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Signposts and Landmarks:

The Business Facilitation (Miscellaneous Provisions) Act No. 5 of 2022 - A Critique of Recent Strides in Nigeria's Business Regulatory Policy Reform Journey

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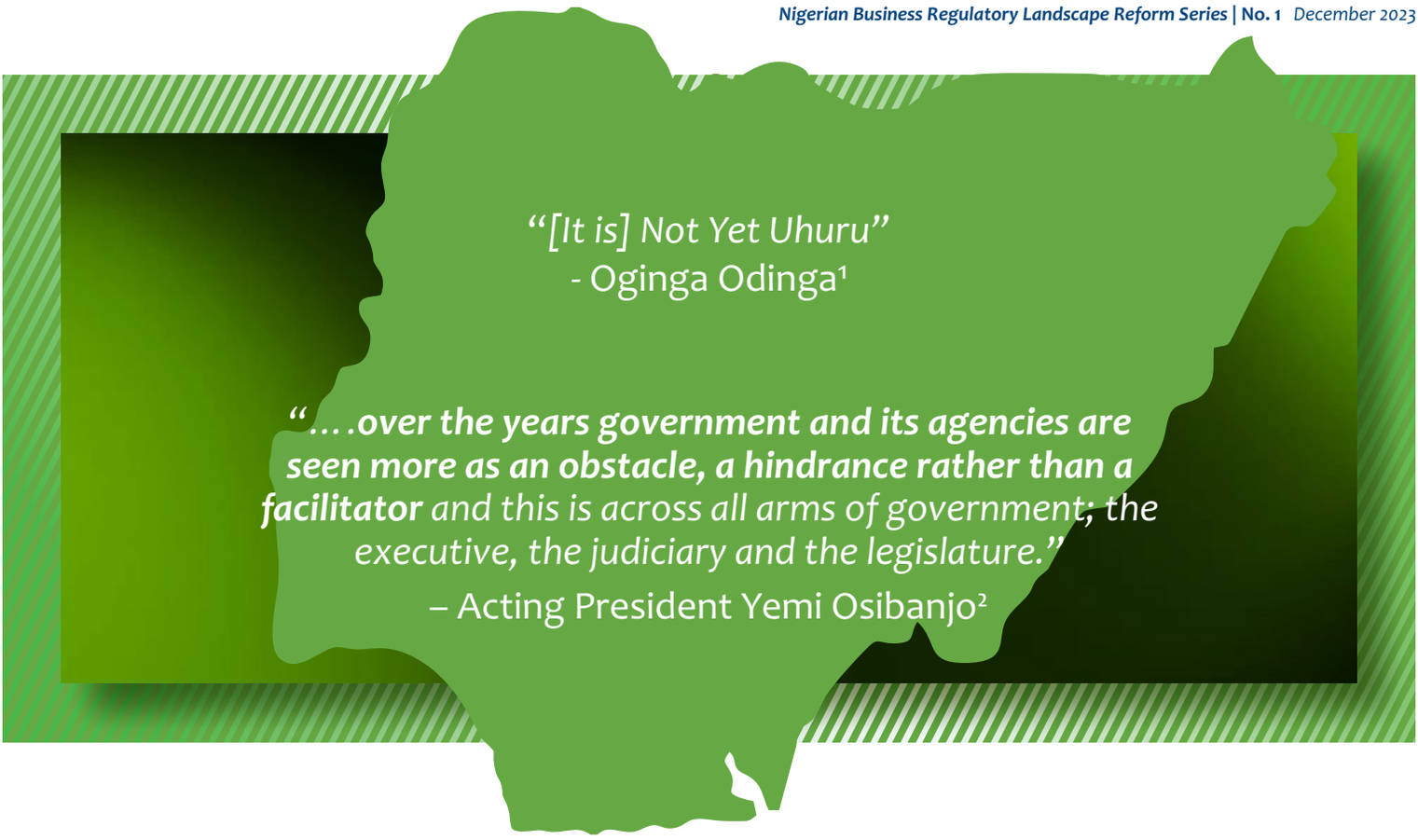

"[It is] Not Yet Uhuru"
- Oginga Odinga[1]

"….over the years government and its agencies are seen more as an obstacle, a hindrance rather than a facilitator *and this is across all arms of government; the executive, the judiciary and the legislature."*
– Acting President Yemi Osibanjo[2]

Introduction

As a keen observer, then active student, and later storied contributor to Nigerian business landscape and sectoral reforms discourse for almost three decades, news of the enactment of the ***Business Facilitation Act (Miscellaneous Provisions) Act No. 5 of 2022 (BFA)*** - in February 2023 - evoked some emotions in me. First, was *"better late than never"*. It was apparently a 'parting gift' from the terminal President Buhari administration, and another laurel to its legislative cap.[3]

Ruminating about the ***BFA***, this author realised it presented an opportunity to evaluate Nigeria's reform journey: *where are we currently at? Have we attended to "the significant items" through the* ***BFA****? Could the* ***BFA*** *have done more? If so, why did it not do more?*

In answering these and even more questions, this article will analyse the 11 section-***BFA*** provisions *cum* antecedents, their potential impact *vis a vis* this author's prior critiques and reform suggestions, as a way of graphic description and measurement of the reform journey. In undertaking this exercise, the author will analyse issues *seriatim*, in tandem with the structure of the ***BFA*** itself.

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[1] ***"Not Yet Uhuru"***, (autobiography of Oginga Odinga), *Heinemann, African Writers Series, 1967*. 'Uhuru' is Swahili for freedom or independence, and in this context *"Not Yet Uhuru"* means Nigeria has not yet arrived at the destination of an enabling business environment, even though progress has been, or is being, made. Making Nigeria a competitive, optimal pro-business environment is not a destination but a journey, especially as other countries are also not static and global capital will always go to where it would make the most impact, and be most rewarded.

[2] Remarks *"at meeting with heads of agencies prior to the signing of the E01 on May 18, 2017"*: ***2018 EO 001 Report*** (cited fully below), *p.5*. See also other excerpted comments (***supra***): *"One of the more obvious consequences [of the then status quo] is that* ***our business environment is one of the most stressful in the world. There is no question at all about that and this clearly hinders economic growth****. If people don't invest, no jobs are created and wherever our children go to school, no matter what is spent on our children's education, if they are not able to find jobs, that clearly is a problem." "…* ***every time that a public servant is an obstacle to anyone seeking approvals or licences, he or she attacks the Nigerian economy… every time that we create obstacles to doing business we attack our prosperity as a nation, we also attack the future****…"* Emphases supplied.

[3] The Buhari administration's impressive (but underrated) business related legislative output, and many of which broke free from the historic inertia of outdated predecesso,r statutes includes: ***Companies and Allied Matters Act 2020*** (***(CAMA***), which repealed its 1990 predecessor), ***Petroleum Industry Act 2021*** (***(PIA)*** which owed its origin to proposed reform initiative/legislation of the early/mid 2000s), ***Credit Reporting Act 2017; Secured Transactions in Movable Assets Act 2017; Federal Competition and Consumer Protection Act 2018 (FCCPA); Finance Acts 2019, 2020, 2021, [2022] and 2023; AMCON Amendment Act 2019; Deep Offshore Amendment Act 2022, Data Protection Act 2023, Nigeria Start-Up Act 2022, Banks and Other Financial Institutions Act 2020, CBN Act***, *etc.* There were also *significant constitutional amendments, vide legislation such as* ***The Constitution of the Federal Republic of Nigeria (Fifth Alteration) Act, No. 33, 2022, Fifth Alteration Act No. 32, Devolution of Powers (Railways)***. According to reports, *"The Deputy Speaker of the House of Representatives and Chairman House Committee on Constitution Review, Idris Wase (APC, Plateau), said President Muhammadu Buhari has signed 16 Constitution Alteration Bills into law. Mr Wase, in a statement on Friday, commended the President for giving assent to the Bills, which according to him will devolve more power to States. … Premium Times had reported that the National Assembly in January transmitted 35 constitution amendment bills to the President for assent.* ***… 12. Fifth Alteration (No.16), the Bill seeks to alter the Constitution … to move the item "railways" from the Exclusive Legislative List to the Concurrent Legislative List; and for related matters. 13. Fifth Alteration (No.17), the Bill seeks to alter the Constitution … to allow States to generate, transmit and distribute electricity in areas covered by the national grid; and for related matters."*** See Bakare Majeed, ***'Updated: Constitution Amendment: Buhari Signs State Assembly, Judiciary Independence Bill, 18 Others into Law'***, *Premium Times, 17.03.2023*: https://www.premiumtimesng.com/news/588145-updated-constitution-amendment-buhari-signs-state-assembly-judiciary-independence-bill-18-others-into-law.html#:~:text=The%20Deputy%20Speaker%20of%20the,constitution%20alteration%20bills%20into%20law. See also, NAN, ***'9th Senate Valedictory: We Passed 500 Bills in 4 Years – Lawan'***, *The Guardian, 11.06.2023*: https://guardian.ng/news/9th-senate-valedictory-we-passed-500-bills-in-4-years-lawan/. Excerpts: *"Lawan said that the Senate accomplished some significant accomplishments over the last four years." "In lawmaking, the 9th Senate introduced and* ***successfully passed critical legislation that could reform and promote the economy, improve transparency in government processes****. As of June 10, over 1,129 Bills were presented on the floor of the Senate, and over 500 were successfully passed.* ***The President assented to 131 Bills; the highest of any Assembly in Nigeria's history****."* All emphases supplied. (both accessed 15.09.2023)

Objectives – Improvement of Ease of Doing Business

The ***BFA's*** long title aptly describes it as "*An Act to provide for the ease of doing business, ensure transparency and productivity in Nigeria; and for related matters*".[4] ***Section 1*** proceeds to provide that: "*The objectives of this Act are to - (a) promote the ease of doing business in Nigeria and eliminate bottlenecks; and (b) amend relevant legislation to promote the ease of doing business in Nigeria and institutionalise all the reforms to ease implementation.*"[5]

How far has the ***BFA*** achieved these objectives is the fulcrum of this article; it is hoped that the resultant discussion would be helpful in considering next steps by the President Tinubu administration, which after assuming office in May 2023 has taken some '*tough reform*' decisions; albeit the jury is out on their current impact, *vis a vis* potential future benefits to the economy.[6]

A. *Commentary: BFA Provisions*

Transparency Requirements

Section 3 provides that:

"*(1) Ministries, Departments and Agencies (MDAs) of the Federal Government which provides products and services **shall publish a complete list of requirements** to obtain the products and services.*

(2) The products and services mentioned in subsection (1) include permits, licenses, waivers, tax related processes, filings, approvals, registration, certification, and other products and services, in accordance with the functions of the MDA.

