

# Revolutionizing business in Nigeria:

## A detailed examination of the Business Facilitation Act 2/2

Grow | Protect | Operate | Finance

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The Business Facilitation (Miscellaneous Provisions) Act was signed and enacted into law by President Muhammadu Buhari in February 2023. The Act aims to (i) promote the ease of doing business in Nigeria by ensuring transparency and regulatory efficiency; and (ii) facilitate the growth of businesses in Nigeria by reducing the time of applications Ministries, Departments and Agencies (MDAs) of the Federal Government. The Act also amends outdated provisions of relevant legislations in various industries. This article highlights some of the key provisions of the Act that will impact how business is being carried out in Nigeria.

This is the second part of our two-part series on the Business Facilitation Act 2023 where we analyse notable changes made to the following laws:

- the Investment and Securities Act;
- Nigerian Export Promotion Council Act;
- Custom and Excise Management Act;
- National Office for Technology Acquisition and Promotion Act;
- Nigerian Custom Service Board Act; Nigerian Investment Promotion Commission Act;
- Nigerian Ports Authority Act;
- Patent and Design Act;
- Trademarks Act;
- Pension Reform Act; Standard Organisation of Nigeria Act;
- Foreign Exchange (Monitoring and Miscellaneous Provisions) Act;
- Industrial Inspectorate Act;
- Industrial Training Fund Act;
- Export (Prohibition) Act;
- Financial Reporting Council Act;
- National Housing Fund Act;
- National Planning Commission Act; and
- Nigerian Oil and Gas Industry Content Development Act.

## Pre-BFA

**Section 67 of the Investment and Securities Act** permits only authorised public companies, statutory bodies, or banks (in Nigeria), to offer corporate securities to the public, or deposit money with any Nigerian company for such purposes.

## Now – BFA (2023)

The new subsection now allows a private company through any lawful means, as the Commission may by regulation prescribe, to allot any securities to the public for subscription.

## Implications

Section 67 of ISA has been amended. The new subsection seeks to ensure that private companies, through lawful means prescribed by the Securities Exchange Commission, are also able to offer and allot their company securities to the public for subscription. The former provision of the law allowed this for only public companies and statutory organizations.

One of the main functions of the Securities Exchange Commission is to protect the public from being defrauded or from investing in companies that are not registered with the commission. Given that the Commission does not regulate the private entities, a concern that could arise, would be whether the members of the public would have access to information regarding the financial statements, managerial competence, and corporate information/ operations of the private entities for instance.

| Pre-BFA   | Now – BFA (2023)   | Implications  |
|---|--|---|
| <p><b>Section 2 of the Nigerian Export Promotion Council Act</b> states that there shall be a governing board of the Council and it shall consist of a Chairman to be appointed by the President on the recommendation of the Minister and the following members:</p> <p>(a) a representative each of the following Federal Ministries, that is to say:</p> <ul style="list-style-type: none"> <li>(i) Foreign Affairs;</li> <li>(ii) Commerce;</li> <li>(iii) Culture and Tourism;</li> </ul> <p>(b) a representative of the Nigerian Customs Services;</p> <p>(c) a representative each of the following associations, that is:</p> <ul style="list-style-type: none"> <li>(i) the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;</li> <li>(ii) the Manufacturers’ Association of Nigeria;</li> <li>(iii) the Association of Nigerian Exporters;</li> <li>(iv) the Farmers’ Association; and</li> </ul> <p>(d) one person to be appointed by the Minister from the private sector who shall be a person possessing practical experience in industry, commerce, finance, and export promotion; and</p> <p>(e) the executive director of the Council.</p> | <p>A representative of each Federal Ministry under section 2(a) has been amended to include (i) Industry, Trade and Investment, (ii) Mines and Steel, (iii) Agriculture, and (iv) Finance.</p> <p>Section 2(b) has been amended to include a representative of the Bank of Industry (“BoI”) and the Central Bank of Nigeria (“CBN”).</p> <p>Section 2(c) has been amended to include an executive director of the Council as well as one person appointed by the Minister from the private sector with experience in industry, commerce, finance, international trade or export promotion.</p> | <p>The new sections ensure adequate representation of more sectors that are paramount in the administration of businesses on the Nigerian Export Promotion Council’s board.</p> |

