
Examining the Regulatory Functions of the Central Bank of Nigeria on Other Banks

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Abstract

The importance of banking system in any economy cannot be overemphasized because banks act as a medium through which monetary policies are implemented and also inter-mediate between the superfluous and deficit units of the economy. The sensitive functions of banks, therefore, make them susceptible to liquidity problems and loss of public confidence. This brought about the need for regulation of banks by the government. The Banks and Other Financial Institutions Act (BOFIA) which is the primary legislation for the regulation of banks in Nigeria empowers the Central Bank of Nigeria (CBN) to regulate and supervise banks and other financial institutions in Nigeria and in furtherance of this, the CBN issued several guidelines for the effective regulation of banks in the country. This paper, therefore, seeks to appraise the effectiveness of CBN as a regulatory body to other banks. The doctrinal mode of research was adopted in conducting this research in which both primary and secondary sources of law. The primary source includes Acts of the National Assembly such as the Banks and Other Financial Institutions Act, Central Bank of Nigeria Act, Companies and Allied Matters Act (CAMA), Asset Management Corporation of Nigeria (AMCON) Act, Foreign Exchange (Monitoring and Miscellaneous) Provisions Act and Nigerian Deposit Insurance Corporation Act. The secondary source includes textbooks, journal articles, theses, regulations such as Banking Regulation as well as on-line materials were analysed. It has been found that CBN has been efficient in the regulation of banks in Nigeria and the regulation has yielded laudable results in the banking industry.

Keywords: *Banking, Regulation, Banks, Financial Institutions*

Introduction

The banking system in any economy plays vital roles in promoting economic growth and development. This is said to be done through financial intermediation.¹As a result of the importance of the banking system in Nigeria, there is a need to regulate the system. This is what informed the regulation of banks by the government in Nigeria. The Banks and Other Financial Institutions Act (BOFIA) is the primary legislation on regulation of banks in Nigeria and it empowers the Central Bank of Nigeria (CBN) to regulate and supervise banks and other financial institutions in Nigeria.

The Central Bank of Nigeria was established by the CBN Act of 1958 (now CBN Act 2007)². The primary objectives of the bank are the issuing of legal tender currency in Nigeria, management of the country's external reserves and the safeguarding of the international value of the currency. The CBN is also responsible for promoting monetary stability and a sound financial structure in Nigeria. In exercising this role, it monitors and supervises banks and other financial institutions in Nigeria.³

The regulation of the banking industry can be traced to 2004 when the CBN embarked on a policy-induced consolidation programme where the minimum capital of a bank was increased from 2 billion Naira to 25 billion Naira. This led to a reduction in the number of banks from 120 to 25 in 2005. The consolidation is said to have resulted in the dramatic growth and internalization of the Nigerian banking sector which attracted unprecedented and sudden capital inflows into the stock market.⁴

Although the CBN Act established the CBN as the apex regulatory and supervisory body of banks in Nigeria, there are other legislation that regulate banks which include the Companies and Allied

¹Iyade, A. I. (2006). *The Impact of Regulation and Supervision on the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC)* (Ph.D Thesis, St. Clements University).

² The Act is now embodied in *Cap C4, Laws of the Federation of Nigeria 2010*.

³Offor, E. R (2009). *A Critical Evaluation of the Role of the Central Bank of Nigeria in Ensuring Corporate Governance in Nigerian Banks Post Consolidation*. Available at <<http://Ssrn.Com/Abstract=15094545>> Accessed on 16 July, 2022.

⁴ "Banking Regulation 2018 <https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/nigeria>. Accessed on 20 July, 2022.

Matters Act (CAMA),⁵ the Asset Management Corporation of Nigeria (AMCON) 2010,⁶ the Foreign Exchange (Monitoring and Miscellaneous) Provisions Act⁷ and Nigerian Deposit Insurance Corporation Act 2006.⁸

This paper will appraise the effectiveness of CBN as a regulatory body to other banks and it will be found that since the establishment of CBN in 1959, the bank has been very efficient in exercising her role as a regulatory body to other banks. It will equally be found that the CBN Governor in exercising the power to make rules and Regulations for the regulation of banks has issued several guidelines which are all aimed at improving the banking sector.

