

**APPRAISAL OF THE INNOVATIVE PROVISIONS OF THE BUSINESS FACILITATION ACT 2023 IN THE LIGHT OF NATIONAL POLICY ON EASE OF DOING BUSINESS IN NIGERIA.**

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**Abstract**

Business activities in Nigeria, which has the largest economy in Africa, have been impeded by bureaucratic red tape, ambiguous legal requirements, and inefficient administrative procedures.<sup>1</sup> Such barriers have been a continuous problem. To address the various obstacles faced by businesses in Nigeria and to effectively implement regulatory and administrative reforms, the Federal Government of Nigeria has enacted the Business Facilitation (Miscellaneous Provisions) Act (BFA) 2023. The Business Facilitation Act 2023, a notable development in creating a favourable business climate, was officially signed into law by President Muhammadu Buhari on 14 February 2023.<sup>2</sup> The BFA 2023 is in line with the National Policy on Ease of Doing Business in Nigeria, which has been a key part of economic reforms to improve the regulatory environment, reduce bureaucracy, and create a more business-friendly climate.<sup>3</sup> It introduces various innovative provisions to simplify regulatory processes, increase transparency, and improve efficiency. This paper therefore aims at evaluating the provisions of the Business Facilitation Act 2023 and analyses their compatibility with the National Policy on Ease of Doing Business in Nigeria. It further analyzes the key amendments and regulatory changes introduced by the Act. The paper will also show the lessons and reflections on potential impacts on the business ecosystem in Nigeria, with a focus on reducing administrative hurdles, fostering economic development, and enhancing the overall ease of doing business. The researchers adopted the doctrinal methodology with analytical approach. The BFA 2023 is a major milestone in improving the business environment in Nigeria. The Act addresses critical challenges faced by businesses by introducing innovative provisions such as the one-stop shop policy and enhanced dispute resolution. Collaboration among stakeholders, including government agencies, businesses, and civil society, is crucial to ensure the Act effectively creates a favourable business environment in Nigeria.

**Keywords: Innovative Provisions, Business Facilitation Act, National Policy, Ease of Doing Business, Nigeria**

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<sup>1</sup> P Thandika Mkandawire and Charles Chukwuma Soludo, *Our Continent, Our Future* (International Development Research Centre, 2014); Oluwafemi Moses and Omoniyi V Ajulor, 'Effects of Bureaucratic Red Tape on Employees' Performance in an Organization (A Study of Lagos State Water Corporation) (MSC, University of Nigeria, McCarthy Study Centre Lagos, 2022).

<sup>2</sup>Olujimi Bucknor, Subuola O Lanlehin and Alicia Adefarasin, 'Revolutionizing Business in Nigeria: A Detailed Examination of the Business Facilitation Act, Its Benefits and Challenges ½' (*Denton ACAS-Law*, 16 March 2023) <<https://www.dentonsacaslaw.com/en/insights/articles/2023/march/16/revolutionizing-business-in-nigeria>> accessed 20 May 2024.

<sup>3</sup> Business Facilitation (Miscellaneous Provisions) Act No 5 2022, s 1 (1) (a) & (b)

## 1.0 Introduction

Business activities in Nigeria, which has the largest economy in Africa, have been impeded by bureaucratic red tape, ambiguous legal requirements, and inefficient administrative procedures.<sup>4</sup> Such barriers have been a continuous problem. The World Bank's Ease of Doing Business report has repeatedly ranked Nigeria 131 out of 190 which can be classified as having a low level of ease of doing business.<sup>5</sup> The reason for the low ranking is not far-fetched. Nigeria is regularly condemned for the complicated regulatory processes it employs, the ineffective administrative procedures it employs, and the overall lack of openness in the way the government conducts its business.<sup>6</sup> Both domestic and international investments in the country have also been hampered by these challenges, which have consequently impeded economic growth and development.<sup>7</sup> To address this issue, the Nigerian government established the Presidential Enabling Business Environment Council (PEBEC) in 2016, with the aim of enacting measures that would make it easier for businesses to operate freely.<sup>8</sup> A number of initiatives, including the National Policy on Ease of Doing Business, have been put into action with the profound assistance of the PEBEC.<sup>9</sup> This policy also aims to improve the business environment by implementing specific regulatory and administrative reforms.

The rationale for this research lies in the critical need to understand how these legislative changes can potentially transform the business environment in Nigeria. Considering the significance of MSMEs to the Nigerian economy, a comprehensive analysis of these provisions will shed light on the BFA's potential to stimulate economic growth, attract foreign investment, and enhance Nigeria's position in global ease of doing business rankings.<sup>10</sup>

This paper has significance for policymakers, business leaders, entrepreneurs, and investors who want to gain a comprehensive understanding of the changing regulatory landscape in Nigeria. The main aim is to provide a well-rounded and insightful analysis that highlights the strengths and possible limitations of the Act. Additionally, actionable recommendations will be offered for further policy improvements.

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<sup>4</sup> P Thandika Mkandawire and Charles Chukwuma Soludo, *Our Continent, Our Future* (International Development Research Centre, 2014); Oluwafemi Moses and Omoniyi VAjolor, 'Effects of Bureaucratic Red Tape on Employees' Performance in an Organization (A Study of Lagos State Water Corporation) (MSC, University of Nigeria, McCarthy Study Centre Lagos, 2022).

<sup>5</sup>World Bank, 'Economy Profile of Nigeria Doing Business 2020 Indicators' (2020) <<https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf>> accessed 21 May 2024; Aisha Salaudeen, 'Nigeria improves in World Bank ease of doing business ranking, but is it easier to do business there?' (*CNN*, 24 October 2019) <<https://edition.cnn.com/2019/10/24/africa/nigeria-improves-in-world-bank-ranking/index.html>> accessed 21 May 2024.

<sup>6</sup> Ibrahim Abubakar et al., 'The Lancet Nigeria Commission: Investing in Health and the Future of the Nation' (2022) 399 *The Lancet* 1155 <[http://dx.doi.org/10.1016/s0140-6736\(21\)02488-0](http://dx.doi.org/10.1016/s0140-6736(21)02488-0)>.

