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EXECUTIVE ORDER ON EASE OF DOING BUSINESS IN NIGERIA – A REVIEW

INSIGHTS

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According to the World Bank Doing Business Rankings¹, Nigeria experienced a sharp decline in the ease of doing business² and it was not until 2017 that we began to see a slight recovery³. This recovery is not unconnected to the establishment of the Presidential Enabling Business Environment Council (PEBEC) in July 2016 by President Muhammadu Buhari. The Council is headed by the Vice-President Prof. Yemi Osinbajo and comprises 10 Ministers, the Head of the Civil Service of the Federation, the Governor of the Central Bank of Nigeria, representatives of the National Assembly and the Judiciary, Lagos and Kano State Government and representatives of the Private Sector.

The goal of the Council is to make Nigeria a progressively and sustainably easier place in which to do business. This was followed by the Executive Order 001 of 2017 signed by Prof. Yemi Osinbajo (Acting-President of Nigeria at the time).

We have 42 Ministries, Departments and Agencies (MDA) working with the PEBEC on improving the ease of doing business in Nigeria. Albeit these MDAs have shown different laudable levels of compliance with the directives of this Executive Order in their relations with PEBEC, the Corporate Affairs Commission and the Federal Inland Revenue Service lead the pack.

We shall be reviewing the Executive Order, its directions and juxtapose same with progress in the relevant Ministries, Departments and Agencies (MDAs). The Executive Order is divided into 6 aspects viz;

- A. Transparency in MDAs
- B. Default Approvals
- C. One Government Directive
- D. Entry Experience of Visitors and Travellers
- E. Port Operations
- F. Registration of Businesses.

1 The ease of doing business index was created by Simeon Djankov of the World Bank Group in November 2001. The index is meant to measure regulations directly affecting businesses. And it is done based on the average of 10 sub-indices; *Starting a business, Dealing with construction permits, getting electricity, registering a property, getting credit, Protecting investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.*

2 From ranking 131 to 170 out of 185 Countries

3 At present, we rank 145 out of 190 Countries

A. Transparency in MDAs

(Orders 1-2)

Every MDA in Nigeria shall publish a 'complete list' of requirements and/or conditions for obtaining product, licenses and services within the MDAs scope of responsibility. This includes, permits, waivers, tax related processes, filings and approvals. This list shall include the Fees and timelines required for the processing of applications. It must also be conspicuously pasted on the Premises of the relevant MDA 21 days from the issuance of the Order and must be kept up-to-date at all times.

The essence of this order is to cut down on the time it would take to access this information from officers of the MDAs, to foster uniformity of fees, transparency so one person is not charged more than another and to increase predictability of the process.

B. Default Approvals

(Orders 3 - 9)

The Order further directs that where an agency or official fails to communicate the approval or rejection of an application within the stipulated time, such application shall be deemed approved and granted.

Where an application is rejected, it shall be done with reasons, tracked for accurate records and submitted to the head of the MDA on a weekly basis.

There shall be at least 2 (Two) modes of communicating the official decision of the MDA including, letters, emails and publications on the MDAs websites.

An Applicants acknowledgement copy of the application, including electronic submission acknowledgements shall serve as proof of the date of submission of the application in order to determine the commencement of the application timeline. Also, an applicant whose application is deemed granted under this Directive⁴ may apply to the Minister in charge of the application for the issuance of any document or certificate in evidence of the grant within 14 (Fourteen) days lapse of the MDAs stipulated timeline.

⁴ This happens where the MDA fails to communicate its official decision within the stipulated time

Although this seems like a good idea, it raises questions as to the chances of more red-tape and wastage of time when the application gets to the Ministry. Also, what checks can be put on the Minister in order to ensure expedited treatment and issuance of the documents or certificate? What happens if the application is brought after 14 days? .

Failure by the officer in charge to act within the timeline stipulated on any application, without lawful excuse, shall amount to misconduct and be subject to appropriate disciplinary proceedings in accordance with the extant laws.

This is laudable. It ensures that there are consequences for failure of officials to do the needful. It also ensures that MDA's keep up with technological advancements and the ease that technology brings. It also cuts down on red-tape and undue delay in service provision by persons in the employ of the MDA's.

C. One Government Directive

(Orders 10 - 13)

An MDA that requires documentation, requirements or conditions from another MDA in order to deliver a product or service (permits, license, waivers, tax documentation, filings and approvals) shall only request a photocopy or other prima facie proof from the applicant. It shall be the responsibility of the originating MDA to seek verification from the issuing MDA.

Service Level Agreements shall be binding on MDAs and shall be relied upon by MDAs in the issuance of published stipulated timelines for processing of applications for the products and services. It shall be the responsibility of the head of the relevant MDA to ensure that the agreed terms of the Service Level Agreements are adhered to.

Failure of the appropriate officer to act within the timeline stipulated in the Service Level Agreement, without lawful excuse, shall amount to misconduct and be subject to appropriate disciplinary proceedings in accordance with the extant laws.

