

Aurora

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OVERVIEW OF THE BUSINESS FACILITATION ACT 2023

INSIDE TOLG ADVISORS

INTRODUCTION

The World Bank 2020 Doing Business Report (the **“Report”**) ranked Nigeria 131 out of 190 countries in the Ease of Doing Business. The Report measures the Ease of Doing Business through a comparative assessment of the regulatory environment as it relates to dealing with construction permits, procuring licenses, registration of properties, obtaining credit, protecting minority shareholders, paying taxes, trading across borders, enforcing contracts, resolving insolvency, employing workers and contracting with the government. This Report is considered a major factor in the enactment of the Business Facilitation (Miscellaneous Provision) Act, 2023 (the **“Act”**).

The Act which is also known as the Omnibus Act was signed into law on the 14th of February, 2023, and is established to promote the Ease of Doing Business in Micro, Small, and Medium Sized Enterprises (**“MSME”**) in Nigeria. The Act also applies to Ministries, Departments, and Agencies (**“MDAs”**) of the Federal Republic of Nigeria.

OVERVIEW OF THE ACT

The Act is divided into eleven sections namely:

- Section 1- Objective
- Section 2- Application
- Section 3- Transparency Requirements
- Section 4- Default Approvals
- Section 5- One Government
- Section 6- Directive Service Level Agreement
- Section 7- Port Operations
- Section 8- Registration of Business
- Section 9- Consequential Requirements
- Section 10- Interpretation
- Section 11- Citation

In addition, Section 9 of the Act provides for a Schedule, which makes amendments to 21 Acts of the Federal Republic of Nigeria, to aid the Ease of Doing Business. The amended Acts are the Companies and Allied Matters Act, 2020; Nigerian Export Promotion Council Act, 2004; Custom and Excise Management Act, 2004; Export Prohibition Act, 2004; Financial Reporting Council Act, 2011; Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 2004; Immigration Act, 2015; Industrial Inspectorate Act, 2004; Industrial Training Fund Act, 2004; Investment and Securities Act, 2007; National Housing Fund Act, 2004; National Office for Technology Acquisition and Promotion Act, 2004; National Planning Commission Act, 2004; Nigerian Customs Service Board Act, 2004; Nigerian Investment Promotion Commission Act, 2004; Nigerian Oil and Gas Industry Content Development Act, 2010; Nigerian Port Authority Act, 2004; Patents and Design Act, 2004; Pension Reforms Act, 2014; Standard Organization of Nigerian Act, 2015 and the Trade Marks Act, 2004.

OBJECTIVES OF THE ACT

Section 1 of the Act provides for the objectives of the Act namely:

- a. To promote the Ease of Doing Business in Nigeria and eliminate bottlenecks; and
- b. To amend relevant legislation to promote the Ease of Doing Business in Nigeria and institutionalize all the reforms to ease implementation.

KEY PROVISIONS ESTABLISHED TO PROMOTE THE OBJECTIVES

The Key provisions established to promote the above objectives are:

- a. The MDAs of the Federal Government which provide products and services must publish a complete list of requirements to obtain the products and services within 21 days from the commencement of the Act. Furthermore, the Head of an MDA is obligated to ensure that the list of requirements is verified and updated at all times. Given this, the Act provides that where there is a conflict between a published and unpublished list of requirements, the published list shall prevail;
- b. MDAs shall maintain a register of applications for products and services;
- c. MDAs are also at liberty to communicate to the applicant where the application is rejected, stating the grounds for the rejection;
- d. An application is deemed granted, where the relevant MDA fails to communicate approval or rejection of an application within the time stipulated in the published list. The physical or electronic acknowledgment of the application shall serve as proof of the date of submission of the application to determine when the timeline of an application commenced. Furthermore, the Act empowers the applicant whose application is deemed granted to request for certificate of approval and the relevant MDA must upon the receipt of the application, issue the certificate within 14 days;
- e. The Act initiated the “one government directive”; which mandates MDAs to collaborate amongst themselves to process and deliver products and services to the public;
- f. The Act imposes on MDAs to have a Service Level Agreement, which shall contain; a list of products and services rendered, documentation requirements, applicable fees, summary of the procedure of application, redress mechanisms, and such other requirement, as the MDA may consider necessary. This Service Level Agreement is to be published on the website of the MDA.

NOTABLE AMENDMENTS IN THE ACT

This Article shall focus on the notable amendments of three laws under the Act. These laws are the Companies and Allied Matters Act 2020, Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 2004, and Custom and Excise Management Act 2004.