*(3) The list of requirements referred to in subsection (1) shall - (a) include **all processes, documents, fees and timelines required for the processing of applications for the products and services;** and (b) within 21 days from the commencement of this Act, be - (i) **conspicuously published on the website of the relevant MDA**, and (ii) **available at the customer help desk** or other office designated for this purpose.*

*(4) The head of an MDA shall ensure that **the list of requirements is verified and kept up-to-date at all times.***

(5) Where there is a conflict between a published and an unpublished list of requirements, the published list shall prevail.

*(6) An MDA shall **maintain a register of applications for products and services**"*[7]

The more the regulatory framework provides clarity, and 'frees' people from being at the mercy of public servants, the better for everyone.

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[4] ***BFA***'s enactment is in recognition of the fact that *in the hierarchy of instruments, executive orders and policy statements do not have the force of law that is accorded to an* ***Act*** *of the National Assembly*; it could also be regarded as a tacit acknowledgement that the pro-business executive orders were not working or as efficacious as envisaged. However, in line with Nigeria's federal system of government, although ***section 2 BFA*** declares that "*This Act applies throughout the Federal Republic of Nigeria*", it is submitted that the ***BFA*** only applies to Federal MDAs, since State Governments and their MDAs are not subject to federal oversight. For a discussion along these lines, see generally, Afolabi Elebiju, *et al*, ***'Validity Questions: Nigeria's Companies and Allied Matters Act 2020 (CAMA) and Limited Partnerships (LPs)'***, *LeLaw Thought Leadership, February 2023*: https://lelawlegal.com/add111pdfs/Validity_Questions_CAMA_updated.pdf (accessed 15.09.2023). See particularly, the discussion in *footnote 8* (at p.2) and the cases cited, such as: ***A-G Federation v. A-G Lagos State [2013] 16 NWLR (Pt. 1380), 249; A-G Abia v. A-G Federation [2022] 16 NWLR (Pt. 1856) 205 at 434A-B; A-G Lagos v. A-G Federation [2003] 10 NWLR (Pt. 883), 1***.

[5] The ***BFA*** takes its cue from, and embodies many provisions of the ***'Executive Order on the Promotion of Transparency and Efficiency in the Business Environment No.001 of 2007' (EO1 2017)***, which was signed by erstwhile Acting President Yemi Osibanjo, in May 2017. For a robust LeLaw commentary on ***EO1 2017***, see Chuks Okoriekwe, ***'Executive Order on Ease of Doing Business in Nigeria: Knuckling Down to Get Business Done'***, *LeLaw Regulatory Alert, June 2017*: https://lelawlegal.com/add111pdfs/Executive_Order_on_Ease_of_Doing_Business_in_Nigeria_-_Knuckling_Down_to___.pdf (Also, *cf.* ***section 1 BFA*** (reproduced above), with ***Recitals 1 and 2 EO1 2017***, which provides: "*WHEREAS, it is the policy of the Federal Government of Nigeria (FGN) to* ***create an enabling environment for businesses and entrench measures and strategies aimed at promoting transparency and efficiency****; WHEREAS, the FGN is committed to the promotion of domestic and foreign investments, creation of employment and stimulation of the national economy*". Emphasis supplied. ***EO1 2017*** is available at: https://docplayer.net/140114959-Executive-order-no-001-of-on-the-promotion-of-transparency-and-efficiency-in-the-business-environment.html. According to the PEBEC, "*EO1's six directives address limitations identified in the civil and public service systems: Transparency; Default Approval (efficiency); One Government (efficiency); Entry Experience of Visitors and Travellers; Port Operations and Registration of Businesses*". Another question worth asking *is how much sensitisation has government done for civil service personnel to appreciate how they could be Nigeria's secret weapon or how much of a drag their inefficiency, corruption and other vices constitute a huge impediment to national development?* Such sensitisation is particularly important for junior staff who may not see any nexus between their low productivity and lackadaisical attitude to work and poor public service delivery together with the attendant negative spillover effects on Nigeria's investment competitiveness. Agencies like the PEBEC, National Orientation Agency (NOA) and the Federal Ministry of Information should be, or should have been, in the forefront of such nationwide sensitisation.

[6] See ***'Tinubu Addressing Challenges Arising from Reforms, says Presidential Aide'***, *Punch, 23.12.2023*: https://punchng.com/tinubu-addressing-challenges-arising-from-reforms-says-presidential-aide/#:~:text="The%20removal%20of%20fuel%20subsidy,Tinubu%20administration%20since%20late%20May. Excerpts from the news report quoting statement by Bayo Onanuga, Special Adviser to the President on Information and Strategy include: "*The removal of fuel subsidy and the move to merge foreign exchange rates, two headline reforms introduced by the Tinubu administration since late May*" and "*Many of these measures are already being taken and in the New Year, we expect the silver linings, that are at present understated, to blossom into rays of sunshine to be experienced by all Nigerians.*" See also Victor Ejechi, ***'Wale Edun: Tinubu's Reforms Widely Recognised as Key to Nigeria's Economic Recovery'***, *The Cable, 15.10.2023*: https://www.thecable.ng/wale-edun-tinubus-reforms-widely-recognised-as-key-to-nigerias-economic-recovery; Fredrick Nwabufor, ***'Nigeria's Credit Rating Bounce and Tinubu's Reforms'***, *The Cable, 12.12.2023*: https://www.thecable.ng/nigerias-credit-rating-bounce-and-tinubus-reforms; Ehime Alex, ***'First 100 Days: How Tinubu's Reforms Throttle Nigeria's Economy'***, *ICIR, 05.09.2023*: https://www.icirnigeria.org/first-100-days-how-tinubus-reforms-throttle-nigerias-economy/; Pelumi Salako, ***'Will Bola Tinubu's Reforms Help or Harm Nigeria?'***, *Foreign Policy, 24.07.2023*: https://foreignpolicy.com/2023/07/24/nigeria-tinubu-reform-economic-development-debt-imf-world-bank/. (all accessed 30.12.2023). *Per* the summary headnote of this last article, "*Removing fuel subsidies and floating the naira's exchange rate may please international lenders, but the policies could trap millions in poverty.*"

[7] Emphases supplied. *Is there any mechanism for monitoring implementation compliance of these provisions?* Presumably, PEBEC would be in the vanguard of ensuring that this is done. With these provisions, the era and notoriety of some MDAs not having websites; or their staff using non-official emails (like *yahoo, gmail, hotmail*, etc) to conduct government business should be over. As recently as February 2023, President Buhari had to bar MDAs from using personal or generic emails for conducting official business: Stephen Angbulu, ***'Buhari Bars Govt Officials from Using Private'***, *Punch, 02.02.2023*: https://punchng.com/buhari-bars-govt-officials-from-using-private-emails/. Excerpts: "'*I hereby direct that all government officials should refrain from using private emails for official purposes,' Buhari said when he launched the National Policy on Nigeria Government Second-Level Domains at the State House, Abuja.*" "*He also ordered all Federal Public institutions to migrate their websites to the relevant government domains.*" By enacting the ***BFA***, the Federal Government has upped the *ante* regarding its seriousness to really improve the qualitative public service delivery component to the much desired enabling business environment that Nigeria is meant to be. In its ***'2018 E01 Report: Ease of Doing Business Executive Order 001' (2018 EO1 Report)*** PEBEC provided a compliance scorecard, with the top 5 MDAs being: Oil & Gas Free Zone Authority (OGFZA), Federal Ministry of Foreign Affairs (FMoFA), Nigeria Electricity Regulatory Commission (NERC), and Nigeria Immigration Services (NIS) scoring between 94% and 80%. See PEBEC, ***(2018 EO1 Report)***, *p.2*: http://www.businessmadeeasy.ng/assets/img/resources/2018-Executive-Order-001-Report.pdf . At *p. 3*, it further stated that "*The FGN is relentless in its pursuit of impact and aspires to place Nigeria in the top 100 countries on the World Bank's ease of doing business index by 2020, and in the top 50 by 2025…*" It is hoped that Hadiza Bala Usman, President Tinubu's Special Assistant on Policy Coordination will also ensure that her office pulls its weight, given her statement that "*the role of my office is to ensure that there is coordination across [MDAs]. We have effectively commenced our work…*" See Ahmad Sahabi, ***'Ministers Will Sign Performance Bond With Tinubu, Says Hadiza Bala Usman'***, *The Cable, 17.10.2023*: https://www.thecable.ng/every-minister-would-sign-a-performance-bond-with-tinubu-says-hadiza-bala-usman (all accessed 26.12.2023).

Transparency empowers the public (being the consumer of public service delivery), and makes the civil service more accountable. Publication can also put less pressure on public servants and deter efforts to compromise, or make them act out of turn.

This author's experience with a Local Government in Lagos State can be illustrative: clients were issued with assessments for two or three years under a ***Bye-Law*** and its amendments which were not publicly available. Approaching the LCDA to obtain the three instruments, and impressing it upon the LCDA officials that our clients needed to review the ***Bye-Law as amended*** in order to confirm their propriety, we were informed that we could only obtain copies from an official who was not regularly at work. The instruments were eventually (and belatedly) obtained, and involving avoidable waste of time and resources in going back and forth before the obtainment.[8]

A salutary impact of these provisions is that the ***BFA*** provides an easier access to information than even under the ***Freedom of Information Act 2011 (FOI Act)***;[9] the ***BFA*** should in appropriate cases, make resort to ***FOI Act*** protocols (including resort to court) unnecessary, because such information is already available.[10]

Default Approvals

Section 4 is more or less, a rehash of ***Paragraphs 3-9 EO1 2017***:

"(1) Where the relevant MDA ***fails to communicate approval or rejection of an application within the time stipulated in the published list, all applications for products and services not concluded within the stipulated timeline shall be deemed approved and granted.***

(2) An MDA shall maintain, at least, two modes of communication of its official decisions to applicants, and the preferred modes of communication shall be published on the website of the MDA.

(3) Where an application is rejected within the stipulated timeline, the MDA shall communicate the rejection to the applicant stating the grounds for the rejection.

(4) An applicant's physical acknowledgement or electronic copy of an application shall serve as proof of the date of submission of the application to determine when the timeline of an application commenced.

(5) ***An applicant whose application is deemed granted under subsection (1) may, on the expiration of the application timeline, notify the relevant MDA for the issuance of a certificate or document in evidence of the grant, and the MDA shall within 14 days, issue the certificate or document in evidence of the grant.***

(6) The notification referred to in subsection (5) shall, for all purposes, be construed as a certificate or document in evidence of the grant.

(7) ***If the appropriate officer in an MDA fails to act on an application within the timeline stipulated, without lawful reason, the failure constitutes misconduct and is subject to***

[8] In the event, we advised the LCDA officials that it would make government business much easier if their Bye-Laws were published on their website. And that not doing so was a great disservice to the metropolitan cum *"megacity"* status of Lagos. They gave at a best a noncommittal expression to indicate that they did not think much of the advice.