<sup>7</sup> Yusuf Abdulkarim, 'A Systematic Review of Investment Indicators and Economic Growth in Nigeria' (2023) 10 *Humanities and Social Sciences Communications* <<http://dx.doi.org/10.1057/s41599-023-02009-x>>.

<sup>8</sup>United States Department of State, 'Nigeria - United States Department of State' (7 December 2023) <<https://www.state.gov/reports/2023-investment-climate-statements/nigeria/#:~:text=The%20government%20established%20the%20Presidential,improving%20business%20transparency%20and%20efficiency.>>>.

<sup>9</sup> Financial Nigeria International Limited, 'PEBEC Launches Fourth National Action Plan on Ease of Doing Business Reform' (5 March 2024) <<https://www.financialnigeria.com/pebec-launches-fourth-national-action-plan-on-ease-of-doing-business-reform-sustainable-photovideo-details-1095.html>>. Accessed 20 May 2024.

<sup>10</sup> T Awosika and S Abu, 'Insights on The Business Facilitation Act 2023 | A Leading Commercial & Dispute Resolution Law Firm in Nigeria' (Duale Ovia & Alex-Adedipe, 3 March 2023) <<https://www.doa-law.com/insights-on-the-business-facilitation-act-2023/>> accessed 21 May 2024.

## 2.0 Analysis of the Business Facilitation Act 2023 and its Alignment to the National Policy on Ease of Doing Business

The BFA 2023 has emerged as a game-changer in Nigeria's business landscape. This recent legislation is poised to greatly simplify business operations in the country. This analysis therefore examines the main provisions of the Act and evaluates its compatibility with the National Policy on Ease of Doing Business.

The BFA 2023 now operative in Nigeria, aims to simplify and streamline the business registration process by removing bureaucratic obstacles thereby reducing the time and cost associated with regulatory compliance. The Act requires the streamlining of procedures within government agencies, allowing for decreased time and expenses related to regulatory compliance.<sup>11</sup> It also promotes the use of electronic submission and handling of documents to improve efficiency and mitigate misconduct. The Corporate Affairs Commission (CAC) for instance is mandated to offer an online platform for business registration, making it convenient for entrepreneurs to complete all necessary paperwork.<sup>12</sup> Simplifying the registration process is expected to improve the ease of doing business in Nigeria, attract foreign investors, and stimulate economic activity and employment opportunities.<sup>13</sup> The provision also aligns with global best practices, making Nigeria a more attractive destination for foreign investors. Another important aspect of the Act is its emphasis on streamlining the process for granting licences and permits. Entrepreneurs frequently face obstacles and complications when seeking the required authorizations to initiate or grow their businesses.<sup>14</sup> The Act requires that government agencies provide clear guidelines and timelines for the issuance of licences and permits.<sup>15</sup> In addition, the Act includes a provision for "silent approval," meaning that applications will be considered approved if the relevant agency does not respond within a certain timeframe. Streamlining licencing and permits decreases administrative burden on businesses and fosters openness and responsibility within government agencies.<sup>16</sup> The implementation of silent approval is highly commendable, as it effectively eliminates any unnecessary delays and guarantees smooth business operations. This provision is expected to enhance investor confidence and promote additional business ventures.

The BFA presents a fascinating system for default approvals. The MDA must maintain two modes of communication for its official decisions, which will be published on the MDA's website. A timely response is necessary for an MDA to convey the decision on an application, as mentioned in the specified requirements.<sup>17</sup> When an application is denied, it is the responsibility of the MDA to inform the applicant of the rejection and provide a clear explanation for the decision.<sup>18</sup> It is crucial to note that according to the BFA, if an MDA does not provide a response to an application within the specified timeframe outlined in the published requirements, the application will be considered approved. To establish the application timeline, the applicant's physical acknowledgement or electronic copy of the application is sufficient as evidence of the submission date.

The BFA 2023 further illustrates the importance of using electronic systems for a wide range of business transactions. These processes encompass the digitalization of tax payments, customs procedures, and various regulatory compliance processes.<sup>19</sup> The Act also requires the use of

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<sup>11</sup> BFA 2023 (n 9), ss 1 (1), 1 (3) & 3.

<sup>12</sup> *Ibid*, s 8.

<sup>13</sup> SOpuala-Charles and I V Oshilike, 'Impact of Ease of Doing Business on Foreign Direct Investment in Nigeria' (2023) 4 *J Econ Management* 1. <DOI:10.47363/JESMR/2023(4)174>

<sup>14</sup> B Hoogendoorn, P van der Zwan and RThurik, 'Sustainable Entrepreneurship: The Role of Perceived Barriers and Risk' (2019) 157 *Journal of Business Ethics* 1133 <<http://dx.doi.org/10.1007/s10551-017-3646-8>>.

<sup>15</sup> BFA 2023 (n 9), s 4

<sup>16</sup> *Ibid*, s 5

<sup>17</sup> *Ibid*, 4 (1) & (2)

<sup>18</sup> *Ibid*, s 4 (3) & (5)

<sup>19</sup> *Ibid*, s 3 (2), 4 (4)

electronic platforms to increase efficiency, combat corruption, and enhance service delivery.<sup>20</sup> The implementation of electronic systems for business transactions is a crucial advancement in updating Nigeria's business environment. Digitalization improves transparency, mitigates corruption risks, and streamlines processes, facilitating businesses' compliance with regulatory requirements. This provision reflects current global trends and positions Nigeria as a progressive economy.

