

WRAP UP OF KEY 2020 LEGISLATIONS

In fulfilling the Federal Government's commitment towards providing an enabling environment for businesses in Nigeria in line with its Ease of Doing Business (EoDB) Initiative, the 2020 legislative year ushered in key legislations in Nigeria, particularly in the business clime. Whilst some of these legislations repealed existing laws, others introduced amendments and in some cases, completely novel provisions to keep up with evolving global trends. The main points of some of these key legislations are discussed below.

1. COMPANIES AND ALLIED MATTERS ACT

The Companies and Allied Matters Act (CAMA) 2020 was signed into law on 7 August 2020 to replace CAMA 1990, a law which had regulated Nigerian businesses for over 30 (thirty) years, despite the numerous advancements in the way of doing business in Nigeria and around the world. Notably, the CAMA 2020 is centered on improving the ease of doing business in Nigeria in line with current economic realities. The CAMA 2020 introduces innovative provisions which include but are not limited to single member/shareholder companies,¹ limited liability partnerships,² use of electronic signatures,³ electronic transfer of shares,⁴ virtual general meetings⁵ etc. The CAMA 2020 also incorporates corporate governance principles such as the requirement for a director in a public company to disclose directorship held in other public companies,⁶ requirement of a minimum of 3 (three) independent directors for public companies,⁷ prohibition of a Chairman of a public company from acting as the Chief Executive Officer of the same company,⁸ prohibition of holding of multiple directorship in more than 5 (five) public companies simultaneously.⁹ It also introduces business rescue mechanisms such as company administration as an alternative to receivership,¹⁰ voluntary arrangements, take-overs, striking off, and recognition of netting

¹ Section 237(1) CAMA 2020

² Section 746 CAMA 2020

³ Section 101 CAMA 2020

⁴ Section 175(1) CAMA 2020

⁵ Section 240 (2) CAMA 2020

⁶ Section 278(2) CAMA 2020

⁷ Section 275(1) CAMA 2020

⁸ Section 265(6) CAMA 2020

⁹ Section 307(2) CAMA 2020

¹⁰ Sections 443 – 444 CAMA 2020

arrangements¹¹ etc. Other innovations of CAMA 2020 include introduction of an alternative to the Attorney General of the Federation's consent to the Memorandum of a company limited by guarantee,¹² removal of restrictions on objects of a company, save for restrictions specified by the company's articles,¹³ provision of damages as a relief available to minority shareholders who institute personal or representative actions for the enforcement of their right(s),¹⁴ provision of whistle blowing protection and or compensation for employees who provide information in the course of an investigation into a company's affairs.¹⁵

It is noteworthy that the enactment of the CAMA 2020 was greeted with mixed reactions by some sectors of the economy, particularly the provisions relating to religious and non-governmental organisations. There are contentions that some of the provisions introduced by CAMA 2020, specifically section 839 which empowers the Corporate Affairs Commission to suspend and or remove the trustees of an association/incorporated trustees and appoint interim managers in their place, are draconian in nature and against the constitutionally guaranteed right to freedom of association. As a matter of fact, a legal action has been filed to challenge the legislation on this ground.¹⁶

Overall and undoubtedly, the enactment of CAMA 2020 has cured major shortcomings of the obsolete provisions of the repealed law and marks a turning point for company administration/regulation in Nigeria. The legislation provides incentives for both foreign and local investments and will ultimately drive business expansion and economic growth.

¹¹ Sections 718 – 721 CAMA 2020

¹² Section 26(7) - (10) CAMA 2020

¹³ Section 35(1) CAMA 2020

¹⁴ Section 344(1)(a) CAMA 2020

¹⁵ Section 357 (4) and (5) CAMA 2020

¹⁶ <https://www.google.com/amp/s/punchng.com/cama-2020-lawyer-challenges-cac-power-to-suspend-trustees/%3famp=1> accessed 7 January 2021

2. BANKS AND OTHER FINANCIAL INSTITUTIONS ACT

The Banks and Other Financial Institutions Act 2020 (BOFIA 2020) was signed into law on 13 November 2020. It repeals the extant BOFIA 1991 (as amended) and primarily seeks to regulate banking and banking business in Nigeria. The BOFIA 2020 amongst other things establishes a new banking sector resolution fund, as well as a tribunal for the enforcement and recovery of eligible loans. It also revises various fines and penalties stipulated by the Act, especially for bank officials. This will ensure accountability and compliance with required banking standards. Also, the operations of digital financial service providers/FinTechs in Nigeria which have hitherto been regulated by mere guidelines are now governed by the BOFIA 2020 and regulated by the Central Bank of Nigeria (CBN). ‘Other financial institutions’ now include entities that carry on financial businesses electronically, virtually, or digitally. In essence, all modern start-ups like Fintech companies or electronic payment companies carrying on online financial businesses are designated ‘other financial institutions’ and are required to obtain a licence from the CBN to carry on business. A noteworthy feature of the BOFIA 2020 is the expansion of the discretionary powers of the CBN, particularly as it pertains to approval and revocation of licenses. It imposes a limitation period of 30 (thirty) days within which to institute an action to challenge a revocation by the CBN¹⁷ and provides that no restorative orders can be granted against the CBN or its officials in relation to a revocation of banking licence. Thus, the only redress available to an aggrieved bank is monetary compensation and not a reversal of a revocation by the CBN.¹⁸ It also widens the Federal Government, and CBN’s immunity from legal proceedings.