| Pre-BFA  | Now – BFA (2023)   | Implications   |
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| <ul style="list-style-type: none"> <li>In the Customs and Excise Management Act, the ‘single window’ was not a concept under this Act.</li> </ul>                | <p>The Act introduces the term ‘single window’ in sections 2, and 18.</p>  | <p>A Single Window Platform was introduced for the facilitation of Nigerian trade. This single window allows traders to submit documentation and data requirements for importation, exportation, or transit to a single-entry point. There is a reduction in the time needed for dispute resolution when buyers appeal to the Nigeria Customs Service because they are not satisfied with the valuation of imported goods<sup>1</sup>.</p> |
| <p><b>Section 1 of Export (Prohibition) Act</b> states the goods specified under this Act shall be absolutely prohibited from being exported out of Nigeria.</p> | <p>The new subsection now allows the Minister for Finance to vary the list of goods prohibited from being exported out of Nigeria.</p>   | <p>This power given to the Minister of Finance will allow for the frequent review and update of the list of prohibited food in line with the current state of the economy as well as the protection of the interest of the local manufacturers.</p>  |
| <p>Section 59 of the Financial Reporting Council of Nigeria Act states that the preparation of Financial Reports must be in accordance with standards.</p>       | <p>A new subsection has been introduced and states as follows:</p> <p>“Notwithstanding the provisions of any laws relating to form and content of financial statements in Nigeria, general purpose financial statements prepared by companies, government organisations and corporations shall be prepared in line with standards, regulations, rules and pronouncements issued and adopted by the Financial Reporting Council of Nigeria.</p> | <p>This amendment reemphasizes the standard to be adopted when preparing general purpose financial statements, regardless of any laws pertaining to the form and content of financial statements in Nigeria.</p> <p>This is also in line with the objects of the Financial Report Council of Nigeria as set out in the Act.</p>  |

<sup>1</sup> Section 25 – 28 of the Act.

| Pre-BFA   | Now – BFA (2023)   | Implications   |
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| <p><b>Section 6(1) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act</b> states that the revocation of appointment of an authorised dealer or buyer may be done where there is reason to believe it is in the national interest to do so.</p>   | <p>A new subsection replaced the previous one. This new subsection sets out the grounds upon which the Central Bank may now revoke the appointment of an Authorised dealer or buyer.</p>   | <p>Prior to this amendment, the subsection was broad and subject to the discretion of the CBN. Whereas this amendment promotes transparency and procedural fairness. For instance, where the aggrieved seeks to challenge the revocation the grounds of appeal can be fully fleshed out.</p> <p>We recommend that Authorised Dealer and Buyers should familiarise themselves with this provision so as to avoid their license being revoked.</p> |
| <p><b>Section 3 of the Industrial Inspectorate Act</b> states that any person proposing:</p> <p>(a) to start a new undertaking involving the expenditure of not less than twenty thousand Naira; or</p> <p>(b) to incur additional capital expenditure of not less than twenty thousand Naira in respect of an existing undertaking, shall give to the Director notice of his intention in the form specified in the First Schedule to the Act.</p> | <p>Section 3 has now replaced the expenditure of not less than twenty thousand naira with “expenditure of Five Million Naira or as the Minister may by regulation prescribe”. And capital expenditure of not less than twenty thousand Naira with “expenditure of Five Million Naira”.</p>   | <p>The implication is that the Industrial Inspection Division no longer need to investigate capital investments that are less than Five Million Naira.</p>   |
| <p>Under <b>section 6 of Industrial Training Fund Act</b>, an employer has a duty to contribute 1% of the employees’ annual pay to the Industrial Training Fund where the employer has either five or more employees or less than five employees but with a turnover of N50 million and above.</p>  | <p>The new section provides that any employer with 25 or more employees and not operating within a free trade zone, is required to contribute to industrial fund. Any supplier, contractor, or consultant with 25 or more employees are required to fulfil statutory obligations with respect to payment of training contribution to the Fund.</p> | <p>Every employer will do well to put the various obligations that concern his or her field into consideration when entering employment relationships.</p>   |