[9] The ***FOI Act's*** long title describes it as: *"An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters."*

[10] *Per* ***section 1(2)*** and ***(3)***: whilst an applicant need not demonstrate any specific interest in the information being applied for, there may be need to institute legal proceedings to compel the public institution to comply with the ***FOI Act*** provisions. See also generally, ***'Compilation of Rulings and Judgments in FOI Cases in Nigeria (2012 - 2018)'***, *"Media Rights Agenda with support from the Open Society Initiative for West Africa (OSIWA) under the project 'Supporting the Media through Litigation'"*: https://www.africanplatform.org/fileadmin/user_upload/Compilation_of_Rulings_and-_Judgments_in_FOI_Cases_in_Nigeria.pdf (accessed 26.12.2023).

> ***the prescribed disciplinary proceedings under the civil or public service rules."***[11]

Notably, post-***EO1 2007*** the Federal High Court (FHC) in ***Lekoil v. Minister of Petroleum Resources*** held that *the law does not recognise default approval*: an applicant may not take lack of feedback within the stipulated timeline as positive approval of his/its application.[12] Jurisprudentially, default approvals has obviated the need for potential recourse to seeking orders of mandamus from the FHC to compel the performance of public duty that an aggrieved applicant for a delayed regulatory approval might have considered pursuing.[13]

However, the subsequent enactment of ***section 4 BFA*** shows the clear intent of the legislature to ensure the inviolability of default approval as an established statutory principle, which the Courts are bound to give effect to.[14] Furthermore, ***BFA*** is later in time to many other legislation that the Court might hold was superior in effect to ***EO1 2017*** or its peers.[15]

Section 5 BFA enshrines the *"one government"* principle and envisages that *"For the purposes of one government, where an applicant requires service from an MDA, the MDA shall conduct the necessary verification or certification from relevant MDAs, in respect of the applicant"* ***(section 5(1)***; and that *"'one government' means collaboration between MDAs to process and deliver products and services to the public"* ***(section 5(3)).***[16]

Section 6 (Service Level Agreements) mandates MDAs to have SLAs stipulating: *"(a) a list of products and services rendered; (b) documentation requirements; (c) time lines for processing applications; (d) applicable fees; (e) a summary of the procedure of application; (f) redress mechanisms; and (g) such other requirement, as the MDA may consider necessary"* ***(section 1(1)).***

Furthermore, by ***section 6(2) and (3)***, *the [SLA] of an MDA is binding on the MDA in processing applications and shall be published on the MDA's website.* Finally, *"(4) Failure of the appropriate officer to act within the timeline stipulated in the [SLA], without lawful reason, shall amount to misconduct and be subject to appropriate disciplinary proceedings in accordance with the relevant law or regulations applicable to the civil or public service."*[17]

It would nice to have a status check of how many MDAs as at date have their SLAs in place.[18]

Section 7 prohibits touting in all its ramifications at Nigerian air and sea ports. It not only leverages, but extends, the *in pari materia* provisions of ***Paras 17 -24 EO1 2017.***[19] Thus, ***section 10 BFA*** defines *"touting"* to include *"carrying out unlawful activity for personal gain".*

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[11]Emphases supplied. ***Section 4 BFA*** is one of the strong illustrations of the legislature's effort to tighten the screws on bureaucracy. Whilst its default approval and ***section 3's*** transparency provisions whittles down the scope of discretion *cum* arbitrariness that can be used to pressure private sector for corrupt purposes; the enforcement elements of the provisions disincentivises breach of same. It makes 'less powerful', public service personnel that might have otherwise been accustomed to, or want to 'wrongly exert the weight' of their office, for corrupt personal gain. *Government would however need to signal that it possesses the requisite enforcement appetite to make the provisions efficacious.* This author is not aware of specific actions taken since ***BFA's*** enactment in this regard. *Quaere*: is the PEBEC invested with powers of the *"Office of Inspector-General"* (like in the USA), to drive enforcement oversight of the ***BFA***?

[12]See Lukman Bola Ogunsola, ***'Ease of Doing Business: The Implications of Lekoil v. Ministry of Petroleum Resources'***, *Deloitte Tax Take (undated)*: https://www.deloitte.com/content/dam/Deloitte/ng/Documents/tax/ng-the-implications-of-lekoil-ministry-petroleum-resources.pdf (accessed 26.12.2023). Excerpts: *"The [FHC], recently ruled that an indigenous oil exploration company could not deem the consent of the Minister of Petroleum Resources (the Consent) granted on default as recommended by the Executive Order One (EO1) signed in May 2017 by the Presidency. The Judge held that EO1 could not supersede requirement for the Consent. … Lekoil's subsidiary ("the Company") entered into an agreement to acquire Afren Plc's participating interest in [OPL 310]. In line with the Petroleum Act and the Oil Pipeline Act, the Consent was required to give full validity to the acquisition. Therefore, Afren applied for the Consent, in January 2016. The [MPR] did not issue the Consent for over 3 years; neither did it provide satisfactory explanation for its non-issuance. In 2017, the Presidency issued EO1 mandating governmental agencies to publish procedures and timelines for obtaining relevant permits/ approvals. The agencies are required to approve or reject (based on reason) an application within the timeline as published on its website. Otherwise, the applicant will deem the application approved on default (Default Approval). On this premise, Lekoil decided to approach FHC for a declaration of a Default Approval of the Consent; perhaps, but FHC ruled against Lekoil's application." "The major rationale for the decision under consideration is that the Default Approval (creation of the Executive) cannot take the place of actual Consent, being the creation of the law. Furthermore, Lekoil's application was made before EO1 became effective. Essentially, the implication of the decision is that EO1 has no force of law, thus cannot abrogate or supercede the provision of the law. Understandably, one of the snags noted about executive orders was their potential ineffectual nature considering they are not proper legislation. However, it is arguable that EO1 did not seek to abrogate the provision of the law on the premise that granting the Consent falls within the powers of the Executive. The Executive, headed by the Presidency just sought to make its process for granting the Consent more effective."*

[13]According to ***'Sasegbon's Judicial Dictionary of Nigerian Law'***, *(1st ed. 2019, DSC Publications), Vol. 5, p.28: "'Mandamus is high prerogative writ, which lies to secure the performance of a public duty, in the performance of which the applicant has a sufficient legal interest. It gives a command that duty or function of a public nature, which normally, though not necessarily, is imposed by statute but is neglected or refused to be done' – Per Uwaifo, JSC in Fawehinmi v. IGP Suit No. SC 201/2000; (2002) 7 NWLR (Pt.767) 606 at 674."*

[14]By enacting divergent provisions from judicial decisions, the legislator has clearly expressed its intention to depart from same. *Cf.* ***Lakanmi v. A-G Western Region (1970) SC.58/69*** and ***(1970) LPELR-SC.58/69*** *vis a vis* ***The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970***, which reversed the SC decision.

[15]It is a trite rule under interpretation of statutes that where the provisions of two legislation conflict, absent special considerations, the latter provisions (later in time) prevails. The rationale is that the legislature is aware of the earlier provision and in enacting the subsequent one, intends to achieve a different result: ***Akintokun v. LPDC (2014) LPELR - 22941 at 62***.

[16]*Cf.* ***Para 10 EO1 2017*** especially the last sentence, which prescribes that: *"It shall be the responsibility of the originating MDA to seek verification or certification directly from the issuing MDA" vis a vis* ***section 5(2) BFA***: *"… Subject to subsection (1), a copy of any document submitted by an applicant in respect of an application shall be apparent proof of the content of such document."*

[17]*Cf.* the *in pari materia* sanctions phraseology of ***sections 4(7) and 6(4) BFA***. ***Section 6*** is also *in pari materia* with ***Paras 11-13 EO1 2017***. *Cf.* ***section 2(4) FOI Act 2011***: *"A public institution* ***shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions."*** Emphasis supplied. In a sense, are the equivalent provisions in the ***BFA*** new; 'don't' they sound familiar? The main difference may now be that the ***BFA*** focuses on business impacting requirements and information, whilst ***FOI Act*** has a wider focus. Also under ***section 4(2) FOI Act***, the MDA can deny an FOI request, albeit it is obliged to give notice of refusal and reasons therefor, which the applicant may challenge in Court within 30 days of refusal or deemed refusal: ***sections 7 and 20***. Although applications are to be heard and determined summarily (***section 21***), given the associated costs (legal fees and potentially time), resort to Court may not be a preferred option. ***Quaere***: should the ***BFA*** and ***FOI Act*** be merged or synchronised to obviate repetitive provisions?

[18]See for example, SLA of the Nigerian Embassy in Argentina: https://nigeriaembassyargentina.org/service-level-agreements-sla/ (accessed 26.12.2023).

[19]*Cf.* for example, ***Para 24 EO1 2017: "The Apapa Port*** *shall resume 24-hour operations within 30 days of the issuance of this Order"* and ***section 7(13) BFA***: ***"A port shall, within 30 days of commencement of this Act, maintain a 24-hour operation, or such other periods of operation to be determined by the relevant MDA."*** Emphases supplied. Experience has shown that the congestion of the Lagos (Apapa port) is frustrating to stakeholders, and breeds inefficiency, resulting in huge losses/cost overruns for importers and exporters. One easy way out is to ensure the non-Lagos sea ports in the Niger Delta operate at enhanced levels; this will result in less travel time and costs from port to destination, improved quality of exported products since port delays will be minimised, etc. and other positive spillover effects for the economy.

Furthermore, the sternness of ***section 7(14) and (15)*** are to give teeth to the provisions of ***section 7***:

> *"(14)* ***A person who violates the provisions of subsection (1), commits an offence and is liable on conviction to a fine of at least ₦1,000,000 or imprisonment for a term of at least six months or both.***
>
> *(15) A person who violates the provisions of subsections (2), (3), (5) and (6), is* ***liable to administrative penalties as may be prescribed in a regulation issued by the relevant MDAs.****"*[20]

Section 8 BFA prescribes that:

> *"The Registrar-General of the Corporate Affairs Commission (CAC) shall, within 14 days of the commencement of this Act, ensure that all application processes at the CAC are fully automated from the start to completion."*

This provision presumes that automation will make for more seamless CAC operation; but this is not the case in practice, for example, sometimes the CAC systems shut down.[21] Since the provision did not prescribe minimum timeframes for delivery of CAC's registration and other services, resort would have to be made CAC's SLA in that regard.[22]

B. *BFA Amendments to Substantive Legislation*

Section 9 amends the 21 subject legislation *"as set out in the Schedule to [the BFA."* The amended legislation are: ***CAMA 2020***, ***Nigerian Export Promotion Council Act***,[23] ***Customs and Excise Management Act***,[24] ***Export (Prohibition) Act***,[25] ***Financial Reporting Council of Nigeria Act***,[26] ***Foreign Exchange (Monitoring and Miscellaneous Provision) Act***,[27] ***Immigration Act***,[28] ***Industrial Inspectorate Act***,[29] ***Industrial Training Fund Act***,[30] ***Investment and Securities Act***,[31] ***National Housing Fund Act***,[32] ***National Office for Technology Acquisition and Promotion Act***,[33] ***National Planning Commission Act***,[34] ***Nigerian Customs Service Board Act***,[35] ***Nigerian Investment Promotion Commission Act***,[36] ***Nigerian Oil and Gas Industry Content Development Act***,[37] ***Nigerian Ports Authority Act***,[38] ***Patents and Designs Act***,[39] ***Pension Reform Act***,[40] ***Standards Organisation of Nigeria Act***,[41] and ***Trade Marks Act***.[42]

The breadth of the ***BFA*** *amendments is a commendable effort to easing, even statutory bottlenecks, to an enabling business environment; whilst the model adopted by the* ***BFA*** *in amending so varied and huge number of* ***Acts*** *in one fell swoop, smacks of thorough prior executive*

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[20]Emphases supplied. For obvious reasons, ***EO1 2017*** could not have prescribed specific criminal punishment as did the above ***BFA*** provisions. However, as experience has shown that only consistency of enforcement, borne out of sufficiently passionate reform minded enforcement appetite can deliver the envisaged results and cultural change especially amongst government personnel at the .

