

A Review of the Business Facilitation (Miscellaneous Provisions) Act, 2023

Contributors

Adedolapo Adegoroye

Ayodeji Sarumi

Diana Uzor

Dorcas Tsebee

Inioluwa Taiwo

Olorunjoba Oguntunde

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The Presidential Enabling Business Environment Council (PEBEC), in line with its mandate and consultation and collaboration with the relevant stakeholders, drafted the Business Facilitation (Miscellaneous) Bill (the “Bill”), which was presented as an Executive Bill. The law aims to make the country a good place for micro, small, and medium-sized businesses (MSMEs).

On the 13th of February, 2023, President Muhammadu Buhari signed (assented) the first Business Facilitation Bill into law. The Bill, which is now known as the Business Facilitation (Miscellaneous) Act 2023 (the “Act” or “BFA”), contains 21 business-related laws that have now been amended while removing bureaucratic constraints to doing business in Nigeria. The Act has now institutionalised all the reforms put in place by PEBEC since its establishment to ease implementation.

Objectives and Transparency Requirements

The Act requires all Ministries, Departments and Agencies (MDAs) in the service and product delivery sectors to make public,¹ either via their official website or in a conspicuous place where the MDA is carrying on business, the requirements for doing business with them within 21 (twenty days)².

The published requirement will always come first, even if there are other requirements the public may not know about. An MDA has a certain amount of time to respond to an application, whether approved or not. If it doesn't, the application is considered to be approved³ and the MDA must send the applicant a certificate or other proof of approval within 14 days of notification from the applicant after the time limit for the application has passed.⁴

If an MDA official doesn't act on an application within the time frame given without a legal reason, this is considered misconduct and such an official may be disciplined according to public or civil service rules.⁵

One of the remarkable principles of the Act is the multi-MDA application management system, which places a statutory requirement on MDAs to facilitate the entire process in an inter-MDA transaction. When an application needs information from another MDA, like certification and verification, the first MDA will meet the requirements of the verifying MDA so that the application can be processed.⁶ This principle is called the “One Government Directive”.

An MDA shall have a Service Level Agreement (SLA) published on its website that documents the services the MDA will provide and defines the service standards the MDA is obligated to meet.

¹ Section 3(1)

² Section 3 (3) (b)

³ Section 4

⁴ Section 4 (5)

