

THE BUSINESS FACILITATION ACT, 2023 AND ITS AIM TO PROMOTE TRANSPARENCY

The Business Facilitation (Miscellaneous Provision) Act, 2023 (the "Act") was signed into law on 8 February 2023. The Act aims to promote transparency and the ease of doing business in Nigeria. To achieve this purpose, the Act amended twenty-one (21) pieces of legislation aimed at fostering collaboration within Nigeria's business environment. One of these laws is the Companies and Allied Matters Act, 2020 ("CAMA"). In this two-part series, we will examine how the Act promotes transparency and the effect of the amendment to the process of increase in share capital. We will examine transparency in this article,

In order to achieve its purpose of promoting transparency, the Act has mandated Ministries, Departments, and Agencies (MDAs) of the Federal Government to publish a complete list detailing their products and services and the requirements for obtaining these products and services.

The list is expected to include all processes, documents, fees, and timelines required for the processing of any applications relating to the products and services the MDA provides. This list is to be published on the website of each MDA and is to be updated regularly.

Where an application is made to an MDA, the MDA is expected to communicate its approval or rejection within the timelines stipulated in the service level document earlier mentioned. Failure by the MDA to communicate with the applicant within the prescribed timeline will be a ground for what the Act has called a "deemed approval." In the event of a deemed approval, the applicant is entitled to request the MDA to issue a certificate as evidence of the approval, and the certificate must be issued within 14 days.

How does this promote transparency, one might ask? Well, it promotes transparency as companies operating in Nigeria are made aware of the products/services, the process, costs, and timelines for each application to be made to an MDA, and the MDAs are required to abide by this. It would prevent a situation whereby an MDA can delay/frustrate applications. However, the enforceability of this mandate on the MDAs is a concern.

The Act further mandates MDA to keep registers of all applications made for its products and services. This promotes transparency as it provides an audit trail for ease of tracking in situations where the timelines provided are not met.

To achieve adequate enforceability, the Act is encouraged to establish monitoring systems and protocols that will hold the MDAs accountable in a situation whereby these registers are audited, and defaults are observed. These systems should also allow the public to make complaints when timelines provided are not met, and following receipt of such complaints, punitive measures can be taken where necessary. MDAs would be compelled to act within the required timelines where such systems are implemented, thereby eliminating bureaucratic bottlenecks.

The Act's intention to promote transparency and ease of doing business is commendable; however, its challenge would lie in its implementation and subsequent monitoring.