[21]See for example, Onyinyechi Ukegbu, ***'Businesses Groan as CAC Portal Creaks'***, *BusinessDay, 15.05.2023*: https://businessday.ng/big-read/article/businesses-groan-as-cac-portal-creaks/. According to the news report, ***"Businesses and corporate lawyers in Nigeria have been beset by several challenges from the Corporate Affairs Commission (CAC) portal, with pressing transactions coming to a standstill as a result. There has been significant downtime on the portal, which barely functions for more than an hour per day.*** *'The portal is usually inaccessible during the day,' said an Abuja-based lawyer, who asked not be identified. 'I have had to wake up in the early hours of the morning to conduct transactions because I believe the traffic would be lighter on the platform.' 'Young and emerging Nigerian entrepreneurs have been hit the most. Their hopes are being dashed everyday by the ineptitude of people at CAC and no one in government seem to care,' Tivie Michaels, Niger Delta activist and lawyer, said. An email seeking comments from Garba Abubakar, Registrar-General of CAC, on these issues and what is being done to resolve had yet to be responded to as of the time of filing this report."* See also Folake Balogun, ***'Nigeria Lags African Peers in Registering Business'***, *BusinessDay, 17.05.2023*: https://businessday.ng/business-economy/article/nigeria-lags-african-peers-in-registering-business/ Excerpts: *"Another lawyer told BusinessDay that registering non-governmental organisations (NGOs) can be tedious. The office of the registrar-general handles the registration of NGOs, including religious organisations. 'It took me eight months to get first availability from the RG's office for an NGO a client wants to register,' she said. The delays and excuses make his clients suspicious. It leaves them 'thinking that you have eaten their money and do not want to do their work,' [s]he added." "Over a five-day period, Adebanjo, a lawyer, tried to register a company on the portal of the agency charged with regulating the formation and management of companies in the country. From the public search to the reservation of name and the registration itself, the process left Adebanjo frustrated and groaning as the server of the agency kept crashing.* ***The constant breakdown of its servers is one of the major barriers to registering a company in Africa's largest economy****."* Emphases supplied.

[22]This author's online search for a ***BFA*** compliant (and current) CAC SLA only yielded the following results: ***'Revised Service Timelines for the Period of Covid 19 Registration'*** at: https://www.cac.gov.ng/4341-2/. Thereunder, *"New Registrations (from the upload of all relevant documents Or Compliance with any raised Query) [for] Companies [is] 24 Hours"*; ***'Service Timeline (Post Incorporation Revised Timeline)'***, *01.12.2019*, at: https://www.cac.gov.ng/faq_category/service-timeline/. The CAC's ***Company Regulations 2021*** is arguably not such SLA, as it does not contain timelines.

[23]***Cap. N108, Laws of the Federation of Nigeria (LFN), 2004***

[24]***Cap. C45, LFN 2004***

[25]***Cap. E22, LFN 2004***

[26]***No. 6 of 2011***

[27]***Cap. F34, LFN 2004***

[28]***No. 8 of 2015***

[29]***Cap. I8, LFN 2004***

[30]***Cap. I9, LFN 2004***

[31]***No. 29 of 2007***

[32]***Cap. N45, LFN 2004***

[33]***Cap. N62, LFN 2004***

[34]***Cap. N66, LFN 2004***

[35]***Cap. N100, LFN 2004***

[36]***Cap. N117, LFN 2004***

[37]***No. 2 of 2010***

[38]***Cap. N126, LFN 2004***

[39]***Cap. P2, LFN 2004***

[40]***No. 4 of 2014***

[41]***No. 14 of 2015***

[42]***Cap. T13, LFN 2004***

(read PEBEC driven) work, and legislative efficiency.[43] The concluding part of this article will *highlight some of the **BFA** legislative amendments vis a vis this author's earlier business landscape reform discourse; and weigh in from a reform effectiveness perspective, on the implications of such respective amendments.*[44]

a. ***CAMA 2020 BFA** Amendments*

The ***BFA*** amended twenty (20) sections of the ***CAMA***,[45] but this article highlights only the following:

(i) Increase in Share Capital: The amendment of ***section 127*** makes it easier for companies to effect increases in their share capital by adding another option or track: pursuant to a board resolution (albeit subject to any directions of the general meeting or in the Articles if any). Previously, companies can only do so "*in general meeting and not otherwise*";

(ii) Pre-emption Rights of Existing Shareholders: The amendment to ***section 142***, essentially codifying pre-emption rights, makes exit scenarios clearer and should now obviate the possibility of many erstwhile shareholder litigation;

(iii) Authority to Allot Shares: Per the amended ***section 149***, the Board can now allot shares if they have been vested with such powers by the general meeting or by the company's Articles. It may be prescient to amend (if applicable) the Company's Articles to vest this power, for good order so allotments have another "margin of safety", in any instance that there was no enabling general meeting resolution;

(iv) Return of Allotments to the CAC: The new ***section 154(1)*** abridges the time to file returns of allotments to 15 days from the erstwhile one month. Given that penalties will apply for every day of default, this incentivises prompt conclusion of the perfection process of share allotments;

(v) Electronic Share Certificates: The new ***section 171(7)*** which provides for electronic certificates is a welcome development in a world that is going paperless; the provision is in line with current digital realities;

(vi) Virtual Meetings for all Companies: ***Section 240(2) as amended*** now allows public companies too to have electronic meetings;

(vii) Service of Notice: ***section 244(1)*** has widened the options to include: electronic notices; and delivery (of physical notice, in the absence of a registered address within Nigeria), to any address supplied by the shareholder for the giving of notice to him. This makes the

[43]Given the number of ***Acts*** it amended, prior to its passage, the ***BFA*** was nicknamed the "*Omnibus Bill*": "*President Muhammadu Buhari, has signed the [BF] (Miscellaneous Provision) Bill 2022 (also known as the Omnibus Bill) into law, as part of the government's efforts to create an enabling environment for micro, small and medium-sized enterprises (MSMEs) in Nigeria.*" "*Presented as an Executive Bill, the [BFA] is a legislative intervention by the PEBEC which amends 21 business related laws, removing bureaucratic constraints to doing business in Nigeria. 'The new law also codifies the Executive Order 001 …, the Administration's first executive order, aimed at strengthening ease of doing business reforms across the country,'… … the Act is a culmination of over four years of collaboration between public and private sector stakeholders, including the [AGF], the Federal Ministry of Justice, the [NBA –SBL] through the participation of over 40 law firms and consulting firms, the [NESG], and the National Assembly Business Environment Roundtable (NASSBER).We are especially delighted to appreciate the 9th National Assembly for its speedy consideration of this Bill … The BFA consolidates the last seven years of PEBEC-led reforms and demonstrates the Administration's sustained commitment towards making Nigeria a progressively easier place to start and grow a business.*" See Gbemi Faminu, ***'Buhari Signs Nigeria's First Business Facilitation Bill into Law'***, *BusinessDay, 14.02. 2023*: https://businessday.ng/news/article/buhari-signs-nigerias-first-business-facilitation-bill-into-law/ (accessed 19.09.2023).

[44]For reasons of space and given the focus of this article, the author only discusses specific ***BFA*** amendments as they relate to prior reform advocacy that he was interested in or contributed to discourse on.

[45]See ***Part I – Schedule to the BFA (Consequential Amendments)***.

service/delivery of notices much easier;

(viii) *Procedure of Voting*: ***Section 248 (1)*** recognises now that voting can either be decided by show of hands or electronic voting. This makes hand especially for virtual or hybrid meetings.

(ix) *33.3% of Directors Must be Independent Non-Executive Directors (INEDs)*: The new ***section 275(1)*** provides that: *"A public company shall have at least one-third of the total number of its directors as [INEDs]"*, instead of the erstwhile 3 minimum INEDS in predecessor CAMA. This will further help corporate governance in public companies. Notably, the ***Nigerian Code of Corporate Governance 2018*** did not prescribe any minimum number INED requirements.[46]

(x) *Disqualification for Directorship:* ***Section 283(c)*** amendment replaced the old provision with this: *"(c) is a person removed under section 288 of this Act, where such removal was on the grounds of fraud, dishonesty or unethical conduct".* This welcome amendment is of special interest to this author, given the arguments for such amendment, in a joint article published before ***BFA's*** enactment.[47]

(xi) *Multiple Directorships*: The new ***section 307(3)*** further regulates multiple directorships by requiring anyone holding directorships of more than five (5) public companies to resign from all but five companies by the next annual general meeting after the expiration two years from commencement of the ***CAMA***.[48]

(xii) *Qualification of Small Company*: The new ***section 394(2)*** reflects an opportunity to showcase elegant drafting *vis a vis* the old provision, thus: *"A company qualifies as a small company in relation to a subsequent financial year if the conditions qualifying it as a small company are met in that year and the preceding financial year."*[49] However, the calls for company size categorisations to be aligned in both tax and companies' legislation, as espoused by this author, may merit further examination.[50]

(xiii) *Definition of 'Inability to Pay Debts'*: Whilst the ***BFA*** amends ***section 572(a) CAMA*** by "substituting for the expression '*a sum exceeding* ₦*200,000*', the words '*a sum to be determined by a regulation issued by the Commission*' ", the CAC has not yet picked up the

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[46] See *pp 7-8*. The focus of ***Principle 7*** on INEDs is more on prescriptions of who an INED is, and the benefits of having INED(s) on the Board (not necessarily of public companies only).

[47] See Afolabi Elebiju and Sam Ngwu, ***'Anomalies': The Illogics of Section 283(c) and 20(1)(d) Companies and Allied Matters Act 2020 Directors' Removal/Disqualification Overkill'***, *LeLaw Thought Leadership, March 2022*: https://lelawlegal.com/add111pdfs/AESam_-_Director_Removal_Final_Review.pdf (accessed 27.12.2023).

[48] It is respectfully submitted that the two years after commencement of the Act must be read to mean two years after the new ***section 307(3) CAMA*** came into effect on 8th February 2023 (when the ***BFA*** was signed), and not when ***CAMA*** was enacted in August 2020.