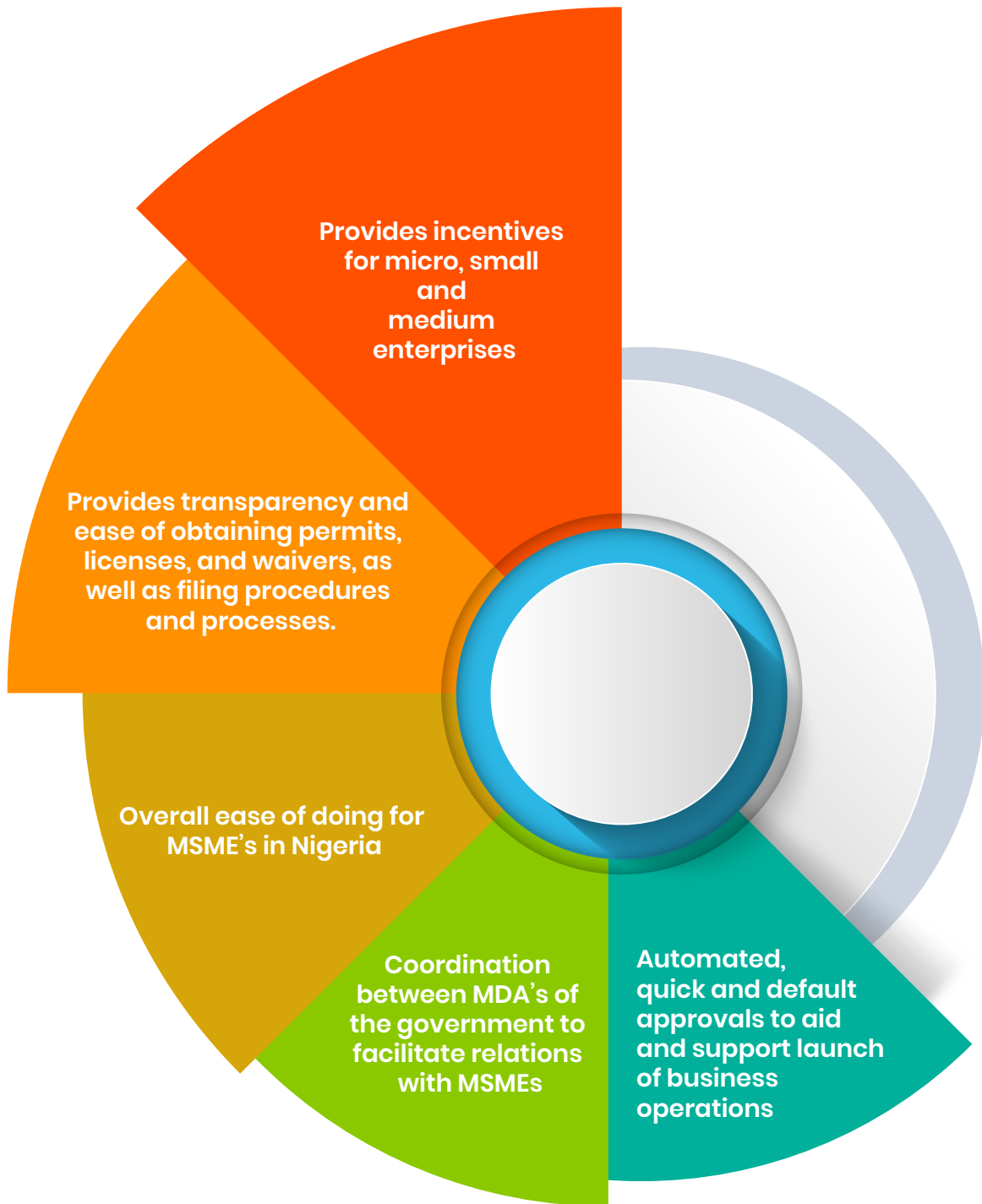
⁵ Section 4 (7)

⁶ Section 5

Amended Laws



Benefits of the Business Facilitation Act 2023



Regulatory Authority	The Affected Legislation	Provision of the BFA 2023	Comment and Impact
<p>Corporate Affairs Commission (CAC)</p>	<p>Companies and Allied Matters Act (CAMA) 2020</p>	<p>Section 8: automation of the application processes at the CAC</p>	<p>The Act eliminates any form of manual filing at the CAC. Prior to 2023, some of the applications returns were filed manually, i.e., an applicant had to submit a hardcopy to the CAC, and upon approval, the CAC would issue a CTC in hardcopy format. With this provision, all applications will be carried out via the designated portals.</p>
		<p>Section 9 (2) amends Section 78 (3) of CAMA: additional exemptions to why a foreign company may carry on business in Nigeria.</p>	<p>CAMA requires every foreign company that wants to operate in Nigeria, whether before or after the Act's implementation, to register in Nigeria; however, it provided for two exceptions. The BF(M) A has expanded the exceptions to include companies that may be exempted by law(s) made by the National Assembly.</p>
		<p>Section 9 (3) amends Section 127 of CAMA: grants power to the board of directors to increase the share capital of a company</p>	<p>The Act amended this section to include the resolution of the board of directors as one of the instruments that can be used to increase the share capital of the company, provided the articles of association or the general meeting of the company allow it. Prior to this amendment, only the shareholders of the company at a general meeting could increase the share capital of the company. This removes the bureaucratic process of calling a general meeting of shareholders and gives the directors the power to do what is necessary for time to the advantage of the company.</p>
		<p>Section 9 (4) amends Section 142 of the CAMA: Pre-emptive rights of existing shareholders now only apply to private companies, and there is a timeframe of 21 days in which such shareholders have to accept the offer or the offer will be deemed forfeited.</p>	<p>A shareholder in a public company who wishes to sell his or her shares no longer needs to offer them to an existing shareholder; instead, he or she may sell them to anyone willing and able to pay the price. Only private companies are now obligated to comply with the pre-emptive rights of shareholders, and when such an offer is made, it must be accepted within 21 days of the offer being made, as opposed to the reasonable time provided for in CAMA, else it will be deemed declined.</p>

