

Revolutionizing business in Nigeria:

A detailed examination of the Business Facilitation Act 1/2

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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 The Act also amends outdated provisions of relevant legislations in various industries.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 first part of a two-part series on the Business Facilitation Act 2023 where we analyse notable changes made to the Companies and Allied Matters Act 2020 ("CAMA"), the Immigration Act 1971 and the impact of these laws on MDAs of the Federal Government as well as businesses operating in Nigeria.

CAMA is the principal legislation that provides for the incorporation, regulation and winding-up of companies in Nigeria.

Before – CAMA (2020)	Now – BFA (2023)	Implications
Non-existent	Recognition of electronic share certificates ¹ .	<p>The Act embraces technological changes in the business world by enhancing ICT-based procedures.</p> <p>The need to print physical certificates and the issue of lost certificates would be eliminated and efficiency brought back to the administration of the shares and dividend payments.</p>
Vote by show of hands or by poll under CAMA	The Act allows electronic voting at annual general meetings for private and public ² companies and other data in tandem with best practices in technology ³ .	<p>Enables wider participation in the election, making it possible for absentees to vote at AGMs;</p> <p>Establish speedy conflict resolution mechanisms;</p> <p>Offering shareholders, the flexibility to vote from anywhere in the world;</p> <p>Better business integration as a number of meetings are already held virtually. It legitimises and is in tandem with these virtual meetings.</p>

1. Section 9(7) of the Act
2. Section 9(11) of the Act amends section 240(2) of the CAMA by deleting the word private in the subsection.
3. Section 9(13) of the Act

Before – CAMA (2020)	Now – BFA (2023)	Implications
<p>Under section 127 CAMA 2020, a company that wishes to increase its issued share capital shall:</p> <ul style="list-style-type: none"> • pass a resolution approving the allotment of new shares to named persons; • notify the CAC of the increase and allotment within 15 days of passing the resolution; • pay the necessary stamp duty and CAC filing fees on the amount of the increase; and • file a Return of Allotment Form. 	<p>The amendment includes the option for the decisions to be determined by a resolution of the Board of Directors, subject to the provisions in the articles of association of the company or by the company in general meeting.</p>	<p>The amendment will promote better industry practice by simplifying the process for share capital increase thereby reducing administrative burden.</p>
<p>Under section 142(2) CAMA, the offer to existing shareholders shall be by notice specifying a reasonable time period after the expiration of which the offer, if not accepted will be deemed to be declined.</p>	<p>This provision is only applicable to private companies.</p> <p>It now sets out a period of 21 days within which an offer of shares by the existing shareholders must be accepted or be deemed declined⁴.</p>	<p>Section 142 of CAMA did not distinguish between private and public companies. Now, it is clear that this only applies to private companies.</p> <p>Further, it is no longer left for companies to specify reasonable time period as there is now a provision of a specific maximum timeline of 21 days. This regulation appears to infringe on the principle of freedom of contract and the ability of parties to make private commitments to one another. Furthermore, tag along and drag along provisions in shareholders' agreements may also need to be reviewed.</p>

4. Section 142(2)(c) of CAMA is replaced with a new one by section 9(4) of the Act.

Before – CAMA (2020)	Now – BFA (2023)	Implications
<p>The registration of an allotment of shares at the CAC must be done 1 month.</p>	<p>The registration of an allotment of shares at the CAC must be done within 15 days.</p>	<p>The registration of an allotment of shares must be done within 15 days as opposed to a month. This significantly shortens the process and makes it more efficient.</p>
<p>Under CAMA 2020, all public companies are required to have at least three independent directors on the Board.</p>	<p>Reduction of independent directors on the board of public firms from three (3) to one-third⁵.</p>	<p>This flexibility gives companies the autonomy to determine the size and composition of their Board. This must however be done in line with the requirements set out by their sectoral regulators and codes of corporate governance. significant control over their cost of governance.</p> <p>This requirement is also in line with corporate governance principles in Nigeria to ensure good governance, i.e., section 4.3 of the SEC Code that states public companies should have a minimum of 1 independent director. The FRC does not specify the number of independent directors required on boards but recommends an appropriate mix of executive, non-executive, and independent non-executive members, with a majority of non-executive directors.</p>