[49] The predecessor provision states: *"(2) A company qualifies as small in relation to a subsequent financial year if the qualifying conditions - (a) are met in that year and the preceding financial year; (b) are met in that year and the company qualified as small in relation to the preceding financial year; or (c) were met in the preceding financial year and the company qualified as small in relation to that year."*

[50] See generally, Afolabi Elebiju, ***'Synchronisations: Size Categorisations under Nigerian Companies and Tax Legislation'***, *LeLaw Thought Leadership Reflections, August 2021*: https://lelawlegal.com/add111pdfs/AE_-_Synchronisations_Companies_Size_3.pdf (accessed 27.12.2023).

gauntlet. This is because the ***Insolvency Regulations 2022*** still defines *"inability to pay debts"*, as having *"the meaning given by section 572 of the Principal Act."*[51]

CAMA's Potential Amendments' Unfinished Business: Some potential amendments that the ***CAMA*** should still benefit from include reviewing the sole shareholder company regime,[52] the provisions on limited partnerships,[53] (implementation of the) minimum issued share capital provisions,[54] prohibition of corporate political donations,[55] amongst others.

b. ***Customs and Excise Management Act BFA*** *Amendments*

The ***CEMA*** amendments are set out in ***Part III, BFA Schedule***. Key provisions include the following:

(i) Definition of Single Window: ***Section 2 CEMA*** now has an added definition:*" 'single window' means 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 fulfil all import, export, transit related and other regulatory requirements."*

(ii) Single Window: The newly inserted ***section 18A*** builds on the definition in (i) above to prescribe how the single window will facilitate seamless and efficient transactions processing.[56] It is respectfully submitted that ***section 18A*** and its counterpart ***section 18B*** are also in furtherance of ***section 7 BFA***, which aims at Nigerian ports (sea, air and inland) to be beacons of efficiency.

(iii) (Coordinated) Examination: ***Section 18B*** makes clear that: ***"The inspection or examination of goods under this Act or any other law shall be scheduled to ensure that the inspections or examination by any officer and other relevant authorities are co-ordinated and, if possible carried out at the same time."***[57] This is probably one of the most significant amendments that will optimise Nigerian import and export logistics, with the huge potential positive spillover effects, and needs rigorous monitoring so there is strict compliance.[58]

(iv) Reduced Timelines: These positive developments regarding ***CEMA's*** process have been captured in ***Para 27 BFA Schedule (Amendment of section 31 [CEMA])***,[59] and various amendments of ***Para 13,***

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[51] See CAC, ***'Insolvency Regulations 2022'***, ***Chapter 2 (Definition of Terms)***, *p.2*: https://www.cac.gov.ng/wp-content/uploads/2021/12/INSOLVENCY-REGULATIONS-Exposure-Draft.pdf (accessed 27.12.2023).

[52] See Afolabi Elebiju and Denis Ogunbowale, ***'Going Further Beyond: Corporate Restructuring Reflections on the Companies and Allied Matters Act 2020 Single Shareholder Company Regime'***, *LeLaw Thought Leadership, July 2023*: https://lelawlegal.com/add111pdfs/Afolabi_Elebiju_Denis_Ogunbowale_-_Restructuring_Reflections_on_CAMA_Single_Shareholder_Regime.pdf (accessed 27.12.2023).

[53] Afolabi Elebiju, *et al*, ***'Validity Questions: Nigeria's Companies and Allied Matters Act 2020 (CAMA) and Limited Partnerships (LPs)'***, *LeLaw Thought Leadership, February 2023*: https://lelawlegal.com/add111pdfs/Validity_Questions_CAMA_updated.pdf (accessed 27.12.2023).

[54] This author believes that extant companies should have been grandfathered; the unissued shares will automatically become void if not issued within the stated timeline, without any need for penalties for non-cancellation of the shares as required by ***CAMA*** and the CAC.

[55] See Afolabi Elebiju, ***'Perplexities: Is the Companies and Allied Matters Act 2020 (CAMA)'s Prohibition of Political Donations by Nigerian Companies Tenable?'***, *LeLaw Thought Leadership, August 2023*: https://lelawlegal.com/add111pdfs/Afolabi_Elebiju_-_Corporate_Political_Donations_Critique_Article_-_Final.pdf (accessed 27.12.2023).

[56] It provides as follows: *"18A. - (1) The Board shall establish and maintain a single window to enable traders submit documentation or data requirements for importation, exportation or transit to a single-entry point and utilise information and communications technology to support the single window. (2) The documentation or data requirements maintained in the single window mentioned in subsection (1) shall be made available to the relevant authorities or agencies for examination. (3)* ***The result of the examination mentioned in subsection (2) shall be made available to the applicant, through the single window within a period, as may be prescribed in a regulation.*** *(4)* ***Where documentation or data requirement has been submitted through the single window, such documentation or data requirement shall not be requested by any other authority or agency except in urgent circumstances and other limited exceptions which are made public.*** *(5) All references to delivery of or entry of any documentation, data requirement or information in this Act shall be construed as lodgement of such documentation, data requirement or information on or through the single window."* Emphases supplied.

[57] Generally, the less discretion that public officials have, the better for the system; the openness that this requirement will engender could make it less likely for particular officials to hold importers and exporters to ransom.

[58] Hopefully, businesses that are at the receiving end of non-compliance can provide such feedback to the Government for their further (enforcement) action. Nigeria has absolutely no reason not to be in the league of countries like Kenya and Carribbean counterparts in recording huge export earnings from fresh agricultural produce (fruits, vegetables and flowers). Institutional inhibitions and dysfunctional logistics have been part of the major culprits or inhibitors. Between January and June 2023, Kenya earned US$476 from horticultural exports. See ***'Kenya Horticulture Exports Rebound on Stronger Euro'***, *The East African, 07.09.2023*: https://www.theeastafrican.co.ke/tea/business/kenya-horticulture-exports-rebound-on-stronger-euro-4361124. *"Besides tourism, horticulture is one of Kenya's main sources of foreign exchange."* See 'Kenya's Horticulture Export Earnings up 40 pct in Q3 [2023] on Higher Volumes', Xinhua, 15.11.2023: https://english.news.cn/africa/20231115/96891653c85e42f2abada3f2e2cac8ac/c.html. See also, Chinedu Eze, ***'Expert: Nigeria Sitting on Multibillion Dollars Unexplored Perishables Exports'***, *THISDay, 09.09.2022*: https://www.thisdaylive.com/index.php/2022/09/09/expert-nigeria-sitting-on-multibillion-dollars-unexplored-perishables-exports (all accessed 28.12.2023). *"According to the [CBN], Nigeria earned ₦4.13 trillion from oil and gas exports in 2021, but experts who are versed in export of perishable farm produce believe Nigeria can earn double of this amount from just export of agricultural goods alone. Currently Nigeria is an import dependent country, where cargo planes come to drop goods and go to Kenya, Ghana or other African countries to carry farm produce to Europe, Americas, Australia, Asia and others. Nigeria is the best producer of mangoes. We have all kinds of variety and the proper climate to grow them." "Nwokoma told THISDAY that Ghana is doing much better than Nigeria in the export of farm produce. Ghana, he added, exports mangoes, oranges and yam to different countries of the world, noting that the major setback for Nigeria is processing and procedures." "'We are the highest producer of cassava and yam in the world. We are not maximisng the opportunities that we have. Some countries, like the United Arab Emirates (UAE) import everything they eat,..'"*

[59] The amended ***section 31 CEMA*** has reduced 15 to 5 days, and 14 to 4 days in ***31(1)*** and ***(4)*** respectively, regarding compliance requirements of uncleared or missing goods (list of goods unloaded from ship, aircraft or vehicle).

CEMA's First Schedule.[60] These should incentivise regulatory and transaction efficiencies, to help unlock the typical logjam around Nigerian trade logistics, and helping to change negative perceptions about the country.[61]

c. ***Export (Prohibition) Act (EPA) BFA*** *Amendments*
Para 30 (Part IV), BFA Schedule inserts a new ***section 1 EPA*** thus:

> *"1. (1) Notwithstanding the provisions of the Customs Excise Tariff, Etc. (Consolidation) Act ... or any other enactment, the goods specified in the Schedule to this Act are prohibited from being exported outside Nigeria. (2) The Minister may by order vary the goods set out in the Schedule to this Act. (3) In this section, "Minister" means the Minister responsible for finance."*[62]

This author believes that with the right commercial incentives, export prohibition should be unnecessary; *generally, the focus should be on enabling more production of the relevant items, rather than imposing export ban on them.* This is moreso that from experience, items subject to export ban may be smuggled out of Nigeria almost without consequences. High domestic demand should in itself be an incentive to produce more, whilst still also earning foreign currency from such items (unless they are of such nature that require local processing cum value addition before export in order to retain a higher quantum of value domestically.

d. ***Foreign Exchange (Monitoring and Miscellaneous Provision) Act***
The ***BFA Amendments*** relate to only ***section 6***, obviously targeting improved compliance status from authorised dealers and buyers. This is because *"The Central Bank may revoke the appointment of an authorised dealer or authorised buyer, where the authorised dealer or authorised buyer"* breaches any of the provisions of the new ***section 6(1)(a)-(l)***.

e. ***Immigration Act BFA*** *Amendments*
Part VII, BFA Schedule amends the ***Immigration Act (IA)***.

