



GBENGA  
BIOBAKU & CO  
BARRISTERS & SOLICITORS

**THE BUSINESS FACILITATION  
(MISCELLANEOUS PROVISIONS)  
ACT 2022**



The Business Facilitation (Miscellaneous Provisions) Act 2022 (the "Act") which was signed into law by President Muhammadu Buhari in February 2023 is geared towards facilitating and boosting investment opportunities in the Nigerian economy and promoting the ease of doing business in the country by removing institutional and administrative bottlenecks encountered by businesses in the course of doing business in Nigeria. The Act also introduces provisions allowing pension fund operators to utilize pension funds for securities lending and enhances the ability of private companies to raise capital from the public whilst improving the ease for foreign companies to participate in business in Nigeria. By codifying the first Executive Order, E001 issued by the President Muhammadu Buhari administration, Dr. Jumoke Oduwole, the Special Adviser to the President on Ease of Doing Business in Nigeria noted that the Act aims to institutionalize reforms within certain government agencies such as the Customs, the Immigration Office, and the Standard Organization of Nigeria and deepen the level of transparency and efficiency in public services. The Act is geared generally towards assisting the private sector, especially Micro, Small & Medium Enterprises ("MSMEs") which rely on public sector services for the commencement and operation of their businesses. Such services include issuance of business permits and licenses, certificates, granting of incentives and exemptions.

The Act whilst introducing certain innovations also amends several existing laws to improve the efficiency of Ministries, Departments & Agencies of the Government ("MDAs"). Some of the cogent innovations and amendments are discussed below.

# INNOVATIONS UNDER THE ACT

## 1. Transparency Initiatives

- **Publication of List of requirements and Service Level Agreements:** MDAs are obligated to publish a complete list of requirements for the services of government agencies such as certifications, permits, licenses, waivers, tax processes on their websites. Where discrepancies exist between the published list and an unpublished list, the published list takes precedence.
- **Default Approval:** The Act introduces a default approval status for applications made to MDAs in which the relevant MDA fails to communicate an approval, a rejection or notice to amend to the applicant within the published processing time.
- **One Government Principle:** MDAs are charged with the responsibility of interfacing with each other through a backend system to verify or authenticate public documents presented by applicants rather than belabouring applicants to go from one MDA to the other to stamp or certify documents while processing applications.

## 2. Port Operations

- The Act prohibits touting which it defines as carrying out unlawful activity for personal gain at Nigerian ports and requires all staff of the Port Authority on duty to be properly identified by uniform and official identity card.
- The Act institutionalizes a single customer interface for port transactions to capture, track and record all information on goods related to their arrival into and departure from Nigeria.



# REFORMS BROUGHT BY AMENDMENTS UNDER THE ACT

- Greater ease for foreign investment and participation in Nigerian companies

Significant amendments have been made to the Companies and Allied Matters Act (“CAMA”) to make it easier for a foreigner or a foreign entity to invest in a company in Nigeria and participate directly in the corporate governance of the company as a shareholder without having to be physically present in Nigeria. The Act recognizes electronic mail as a valid means of sending notice to members by the company. By allowing a shareholder to vote electronically, a foreigner or person resident outside of Nigeria can receive notice of, participate in meetings and vote on resolutions to be passed by the company. Also, a foreigner can now dispose of his shares in a company through electronic share transfer forms. Existing shareholders in private companies now have 21 days to accept or reject shares offered to them in accordance with preemptive rights in the CAMA. Shares not accepted within the 21 days can be offered to third parties subject to the articles of association of the Company. This regime for easier foreign participation in business in Nigeria is not limited to private companies, as the CAMA now allows public companies to hold their annual general meetings electronically. This initiative is aligned with the strategic investment initiatives promotion of the Federal Government of Nigeria by the amendment of the Nigerian Investment Promotion Commission Act which now requires the government to specify and publish priority areas of investments and applicable benefits and incentives in the Federal Government Gazette and on the website of the Commission to guide potential foreign investors in Nigeria. Additionally, the Act codifies the existing regulations on the issuance of Visa on arrival within 48 days which is another significant reform to improve the ease of doing business in Nigeria.



### • **Faster processing of trade-import and export transactions**

The Act amends the Customs and Excise Management Act to institute a “single window” platform for parties to lodge and fulfil all import, export, transit-data and other regulatory requirements required by MDAs through a single-entry point interface. The statutory time for clearing of goods at the port is abridged from 15 days after discharge of ship or aircraft to 5 days. The Act shortens the period for consideration of appeals by the Customs Area Comptroller, and the Comptroller-General of Customs from 21 days and 10 days to 7 days and 4 days respectively. Finally, an importer or his agent who is not satisfied with the decision of the Comptroller-General may within 14 days institute an action in Court. In all, the length of time within which an importer can appeal the valuation of his goods is abridged from 66 days to 24 days. This is a noble reform which is expected to accelerate the process for the clearing of goods at Nigerian ports.