| Pre-BFA   | Now – BFA (2023)   | Implications   |
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| <p>Under the <b>National Housing Fund Act</b>, section 4 provides that a Nigerian worker earning an income of N3,000 and above per annum in both the public and the private sectors of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund. b) An interest rate of 4 per cent shall be payable on contributions made under subsection (1) of this section.</p> <p>Section 9(1) An employer who has in its employment an employee earning a basic salary of N3,000 and above per annum shall deduct 2.5 per cent of the monthly salary of that employee as the employees contribution to the Fund.</p> | <p>Section 4 now states that any employee or self-employed person earning the national minimum wage and above in the public or private sector shall contribute 2.5% of his monthly Income to the Fund.</p> <p>An interest rate of 2% per annum or as determined by the Bank shall be payable on contributions made.</p> <p>The Federal Government may also make any grant to the Fund.</p> <p>Section 9(1) now states as follows: “an employer who has in its employment an employee earning the minimum wage and above per annum shall deduct 2.5 per cent of the monthly salary of that employee as the employee’s contribution to the Fund.</p> | <p>The amendment addresses the effect of inflation on the Naira over the years and expands the scope of the Act to enable MSMEs owner gain access to national housing funds.</p>   |
| <p><b>Section 5 of the NOTAP</b> provides that “every contract or agreement entered into by any person in Nigeria and in relation to any matter shall be registered with the National Office in the prescribed manner not later than six months after the commencement of this Act”.</p>  | <p>Foreign transactions entered into by Nigerian companies in their first two years of operation will not be subject to mandatory late registration penalties, as long as the contracts are registered before the end of the second year of company operation.</p>   | <p>In a bid to promote ease of doing business, this change helps to remedy the unnecessary bureaucracy posed by the NOTAP Act that requires registration of contracts or agreements involving the transfer of technology that an individual in Nigeria enters into with an individual outside of Nigeria not later than sixty months after it is executed in relation to transfer of foreign technology.</p> |

| Pre-BFA  | Now – BFA (2023)  | Implications  |
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| <p><b>Section 3 of the National Planning Commission Act</b> sets out the membership of the Commission.</p>   | <p>The section was amended to include a new subparagraph which now includes the Director-General of the Infrastructure Concession Regulatory Commission as a member of the National Planning Commission.</p>  | <p>This is in line with the objectives of the Act which include to ensure transparency, efficiency, and productivity by institutionalising all the reforms to ease implementation.</p>  |
| <p><b>Section 20 of the National Investment Promotion Council (NIPC)</b> provides that an enterprise in which foreign investment is permitted shall before the commencement of business register with the Commission, but before registration, the enterprise with foreign participation must first be incorporated under the Companies and Allied Matters Act.</p> <p><b>Section 22 of the NIPC</b> sets out the incentives for special investment.</p> | <p>A new subsection (3) has been added under section 20 which states that an enterprise registered in Nigeria which subsequently acquires foreign participation after the commencement of business shall, within three months of such acquisition, register with the Commission.</p> <p>Section 22 has been substituted with a section which states that the Commission shall specify priority area of investment and their applicable benefits as well as incentives. The Commission shall also negotiate specific incentives packages for strategic investments in addition to the incentives available to any enterprise under other laws.</p> | <p>These amendments are aimed at boosting more investments in the commercial sphere especially as it now allows for the negotiation of specific incentives packages for strategic investments in addition to existing incentives.</p> |



| Pre-BFA  | Now – BFA (2023)  | Implications   |
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| <p><b>The Nigeria Oil and Gas Industry Content Development Act</b> defines “Nigerian Independent Operators”.</p>   | <p>The Act now provides for a definition of “Nigerian Independent Operators”, it means “a Nigerian Company” and “Nigerian Company” is defined as a company formed and registered in Nigeria in accordance with the provision of Companies and Allied Matters Act with not less than 51% equity shares by Nigerians.</p>   | <p>This further reinforces the objective of the Nigerian Oil and Gas Industry Content Development Act, which is to give preferential treatment to all Nigerian companies operating in the industry.</p>  |
| <p><b>Section 7 of the Nigerian Port Authority Act</b> states the functions of the Authority.</p> <p><b>Section 40 of the Nigerian Port Authority Act</b> sets out the powers of the Authority to make byelaws for control, etc, of wharves.</p> | <p>A new subsection has been created under section 7(e)(v) to include the use of information and communications technology for operations within the ports.</p> <p>And new subsections have also been inserted under 7(i) to include the removal of all unauthorised personnel from the ports; to 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 and finally to ensure the operations required by law of all government agencies in any port in Nigeria are harmonised through the single window domiciled with the ports (under 7(i)(a), 7(i)(b), 7(i)(c)).</p> <p>Section 40(1)(d) has been amended and should now read as follows: “authority of unauthorised personnel”.</p> | <p>Each agency operating in Nigerian ports must have a single interface station domicile in one location at the port and always be implemented by a single joint task force. This ensures uniformity and easy access to the MDAs and reduces the hardship encountered in proper correspondence by business organisations who have activities at the ports<sup>2</sup>.</p> |