(i) The ***IA's*** new ***section 20(8)*** and ***(9)*** is consistent with the ***BFA's*** broad *"efficiency"* objectives: *"(8) Entry visas to Nigeria shall be* ***issued or rejected with reason within 48 hours of receipt of valid applications****. (9)* ***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, shall be published on all immigration-related websites, Embassies and High Commissions, and all Nigerian ports of entry."***[63]

(ii) Non-Removal of Business Permit (BP) Requirement for Companies with Foreign Participation: According to the new ***section 36(4) IA***, *"Notice of any change to the*

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[60]Courtesy of ***Para 28 BFA Schedule***, to hasten processes the time for taking relevant steps regarding appeals as stated in ***Para 13 First Schedule CEMA*** has been reduced from 7 days to 3 days ***(13(1))***; from 21 days to 7 days ***(13(2))***; from 14 days to 5 days ***(13(3))***; 10 days to 4 days ***(13(4))***; and 14 days to 5 days ***(13(5))***.
[61]It bears repetition that logistics and bureaucracy are the greatest impediments to Nigeria realising non-oil export earnings potential. This explains why Nigeria has always been giving export incentives almost forever but with little results to show for it. Public servants in an effort to pressure exporters for bribes will deliberately refuse to pass on paperwork, knowing that the produce will go bad or the fear of the produce going bad and need to avert such outcome will force exporters to "play ball". If data on losses incurred as a result of produce going bad in transit as a result of delayed clearance and public servants non-challence is collated, same would be substantial. There was the anecdotal story of a farmer who invested in cooling vans to ensure freshness of his produce from farm to airport for export, yet his vegetables will often still get spoilt at the Lagos airports.
[63]Emphases supplied.

particulars relating to the [BP] shall be given to the Comptroller General of Immigration." This is a very disappointing provision to say the least, given the persuasive arguments by this author against the continuation of a *Ministry of Interior (MoI) administered BP regime* under the ***IA***. One had hoped that the strident reasoning would have attracted the necessary regulatory attention, and the requisite reform action taken *vide* the ***BFA***.[64]

This author's respectful view remains that now, more than ever before, given the 'coordination' underlying the ***BFA***, the retention of an MoI BP process is absolutely incongruous, especially as the MoI will (or should) have access to, and can always rely on the CAC and NIPC's data.

f. ***Industrial Inspectorate Act BFA*** *Amendments*

The Industrial Inspectorate Act's Certificate of Acceptance Fixed Assets (CAFA) regime that the ***BFA*** sought to amend is itself anachronistic and smacks of duplication of work by since the FIRS undertakes tax audit and investigations; moreso, that digital resources has eased price verification of assets. Thus, respectfully, *the amendment seriously falls off the mark;* and given the ***BFA's*** policy underpinnings, *it ought to have been a repeal of the CAFA requirement in its entirety*.[65]

g. ***Industrial Training Fund Act BFA*** *Amendments*

The author believes that the ***BFA's ITF Act Amendments*** are not far reaching: because it imposes more burden than real value, it should have been scrapped or fundamentally tweaked at the very least. Prior views for scrubbing the ***ITF Act*** from our statute books have been published elsewhere, and recently the author reiterated this in a Memorandum submission.[66]

To make matters worse, the new ***section 6(3)*** means that there is a 50% chance that the ITF Levy could be increased in the future, because: "*The Minister may, with the approval of the Federal Executive Council by order published in the Federal Government Gazette, vary the rate of contribution prescribed in subsection (1).*"

h. ***National Housing Fund Act BFA*** *Amendments*

Part XI BFA Schedule amended ***section 4 NHF Act***.

It is respectfully submitted that since the NHF has always

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[64] See Afolabi Elebiju, ***'Musings II: Is Business Permit Under the Immigration Act Still Tenable in Nigeria?'***, *LeLaw Thought Leadership Perspectives, December 2020:* https://lelawlegal.com/add111pdfs/AE_-_Business_Permit_in_Nigeria.pdf (accessed 27.12.2023). See also Afolabi Elebiju, ***'Key Implications of the Immigration Regulations 2017 [and the Ease of Doing Business']***, *Presentation at NAILs' Conference, Abuja, 19th May 2022 themed* ***'Contemporary Issues in the Immigration Milieu in Nigeria'***.

[65] On this issue, in a recent Memorandum, this author stated as follows:

"***B. Remove the Requirement for Certificate of Acceptance on Capital Assets (CAFA)***

2.4 ***Section 3 Industrial Inspectorate Act, Cap. I8, LFN 2004 (IIA)*** *as amended by* ***section 39 BFA*** *requires CAFA for capital assets involving "expenditure of five million naira or as the Minister may by regulation prescribe" instead of the ₦20,000 erstwhile statutory threshold (albeit in practice, the threshold was previously ₦500,000). We believe that the entire CAFA regime should be scrapped as the bureaucracy around it, engenders corruption. Furthermore, with the democratisation of access to information, whereby prices are more easily discoverable/ verifiable, tax audits can always throw up egregious or inflated costs.*

2.5 *The time, energy and resources involved in obtaining CAFA for capital expenditure smacks of gross inefficiency and represents opportunity cost of time that could have better been spent on the core businesses of applicants, to make them more profitable for government to earn its share from the potentially higher taxable income. It is doubtful whether the regulator (Industrial Inspectorate Department of the Federal Ministry of Industries) have the capacity to keep processing timeously, as the economy expands.*

2.6 *Alternative ways of obviating CAFA includes providing for sworn affidavits to accompany the returns on capital expenditure in addition to credible third party documentation such as invoices and receipts. The risk of perjury in addition to other sanctions in the tax laws will discourage submission of erroneous information.*

2.7 *We respectfully submit that the framing of* ***section 1 IIA*** *itself is an aberration to modern business realities:*

"(1) As from the commencement of this Act, ***any person proposing*** *- (a) to start a new undertaking involving the expenditure of five million naira or as the Minister may by regulation prescribe; or (b) to incur additional capital expenditure expenditure of five million naira or as the Minister may by regulation prescribe in respect of an existing undertaking,* ***shall give to the Director notice of his intention in the form specified in the First Schedule to this Act****."*

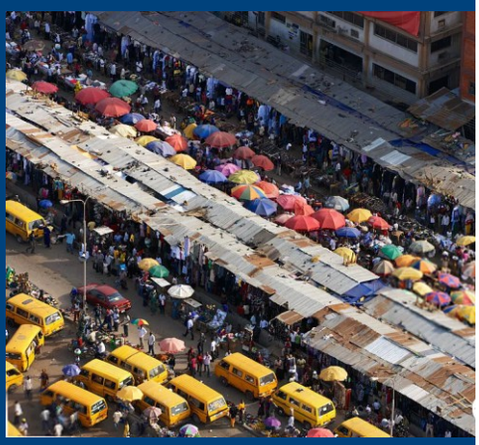
2.8 *Why should businesses be giving notice of their intention to incur capital expenditure to a regulator that does not even work as efficiently as the private sector? Practical evidence of that aberration was that in practice, CAFA was always obtained after the fact; same result might as well be achieved even more efficiently during audit, if at all.*

[66] "A. ***Repeal or Further Amend the Industrial Training Fund (ITF) Act***

2.1 *The* ***IFT Act*** *should be made totally inapplicable to private sector employers, who already have sufficient motivation to train and retain their staff, without any regulatory interventions; which in any event, adds to the cost of doing business, because of the compliance obligations. The recent amended* ***section 6 ITF Act*** *vide* ***section 41 Business Facilitation Act*** *(****(BFA)****, which raises the compliance threshold to employers having 25 employees), does not go far enough.*

2.2 *Further bases for our views are contained in an earlier article by our Principal, Afolabi Elebiju,* ***'Vestiges: Do We Still Need the Industrial Training Fund (ITF)?'****, Nigerian Tax Journal (KPMG, 2020), pp.40-42: https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/nigerian-tax-journal-2020.pdf; and at LeLaw Thought Leadership page:* https://lelawlegal.com/add111pdfs/Afolabi-Vestiges-Do-We-Still-Need-the-ITF.pdf.

2.3 *We believe that the* ***ITF Act*** *itself disrespects, instead of commending, the role of employers in lowering Nigerian unemployment data, and diversely contributing to the national economy by the very fact of employing Nigerian citizens. The preferable focus should be that the regulatory framework encourages fair treatment and compensation of employees; there is absolutely no need for regulatory intervention on training of private sector employees in the manner contemplated by the* ***ITF Act****."*



had a most unimpressive history,[67] the Government's focus should have been more on developing or facilitating a private sector led Nigerian mortgage market. *Consequently, the preferred amendments would have been the wholesale repeal of the* ***NHF Act*** *or to change its modus operandi to a willing contributory model/basis.*

By the new provisions, only employees "*earning the national minimum wage and above*" in both the public and private sectors "*in Nigeria shall contribute 2.5% of his monthly income to the Fund*" ***(section 4(1)); section 4(2)*** states that: "*Any self-employed person earning the equivalent of the national minimum wage and above shall contribute 2.5% of his monthly income to the Fund.*" By 4(3), "*An interest rate of 2% per annum, or as may be determined by the Bank, shall be payable on the contributions made under subsection (1) and (2)*". Finally, ***section 4(4)*** provides: "*The Federal Government may make any grant of money to the Fund.*"

In summary, these provisions do not inspire any confidence for the following reasons:

(a) Government presently has no way of forcing self-employed citizens who earn more than the minimum wage and above, especially in the informal sector, to subscribe to the NHF. If Government does, will that not be expropriation, and will there not be a moral burden? Citizens who sweat to earn their income should be able to freely determine how they want to spend same, and should not be subjected to any "big brother" or paternalistic compulsions or priorities on their spending;[68]

(b) Greater efforts should have been put into improving the present regime, to provide increased incentive for willing participation based on potential benefits, rather than decreeing contributions. If according to ***section 4(3)*** as amended contributions will earn 2% interest, will potential contributors not explore alternative channels that could yield far more robust returns, such as the stock market (subject to risk management) or even money market instruments?[69]

(c) If ***section 4(4)*** was mandatory, and it was certain that the Federal Government ***will (not may)*** make a grant of money to the Fund, then maybe more contributors would be minded to participate in the NHF.[70]

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[67] See World Bank, ***'Nigeria Financial Sector Review'***, *Volume 3: Non-Bank Financial Institutions and Markets, May 2000, pp 12 – 17:* https://openknowledge.worldbank.org/server/api/core/bitstreams/a80b4f80-7c88-51df-bb28-910f8b1d0ea6/content (accessed 27.12.2023). Excerpts: ***Para 7.28***: "*… FMBN has become dependent on NHF revenues and its primary activity at present is collecting NHF contributions as a fiscal public agency. FMBN's financial performance has been disappointing, as summarized in Annex 5B and NHF's impact as a housing finance policy instrument has been very poor.*" ***Para 7.29***: "*… FMBN's administrative expense, adding to 10% of total assets (inclusive of NHF funds), is excessive for a second tier lending institution. …*" ***Para 7.30***: "*… 60% of contributors in 1997 were civil servants who have difficulty avoiding this mandatory requirement, while the self-employed easily escaped this requirement. Many private companies, labor unions, and even public institutions (two states as well as CBN staff) flatly reject NHF contributions, which are perceived as another wage tax. The poor performance of collections is due to the unattractive 4% saving rates, not compensated by a reasonable opportunity to obtain a subsidized mortgage loan. …*" ***Para 7.30***: "*By December 31 1998, although all NHF contributors are supposedly eligible, NHF refinanced only 1 borrower per 4000 contributors (i.e. 141 loans). Even if the Fund could disburse at its maximum capacity (which would require amendments to NHF mechanisms), this ratio would not reach more than 1 borrower per 500 contributors. Therefore, the NHF functions essentially as an unsustainable "lottery". …*" See also, ***'Recommendations'*** at *pp. 14-17.*

[68] The ***NHF Act*** presumes that employees will be contributing throughout their entire working life. Why can they not opt out after they have acquired their target property and paid any outstanding indebtedness? Moreso NHF refunds can only be obtained upon retirement at 60 years or after 35 years of service. Contributions over an entire career and which is marked by sub-optimal returns is effectively a double whammy given the opportunity cost/alternative returns such contributions could have generated elsewhere. For some details about how the NHF works, see ***'NHF Frequently Asked Questions'***: https://fmbn.gov.ng/National%20Housing%20Fund/nhf.html (accessed 27.12.2023). Also, *cf.* with the new ***section 89(2)(b)(i) Pension Reform Act 2014*** as inserted by ***Para 64 BFA Schedule***: "*(2) Notwithstanding the provisions of subsection (1)(c) … (b) Pension Fund Administrator may, subject to guidelines issued by the Commission,* ***apply a percentage of the pension assets in the retirement savings account - (i) towards payment of equity contribution for payment of residential mortgage by a holder of Retirement Savings Account.***" Emphasis supplied.

