schedule of the Act. Financial statements should only be made compliant to the requirements of the accounting standards prescribed in the statements of accounting standards issued by the Financial Reporting Council of Nigeria.⁹

2.10 **Definition of inability of a company to pay its debts:** The BFA has deleted the ₦200,000 (Two Hundred Thousand Naira) 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.

2.11 **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.¹⁰

¹ S. 2, BFA.

² S. 3, BFA.

³ S. 4, BFA.

⁴ S. 5, BFA.

⁵ S. 9, BFA.

⁶ S. 11, BFA; S. 13, BFA.

⁷ S. 7, BFA.

⁸ S. 14 & 16, BFA.

⁹ S. 17, BFA.

¹⁰ S. 20, BFA.

3. Customs and Excise Management Act, 2004 (“CEMA”)

Single window: The BFA amends s.2 and 18 of CEMA to introduce the single window tool, which is a one-stop portal for parties involved in trade and transport to lodge import or export data required by government departments or agencies through a single-entry point interface.¹¹ This amendment promotes trade facilitation and is also in line with the World Trade Organisation Trade Facilitation Agreement which Nigeria is a party to.

4. Export (Prohibition) Act, 2004 (“EPA”)

Prohibited goods: The BFA amends the EPA by empowering the Minister of Finance to vary by order the items on the export prohibition list, which includes beans, cassava tuber, maize, rice, yam tuber, products or derivatives of the above, and all imported food items.¹²

5. Foreign Exchange (Monitoring and Miscellaneous Provision) Act 2004

Revocation of appointment: The BFA expanded the ground under which the Central Bank may revoke the appointment of an Authorized Dealer or Authorized Buyer to include non-disclosure/falsification of material information during application; non-compliance with a directive, liquidation/bankruptcy/receivership; failure to utilize the licence within 30 days or to commence exchange business within 6 months; committing malpractice or irregularity in the management of the business of dealing in foreign exchange amongst others.¹³

6. Immigration Act, 2015

6.1 **Deadline for Entry Visas and publication of Entry Visa related information:** Entry visas to Nigeria shall now be issued or rejected within 48 hours of receipt of valid applications.¹⁴ Also, recent and comprehensive information about entry visas shall be published on all immigration related websites, embassies & high commissions, and all Nigerian ports of entry.¹⁵

6.2 **Comptroller-General of Immigration:** The word “Minister” has now been substituted with “Comptroller-General of Immigration.” The BFA further provides that the Comptroller-General of Immigration should be notified of any change to the particulars relating to the business permit. Finally, the Immigration Service is mandated to establish an electronic system to facilitate automated filing of documents.¹⁶

7. Investment and Securities Act, 2007

Public Offer: A private company may make a public offer of its securities through any lawful means approved by the Securities and Exchange Commission.¹⁷

8. Industrial Inspectorate Act, 2004 (“IIA”)

Increase in the capital expenditure threshold required for notification: By the IIA, any person proposing to start a new undertaking or to incur additional capital expenditure of not less than ₦20,000 (Twenty thousand naira) is required to notify the Director of the Industrial Inspectorate Division of his intention. The BFA amended this threshold by increasing the amount from ₦20,000 (Twenty Thousand Naira) to ₦5,000,000 (Five Million Naira).¹⁸ The BFA also empowered the Minister of Industry, Trade and Investment to review this threshold by regulation.¹⁹

9. Industrial Training Fund Act, 2004 (the “ITFA”)

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.²⁰

¹¹ S.25, BFA.

¹² S. 30, BFA.

¹³ S. 34, BFA.

¹⁴ S. 36, BFA.

¹⁵ Ibid.

¹⁶ S. 37, BFA.

¹⁷ S. 43, BFA.

¹⁸ S. 10, IIA defines undertaking to mean any undertaking carried on by way of trade or business for the production of goods or services for sale and requiring the use of industrial machinery and other equipment, plants, buildings and other permanent or temporary fixtures on land.

¹⁹ S. 39, BFA.

²⁰ S. 40, BFA.

10. **National Housing Fund Act, 2004 (“NHF Act”)**

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.²¹

11. **Nigerian Investment Promotion Commission Act, 2004**

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.²²

12. **National Office for Technology Acquisition and Promotion Act, 2004**

Registration of Agreements: Companies, in their first two (2) years of operation, are exempted from paying late registration fees if the contract was entered into before the second year of their business operation.²³

13. **National Oil and Gas Industry Content Development Act (“NOGIC Act”)**

Definition of Nigerian Independent Operators: The BFA inserted a definition of Nigerian Independent Operators. Under amended NOGIC Act, Nigerian Independent Operators is defined as a Nigerian Company.²⁴

14. **Patents and Designs Act, 2004 (“PDA”)**

Procedure for Compulsory License: The BFA amends Paragraph 13 of the PDA which allows the Minister to grant compulsory licenses to certain patented products and processes. It introduced a new Paragraph 13A that empowers the Minister to prescribe by regulation the procedure for the application, grant, use and withdrawal of compulsory licenses under the paragraph.²⁵

15. **Pension Reform Act No. 4, 2014**

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.²⁶

16. **Standards Organisation of Nigeria (“SON”) Act, 2015**

Additional Functions: The BFA increased the functions of SON by adding “investigation of the quality of imported materials and publication and registration of products that need standardization”.²⁷ The BFA also reduced the timeline within which hazardous products can be detained by the court upon *ex parte* application by the Director-General from 60 days to 30 days.²⁸

17. **Trade Marks Act, 2004 (“TMA”)**

Trademark definition: The BFA amends S.67 of the TMA by expanding the definition of goods to include services. The old definition of Trade Mark has also been substituted with a new one which includes goods and services, shape of goods, packaging and combination of colours.²⁹

18. **Conclusion**

Overall, the BFA is a welcome development in the Nigerian business landscape. It could potentially eliminate bureaucratic constraints that has in many ways limited the productivity of Nigerian enterprises. It is hoped that the Act will bring relief to business owners and investors in Nigeria.

²¹ S. 45, BFA.

²² S. 54, BFA.

²³ S. 48, BFA.

²⁴ S. 57, BFA.

²⁵ S. 62, BFA.

²⁶ S. 64, BFA.

²⁷ S. 66, BFA.

²⁸ S. 67, BFA.

²⁹ S. 69, BFA.

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