D. Entry Experience of Visitors and Travellers

(Orders 14 - 16)

Ordinary tourist and business entry visas to Nigeria shall henceforth be issued or rejected with reason by the Consular Office of Nigerian Embassies and High Commissions within 48 hours of receipt of valid application. The timeline shall be notified to the public by pasting a

notice conspicuously at every Consular Office and by publication on every website of Nigerian Embassies and High Commissions.

A comprehensive and up to date list of requirements, conditions and procedures for obtaining visa on arrival, including the timeframe shall be published on immigration-related websites in Nigeria and abroad, Embassies, High Commissions and Ports of entry into Nigeria.

The processing and issuance of visas on arrival shall be carried out in a transparent manner and visas on arrival shall be granted at all Nigerian ports of entry once applicants have met all the published requirements.

E. Port Operations

(Orders 17 - 24)

The Order directs against touting by either officials or non-officials at any port in Nigeria. All staff on duty must be identified by uniforms and ID cards. All off-duty staff are to stay away. The FAAN, Aviation Security (AVSEC) and Nigeria Ports Authority (NPA) Security shall enforce this order.

All non-official staff shall be removed from the secured areas of airports and an official of any agency or ministry shall meet any non-designated dignitary at any secure area of the airport. Pre-approved list of dignitaries to be received by protocol officers shall be made available to the AVSEC and other relevant agencies.

Any official caught soliciting or receiving bribes from passengers or other port users shall be removed from his post and shall be dealt with in line with the extant laws.

All MDAs at the airports shall within 30 days of this order merge their respective departure and arrival interfaces into a single customer interface without prejudice to necessary back-end procedures.

All agencies currently physically present in Nigerian Ports shall within 60 days harmonize their operations into one single interface station domiciled in one location in the port and implemented by a single joint task force at all times, without prejudice to necessary backend procedures.

The new single interface station at each Port shall capture, track and record information on all goods arriving and departing from Nigeria and remit captured information to the head of the MDA and the head of the National Bureau of Statistics on a weekly basis.

Each Port in Nigeria shall assign an existing export terminal to be dedicated to the exportation of agriculture produce within 30 days of the issuance of this Order.

The Apapa Port shall resume 24-hour operations within 30 days of the issuance of this Order.

F. **Registration of Businesses**

(Order 25)

The Registrar-General of the Corporate Affairs Commission (CAC) shall within 14 days of the issuance of this Order ensure that all registration processes at the CAC are fully automated through the CAC website from the start of an application process to completion, including ensuring the availability of an online payment platform where necessary.

Impact On Businesses

It enables the creation of businesses and a better experience for foreigners coming into the country to start businesses but doesn't support sustenance of certain businesses after commencement. Businesses that rely heavily on Power to operate profitably will find themselves struggling in the long run. Access to Electricity is one of the 10 indicators the World Bank uses to rank the ease of doing business in 190 countries.

Albeit PEBEC is making laudable moves in order to enhance the business environment for existing businesses and start-ups in Nigeria, access to electric power supply is still the elephant in the room. The only laudable progress we have made in this

regard is to reduce the time it takes to get connected to distribution companies. But like Nigerians can testify, connection to electricity distribution companies and actual supply of electricity are two very different things.

If we are to be honest, ease of starting a business is just one hurdle to be crossed which pales in comparison to the need for constant power supply in all sectors of the economy especially in the agricultural and manufacturing sectors.

Although there is no reliable data on the number of businesses that are dependent on Power in Nigeria, nor is there data on the number that have left the country or failed as a result of lack of access to power, we are not ignorant of the adverse impact this has had on businesses in Nigeria. As a matter of fact, seeing various business operate daily with the help generators is a sight all too familiar.

We acknowledge that the issue of electric power supply is a mammoth that can only be handled by the Federal government itself as can be seen in the unbundling of the power sector. Indeed the epileptic power supply in various parts of the country leaves much to be desired.

Conclusion

PEBEC has gone a step further to create a mobile application in addition to their responsive website. These act as checks and balances to keep the MDAs accountable and also as channels for reporting any MDA that falls short of the directives of this Executive Order.

The Chairman of PEBEC hinted that an Omnibus Bill that will give legislative flavor to the Executive Order is in the works but it hasn't been sent to the National Assembly at the time of writing this review. An Omnibus Bill is a piece of legislation that covers a number of diverse or unrelated topics and is accepted in a single vote by the legislature. The 42 MDA's working with PEBEC were established by laws which prescribed several procedures that have clogged the wheels of progress in the Nigerian business sphere. This Omnibus Bill will harmonize and in one fell swoop, make vital changes that will repeal the problematic sections of these laws and also establish a more effective process that will improve the ease of doing business in Nigeria.

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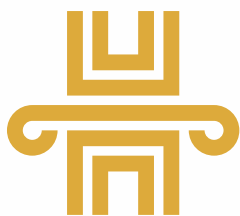
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