### • **Private Companies can allot securities to the public**

The Act also amends the Investment and Securities Act to allow private companies to raise capital by offering securities to the public by complying with relevant regulations issued by the Securities and Exchange Commission (“SEC”). Private companies with capital intensive ideas who desire to remain private can favourably compete in their sectors and reach their maximum potentials in the market. With this initiative, MSMEs, especially Fintech startups with prospects can seize this opportunity to easily scale their business within the shortest possible time. This amendment is in sync with the SEC Rules on issuance and offering of digital assets by Fintechs. The amendment to the National Office for Technology Acquisition and Promotion Act gives allowance to startups like Fintechs in their first two years of business operation some concession by exempting them from payment of late registration penalties so far as registration is effected before the end of the second year of business operation.

### • **Investment of Pension Funds by Pension Fund Administrators**

The Pension Reform Act is amended to allow a Pension Fund Administrator utilize pension assets for securities lending and payment of equity contribution for residential mortgage by a holder of Retirement Savings Account. This amendment heralds a boost in the investment ecosystem of Nigeria. Pension Fund Administrators can now lend pension funds in return for investment returns. This will provide more pool of funds available for securities lending in the capital market following guidelines to be issued by the National Pension Commission. Private Companies and Startups who are now allowed to raise funds by utilizing their securities as collaterals can take advantage of this pool of funds. This is expected to translate to and lead to more job opportunities in the country.

# OTHER MAJOR AMENDMENTS UNDER THE ACT

## • Foreign Exchange (Monitoring and Miscellaneous Provisions) Act

The Act outlined clear grounds for revocation of the licenses of an authorized dealer or authorized buyer. Prior to this amendment, the CBN held the discretion to revoke such appointment based on national interest. Some of the grounds for revocation introduced by the amendment include where the authorized dealer or authorized buyer fails to utilize the license within 30 days or commence its exchange business within six (6) months from the issue date of the license. The enumerated grounds now allow for a transparent and accountable exercise of the power of revocation.

## • Standards Organization of Nigeria Act

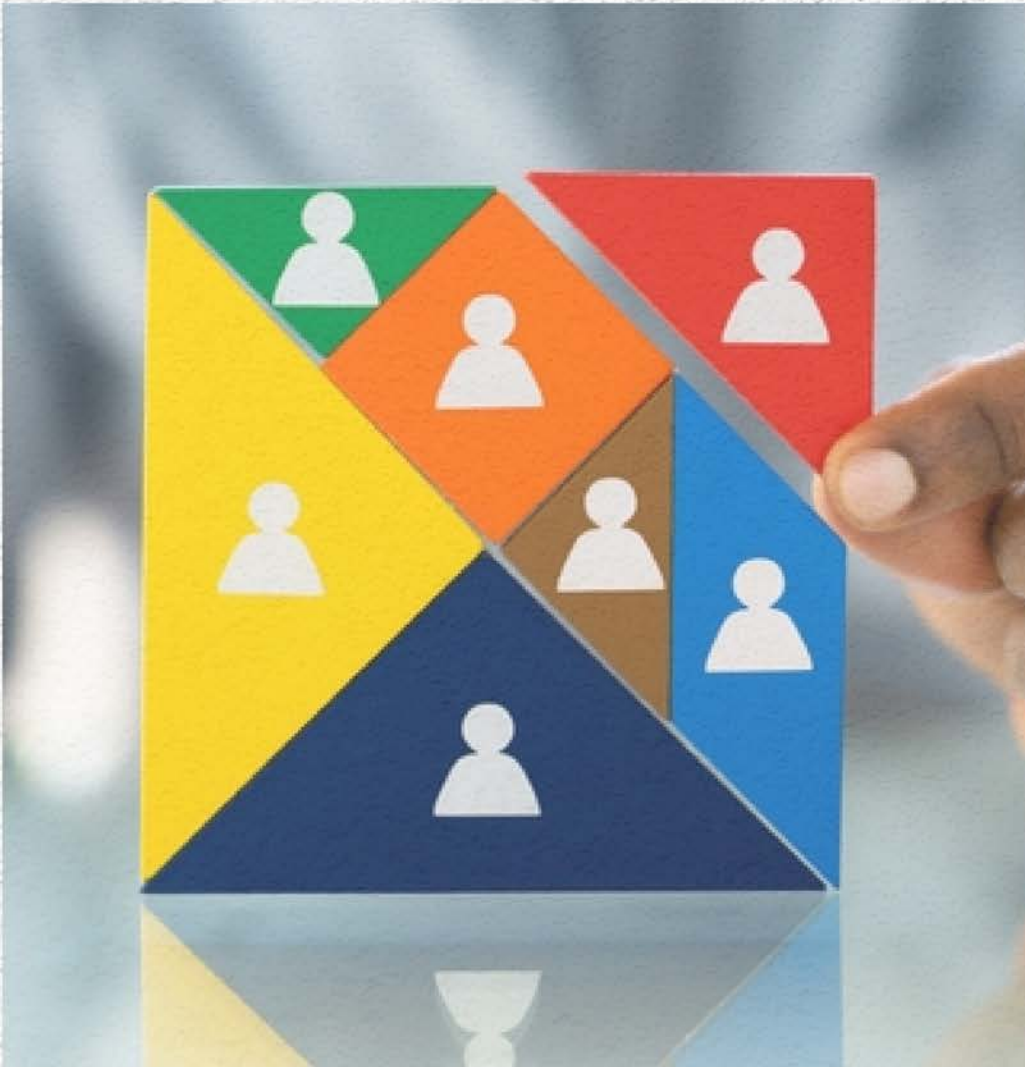
The Act now requires SON to obtain an ex-parte order from the court before it can seize and detain products considered detrimental or hazardous to life, property, and the national economy. Such order cannot exceed a period of thirty (30) days. In addition, a separate order of court is required by the SON to forfeit the suspicious products. This is to curb the tendency of arbitrary exercise of discretion by the SON in the confiscation of goods.