The BFA enforces regulations against touting<sup>21</sup> in Nigerian ports. It requires port staff to wear their uniforms and identity cards for identification purposes.<sup>22</sup> In relation to secure areas of the ports, the Act prohibits unauthorized personnel from entering these areas in Nigerian ports. Additionally, it forbids staff from interacting with individuals who are not designated dignitaries in these areas. A pre-approved list of dignitaries is required to be made available to the Port Authorities prior to the arrival of a dignitary.<sup>23</sup> Soliciting or collecting bribes from passengers is strictly prohibited by the BFA.<sup>24</sup> If an official engages in such behaviour, they will be relieved of their duty, face disciplinary action, and may be subject to criminal charges. Every port is required to operate 24 hours a day, as determined by the relevant Port Authorities. In the end, the Act places a duty on the Port Authorities to ensure adherence to the provision. Port Authorities must combine departure and arrival interfaces into a single customer interface within thirty (30) days of the start of the Act.<sup>25</sup> All agencies operating within the ports must consolidate their operations into a single interface station located within the port within sixty (60) days of the Act's commencement.<sup>26</sup> This station would be in charge of collecting information on goods entering and leaving Nigeria.

The BFA 2023 made several changes to the provisions of the Companies and Allied Matters Act (CAMA) 2020.<sup>27</sup> Some of the key changes include:

- a. The amendment allows a company to increase its issued share capital through a general meeting or a resolution of the Board of Directors, whereas previously it could only be done through a general meeting.
- b. Private companies are now required to offer newly issued shares to their existing shareholders before they are allotted to the general public. A timeline of 21 days' notice is introduced for accepting or declining the offer.<sup>28</sup>
- c. The authority to allot shares must be vested by the company in a general meeting or the Articles of the Company.<sup>29</sup>
- d. Companies must now register allotments within 15 days to the Corporate Affairs Commission (CAC), changing the previous timeframe of within 1 month.<sup>30</sup>
- e. Share certificates can now be in physical or electronic form.<sup>31</sup>
- f. Documents submitted for the transfer of shares must include electronically issued share certificates.<sup>32</sup>

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<sup>20</sup>*Ibid*  
, s 6 (8)

<sup>21</sup> This is a common phenomenon in the Nigerian business environment and impedes business activities.

<sup>22</sup> BFA 2023 (n 9), s 7 (1)

<sup>23</sup>*Ibid*, s 7 (6)

<sup>24</sup>*Ibid*, s 7 (7) & 7 (8)

<sup>25</sup>*Ibid*, s 7 (9)

<sup>26</sup>*Ibid*, s 7 (10)

<sup>27</sup> *Ibid*, s 9 (Part 1)

<sup>28</sup>*Ibid*, s 9 (2)

<sup>29</sup>*Ibid*, s 9 (3)

<sup>30</sup>*Ibid*, s 9 (4)

<sup>31</sup> *Ibid*, s 9 (5)

<sup>32</sup>*Ibid*, s 9 (6)

- g. Holders of fixed charge now have priority over a company's debt, including preferential debt.<sup>33</sup>
- h. Both private and public companies can now hold their general meetings electronically, in accordance with the articles of the company.<sup>34</sup>
- i. Notices can be given personally, electronically, by post, or to an address supplied by the member.<sup>35</sup>
- j. Electronic voting is introduced as another way to put a resolution to a vote.<sup>36</sup>
- k. Public companies must have at least one-third of their directors as independent directors.<sup>37</sup>
- l. Directors removed on grounds of fraud, dishonesty, or unethical conduct will be disqualified from being a director.<sup>38</sup>
- m. Directors in more than 5 public companies can resign before the next annual general meeting, rather than being required to resign at the meeting.<sup>39</sup>
- n. Financial statements must comply with the accounting standards prescribed by the Financial Reporting Council of Nigeria (FRCN).<sup>40</sup>

The BFA 2023 amended various laws in Nigeria that regulate business. Some of the amendments include:

- a. Customs and Excise Management Act: Introduced the definition of 'single window' and amended timelines.<sup>41</sup>
- b. Financial Reporting Council Act: Stated that financial statements must be in accordance with the standards set by the Financial Reporting Council.<sup>42</sup>
- c. Foreign Exchange (Monitoring & Miscellaneous Provision) Act: Expanded instances where the Central Bank of Nigeria may revoke the appointment of an authorized dealer or buyer.<sup>43</sup>
- d. Export (Prohibition) Act 2004: The Minister of Finance can now vary the goods prohibited from being exported.<sup>44</sup>
- e. Immigration Act: Mandated timely acceptance or rejection of entry visas and use of electronic communication for correspondence.<sup>45</sup>
- f. Industrial Inspectorate Act: Extended expenditure coverage.<sup>46</sup>
- g. Industrial Training Fund Act: Mandated employers with 25 or more employees to contribute to the fund.<sup>47</sup>
- h. Investment and Securities Act: Amended the method of offering securities to the public.<sup>48</sup>
- i. Nigerian Export Promotion Council Act: Added more members to the Board of the NEPC.
- j. National Housing Fund Act: Mandated contributions to the fund and changed the term 'basic salary' to 'minimum wage'.<sup>49</sup>

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<sup>33</sup>*Ibid*, s 9 (8)

<sup>34</sup>*Ibid*, s 9 (9)

<sup>35</sup>*Ibid*, s 9 (10)

<sup>36</sup>*Ibid*, s 9 (11)

<sup>37</sup>*Ibid*, s 9 (12)

<sup>38</sup>*Ibid*, s 9 (13)

<sup>39</sup>*Ibid*, s 9 (14)

<sup>40</sup>*Ibid*, s 9 (15)

<sup>41</sup>*Ibid*, s 9 (25) amends section 18 (a) & (b) of Customs and Excise Management Act.

<sup>42</sup>*Ibid*, s 9 (32) amended section 32 of the Financial Reporting Council Act

<sup>43</sup>*Ibid*, s 9 (34) amended section 6 of Foreign Exchange (Monitoring & Miscellaneous Provision) Act.

<sup>44</sup>*Ibid*, s 9 (30) amended section 1 of Export (Prohibition) Act 2004.

<sup>45</sup>*Ibid*, s 9 (36) amended section 20 of Immigration Act.

<sup>46</sup>*Ibid*, s 9 (39) amended section 3 of Industrial Inspectorate Act.

<sup>47</sup>*Ibid*, s 9 (41) amended section 6 of the Industrial Training Fund Act.