Furthermore, BOFIA 2020 prohibits foreign banks/entities which have no physical presence or licence in their country of incorporation and are not affiliated to any supervised financial services group that is subject to effective consolidated supervision from operating in Nigeria¹⁹ and prohibits the operation of specialised banking or business of other financial institutions in Nigeria (other than insurance, pension fund management, collective

¹⁷ Section 12 (5) BOFIA 2020

¹⁸ Section 12 (6) BOFIA 2020

¹⁹ Section 3 (5) – (6) BOFIA 2020

investment schemes, and capital market business) except such other financial institution is duly incorporated in Nigeria and holds a valid licence granted by the CBN for such business.²⁰ It also requires the consent of the CBN for any agreement involving the transfer of significant shareholding in a bank or other financial institution²¹ and empowers the CBN upon a reasonable suspicion that transactions undertaken in a bank account involves the commission of a crime, to direct the manager of the bank to freeze such account.²²

In all, the BOFIA 2020 attempts to revolutionise the laws of banking and other financial institutions in Nigeria. To a large extent, it addresses lapses in the previous legislation and introduces provisions to improve loan recovery and control the troubling increase in non-performing loans. Whilst it should be noted that the legislation yields enormous powers to the regulator, it nevertheless remains a laudable attempt towards achieving financial stability in Nigeria.

3. FINANCE ACT

The Finance Act 2020 (Finance Act) came into force on 1 January 2021. It amends 14 (fourteen) principal legislations namely: Capital Gains Tax Act²³; Companies Income Tax Act;²⁴ Customs and Excise Tariff, Etc. (Consolidated) Act;²⁵ Value Added Tax Act;²⁶ Nigeria Export Processing Zones Act;²⁷ Oil and Gas Export Free Zone Act;²⁸ Industrial Development (Income Tax Relief) Act;²⁹ Stamp Duties Act;³⁰ Tertiary Education Trust Fund (Establishment) Act;³¹ Federal Inland Revenue Service (Establishment) Act;³² Fiscal Responsibility

²⁰ Section 57(1) & (2) BOFIA 2020

²¹ Section 7(1)(ii) BOFIA 2020

²² Section 97 BOFIA 2020

²³ Cap. C1, Laws of the Federation (LFN) 2004

²⁴ Cap. C21, LFN 2004

²⁵ Cap. C49, LFN 2004

²⁶ Cap. V1, LFN 2004

²⁷ Cap. N107, LFN 2004

²⁸ Cap. O5, LFN 2004

²⁹ Cap. 117, LFN 2004

³⁰ Cap. S8, LFN 2004

³¹ Act No. 16, 2011

³² Act No. 13, 2007

Act;³³ Public Procurement Act;³⁴ and Companies and Allied Matters Act.³⁵ Notable provisions of the Finance Act 2020 include reduction of the minimum tax payable by companies for tax returns under the Companies Income Tax Act,³⁶ imposition of penalty for false declaration of amount of profits or tax payable,³⁷ provision of a tax holiday incentive for small and medium sized companies engaged in primary agricultural production,³⁸ Introduction of duty free importation of aircrafts, engines, spare parts and components for commercial airlines registered in Nigeria,³⁹ exemption of commercial aircrafts, engines and spare parts, commercial airline transportation tickets, hire/rental/lease of tractors, ploughs and other agricultural equipment for agricultural purposes from Value Added Tax (VAT),⁴⁰ exemption of persons earning national minimum wage or less from personal income tax etc.⁴¹

A major highlight of the Finance Act 2020 is the establishment of a Crisis Intervention Fund,⁴² a sort of National purse from which the Federal Government can obtain funds for emergency expenditures. The Finance Act also creates an Unclaimed Funds Trust Fund⁴³ by which the Federal Government borrows unclaimed dividends of a public limited liability company quoted on the Nigerian Stock Exchange and unutilised amounts in a dormant bank account maintained in or by a deposit money bank which has remained unclaimed or unutilised for at least 6 (six) years. Such unclaimed dividends and unutilised amounts in a dormant bank account are transferred to the Unclaimed Funds Trust Fund and become a special debt owed by the Federal Government to the shareholders and dormant bank account holders.⁴⁴ These provisions of the Finance Act 2020 are in line with one of the objectives of the Act which is to respond to current economic