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		Section 9(6) amends Section 154 of CAMA: Timeframe to file return of allotment at the CAC	The amendment reduced the time allowed by CAMA to file an allotment return from one month to 15 days.
		Section 9 (7) introduced Section 171 (1): Format to issue share certificate.	The Act now provides for electronic formats in which a share certificate may be issued by a company.
		Section 9 (10) amends Section 222 (13) of CAMA: Expansion of definition certain words used in the section.	The Act provided a definition for the following words to avoid ambiguity or mischief: cash, financial collateral, financial instruments, and security interest.
		Section 9 (11): amends Section 240 of CAMA: Virtual meetings for all types of Companies with share capital.	This provision has now rectified one of the major criticisms of the CAMA, which was the limitation of electronic meetings to private companies. The Act now allows all types of companies to hold their meetings electronically as long as the articles of association provide for it.
		Section 9 (12) amends Section 244 of CAMA: additional means of service of notice .	The Act expands the means by which a member of a company may be served notice from the company to include electronic means.
		Section 9 (13) amends Section 248: electronic means of voting.	With the ability to hold meetings online, it became important to have a way for people to vote. The Act has included electronic voting as a way of voting at a general meeting in tandem with the wave of technology sweeping across areas of life.
		Section 9 (14) amends Section 275 of CAMA: The minimum number of independent directors in a public company.	The Act removed the minimum number of 3 independent directors requirement in a public company and replaced it with 1/3 (one-third) of the total number of directors while also amending the number of independent directors that can be nominated by the majority of the board or a person representing the majority of the board was also changed from 3 to 1/3 (one-third).

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		<p>Section 9 (15) amends Section 283 of CAMA: expanded the reasons why an individual may not be appointed as a director in a company.</p>	<p>The Act provides that a person can't be appointed as a director in a company if he or she, as a director in another company, was suspended or removed for fraud, being dishonest, or acting unethically.</p>
		<p>Section 9 (17) amends Section 378 of CAMA: Limitation of the contents of a financial statement</p>	<p>The Act limits what the contents of a financial statement are to the accounting standards issued by the Financial Reporting Council (FRC) of Nigeria instead of CAMA's requirements, which are on top of FRC's.</p>
		<p>Section 9 (19) amends Section 572 of CAMA: Substitution of the definition of inability to pay debts</p>	<p>One of the requirements to be met before a company can be wound-up is the inability to pay its debts. The CAMA further provided that such debt will be the sum exceeding N200,000. The Act has now been amended by giving CAC the power to determine what debt is covered by its regulations. This development is welcomed as the current sum may not reflect economic realities and might not have taken other things into consideration while setting the amount.</p>
		<p>Section 9 (21) amends Section 868 of CAMA: deletion of the definition of Insolvency practitioner</p>	<p>The CAMA restricted who can be an insolvency practitioner with CAC to legal practitioners or accountants registered with a professional body. By taking out the definition, the Act has removed this restriction, making it possible for anyone to be an insolvency practitioner.</p>
<p>Securities and Exchange Commission</p>	<p>Investment and Securities Act 2007 (ISA)</p>	<p>Section 43 introduces a new substitution for Section 67(1) of the ISA: For a public company, allotment of securities offered to the public can only be made when the minimum amount required to be raised by the issue of the share as contained in the prospectus is paid and received by the company. For a private company, allotment can be made by any lawful means as the SEC may prescribe by regulation.</p>	<p>This amendment recognises that private companies may offer their shares to the public for subscription, but allotment must be done through any lawful means as prescribed by the Commission.</p>