<sup>48</sup>*Ibid*, s 9 (43) amended section 67 of Investment and Securities Act.

<sup>49</sup> *Ibid*, s 9 (45) amended section 4 (1) of the National Housing Fund Act.

- k. Nigerian Oil and Gas Industry Content Development Act: Added the definition of "Nigerian Independent Operators".<sup>50</sup>
- l. Pension Reform Act: Allowed pension assets to be used for securities lending.<sup>51</sup>
- m. Standard Organisation of Nigeria Act: Conduct investigations into the quality of imported products and establish a quality assurance system.<sup>52</sup>
- n. Trade Marks Act: Expanded the definition of goods and introduced a new definition of trademark.<sup>53</sup>

The BFA 2023 is seen as a positive development in Nigeria's efforts to improve the ease of doing business. It addresses key barriers to business operations and aims to create a more conducive environment for economic growth. The Act's provisions, such as streamlining business registration processes, simplifying licensing and permits, introducing electronic systems, and protecting minority shareholders' rights, are all steps in the right direction. However, the success of the Act will depend on its effective implementation and enforcement. The government needs to ensure that relevant agencies are adequately equipped and motivated to carry out the provisions of the Act. Continuous monitoring and evaluation are also necessary to assess the impact of the Act and make any necessary adjustments. If implemented effectively, the BFA 2023 has the potential to transform Nigeria's business landscape and make the country a competitive and attractive destination for investment.

### 3.0 Alignment with the National Policy on Ease of Doing Business

The PEBEC on 17 February 2017 approved a 60-Day National Action Plan on Ease of Doing Business in Nigeria.<sup>54</sup> The plan involves collaboration between various government agencies, the National Assembly, the Governments of Lagos and Kano States, and the private sector.<sup>55</sup> This policy focuses on reducing the time, cost, and procedures involved in business operations, thereby making Nigeria a more attractive destination for investment.<sup>56</sup> The BFA 2023 however serves as a legislative instrument to operationalize these policy objectives. The National Policy on Ease of Doing Business aims to streamline regulatory processes, improve transparency, and foster a business-friendly environment.<sup>57</sup> Key provisions of the Policy include:

The policy on Ease of Doing Business provision on Transparency of the MDAs requires every Ministry, Department, and Agency (MDA) of the Federal Government of Nigeria to publish a complete list of all requirements or conditions for obtaining products and services within their scope of responsibility.<sup>58</sup> This includes permits, licenses, waivers, tax-related processes, filings, and approvals. The list should include all fees and timelines required for processing applications and should be prominently displayed on the premises of the MDA and published on its website within

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<sup>50</sup>*Ibid*, s 9 (57) amended section 106 of the Nigerian Oil and Gas Industry Content Development Act.

<sup>51</sup>*Ibid*, s 9 (64) amended section 89 of Pension Reform Act.

<sup>52</sup>*Ibid*, s 9 (66) amended section 5 of the Standard Organisation of Nigeria Act.

<sup>53</sup>*Ibid*, s 9 (69) amended section 69 of Trade Marks Act.

<sup>54</sup>Executive Order On the Promotion of Transparency and Efficiency in the Business Environment (to facilitate EDB), Executive Order On Support for Local Contents in Public Procurement by the Federal Government and Executive Order On Budgets(to facilitate timely submission of annual budgetary estimates by all statutory and non-statutory agencies, including Federal Government owned companies.) Nigerian Investment Promotion Commission, 'The National Action Plan 2.0' (17 October 2017) <<https://www.nipc.gov.ng/2017/10/17/national-action-plan-2-0/>>. Accessed 19 May 2024.

<sup>55</sup> O OOlaganju and J O Ikeolumba, 'The Evaluation of the National Policy on Ease of Doing Business in Nigeria' (2019) 15 *European Scientific Journal ESJ* <<http://dx.doi.org/10.19044/esj.2019.v15n8p203>>.

<sup>56</sup>*Ibid*, 205.

<sup>57</sup> Executive Order On the Promotion of Transparency and Efficiency in the Business Environment (to facilitate EDB),

<sup>58</sup>*Ibid*, Order 1

21 days of the issuance of this order.<sup>59</sup> The head of the MDA is responsible for verifying and keeping the list up-to-date.<sup>60</sup> In case of any conflict between a published and unpublished list of requirements, the published list will prevail.<sup>61</sup>

The policy also states that if a relevant agency or official fails to communicate approval or rejection of an application within the specified time, all applications for business registrations, certifications, waivers, licenses, or permits that are not concluded within the stipulated timeline will be deemed approved and granted.<sup>62</sup> The mode of communication of official decisions to applicants should be stated in the published requirements.<sup>63</sup> Rejections of applications must be given with reasons and accurate records of rejections should be kept and submitted to the head of the agency on a weekly basis.<sup>64</sup> There should be at least two modes of communication for acceptance or rejection of applications, such as letters, emails, or publications on agency websites.<sup>65</sup> The applicant's acknowledgement copy of the application will serve as proof of the submission date for determining the commencement of the application timeline.<sup>66</sup> If an application is deemed granted, the applicant can apply to the relevant Minister for the issuance of any necessary documents or certificates within 14 days of the agency's stipulated timeline.<sup>67</sup> Failure of an officer to act on an application within the specified timeline, without a lawful excuse, will be considered misconduct and subject to disciplinary proceedings.<sup>68</sup>

The Policy further provides that when an MDA requires input documentation or requirements from another MDA to deliver products and services, they can only request a photocopy or prima facie proof from the applicant. It is the responsibility of the originating MDA to verify or certify the information directly from the issuing MDA.<sup>69</sup> Also, Service Level Agreements (SLAs) between MDAs are binding and should be relied upon for setting timelines for processing applications.<sup>70</sup> The head of the relevant MDA is responsible for ensuring adherence to the agreed terms of the SLAs.<sup>71</sup> If an officer fails to act within the stipulated timeline in the SLA without a lawful excuse, it will be considered misconduct and may result in disciplinary proceedings according to applicable laws and regulations in the civil or public service.<sup>72</sup>

The policy on ease of doing business provision on port operations includes several measures. These measures include prohibiting touting at ports, proper identification of on-duty staff, restricting off-duty staff from entering ports without approval, removing non-official staff from secured areas of airports, prohibiting officials from meeting non-designated dignitaries in secure areas, and taking disciplinary and criminal action against officials soliciting or receiving bribes.<sup>73</sup> Additionally, the policy requires relevant agencies to merge their departure and arrival interfaces into a single customer interface, harmonize operations into a single interface station at ports, capture and record information on goods arriving and departing from Nigeria, assign an export terminal for agriculture produce, and resume 24-hour operations at the Apapa Port.<sup>74</sup>

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<sup>59</sup>*Ibid*, Order 1 (1) (a) & (b)

<sup>60</sup>*Ibid*, Order 2.