³³ Act No. 31, 2007

³⁴ Act No. 14, 2007

³⁵ Act No. 3, 2020

³⁶ See section 13 Finance Act 2020

³⁷ See Section 15 Finance Act 2020

³⁸ See Section 23 Finance Act 2020

³⁹ See Section 39 Finance Act 2020

⁴⁰ See Section 45 Finance Act 2020

⁴¹ See Section 30 Finance Act 2020

⁴² See section 75 Finance Act 2020

⁴³ See section 77 Finance Act 2020

⁴⁴ It is noteworthy that this provision is not applicable to official bank accounts owned by the Federal Government, State Governments, Local Governments or any of their Ministries, Departments or Agencies. Section 77 (2)

challenges posed by the Corona Virus (Covid-19) pandemic and decline in oil prices and revenue. The provisions of the Finance Act are intended to provide a seeming succour/panacea to the harsh effects of the Corona Virus (Covid-19) pandemic. Though, there are seemingly valid contentions that some provisions of the Finance Act are capable of impeding on the right to own property guaranteed by section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),⁴⁵ it is our view that the legislation when fully implemented would strengthen Nigeria's weak tax administration system, reform fiscal incentive policies and yield economic growth.

4. POLICE ACT

On 15 September 2020, President Muhammadu Buhari assented to the Nigeria Police Act 2020. (Police Act 2020) The Police Act 2020 repealed the Police Act, Cap. P19, Laws of the Federation of Nigeria 2004. The Act was enacted primarily to provide a more effective and organised Police Force driven by the principles of transparency and accountability in its operations and management of its resources. The Act also establishes an appropriate funding framework for the Police Force in line with what is obtainable in other key Federal Government institutions. Specific objectives of the Police Act 2020 include the provision of a Police Force that is more responsive to the needs of the general public and has entrenched in its operations the values of fairness, justice and equity; empowerment of the Police Force to effectively prevent crimes without threatening the liberty and privacy of persons in Nigeria; development of professionalism in the Police Force by providing relevant training in all Police Formations in Nigeria for enhanced performance.

A notable feature of the Police Act 2020 is the introduction of clear-cut provisions to safeguard the fundamental rights of persons living in Nigeria. These include the imposition on a Police officer, the duty to inform a suspect of the reason of his arrest; his rights; and to inform the suspect's next-of-kin

⁴⁵ <https://nationaldailyng.com/serap-challenges-buhari-over-illegal-finance-act-2020-protests-plan-to-borrow-dormant-account-balances-unclaimed-dividends/> Accessed on 11 January 2021

of the suspect's arrest,⁴⁶ prohibition of arrest in lieu of a suspect,⁴⁷ prohibition of search of suspects on frivolous and unreasonable grounds such as personal attributes including the suspect's colour, age, hairstyle, manner of dressing, previous conviction or stereotyped images,⁴⁸ imposition of a duty on an arresting officer to take a suspect's statements in accordance with constitutional safeguards such as taking such statements in the presence of a legal practitioner of suspect's choice and provision of a mandatory interpreter where a suspect does not understand English language.⁴⁹ The Police Act 2020 also prohibits the arrest of a person on grounds of merely civil wrongs or breach of contracts.⁵⁰

Other provisions of the Police Act 2020 which will promote accountability and transparency include the imposition of a duty on the Inspector-General of Police and head of every agency permitted to effect arrests to make a quarterly report to the Attorney-General of the Federation detailing a record of all arrests made with or without warrant in relation to all Federal offences within Nigeria,⁵¹ establishment of a National Search Record Form for the documentation of searches conducted,⁵² imposition of a duty on police officers including the Inspector-General of Police to document arrests, witnesses and deaths of suspects during police operations or in police custody⁵³ and imposition of a duty on employers to report missing employees at the nearest Police Station within 24 hours.⁵⁴

The Police Act 2020 also expands the functions of the Police Force to include the vetting and approval of the registration of private detective schools and private investigate outfits,⁵⁵ this provision is particularly relevant to intending businesses seeking to provide private investigative and or detective services, as they are now required to obtain the requisite approval from the Police Force.

⁴⁶ See section 35(2) & (3) Police Act 2020

⁴⁷ See section 36 Police Act 2020

⁴⁸ See section 54 Police Act 2020

⁴⁹ See section 60(1), (2) & (3) Police Act 2020

⁵⁰ See section 32(2) Police Act 2020

⁵¹ See section 47(1) Police Act 2020

⁵² See section 57(1) & (2) Police Act 2020

⁵³ See section 89(1)- (5) Police Act 2020

⁵⁴ See section 90(1) & (2) Police Act 2020

⁵⁵ see section 4(i) Police Act 2020

The innovations of the Police Act 2020 are laudable. It is observed that some parts of the legislation, particularly those relating to searches and arrest mirror the provisions of the Administration of Criminal Justice Act 2015, which is of limited application. On the one hand, the new Act checks the activities of the Police Force which have led to gross violations of human rights and even deaths of many Nigerians over the years and on the other hand, it provides a funding framework for the Police Force. These indeed were the highpoints of the demands of the ENDSARS movement of September-October 2020. It is hoped that the provisions of the Police Act 2020 are earnestly and fully implemented and not just a matter of lip service.

Indeed, the enactment of the foregoing legislations are opportune, in view of the impact of the outbreak of the Covid-19 pandemic on both global and national economy. It is hopeful that these legislations amongst other things will promote eCommerce, cross border trade, national security, investments, increased revenue and ultimately, economic growth.

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