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Nigeria Investment Promotion Commission	Nigeria Investment Promotion Commission Act (NIPCA)	<p>Section 54 amends Section 20 of the NIPCA: Nigerian entities that started out without foreign participation but later intend to add a foreigner as a member of the company must register with the NIPC within 3 (three) months of that foreigner becoming a member of the company.</p>	<p>This amendment cures the silence of the NIPC Act on entities that have begun business operations and later acquire foreign participation. Such entities are now mandated to register themselves with NIPC within 3 months of the foreigners' participation in the entity.</p>
		<p>Section 55 amends Section 22 of the NIPCA: Together with specifying priority areas of investment and the general and specific incentives attached to those areas, the Commission must also publish in a Federal Gazette and on its website its criteria for determining specific investment, its list of strategic investment areas and the specific incentives negotiated.</p>	<p>Businesses that fall under the priority area of investment are allowed to negotiate specific investment packages.</p> <p>The list of strategic investments will also be made available in a federal gazette and on NIPC's website.</p>
National Office for Technology Acquisition and Promotion	National Office for Technology Acquisition and Promotion Act (NOTAPA)	<p>Section 48 amends Section 5 of the NOTAPA: Contracts and agreements for the transfer of technology from a party outside Nigeria to a Nigerian party are to be registered within 60 days of their execution or in conclusion, failure to do so will lead to the accrual of penalties. The BFA allows a grace period for companies in their first two years of operation to register such a contract or agreement before the end of the second year.</p>	<p>Companies that are just starting out have been given the option of registering agreements for the transfer of technology with foreign companies before the end of their second year in business.</p> <p>This amendment is geared towards allowing early-stage companies to focus on expanding business operations rather than being distracted by the registration requirements of NOTAP.</p> <p>However, they must register these agreements before the end of the second year of their business operations or a penalty will accrue.</p>
Trademark, Patent and Patent Registry	Trademark Act Cap T13, LFN 2004 (TA)	<p>Section 69 amends Section 67 of the Trademark Act: 'Goods' is now defined to include services and Trademarks apply in relation to goods and services.</p>	<p>Even though the Trademark Act didn't include services until now, the trademark registry will now accept the registration of a trademark that is attached to a service.</p>

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Foreign Exchange Market	Foreign Exchange (Monitoring and Miscellaneous) Provisions Act 2004 (FEMMPA)	<p>Section 34 amends section 6 FEMMPA: It amends it by substituting for subsection 1, a new subsection 1 that sets out conditions for the revocation of the appointment of an authorised dealer or buyer.</p>	<p>Under the old Subsection 1, the CBN could simply revoke the appointment of an authorised dealer or buyer on the sole ground that the appointment was no longer in the national interest of the authorised dealer or buyer.</p> <p>However, the new subsection sets out conditions for such revocation, which mainly include the failure of the dealer to perform the duties under the Act or being no longer qualified to act as one.</p>
Nigeria Customs Services	Customs and Excise Management Act 2004 (CEMA)	<p>Section 25 amends section 2 of CEMA: by inserting a definition for the term “single window”</p>	<p>The definition of the term “single window” gives clarity to the meaning of the platform, which is created for lodging trade-import, export, or transit-data required for use by the relevant agencies.</p>
		<p>Section 26 introduces sections 18A and 18B of CEMA: to establish the single window and examination of goods under the Act, respectively.</p>	<p>In addition to the powers of the Minister to make regulations to restrict the movement of goods in and out of Nigeria, the amendment includes an option of recording the goods that have been brought into Nigeria and those that have left. It provides a form of monitoring for the regulators.</p>
		<p>Section 27 amends Section 31 of CEMA: It substitutes “fifteenth” for “fifth” and “fourteen” for “four”</p>	<p>The implication of this amendment is that the BFA has reduced the length of time for delivery of uncleared or missing goods to the government warehouse.</p>
		<p>Section 28 amends paragraph 13 of the first schedule of CEMA: The section amends paragraph 13 by substituting 7, 21, 14 and 10 days for 3, 7,5 and 4 days, respectively.</p>	<p>The BFA has reduced the time required to file an appeal with the Customs Area Comptroller or the Comptroller-General of Customs.</p>
Nigeria Customs Service	Export (Prohibition) Act 2004 (EPA)	<p>Section 30 amends section 1 of EPA: Section 30 substitutes the old section 1 with a new section 1 with 3 subsections.</p> <p>The additional subsections provide that the Minister of Finance may, by order, vary the goods prohibited from exportation from Nigeria. Again, it defines “Minister” to mean the Minister responsible for finance.</p>	<p>The BFA is amended to make the list of prohibited goods subject to change, allowing the Minister to change the items on the list at any time. This is important because the world is evolving, and it is expected that the law will change with time.</p>