COMPANIES AND ALLIED MATTERS ACT 2020 (“CAMA”)

The CAMA establishes the Corporate Affairs Commission (the “**Commission**”), which is empowered to regulate the formation of companies, business names, and incorporated trustees, as well as the management, control, and winding up/dissolution of these entities. The Act makes the following amendments to CAMA:

S/N	CAMA	THE ACT
1	<p>Section 78</p> <p>It provides that foreign companies are to take all necessary steps to obtain incorporation as a separate entity in Nigeria, however, Ss.3(a)(b) grants exemption to foreign companies formed before the commencement of CAMA, as well as foreign companies exempted under any signed treaty with Nigeria.</p>	<p>A new subsection (c) is added to include foreign companies exempted under any other laws of the National Assembly.</p>
2	<p>Section 127 (1)</p> <p>It provides that a company having its share capital may in a general meeting and not otherwise increase its issued share capital by the allotment of new shares of such amount as it considers expedient.</p>	<p>The Act Substitutes Section 127 (1) with 1(a)(b) to include that the share capital of a company may be increased in a general meeting or by a resolution of the board subject to the provisions in the company's Articles of Association or as may be imposed by the general meeting.</p>
3	<p>Section 142</p> <p>Mandates companies to first offer new shares to existing shareholders and such shares will be deemed declined after a reasonable time.</p>	<p>Restricts this mandate to private companies and stipulates the timeline for a decline to be 21 (twenty-one) days.</p>
4	<p>Section 154</p> <p>It requires a company limited by shares to make a return on their allotment to the Commission within 1 (one) month after such allotment.</p>	<p>The timeline for the return of allotment has been reduced from 1 (one) month to 15 (fifteen) days.</p>
5	<p>Section 171</p> <p>It recognizes issuing physical shares certificates.</p>	<p>The act amends the section to include electronic shares certificates.</p>
6	<p>Section 240 (2)</p> <p>It recognizes virtual general meetings by private companies.</p>	<p>The act extends such meetings to public companies.</p>
7	<p>Section 248</p> <p>It recognizes voting at general meetings, by way of a show of hands.</p>	<p>The act amends the section to include electronic voting.</p>

8	<p>Section 275</p> <p>It mandates public companies to have at least 3 (three) independent directors.</p>	<p>The Act mandates public companies to have at least one-third of the total number of its directors as independent directors.</p>
9	<p>Section 378</p> <p>Provides that companies' financial statements be prepared in accordance with the First Schedule of CAMA and the provisions of the Financial Reporting Council of Nigeria.</p>	<p>The Act restricts the preparation of companies' financial statements to the provisions of the Financial Reporting Council of Nigeria.</p>
10	<p>Section 572</p> <p>It provides that a company is unable to pay its debt when it owes a sum of at least ₦200,000.</p>	<p>The Act provides that the sum will be determined by a regulation issued by the Commission.</p>

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS)
ACT 2004 (“FEMA”)

FEMA establishes an Autonomous Foreign Exchange Market and also provides for the monitoring and supervision of the transactions conducted in the market.

S/N	FEMA	THE ACT
1	<p>Section 6 (1)</p> <p>Empowers the Central Bank to revoke the appointment of an Authorized Dealer or Authorized Buyer, where it believes that their continued operation is against the national interest of the Country.</p>	<p>Section 6 (1) is substituted to include instances where the Central Bank may revoke the appointment of an Authorized Dealer or Authorized Buyer, which are, when the Authorized Dealer or Authorized Buyer:</p> <ul style="list-style-type: none"> a. fails to utilize the license within 30 (thirty) days; b. fails to commence its exchange business within 6 (six) months from the date of the license; c. fails to disclose in their application, any material information known to the licensee or reasonably expected to have been known by the licensee; d. provides material information, which is false; e. has not complied with a directive under the Act; f. following the issue of the license, ceased to qualify for the license; g. is found to be in malpractice or irregularity in the management of the business of dealing in foreign exchange; h. is placed under liquidation, receivership, or is adjudged bankrupt; i. conducts or intends to administer its business in a manner that threatens the interest of customers or potential customers; j. or any of its shareholders apply for the liquidation of the company; k. has a judicial receiver or manager or any similar officer appointed to manage or take over his undertaking; or l. has a bankruptcy order or judgment against him.

CUSTOM AND EXCISE MANAGEMENT ACT 2004 (“CEMA”)

This is an Act to regulate the management and collection of customs and excise duties.