5. Section 9(14) (b) of the Act.

Before – CAMA (2020)	Now – BFA (2023)	Implications
<p>Under CAMA, foreign companies set to operate in Nigeria can be granted exemption from some compliance processes, section 78 CAMA.</p>	<p>A new paragraph in addition to section 78(3) has been added to allow other extant laws of the national assembly to have the power to exclude such companies from incorporation in Nigeria .</p>	<p>This change has the potential to widen the scope of foreign companies that can be exempted from the requirement of being incorporated as condition to carry on business in Nigeria. Thereby creating an enabling environment that attracts foreign investment opportunities and changing the general outlook of doing business in Nigeria.</p>

Furthermore, the Act makes the registration of businesses at the Corporate Affairs Commission an automated process through the CAC website from the start of an application process to completion, including ensuring the availability of an online payment platform where necessary. This minimises the bureaucratic and administrative bottleneck and brings out efficiency in the process of registering a business in Nigeria whilst promoting accountability and clarity in government processes.

With the changes made to the Immigration Act 1971, we believe the country will benefit from more active foreigners’ participation in business as the Act seeks to make travel to Nigeria simpler. One of the main features of the Act is that it sets a 48-hour deadline for processing regular entry visas and obtaining a visa on arrival. This implies that foreigners would not have to wait around for entry visas for longer than necessary. There is also a requirement to publish and regularly update the list of procedural requirements for obtaining visa on arrival as well as other entry visas, on all immigration-related websites, including Embassies, High Commissions, and all Nigerian Ports of entry.

In relation to business dealings with Government Ministries, Departments, and Agencies, (“MDAs”),

the Act provides transparency requirements when issuing permits, licences, waivers, tax related processes, filings, approvals, registration, certifications. MDAs are required to publish a complete list of requirements (up to date) on their website conspicuously for the public’s information. This includes all processes, documents, fees, and timelines required for processing, filing, approvals, registration, certification in accordance with the functions of the MDA. This intervention helps private businesses by providing clear guidelines, and advice to businesses.

The Act also introduces ‘default approval of application’ where all applications for business registrations, certification, waivers, licenses or permits not concluded within the stipulated timeline shall be deemed approved. All rejections shall be given with reasons. Failure of the appropriate officer to act on any application within the timeline stipulated, without lawful excuse, shall amount to misconduct and be subject to appropriate disciplinary proceedings in accordance with the law and regulations applicable to the civil or public service. The effective implementation of this law will promote public trust and keeping administrative burdens to the minimum

Other laws modified by the Act that would be analysed in part-two of this article are:

- i. Investment and Securities Act
- ii. Nigerian Export Promotion Council Act
- iii. Custom and Excise Management Act
- iv. National Office for Technology Acquisition and Promotion Act
- v. Nigerian Custom Service Board Act
- vi. Nigerian Investment Promotion Commission Act
- vii. Nigerian Ports Authority Act
- viii. Patent and Design Act
- ix. Pension Reform Act
- x. Standard Organisation of Nigeria Act
- xi. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
- xii. Trademarks Act
- xiii. Industrial Inspectorate Act

- xiv. Industrial Training Fund Act
- xv. Export (Prohibition) Act
- xvi. Financial Reporting Council Act
- xvii. National Housing Fund Act
- xviii. National Planning Commission Act
- xix. Nigerian Oil and Gas Industry Content Development Act

The effective implementation encourages businesses to make informed decisions when considering whether to carry out business activities in Nigeria and to take on calculated risks, to support public policy and sustainable development objectives. This also serves as a tool for managing regulatory risks associated with doing business in Nigeria and allows businesses in Nigeria to flourish in a competitive environment.

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.