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<p>FAAN, NPA, Aviation Security (AVSEC), Nigerian Immigration Service, Ministry of Foreign Affairs, National Bureau of Statistics</p>	<p>Sectoral Regulations</p>	<p>Section 7: FAAN, NPA and Aviation Security to ensure compliance with the provision of the Act on port operations</p>	<p>BFA aims to regulate port operations and eliminate corruption at ports. It also seeks to enhance a friendly customer experience at the ports by integrating port operations into a single interface at a single location. This process makes it easier to track all goods entering and departing from Nigeria. Overall, the Act seeks to enhance collaboration among various port authorities, including Immigration, the Ministry of Foreign Affairs and the Bureau of Statistics, to promote accountability and transparency within the sector.</p>
<p>Financial Reporting Council of Nigeria</p>	<p>Financial Reporting Council Act 2011 (FRCA)</p>	<p>Section 32 amends section 59 of FRCA: The section is amended by the addition of a new subsection 3. It provides that general purpose financial statements prepared by companies, government organisations and corporations shall be prepared in line with standards adopted by the FRCN.</p>	<p>The implication of this addition is that the section provides for an overriding provision with respect to the preparation of financial reports such that the standard to be adopted must be in line with that issued and adopted by the FRCN, notwithstanding the provisions of any laws relating to the form and content of financial statements in Nigeria.</p>
<p>Nigeria Immigration Service</p>	<p>Immigration Act 2015 (IA)</p>	<p>Section 36 amends section 20 of IA: by inserting new Subsections 8 and 9.</p> <p>Subsection 8 provides for a period of 48 hours within which entry visas to Nigeria may be issued or rejected with reason.</p> <p>Subsection 9 provides for publication on all immigration-related websites an updated list of requirements and conditions for obtaining visas.</p>	<p>The new subsections provide some form of clarity on the issue of visa requirements and the conditions for issuance. The old Section 20 was silent on the period within which the Comptroller-General of Immigration was to communicate a decision to applicants, which made things difficult.</p> <p>With the new timeframe, the process will be less time-consuming. In addition, the publication of an up-to-date list of visa requirements, conditions, and timeframes for obtaining a visa is commendable. This simplifies the application process for prospective applicants.</p>
		<p>Section 37 amends section 36 of IA: by substituting the words “minister” for “Comptroller-General of Immigration” in Subsection 1(b) and inserting Subsections 4, 5, 6, and 7.</p>	<p>The substitution of the word “Minister” for “Comptroller-General of Immigration” is logical because the Comptroller is responsible for the administration of the Immigration Act, and the use of “Minister” in that subsection was out of place.</p>

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			<p>The addition of subsections 4, 5, 6 and 7 simply intends to make entry into Nigeria for the purpose of doing business easier and more seamless. It seeks to provide an automated process for filing documents or returns under the Act.</p>
<p>Industrial Inspectorate Division</p>	<p>Industrial Inspectorate Act 2004 (IIA)</p>	<p>Section 39 amends section 3(1) (a) of the IIA: by substituting for the words “expenditure of not less than twenty thousand naira”, the words “expenditure of five million naira or as the minister may by regulation prescribe”</p> <p>Section 3(1)(b) is also amended to include the same figures.</p>	<p>Previously, the position was that any person proposing to start a new undertaking or intending to incur an additional expenditure of not less than N20,000 (Twenty Thousand Naira) should give notice of such intention to the Director appointed under the Act. The BFA has increased the value of the expenditure to N5,000,000 (Five Million Naira) required to notify the Director, which now reflects economic realities.</p>
<p>Industrial Training Fund (ITF)</p>	<p>Industrial Training Fund (Amendment) Act 2011 (ITFA)</p>	<p>Section 41 introduces a substitution for Section 6 of the ITFA: Only employers with 25 or more employees or suppliers, contractors, or consultants having more than 25 employees are mandated to contribute to the Industrial Training Fund. Establishments operating within the free trade zone are exempt from contributing to the Fund.</p>	<p>Employers with 5 or more employees or an annual turnover of N50,000,000 (Fifty Million Naira) are no longer required to contribute to the ITF. While suppliers, contractors, and consultants with more than 25 employees are required to show compliance with the ITF when bidding for contracts from the Federal Government.</p> <p>Employers operating within the Free Trade Zone have been exempted from compliance.</p>
<p>Federal Mortgage Bank</p>	<p>National Housing Fund Act 2004 (NHFA)</p>	<p>Section 45 introduces a substitution for Section 4 of the NHFA: Public or private sector employees earning more than the minimum wage shall contribute 2.5% of their monthly income to the fund. Additionally, self-employed persons can also make contributions on similar terms. Interest on the contribution is 2% per annum, as determined by the Federal Mortgage Bank.</p> <p>The salary threshold qualifying an employee to participate in the Fund has been changed from NGN 3000 (Three Thousand Naira) to the minimum wage.</p>	<p>BFA has expanded the list of people who can contribute and benefit from the National Housing Fund to include self-employed persons earning more than the minimum wage may contribute to the Fund.</p>