<sup>61</sup> *Ibid*, Oder 2.

<sup>62</sup>*Ibid*, Order 3

<sup>63</sup>*Ibid*, Order 4

<sup>64</sup>*Ibid*, Order 5

<sup>65</sup>*Ibid*, Order 6

<sup>66</sup>*Ibid*, Order 7

<sup>67</sup> *Ibid*, Order 8

<sup>68</sup>*Ibid*, Order 9

<sup>69</sup>*Ibid*, Order 10

<sup>70</sup>*Ibid*, Order 11

<sup>71</sup>*Ibid*, Order 12

<sup>72</sup>*Ibid*, Order 13

<sup>73</sup>*Ibid*, Orders 17, 18, and 19.

<sup>74</sup>*Ibid*, Orders 22, 23, and 24.

The policy further requires the Registrar-General of the CAC to automate all registration processes within 14 days.<sup>75</sup> This includes making the application process and payment platform available online.

The BFA 2023 closely aligns with Nigeria's national policy on ease of doing business, as spearheaded by the PEBEC. The PEBEC strives to elevate Nigeria's position in the World Bank's Ease of Doing Business ranking by implementing streamlined reforms that enhance business operations.<sup>76</sup> The BFA and Policy on Ease of Business aligns in so many respects, including:

- a. Both the Act and the national policy focus on eliminating bureaucratic obstacles that hinder business operations. The one-stop shop policy and simplified licensing procedures are direct responses to this objective.
- b. The electronic filing and payment systems mandated by the Act promote transparency, a core principle of the national policy.
- c. The regulatory review and feedback mechanisms introduced by the Act ensure continuous stakeholder engagement, which is crucial for the dynamic adaptation of policies and regulations.
- d. Both the Act and the national policy prioritize the growth and development of MSMEs, recognizing their critical role in economic development and job creation.

The BFA 2023 however, addresses the specific challenges outlined in the National Policy by reducing bureaucratic red tape through digitalization, enhancing transparency in government dealings, facilitating public-private partnerships for infrastructure development, and simplifying procedures for accessing financing.<sup>77</sup> These measures aim to minimize corruption, speed up processes, ensure accountability, encourage private investment, and make it easier for businesses, especially MSMEs, to secure loans. Further, the BFA has the potential to improve the country's ranking in global ease of doing business indices because it streamlines and digitizes the business registration process, making it easier and faster to start a business.<sup>78</sup> It also enhances access to credit through provisions on collateral registration and financial inclusion. The digitalization of tax filing processes simplifies compliance and reduces administrative burden, improving Nigeria's ranking in the "Paying Taxes" category.<sup>79</sup> The Act also introduces clearer legal frameworks and enhances corporate governance, improving contract enforcement and insolvency resolution. Overall, the Act's emphasis on transparency, accountability, and efficiency contributes to an improved business environment and higher scores in multiple categories of ease of doing business indices.

Additionally, the BFA 2023 has the potential to attract foreign direct investment (FDI) and stimulate domestic entrepreneurship through several mechanisms.<sup>80</sup> The Act addresses bureaucratic inefficiencies, making Nigeria a more attractive destination for foreign investors. It also boosts investor confidence by enhancing transparency and regulatory predictability. The Act also supports

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<sup>75</sup>*Ibid*, Order 26.

<sup>76</sup> PEBEC, "Enabling Business Environment Secretariat" (*PEBEC*, 25 November 2023) <<https://pebec.gov.ng/>> accessed 21 May 2024.

<sup>77</sup>N C Uzoka and O C Aduma, 'Ease of Doing Business: A Critical Examination of the Business (Miscellaneous Provisions) Facilitation Act 2023' (2023) 14 *NAUJILJ* 13.

<sup>78</sup> UK Department of Business and Trade & Foreign, Commonwealth & Development Office, "'Overseas Business Risk: Nigeria" (*GOV.UK*, 3 July 2023) <<https://www.gov.uk/government/publications/overseas-business-risk-nigeria/overseas-business-risk-nigeria--2>> accessed 20 May 2024.

<sup>79</sup> International Centre for Tax & Development, 'Digitising Taxation in Nigeria: Challenges and Recommendations' (*ICTD*, 27 July 2021) <<https://www.ictd.ac/blog/digitising-taxation-nigeria-challenges-recommendations/>> accessed 22 May 2024.

<sup>80</sup> S Akinwalere and K Chang, 'The Determinants of Foreign-Direct-Investment (FDI) Inflows in Nigeria' (2023) 57 *Journal of Developing Areas* 91



MSMEs. which are often the backbone of the economy and contribute to job creation, economic diversification, and poverty alleviation.<sup>81</sup> The growth of MSMEs and FDI can lead to job creation, reducing unemployment and improving living standards. A more vibrant business environment can stimulate economic growth by increasing the private sector's contribution to the GDP and reducing reliance on oil revenues.<sup>82</sup> Furthermore, the Act can contribute to poverty alleviation by providing increased economic opportunities and improving overall social welfare.

In summary, the Business Facilitation Act 2023 is a commendable legislative initiative that holds the promise of transforming Nigeria's business landscape. Its successful implementation will be crucial in achieving the desired outcomes and ensuring that Nigeria becomes a more attractive destination for business and investment.