S/N	CEMA	THE ACT
1	Section 2 is the interpretation section.	This is extended to include a ‘single window’ which 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 fulfill all import, export, transit-related and other regulatory requirements.
2	Section 31 Provides that a proper officer may on the directive of the Board on the fifteenth day after the completion of discharge of the importing ship, aircraft, or vehicle, deliver to the person administering the area within which the discharge took place or, where there is no such person, to the owner of the ship, aircraft or vehicle, or his agent, a list of goods unloaded from such ship, aircraft or vehicle and not yet released by the proper officer.	The timeframe for the delivery of the list of goods by a proper officer is reduced to 5 (five) days.

<p>3</p>	<p>Paragraph 13 of the First Schedule to the CEMA.</p> <p>Sub-paragraph (1) provides that, a buyer or agent that is not satisfied with the customs valuation of his imported goods, may appeal to the Customs Area Comptroller within 7 (seven) days of becoming aware stating the reason for the appeal;</p> <p>Sub-paragraph (2) provides that the Customs Area Comptroller shall communicate the result of the appeal to the buyer or his agent within 21 (twenty-one) days;</p> <p>Sub-paragraph (3) provides that where the buyer or his agent is dissatisfied with the decision of the Customs Area Comptroller, he may, within 14 (fourteen) days of receipt of the decision, appeal to the Comptroller-General of Customs.;</p> <p>Sub-paragraph (4) provides that the Comptroller-General of Customs shall, not later than 10 (ten) days from the date of receipt of the appeal, communicate to the buyer or his agent, the result of the appeal; and</p> <p>Sub-paragraph (5) provides that if a buyer or his agent is not satisfied with the decision of the Comptroller-General he may, within 14 days of his becoming aware of the decision, institute an action in Court</p>	<p>Sub-paragraph (1)- The stipulated time for an appeal is reduced to 3 (three) days;</p> <p>Sub-paragraph (2) - The stipulated time for the Area Comptroller to communicate the result of the appeal is reduced to 7 (seven) days;</p> <p>Sub-paragraph (3) - The stipulated time for an appeal of the above decision to Comptroller-General of Customs is reduced to 5 (five) days;</p> <p>Sub-paragraph (4) - The stipulated time for the Comptroller General of Customs to communicate the result of the appeal is reduced to 4 (four) days; and</p> <p>Sub-paragraph (5) – The stipulated time for a dissatisfied buyer or agent to institute an action in Court is reduced to 5 (five) days.</p>
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BENEFITS OF THE ACT

A review of the Act shows that it:

- a. Provides incentives to encourage the growth of MSME.
- b. Promotes global best practices, adapted for best fit in Nigeria. Just like Mauritius has a codified business Facilitation Act.
- c. Provides harmonization of MDAs' processes, key performance indicators, and consequence management for erring public officials.
- d. Provides an effective tool for speedy amendment of the business-related legislative framework.
- e. Ensures efficiency and transparency in public service delivery as it relates to cost, time, and procedures for doing business.

CONCLUSION

The establishment of the Business Facilitation (Miscellaneous Provision Act) 2023 is a much-welcome development as it seeks to enhance the Ease of Doing Business in the Country, which will facilitate the establishment of businesses, and in turn, increase economic productivity in Nigeria.

This Article was written by the Company Secretarial Services Team and the Regulatory Compliance & Consulting Team at TOLG Advisors.



TOLG Advisors is pleased to officially announce the closing of the ₦1 Billion Naira Balanced Fund by Alpha Morgan Capital.

We acted as Solicitors to the Issue.

We congratulate our Securities, Mergers & Acquisition Team for a job well done.



TOLG Advisors is pleased to officially announce the closing of the ₦15.5 Billion Series 1 Bond Issuance Exercise under the ₦25 Billion Bond Issuance Program by River Jamieson SPV Limited guaranteed by the Edo State Government.

We acted as Joint Solicitors to the Issue.

We congratulate our Securities, Mergers & Acquisition Team for a job well done.



TOLG Advisors is pleased to officially announce the closing of the ₦700 Million Series 2 Note Issuance Exercise under the ₦3 Billion Note Issuance Program by Mainstone Construction Limited.

We acted as Solicitors to the Issue.

We congratulate our Enterprise, Projects & Infrastructure Team for a job well done.



TOLG Quarterly TGIF Hangout

The Firm set out a day for staff to relax and unwind, in line with the Firm's Culture of Energy, Fun and Sophistication. This facilitated team bonding and enabled staff unwind from the activities of the previous quarter.

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