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National Planning Commission	National Planning Commission Act (NPCA)	Section 50 amends Section 3(2) of the NPCA: The Director-General of the Infrastructure Concession Regulatory Commission is included as a member of the National Planning Commission	Expansion of the board of the Commission to include additional technical know-how to further improve the policies of the Commission.
Nigerian Customs Service Board	Nigerian Customs Service Board Act (NCSBA)	Section 52 amends Section 3 of the NCSBA: The Board has been charged with the responsibility of adopting modern means of operations and developing regulations for the activities of the Nigeria Customs Service	This administration has shown a desire to modernise the operations of the Nigeria Customs Service to enhance port efficiency and strengthen anti-smuggling measures. This will, in turn, attract investment in the Nigerian economy.
The Nigerian Content Development and Monitoring Board	Nigerian Oil and Gas Industry Content Development Act (NOGICDA)	Section 57 amends Section 106 of NOGICDA: Nigerian Independent Operators was defined to mean a Nigerian company	Nigerian companies are to be given first consideration in the award of oil blocks, oil field licences, oil lifting licence and in all projects for which contracts are to be awarded in the Nigerian oil and gas industry, subject to the fulfilment of such conditions as may be specified by the Minister.
Nigerian Ports Authority	Nigeria Ports Authority Act (NPAA)	Section 59 amends Section 7 of the NPAA: The use of information technology is promoted in the amendment. The Nigerian Ports Authority is also to provide facilities for the establishment and maintenance of a single window domiciled within the port.	<p>The creation of a single window is a useful tool for facilitating trade and increasing the ease of doing business. A single window will allow parties involved in trade to lodge documents and information through a single entry point to fulfil all import, export, and transit-related regulatory requirements.</p> <p>Affected businesses may find a new ease in product import and export.</p>
Standard Organization of Nigeria	Standard Organization of Nigeria Act (SONA)	<p>Section 66 amends Section 5 (1) (b), (e), (i) of the SONA: SON shall, in addition to investigating the quality of facilities, products, and materials imported into Nigeria, also to establish a quality assurance system that may include certification of what was investigated.</p> <p>SON is also to publish the inventory of products requiring standardisation and register those goods</p>	<p>Facilities, products, and materials imported into Nigeria are to be certified by SON after an investigation by SON into their standards has been carried out.</p> <p>The power of SON to seize, detain, forfeit, and prohibit the sale of suspicious goods can now only be exercised after a court order has been obtained.</p>
		<p>Section 67 amends Section 29 of SONA: The Director General of SON now requires a court order to seize and detain products that do not meet the standard, prohibit the selling of suspicious products, forfeit products, seal up premises, and direct a person to correct any deficiency in any substandard product.</p>	

Conclusion

This is the first Omnibus Act in Nigeria. Its goal is to make this government even more business-friendly by promoting transparency and efficiency in processes involving MDAs, which will help businesses stay in business. The Act will replace the current laws and promises to bring about extensive changes when it is implemented. It covers most of the sectors in which businesses operate, from the laws guiding the operations of registered entities in Nigeria to easing up the ways in which goods or equipment, are cleared at the port to amending laws in light of the current economic situation and meeting international standards.

The Business Facilitation (Miscellaneous) Act amended the laws and made it easier to do business by removing bottlenecks for micro, small, and medium enterprises. It also made official the administration's first executive order, Executive Order 001 on Transparency and Efficiency in Public Service Delivery, which was meant to make it easier to do business nationwide. The Act has given recognition to technology while codifying it to ensure its implementation with the instrument of law.



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