## • Immigration Act

The Act now requires that Entry visas to Nigeria be issued or rejected with reason within 48 hours of receipt of valid applications. The amendment further provides that a comprehensive and up-to-date list of requirements, conditions, and procedures for obtaining visa on arrival as well as all other entry visas, including the estimated timeframe, is to be published on all immigration-related websites, Embassies and High Commission, and all Nigeria ports of entry.

## • Industrial Training Fund Act

The Act amends the principal act by increasing the employee threshold requiring an employer to make contributions under the Act from five (5) or more employees to twenty-five (25) or more employees. This is a welcome development as it will exempt a large number of small and micro businesses from the burden of ITF contributions. In the Act, organizations operating in the Free Trade Zone are no longer obligated to contribute under the ITF Act and additionally the rate of contribution prescribed under the Act can now be varied by the Minister for Industry.



## POTENTIAL CHALLENGES

Whilst the provisions in the Act are very laudable and far reaching, the success of the reforms introduced will hinge primarily on effective implementation by relevant MDAs. Also, certain MDA services may not be suited for default approval such as trade mark or patent registration which is statutorily required to be registered and published in the trademark journal by the trademark registry. A trademark applicant whose application is yet to be granted within the stipulated service timeline may find it difficult to use default approval as evidence of priority of registration in an infringement suit. It would be interesting to see how the Courts will interpret this provision when matters relating to default approvals come before it. It is however hoped that in the spirit of the law, the Courts would be proactive to grant an order in favour of the default approval and order the Trade Mark office to issue the trade mark certificate. The government will also need to commit substantial resources to training to ensure that officers in the MDAs at all levels including senior, intermediate and junior have a good understanding of the provisions and implications of the Act. Government will also need to provide the funding required in some of the cases for the MDAs to be able to perform their statutory functions effectively.

## CONCLUSION

The Act is a laudable development. Its transparency initiatives will engender accountability from the MDAs. The new legislation is expected to boost investment in Nigeria and foster economic growth and development. It is hoped that government will put in place an implementation framework to ensure that the MDAs perform their functions effectively as intended under the Act. It is also hoped that the private sector will take full advantage of the law and push for its implementation to bring about increased efficiency of MDAs as well as increased contribution of the public sector to national GDP. State Governments should replicate this initiative at subnational level.

# DISCLAIMER

Nothing in this article should be construed as legal advice from any of our lawyers or the firm. The article published is a general summary of developments and principles of interest and may not apply directly to any specific circumstances. Professional advice should therefore be sought before action based on any article is taken.

## Authors



**Ijeoma Abalogu**

Partner

[Ijeomaabalogu@gbc-law.com](mailto:Ijeomaabalogu@gbc-law.com)



**Adeola Fayose**

Senior Associate

[adeolafayose@gbc-law.com](mailto:adeolafayose@gbc-law.com)

## **GBENGA BIOBAKU & CO.**

Barristers and Solicitors

11 Babafemi Osoba Crescent Off  
Admiralty Road

Lekki Phase1, Lagos.

234 803 641 0000

+234 1 2717769

+234 1 2707320 (Fax)

[info@gbc-law.com](mailto:info@gbc-law.com)

<http://www.gbc-law.com>