<sup>2</sup> Section 7 (10) of the Act.



| Pre-BFA  | Now – BFA (2023)   | Implications   |
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| <p>Paragraph 13 of the first Schedule of <b>Patent and Design Act</b> provides that the Minister 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 expiration of the period mentioned in paragraph 1 above and may permit importation.</p> | <p>A new paragraph “13A” has been inserted. It provides that the Minister shall by regulation prescribe the procedure for the application, grant, use and withdrawal of compulsory licenses under this paragraph.</p>  | <p>The amendment now gives the Minister the power to regulate the process for the application and grant of compulsory licenses.</p>  |
| <p><b>Section 4 of the Trademarks Act</b> provides that “a trademark must be registered in respect of particular goods or classes of goods”.</p> <p><b>Section 67 of the Trademarks Act</b> sets out definition of terms. We note that the term “goods” was not previously defined.</p>  | <p>The inclusion of the definition of “goods” to include services.</p> <p>It provided a new definition of the word “trademark” to mean “a mark used or proposed to be used in relation to goods or services for the purpose of indicating a connection between the goods or services and a person having the right, either as a proprietor or as a registered user, to use the mark, whether with or without any indication of the identity of that person, and may include shape of goods, their packaging and combination of colours; and in relation to a certification trademark, a mark registered or deemed to have been registered under section 43 of this Act”.</p> | <p>It should be noted that the previous definition did not make mention of “services”, or “shape of goods, their packaging and combination of colours”.</p> <p>The implication of this is that it clears any doubt on the definition of the term “goods” and provides clarity regarding whether a trademark can be registered under the Act in respect of services provided by a proprietor.</p> |

## Pre-BFA

**Section 89 of the Pension Reform Act** restricts the sale of pension fund assets by specifying conditions to access the funds and allows retirement savings account (“RSA”) holders to use a portion of their RSA balance towards payment of equity for residential mortgage.

## Now – BFA (2023)

Section 89(2) has been substituted with a new subsection (2). Pension assets are eligible for securities lending as the Pension Commission may approve. Subject to guidelines issued by the Commission, to apply a percentage of the pension assets in the RSA towards the payment of equity contribution for payment of residential mortgage by a holder of RSA and for the purpose of securities lending.

## Implications

The amendment now allows pension assets to be eligible for securities lending as the Commission may approve. In addition, pension administrators can apply a percentage of pension assets in the retirement savings accounts for the purpose of securities lending.

It also allows for a percentage of the RSA to be used as equity contributions. This is aimed at making it easier for people to which do not need to be repaid and use such funds as a down payment towards buying a residential property.

This also implies that pensioners no longer need to worry about the restrictive nature of their pension assets, as pensioners now the flexibility to utilise retirement savings for securities lending and residential mortgages.

## Pre-BFA

### **Section 5 of the Standards Organisation of Nigeria Act**

states the functions of the Organisation.

**Section 29** states the powers of the Director-General in relation to hazardous products.

## Now – BFA (2023)

The Organisation's functions under section 5(1)(b), (e) and (l) have been amended to include: investigations into the quality of facilities, materials, and products not just in Nigeria, but to include those imported into Nigeria; compilation and publication of products inventory requiring standardization and the registration of all regulated products specified under paragraph (e).

Section 29(1) has been substituting for a new subsection (1) Which states 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 the following orders, to seize, detain, prohibit, forfeit, seal up or give directions.

## Implications

The time limit for notifying SON before instituting legal action against it has been reduced from 90 days to 30 days.

It also entrusts the Director-General with the power to make an ex-parte application to the court for an order pertaining to actions taken by SON in respect of detrimental or hazardous goods.

Please contact us if you have any questions or require any legal advice regarding changes that may affect your business in light of the enactment of the Business Facilitation (Miscellaneous Provisions) Act, 2023.