[69] Note that the erstwhile ***section 4*** provided as follows: "*4. Contribution by Nigerian workers: a) A Nigerian worker* ***earning an income of ₦3,000 and above per annum*** *in both the public and the private sectors of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund. b)* ***An interest rate of 4 per cent shall be payable on contributions*** *made under subsection (1) of this section.*" Emphases supplied. ***Quaere***: a puzzling question is, why did the ***BFA*** reduce the interest rate to 2%?

[70] See Josephine Ogundeji, ***'Poor Access Heightens Calls for National Housing Fund Privatization'***, *Punch, 15.09.2023:* https://punchng.com/poor-access-heightens-calls-for-national-housing-fund-privatisation/ (accessed 27.12.2023). Excerpts: "*Worried by the difficulties workers encounter while trying to access the fund, the Nigeria Labour Congress recently threatened to withdraw civil servants from the mortgage scheme.*" "*The labour union also criticised the Federal Mortgage Bank of Nigeria for its poor management of the funds accumulated from contributors.*" "*The labour union president also informed the committee that despite the increase in the total pool in the NHF, workers were still unable to get loans to get shelter. He, thereafter, called for drastic action to save the mortgage scheme.*" See also, Samuel Adesoji, ***'Buhari's Rejection of the NHF Bill, a Step in the Right Direction?'***, *Nairametrics, 03.04.2019*: https://nairametrics.com/2019/04/03/buharis-rejecting-of-the-nhf-bill-a-step-in-the-right-direction/more Reasons for the President's refusal reportedly included: "*the compulsory investment requirement imposed on commercial banks, merchant banks, insurance banks and pension fund, administrations of the minimum of 10% profit before tax into the National Housing Fund will be destructive punitive to a number of industries and sectors of the Nigerian economy including cement, manufacturing, banking, insurance, pensions and may also impact adversely affect the average Nigerian worker.*"

i. ***National Office for Technology Acquisition and Promotion Act***

***BFA** Amendments*

Para 48 BFA Schedule amended ***section 5(2) NOTAP Act***, by inserting after the word "*thereof*", the words, "*provided that companies in their first two years of business operation shall not be liable to late registration penalties where such contracts are registered before the end of the second year of their business operation*". This is another welcome development, as start-ups are likely to focused on existential issues and in the early days, many may not even know about NOTAP's existence.[71]

j. ***Nigeria Customs Service Board Act (NCSBA)***

Para 52 BFA Schedule amends ***section 3(b)(iii) NCSBA*** by requiring them to "*adopt modern means of operationalisation and develop regulations for the carrying out of the activities of the Service.*" This forward looking provision will entail upgrades and even new technologies for continued improved optimal service delivery. It also sends a strong message that the Government is expecting top notch performance from the Customs at all times.[72]

k. ***Nigerian Investment Promotion Commission Act***

***BFA** Amendments*

The new ***section 20(3) NIPC Act*** (courtesy of ***Para 54 BFA Schedule***) provides that: "*Notwithstanding the provisions of subsections (1) and (2), an enterprise registered in Nigeria, which subsequently acquires foreign participation after the commencement of business, shall, within three months of such acquisition, register with the Commission.*"[73] Consistent with our earlier views on Business Permit, it is respectfully submitted that the "*One Government*" concept underlying the ***BFA*** should mean that foreign investors have nothing to do with MoI beyond expatriate quotas (EQs) and related authorisations; they should interface primarily with the NIPC, moreso as the MoI should ideally will have access to CAC and NIPC data for purposes of their work.

The other amendments further refines the role of NIPC as the investment promotion agency of government are contained in the new ***section 22 NIPC Act***:

> "*22. (1) For the purpose of promoting identified strategic or major investments, the Commission shall - (a) specify priority area of investment and their applicable benefits and incentives; and (b)* ***negotiate specific incentives packages for strategic investments in addition to the incentives available to any enterprise under other laws.***
>
> *(2) The Commission shall publish, in the Federal Government Gazette and on its website the - (a) criteria for determining strategic investment and designate an investment that satisfies the criteria, as strategic investment; and (b)* ***details of special incentives awarded through negotiation under this section.***"[74]

However it is important to note that the ***National Tax Policy (NTP)*** has leaned generally in favour of the sparing use of incentives given their disruptive anti-trust effects; rather preferring a level playing ground for all sectoral players. This author supports that stance,[75] and it

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[71]Since previously, NOTAP essentially regarded fines as veritable source of income; to exclude start-ups from late penalties exemplifies attitudinal shift by government, consistent with the recent tax exemptions (0% CIT) or preferential rates (20% CIT) for small and medium sized companies respectively, under the ***Companies and Income Tax Act (CITA)***.

[72]For efficacy, there should also be mechanism for periodic reviews so as to keep making consequential adjustments.

[73]The new ***section 20(3)*** cures the inadvertent omission of wholly owned Nigerian companies (not requiring NIPC registration) that subsequently become partly (or wholly) foreign owned escaping NIPC registration requirement. The change of ownership status which makes the company registrable within three months of such change is aimed at enabling the NIPC full view of foreign investment data. Incidentally: (a) there is no express provision for registration of companies that changed ownership status post incorporation and after commencing business but pre –***BFA***, to register with the NIPC; and (b) the gap of not having any specific sanctions for failure to register a registrable company (i.e. with foreign participation) with the NIPC, has not been plugged with the ***BFA NIPC Act*** Amendments. ***Quaere***: Maybe the legislature believes that there is no need for sanctions, and if so, why?

[74]Emphases supplied. The new ***section 22(1) (a) and (b)*** NIPC's powers must be by reference to the boundaries of authority prescribed by the FEC or subject to FEC's approval in such regard. It is submitted that the provisions would better accord with reality if they are expressed to be performed/exercised subject to FEC's (prior) approval. For ***section 22(2)***, FEC's approval must be reasonably presumed.

[75]See generally, Afolabi Elebiju and Chuks Okoriewke, ***'Counting the Cost: An Impact Analysis of Nigeria's Tax Incentive Regime'***, *LeLaw Tax Monograph Series, No. 1, March 2021, especially at pp. 4-5:* https://lelawlegal.com/add111pdfs/AEChuks_-Tax_Inequality_Final_new.pdf. Excerpts: "*The NTP 2017 was cognisant of the potential benefit s from tax incentives but cautioned on need to pay 'attention to details' as part of strategic government action. According to Para. 2.2.1(v) and (vi) NTP, 2017: '… any incentive to be granted should be broad, sector based, tenured and transparent. Implementation should be properly monitored, evaluated, periodically reported and kept under review. Revenue forgone from tax incentives or concessions should be quantified against expected benefits and reported annually. Where the benefits cannot be quantified, qualitative factors must be considered…*" See also, Afolabi Elebiju, ***'Promoting Country Competitiveness through Sectoral Reforms: Case Study of Nigerian Telecommunications Sector, 1999–2006'***, *MentorHouse (2014), pp. 126-128;* Afolabi Elebiju and Frank Okeke, ***'Journeys: Current State Assessment of Nigerian Export Processing/Free Trade Zones Regime'***, *LeLaw Thought Leadership, April 2020:* https://lelawlegal.com/add111pdfs/FTZ(1).pdf (accessed 27.12. 2023).

would therefore be prescient for the PEBEC, Hadiza Bala Usman's Policy Coordination Unit and the Presidential Committee on Fiscal Policy and Tax Reforms to ensure that this becomes the driving philosophy on tax incentives.[76]

I. ***Nigerian Ports Authority Act BFA Amendments***

Part XVII BFA Schedule embody the ***NPA Act BFA Amendments***. ***Para 59 BFA Schedule*** amends ***section 7 NPA Act*** with insertion of a new ***7(e)(v)***: "*the use of information and communications technology for operations within the ports*"; and new ***7(ia), 7(ib), and 7(ic)*** as additional functions of the NPA: "*(ia) remove all unauthorised personnel from the ports; (ib) provide facilities for the establishment and maintenance of a single window through, which all the operations required by law of all government authorities and agencies in any part of Nigeria can be undertaken; and (ic) ensure that the operations required by law of all government agencies in any port in Nigeria are harmonised through the single window domiciled within the ports.*"[77]

These provisions evince a strong intention for a new normal in ports administrative processes, etc. that will help benchmark our ports performance against the leading hubs in the continent, and globally.[78] This continues to attract widespread attention[79]

m. ***Pension Reform Act BFA Amendments***

The new ***section 89(2)(a)*** describes that: "*pension assets are eligible for securities lending as the Commission may approve*" and ***89(2)(b)*** goes on to state: "*Pension Fund Administrator may, subject to guidelines issued by the Commission, apply a percentage of the pension assets in the retirement savings*

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[76]See Afolabi Elebiju's contributions at tax panel session on ***'Tax Administration Strides and the Nigerian Business Environment'*** at ***'NBA - SBL 16th Annual International Business Law Conference 2022: Recent Developments in the Business Law Environment'*** on 21.07.2022. He contributed his insights on *whether the Nigerian tax administrative strides has improved tax certainty in Nigeria?* Excerpts: "***The NTP (which could be revised from time to time), is supposed to be the basis for investors' prediction of likely tax changes and how they would be implemented. Although lacking statutory imprimatur, having been approved by the Federal Executive Council (FEC), it could rightly be described as the government's tax manifesto that investors can rely on in their planning. Deviance from its overarching 'expectations context' framework should not be so regular as to make the NTP otiose. Certainty underpins the NTP's five-fold objectives*** *in its Para 1.5 to amongst others: provide basis for future tax administration and legislation and serve as a point of reference for stakeholders in taxation. Indeed, Para 2.1 reflects 'simplicity, certainty and clarity' as one of the (seven) Guiding Principles of Nigerian Tax System. Essentially, it means that 'tax laws and administrative process should be simple, clear and easy to understand.' "* Emphasis supplied. See also *'Taxspectives by Afolabi Elebiju'* related commentary: ***'Country Competitiveness: Reform or Stagnate!'***, *ThisDay Lawyer, 02.03.2010, p.vii*: https://lelawlegal.com/add111pdfs/Country_Competitiveness_Reform_or_Stagnate_-_Final.pdf; and ***'With NTP, Taxes, Not Just Death, Now Certain In Nigeria!'***, *ThisDay Lawyer, 30.03.2010*: https://lelawlegal.com/add111pdfs/WITH_NTP,_TAXES,_NOT_DEATH_CERTAIN.pdf. See also, Chuks Okoriekwe, ***'Pioneer Status Tax Incentive in Nigeria: A Commentary on Recent Developments and Implications for Businesses'***, *(LeLaw Regulatory Alert), ThisDay Lawyer, 12.09.2017, p.7*: https://lelawlegal.com/add111pdfs/Pioneer-Status-Commentary-on-Recent-Developments.pdf (all accessed 27.12.2023).