#### 4.0 Challenges and Implementation Considerations

While the BFA holds significant promise, its effective implementation faces several challenges that need to be addressed:

- a. The Act's implementation may be hindered by bureaucratic inertia and resistance to change within MDAs, necessitating government officials' commitment to reforms.
- b. In order for the Act to be effectively implemented, it is necessary for MDAs to have the required capacity, including the appropriate skills, resources, and infrastructure for automation and digitalization.
- c. Corruption continues to pose a major obstacle in Nigeria. The government must establish measures to safeguard the integrity of the Act and prevent any compromise due to unethical conduct.

In Summary, to effectively implement the innovative provisions of the BFA 2023 requires capacity building and stakeholder engagement. This also includes continuous training and development programs for government officials that can help build the necessary skills for effective implementation. Stakeholder engagement, including businesses, investors, and civil society, is crucial for identifying potential issues and ensuring the reforms meet the needs of the business community.<sup>83</sup> Public awareness campaigns can help disseminate information and build support for the reforms.<sup>84</sup> Ensuring proper enforcement and compliance is essential for the Act's success. Monitoring and evaluation mechanisms can identify issues and measure progress, while incentives and penalties can encourage compliance.<sup>85</sup> For instance, tax breaks or expedited services can be incentives for compliance, while penalties for non-compliance can deter businesses from violating the rules. Collaboration with the private sector can enhance enforcement and compliance by involving businesses in monitoring and reporting non-compliance, and public-private partnerships can help address capacity constraints.<sup>86</sup>

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<sup>81</sup> Federal Republic of Nigeria, 'Economic Diversification of Job Creation: MSME Partners Set to Deliver MSME-Focused Interventions for 1.3M Beneficiaries in 17 States, FCT' (12 September 2023) <<https://statehouse.gov.ng/news/economic-diversification-of-job-creation-msme-partners-set-to-deliver-msme-focused-interventions-for-1-3m-beneficiaries-in-17-states-fct/>> accessed 21 May 2024.

<sup>82</sup>Akinwalere and Chang (n 90) 92.

<sup>83</sup> OECD, *Better Regulation Practices Across the European Union 2022* (OECD Publishing, 2022).

<sup>84</sup> J Yang and T Moerenhout, 'Information Campaigns and Public Perceptions of Structural Reforms: Evidence from a Survey Experiment on Gasoline Subsidy Reform in Nigeria' (2024) 43 *Journal of Policy Analysis and Management* 509 <<http://dx.doi.org/10.1002/pam.22561>>.

<sup>85</sup> RBalwin and Julia Black, 'Really Responsive Regulation' (2007) 15 *LSE Law, Society and Economy Working Papers*. <<https://www.lse.ac.uk/law/working-paper-series/2007-08/WPS15-2007BlackandBaldwin.pdf>> accessed 22 May 2024.

<sup>86</sup> I Hernandez-Aguado and GA Zaragoza, 'Support of Public-Private Partnerships in Health Promotion and Conflicts of Interest' (2016) 6 *BMJ Open* e009342 <<http://dx.doi.org/10.1136/bmjopen-2015-009342>>.

## 5.0. Comparison with International Best Practices

The Business Facilitation Act 2023's innovative provisions require comparison with other countries' legislative frameworks and successful models for business facilitation and ease of doing business.

### 5.1 Estonia's Digital Transformation Model

Estonia is globally recognized as a pioneer in digital governance and transformation. Estonia's digital transformation is centered on the concept of a digital citizen who uses a digital platform to access both public and private services. This platform ensures that different information systems can work together effectively.<sup>87</sup> Estonia's digital journey began in the early 2000s with the establishment of key infrastructures like the X-Road and compulsory national digital ID.<sup>88</sup> These initiatives have created a seamless and secure digital society that has significantly enhanced governmental efficiency and public service delivery.<sup>89</sup> Key Features of the Estonian digital transformation includes:

#### 5.1 X-Road Platform

The X-road platform is an interoperability platform that connects decentralized databases, enabling secure data exchange between different systems.<sup>90</sup> It improves data access and sharing for both public and private sector entities, reducing redundancy and enhancing service delivery.<sup>91</sup> X-Road technology was initially created in Estonia by the RIA and private partners, but it is now managed by the Nordic Institute of Interoperability Solutions (NIIS).<sup>92</sup> From the foregoing, the X-road is governed by the RIA. Key principles of the X-road, using Open Digital Ecosystem (ODE) approach to identify best practices.

#### 5.2 Digital Platform

The X-Road digital platform is based on several key principles. Firstly, it enables interoperability across IT systems, allowing organizations to exchange data.<sup>93</sup> It uses common APIs and open standards for data exchange, improving efficiency and enabling functionalities such as document exchange and database searching.<sup>94</sup> Secondly, it is built on reusable and shareable components, providing flexibility and allowing for customization and easy upgrades.<sup>95</sup> Thirdly, it ensures privacy

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<sup>87</sup>R Kattel and Ines Mergel, 'Estonia's Digital Transformation' (2019) *Great Policy Successes* 143 <<http://dx.doi.org/10.1093/oso/9780198843719.003.0008>>.

<sup>88</sup> STrendall, 'Estonia: How the X-Road Paved the Way to a Digital Society' (*PublicTechnology*, 19 December 2023) <<https://www.publictechnology.net/2023/12/20/society-and-welfare/estonia-how-the-x-road-paved-the-way-to-a-digital-society/>> accessed 21 May 2024.

<sup>89</sup> K Vassil, 'Estonian e-Government Ecosystem: Foundation, Applications, Outcomes' (World Development Report, 2015) <<https://thedocs.worldbank.org/en/doc/165711456838073531-0050022016/original/WDR16BPEstonianeGovecosystemVassil.pdf>> accessed 21 May 2024.