[77]*Cf.* whether the Onne Port (which is part of the Oil and Gas Export Free Zone (OGEFZ) has been able to realise its ambition of being a major service hub to the entire Gulf of Guinea, especially given the competitor that Equatorial Guinea's Bioko represents and the likelihood of overshadowing Onne as a major oil and gas hub? See Afolabi Elebiju, ***'Free Trade Zones & Nigeria Tax Regime'***, *presentation at CITN MPTP, Ibadan, 25.06.08 (Slide 46)*: https://www.templars-law.com/app/uploads/2015/05/citn_presentation.pdf. See also, US Department of State, ***'Equatorial Guinea (02/09)'***: https://2009-2017.state.gov/outofdate/bgn/equatorialguinea/116191.htm. (both accessed 29.12.2023). Excerpts under ***"Infrastructure"***: *"In partnership with the U.S. petroleum company Amerada Hess, the British company Incat made significant progress in a project to renovate and expand Luba, the country's third-largest port, located on Bioko Island. Luba has become a major transportation hub for offshore oil and gas companies operating in the Gulf of Guinea."* With the commencement of operations of the Lekki Deep Sea Port, Dangote Refinery Port (albeit with captive operations), and others in pipeline such as Badagry and Ibom Deep Sea Ports, maybe if Nigeria solves her bureaucracy and logistics problems, she can realise her ambition to be a major African logistics hub. [78]According to a recent performance report, Lagos ranked 260th out of 348 ports globally. See World Bank Group and S&P Global, ***'The Container Port Performance Index 2022 A Comparable Assessment of Performance based on Vessel Time in Port'*** *(Table E.1, The CPPI 2022: Global Ranking of Container Ports, pp. 3-7, Executive Summary, particularly p.6), 2023*: https://openknowledge.worldbank.org/entities/publication/6a51b12c-77cd-4236-be5b-13e468fe0cca *Cf.* Amaka Anagor-Ewuzie, ***'NPA: Evaluating Performance in Trade Facilitation, Revenue Collection'***, *Business Day, 25.10.2023*: https://businessday.ng/maritime/article/npa-evaluating-performance-in-trade-facilitation-revenue-collection/. Excerpts: *"Aside from revenue,* ***NPA is also investing in the facilitation of import and export trade at the port. It came up with strategies that reduce bottlenecks at ports, enhance ease of doing business and reduce costs for port users****. One such strategy was the licensing of 10 Export Processing Terminals (EPTs) in Lagos and Ogun States. … The idea of export terminals was to eliminate all procedural bottlenecks that hitherto made Nigerian exports uncompetitive in the international marketplace."* See also Logistics Clusters, ***'Nigeria Port Assessment (2.1)'***, *2022*: https://dlca.logcluster.org/21-nigeria-port-assessment (both accessed 30.12.2023). Excerpts: *"Nigeria has six major ports controlled by the [NPA]… The ports of Warri, Onne, Port Harcourt and Calabar are multi-purpose facilities located in one the world's largest crude oil production regions, the Niger delta, and their emphasis is on support of this sector. As they continue to invest in infrastructure, expanding their services and levels of operation,* ***there is potential to further utilize these ports to alleviate the congestion at the Lagos port complex. Lagos is the main point of entry for Nigeria's import and export commodity trade. The Lagos Port complex is severely hampered by bottlenecks caused by traffic gridlock due to on-going access road rehab works and due to the large numbers of trucks entering and exiting the port facilities. Multiple checkpoints in front of the port and environs further add to delays and the congestion issues****."* Emphases supplied.

[79]See the views of a commentator on X (formerly Twitter), *Man of Letters.@Letter_to_Jack:* https://twitter.com/Letter_to_Jack/status/1742117516288143803 (accessed 03.01.2024). *"Last night, during a heated argument about Ease of Doing Business in Nigeria,* ***someone dug up a list of the top 10 highest ranking Ports in Africa, published by Business Insider Africa, and to our (not surprising) surprise, No Nigerian Seaport made the list****. How could that be? Aren't we the most populated Black Nation in the world, and the second biggest economy in Africa? I think at this point,* ***we have to ask these very pertinent question: How is it quicker and easier to clear (and ship) containers from the Seaports in smaller, neighboring countries like Togo, Ghana and Benin than it is in Nigeria? For the sake of businesses and revenue, the government must dedicate special effort to this problem and find a lasting solution to this issue of inefficiency that is the root cause of the congestion and delay at our seaports. It is as clear as daylight that the bottlenecks one would encounter when attempting to clear goods at our ports is one of the most significant contributors to our very low Ease of Doing Business index rating****. The process is too cumbersome, time-consuming and stressful. This trademark inefficiency at our seaports has two major resulting effects on Nigeria: 1. Loss of billions of dollars in annual revenue. 2. Trade imbalance due to inefficiencies in exports. What are the key challenges of Nigerian Ports? What could the Federal Government do to arrive at a lasting solution to this problem?"*

account - (i) towards payment of equity contribution for payment of residential mortgage by a holder of Retirement Savings Account, and (ii) for the purpose of securities lending." These provisions are business facilitative and potentially positively impact on the wider economy.

Conclusion

The apt description of Nigeria's reform efforts is that it is not a destination, but a journey paradigm. Consequently, we have to keep travelling; the current administration has to continue from where the previous one stopped. In this wise, it is re-assuring that the PEBEC is still in place and many of its top functionaries are still in government. The expectation is that with their reform focus, they will keep working vigorously towards Nigeria attaining the envisaged top 50 global target by 2025, which is just two years away.

Anecdotal perceptions that some agencies like the National Agency for Food & Drug Administration (NAFDAC) seem to thrive on making registrations and compliance difficult so that they can make money officially and unofficially through enforcement actions, must be actively worked on through such MDAs fully embracing the tenets of the ***BFA***.[80]

It is also worthwhile for States to consider domesticating the ***BFA*** towards ensuring near uniformity of public service delivery nationwide, a view that the author had expressed previously.[81]

It is also heartwarming that part of the remit of the Presidential Committee on Fiscal Policy and Tax Reforms is to address these issues in tandem with the Government; and we should soon see and feel, the positive impact of their work.[82]

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[80]There may be need to review NAFDAC's registration and other compliance processes to ensure that the regulated regulatory burden for any approval is not any heavier than necessary, and definitely without compromising NAFDAC's safety remit/oversight. At the moment, the anecdotal view is that for many reasons, including to make "facilitation" (read: bribery) inescapable, NAFDAC is 'anti-entrepreneurial'. Part of the 'inconspicuous' effects of such attitude, is the potential unfavourable anti-trust impact. Thus, commercial awareness is very important 'must have', for regulatory officials with market facing oversight responsibilities.

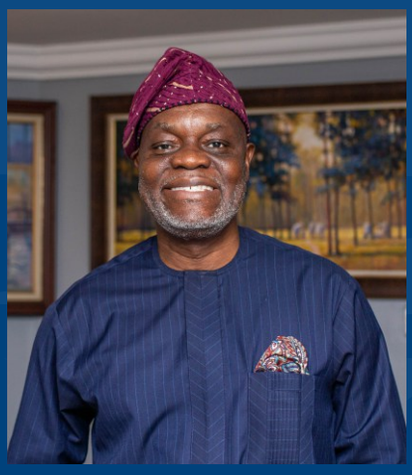
[81]In a recent Memo submission, this author opined as follows:

"I. States Should Domesticate Business Facilitation Act 2022 (BFA) Provisions

2.19 *Since the **BFA** being a federal legislation is not binding on State Ministries, Departments and Agencies (MDAs), it is apposite that State domesticate the provisions, so the same standards of performance regarding business facing or impacting public sector service delivery can be in place. We believe this will help to make life easier for businesses, potentially boosting their productivity cum profitability, from which government will participate in such upside through taxes.*

2.20 *By the same token, States can also consider equivalent measures akin to the **Nigeria Start-Up Act 2022** provisions, to improve their own regulatory landscape competitiveness prospects. It is important to encourage healthy sub-national competition as in Nigeria's First Republic."*

[82]See ***'Mr President's Address at the Inaugural Meeting of the Presidential Committee on Fiscal Policy and Tax Returns'***, *State House Press Release, 08.08.2023*: https://statehouse.gov.ng/news/mr-presidents-address-at-the-inaugural-meeting-of-the-presidential-committee-on-fiscal-policy-and-tax-returns/. Excerpts: *"Today marks another milestone in our quest to reform our economy and re-engineer the finances of our country for optimum performance. … …, **we knew that our reforms will go deeper and far-reaching if we must reposition our country and remove all the barriers stunting our economic growth**. … … Unfortunately, Nigeria's current international standing in this sector shows that we have a long way to go. Globally, Nigeria ranks very low on metrics such as the ease of paying taxes. Equally, our tax to GDP ratio is one of the lowest in the world and falls below even the African average. The consequences of the ongoing failure of our tax regime are real and significant. … **On the day of my inauguration, I promised that my administration would address all of the issues impeding investment and economic growth in Nigeria**. … It is for the same reason we gather here today to inaugurate the Presidential Committee on Fiscal Policy and Tax Reforms … to address the broad fiscal challenges facing our economy. Its mandate shall be divided into three broad areas, viz: Fiscal Governance, Tax Reforms Growth, [and] Facilitation. **Within the scope of this mandate, the Committee shall have as its objective the advancement of viable and cost effective solutions to issues such as … the lack of effective coordination between fiscal and other economic policies within and across levels of government and poor accountability in the utilisation of tax revenues**. The Committee is comprised of experts from both the private and the public sector. I have given them a strong mandate and I expect their report to cover tax reform, fiscal policy design and coordination, harmonisation of taxes and revenue administration among other items. Our target is to improve Nigeria's revenue profile while making the business environment more conducive and internationally competitive. Our aim is to transform the tax system to support sustainable development, while, at the same time, achieving a minimum of 18% Tax to GDP ratio within the next three years. In order to ensure to ensure seamless implementation, the Committee shall be empowered not merely to make recommendations; but to also provide practical support the government in the execution and delivery of the recommended changes. The Committee is expected to achieve its mandate within a period of one year. …. **In carrying out its mandate, the Committee will be guided by national interest above all else. We cannot continue to tax poverty when we should be promoting prosperity. We should no longer tax investment or production; but focus on returns, income and consumption. This government will tax fruits, not seeds. Our goal is to promote investment and facilitate economic growth as a sustainable way to grow and diversify government revenue. We will be mindful to ensure fiscal stability for all stakeholders**, including investors and businesses, both domestic and foreign, as well as all tiers of government. All government [MDAs] are hereby directed to cooperate fully with the Committee towards achieving their mandate. Their assignment is very critical to the fiscal health of our country and our collective survival. It is now our job to support the Committee members to succeed..."* Emphases supplied.



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