<sup>90</sup> YHirdaramani, 'Estonia's X-Road: Data Exchange in the World's Most Digital Society' (21 March 2024) <<https://govinsider.asia/intl-en/article/estonias-x-road-data-exchange-in-the-worlds-most-digital-society>>. Accessed 20 May 2024.

<sup>91</sup>*Ibid.*

<sup>92</sup>Omidya Network India & Boston Consulting Group, 'Estonia X-Road Open Digital Ecosystem (ODE) Case Study' (no date) <[https://opendigitalecosystems.net/pdf/01-Estonia-Case-Study\\_vF.pdf](https://opendigitalecosystems.net/pdf/01-Estonia-Case-Study_vF.pdf)> accessed 21 May 2024.

<sup>93</sup> X-road, 'Case Study: Tax Boards — X-Road® Data Exchange Layer' (*X-Road® Data Exchange Layer*) (no date) <<https://x-road.global/case-study-tax-boards>> accessed 22 May 2024.

<sup>94</sup>*Ibid.*

<sup>95</sup>Github, 'X-Road-Code-Samples/COMPONENTS.Md at Master · Nordic-Institute/X-Road-Code-Samples' (no date) <<https://github.com/nordic-institute/X-Road-code-samples/blob/master/COMPONENTS.md#x-road-end-to-end-monitoring-tool-xrde2e>> accessed 21 May 2024.

and security for data exchange through the adoption of privacy by design principles, minimal data collection, access control, encryption, and transaction logging.<sup>96</sup>

### 5.3 National Digital ID

The Estonian National Digital ID scheme is governed by the Identity Documents Act, which requires all residents and permanent aliens in Estonia to possess a digital ID.<sup>97</sup> The Act is clear, foreseeable, and easily accessible.<sup>98</sup> However, it allows excessive delegation of regulations to the "minister responsible for the area," which raises concerns about the lack of adequate delineation of crucial aspects of the program.<sup>99</sup> The Estonian legal system lacks overarching legislation governing all aspects of the ID's use, leaving critical matters such as data sharing to be determined by other laws or regulations.<sup>100</sup> This creates a system where the Digital ID is not restricted by a purpose limitation and can be used for any sector and any purpose.

In summary, this paper contends that the digital transformation in Estonia has greatly improved the ease of doing business, as evidenced by its ranking as the top country in the EU for digital public services.<sup>101</sup> Also, the use of e-government has steadily increased, with 89% of internet users in Estonia utilizing these services.<sup>102</sup> The COVID-19 pandemic further highlighted the importance of Estonia's digital infrastructure, as it allowed for uninterrupted governmental and business operations.<sup>103</sup>

Lessons for Nigeria:

Nigeria can learn a couple of lessons from the Estonian model, including:

- a. The input suggests that Nigeria should consider developing an interoperability platform similar to X-Road. This platform would facilitate the exchange of data between government agencies and private entities
- b. Nigeria can also benefit from implementing a strong digital ID system. This system would provide secure and efficient access to government services, reducing the reliance on physical documentation.

### 3.2 United Arab Emirate (UAE)'s Public-Private Partnerships Model

The UAE's approach to public-private partnerships (PPPs) serves as a useful benchmark for assessing Nigeria's Business Facilitation Act 2023. The UAE has developed a strong legal framework for PPPs, which has played a crucial role in promoting economic growth and enticing foreign investment.<sup>104</sup>

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<sup>96</sup> World Bank Group, 'Privacy by Design: Current Practices in Estonia, India, and Austria' (2018) <[https://id4d.worldbank.org/sites/id4d.worldbank.org/files/PrivacyByDesign\\_112918web.pdf](https://id4d.worldbank.org/sites/id4d.worldbank.org/files/PrivacyByDesign_112918web.pdf)> accessed 21 May 2024.

<sup>97</sup> Identity Documents Act 2000, s 1

<sup>98</sup> *Ibid*, s 3 and 4

<sup>99</sup> *Ibid*, s 15 (2)

<sup>100</sup> CIS, 'Estonia's E-Identity Programme' (2020) <[https://digitalid.design/docs/CIS\\_DigitalID\\_EstoniaCaseStudy\\_2020.04.pdf](https://digitalid.design/docs/CIS_DigitalID_EstoniaCaseStudy_2020.04.pdf)> accessed 21 May 2024.

<sup>101</sup> D Paraskevopoulos, 'Estonia - a European and Global Leader in the Digitalisation of Public Services - e-Estonia' (*e-Estonia*, December 21, 2021) <<https://e-estonia.com/estonia-a-european-and-global-leader-in-the-digitalisation-of-public-services/#:~:text=Estonia%20ranks%201st%20place%20in,internet%20users%20in%20the%20country.>>> accessed 20 May 2024.

<sup>102</sup> *Ibid*.

<sup>103</sup> J Silaškova and M Takahashi, 'Estonia built one of the world's most advanced digital societies. During COVID-19, that became a lifeline.' (World Economic Forum, 1 July 2020) <<https://www.weforum.org/agenda/2020/07/estonia-advanced-digital-society-here-s-how-that-helped-it-during-covid-19/>> accessed 21 May 2024.

<sup>104</sup> PWC, 'Adopting the Public Private Partnerships Model and its role in attracting Foreign Direct Investment' (*White paper PwC and Dubai Investment Development Agency (DUBAI FDI)*, January 2016)

Public-private partnerships in the UAE cover a wide range of sectors, such as healthcare, education, transportation, and digital transformation.<sup>105</sup> The UAE has established a robust regulatory framework and clear guidelines for PPPs, ensuring mutual benefits for both public and private entities.<sup>106</sup>

The UAE's PPP model is governed by the Federal Decree-Law No. 12 of 2023 on Public-Private Partnerships which sets out the general framework for partnerships between federal government entities and the private sector.<sup>107</sup> The law emphasizes transparency and accountability in the procurement and implementation of PPP projects. This ensures that the decision-making process is fair and that public funds are used efficiently.<sup>108</sup> The law also allows for flexibility in structuring PPP projects, taking into account the specific needs and characteristics of each project.<sup>109</sup> This enables the government to tailor the partnership to best meet the objectives and requirements of the project.<sup>110</sup> Innovatively, the law provides for effective dispute resolution mechanisms, including arbitration, to resolve any conflicts that may arise during the implementation of PPP projects.<sup>111</sup> This helps to ensure timely resolution and minimize disruptions to project progress. Also, the law focuses on promoting the use of advanced technologies and innovative solutions in order to enhance efficiency and improve service delivery.<sup>112</sup> The law also establishes a Partnership Projects Information Centre.<sup>113</sup> The Ministry will create a data register for partnership projects and an evaluation system for projects that have already been implemented. The Ministry also has the authority to publish relevant information.

The UAE model and Nigerian BFA have some similarities in terms of focusing on efficiency and promoting transparency and accountability. However, there are also differences in scope and application, risk management, and incentives for innovation. The UAE model specifically focuses on public-private partnerships for infrastructure and service delivery projects, while the Nigerian BFA has a broader scope covering various aspects of business operations. The UAE model also places more emphasis on risk allocation and incentivizing innovation compared to the Nigerian BFA.

Nigeria can benefit from adopting best practices from the UAE's PPP model:

- a. Nigeria could establish a legal framework similar to UAE's Federal Decree-Law No. 12 of 2023, providing clear guidelines and procedures for PPP projects, promoting investor confidence and facilitating efficient project execution.
- b. Nigeria should integrate risk management strategies into its legal framework, ensuring risk allocation between public and private partners, to improve the sustainability and success of PPP projects.
- c. Nigeria can promote the adoption of advanced technologies and innovative solutions by offering targeted incentives and fostering partnerships between the public and private sectors.

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<<https://www.pwc.com/m1/en/publications/documents/adopting-ppp-and-its-role-in-attracting-fdi-dubai.pdf>>  
accessed 21 May 2024.

<sup>105</sup> Mohammed F Dulaimi, Mohammed Alhashemi, Florence YY Ling, and Mohan Kumaraswamy, 'The Execution of Public-Private Partnership Projects in the UAE' (2010) 28 *Construction Management and Economics* 393 <<http://dx.doi.org/10.1080/01446191003702492>>.

<sup>106</sup> Rauda Al-Saadi and Alaa Abdou, 'Factors Critical for the Success of Public-private Partnerships in UAE Infrastructure Projects: Experts' Perception' (2016) 16 *International Journal of Construction Management* 234 <<http://dx.doi.org/10.1080/15623599.2016.1146110>>.

<sup>107</sup> Federal Law No. (12) of 2023, art 2

<sup>108</sup> *ibid*, art 4

<sup>109</sup> *ibid*, art 5

<sup>110</sup> *ibid*, art 6

<sup>111</sup> *ibid*, art 31

<sup>112</sup> *ibid*, art 14

<sup>113</sup> *ibid*, art 29

The comparative analysis of Estonia's digital model, UAE's PPP model, and Nigeria's Business Facilitation Act 2023 reveals the potential for cross-learning and improvement. Estonia has a well-defined legal framework for digital governance, ensuring data security and privacy, while UAE has a comprehensive regulatory framework for PPPs, promoting transparency and accountability. Additionally, Estonia's implementation is driven by government-led initiatives with strong public participation, while UAE relies on collaborative efforts between public and private sectors. The outcomes of Estonia and UAE are enhanced efficiency, reduced bureaucracy, improved public service delivery, and accelerated development, improved infrastructure, and enhanced public services through private sector expertise and investment. Nigeria can adopt a hybrid approach, combining best practices from Estonia and the UAE, focusing on digital transformation for efficiency and PPPs for development and innovation. Policy reforms should emphasize digital governance and PPPs, creating a conducive environment for digital initiatives and private sector participation.<sup>114</sup> Also, investing in capacity building for public sector employees and partners is crucial, and raising public awareness about the benefits of digital governance and PPPs can foster greater acceptance and participation.<sup>115</sup>

## 6.0 Conclusion and Recommendations

The BFA 2023 is a major milestone in improving the business environment in Nigeria. The Act addresses critical challenges faced by businesses by introducing innovative provisions such as the one-stop shop policy, electronic filing and payments, simplified licensing procedures, regulatory review mechanisms, and enhanced dispute resolution. These measures align with the national policy on ease of doing business. When examining the Act in relation to international standards, it becomes clear that Nigeria is heading in the right direction. However, to fully unlock the Act's potential, it is crucial to prioritize consistent implementation, ongoing improvement, and the development of necessary skills and knowledge. Examining the experiences of countries such as Estonia and the UAE can provide valuable lessons to enhance Nigeria's regulatory framework. Ultimately, the BFA 2023 has the power to revolutionize Nigeria's business landscape, promoting economic growth and establishing the nation as a formidable investment hub. Efficient execution and ongoing enhancement are vital for attaining these objectives. Collaboration among stakeholders, including government agencies, businesses, and civil society, is crucial to ensure the Act effectively creates a favourable business environment in Nigeria.<sup>116</sup>

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<sup>114</sup> Lucia Xiaoyan Liu, Stewart Clegg and Julien Pollack, 'The Effect of Public-Private Partnerships on Innovation in Infrastructure Delivery' (2023) 55 *Project Management Journal* 31 <<http://dx.doi.org/10.1177/87569728231189989>>.

<sup>115</sup>ICLEI, 'Digitalization: A Game Changer for Local Governments & Communities Enhancing Capacities to Deploy Transformative Solutions' (*Policy Brief*, November 2023) <<https://iclei.org/wp-content/uploads/2023/12/2022-Academy-Digitalization-Policy-Brief-ICLEI.pdf>> accessed 21 May 2024.

<sup>116</sup> House of Commons Committee Foreign Affairs Committee, 'Lagos calling: Nigeria and the Integrated Review: Government Response to the Committee's Seventh Report of Session 2021-22' (First Special Report of Session 2022-23, 5 July 2022) <<https://committees.parliament.uk/publications/23036/documents/168809/default/>> accessed 23 May 2023.