Developments Of Banking Industry In Nigeria

Commercial banking activities commenced in Nigeria in 1892. The first bank that was established is known as African Banking Corporation (ABC). In 1894, the African Banking Corporation was replaced by the Bank of British West Africa which was later changed to Standard Bank and is now known as First Bank of Nigeria Plc.⁹ The bank had complete monopoly of business in the banking industry until the establishment of the Colonial Bank in 1917.¹⁰ The Colonial Bank had branches in Jos, Kano, Lagos and Port Harcourt. In 1952 the bank was renamed Barclays Bank DCO and is now called Union Bank of Nigeria Plc.¹¹

In 1929, the Industrial and Commerce Bank was established by a group of Nigerian and Ghanaian Entrepreneurs. This bank was the first indigenous bank to be established. However, in 1930, the bank failed due to inadequate capital, poor management, hostile and unfair competition from foreign established banks.¹²

⁵ Companies and Allied Matters Act, 2020.

⁶ Embodied in *Cap A 24A, Laws of the Federation of Nigeria 2010*.

⁷ Embodied in *Cap F34, Laws of the Federation of Nigeria 2010*.

⁸ Embodied in *Cap N 102, Laws of the Federation of Nigeria 2010*.

⁹ Iyade, A. I. (2006). *The Impact of Regulation and Supervision on the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC)*. (Ph.D Thesis, St. Clements University).

¹⁰ Leye-Isola, A. E. (2009). *Bank Services in Nigeria Financial Industry: A Case Study of Customer's Preference for Banking Services in Lagos and Abuja*. <<http://www.unn.edu.ng/publications/files/isola>> accessed on 16 July, 2022.

¹¹ Ibid.

¹² Ibid.

In 1933, another group of entrepreneurs who were all Nigerians established the Nigerian Merchant Bank. This bank was said to be more successful than its predecessor. However, the bank also failed in 1936.¹³In 1933, the National Bank of Nigeria Limited was established and it made history as the first indigenous bank to survive although it encountered few problems with the 1952 Banking Ordinance. As a result of the success of the National Bank of Nigeria Limited due to careful management by the Western Regional Government, Nigerians were stirred to go into banking business. Flowing from this, the Agbonmagbe Bank was established in 1945. Although the bank ran into some challenges in 1967, it was later rescued by the Western Nigerian Development Corporation (WNDC) which was later metamorphosed to Odua Investment Corporation. The corporation took over the bank and changed its name to Wema Bank Limited. The Nigerian Penny Bank is another indigenous bank which was established but unfortunately, the bank packed up operations after its registration in 1946 with depositors losing all their savings to the bank.¹⁴

In 1946, Dr. Azikiwe established the Tinubu Bank to serve the Zik Group of Companies, which was established in 1941 and called Tinubu Properties Ltd. The name of the bank was changed to African Continental Bank in 1947 with its first office in Yaba, Lagos. Also, in 1949, a foreign bank comprising of the British and French Banks was established. In 1961, the bank was re-established by a group of five foreign banks. The bank has since been called the United Bank for African (UBA).¹⁵

It was observed that the indigenous banks failed due to the peculiar features that characterized banking scene in the free banking era which was said to have extended to the period of independence. The features are said to include the following:¹⁶

1. Foreign bank's dominated the deposit base and credit availability;
2. Bank services were mostly tailored towards the needs of the expatriates;
3. Indigenous banks' boom and failures also resulted from undercapitalization and poor quality management.

¹³Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶Offor, E.R "A Critical Evaluation of the Role of the Central Bank Of Nigeria in Ensuring Corporate Governance in Nigerian Banks Post Consolidation" (2009) Available at <<http://Ssrn.Com/Abstract=1509454>> Accessed on 16 July, 2022.

4. There was equally lack of banking control and direction, because there was no regulatory framework.

It is important to note that real banking regulation and surveillance did not commence until the establishment of the Central Bank of Nigeria (CBN) in 1958 and its commencement of business in 1959.¹⁷ In 1986, the Structural Adjustment Programme (SAP) was introduced with the main objective of deregulating the financial and economic systems. During the period preceding the SAP era, banks were subjected to substantial restrictions in their products and services. This limited the scope of competition in the industry. The restrictions were said to be in various shades ranging from ceiling on credit expansion and interest rate to restrictions on entry into the banking industry, restriction on banks' portfolio selection, as many of the banks were forced to perform developmental roles such as provision of subsidized credit to some areas designated as priority sectors and public enterprise.¹⁸

The introduction of SAP brought about the emancipation of banks wherein discriminatory practices that inhibited both the free entry into the market or the scope and manner of its operation was eliminated. It equally brought about the privatization of a number of government-owned banks. It was observed that banking became very competitive during this period as banks had to be innovative and aggressive in order to survive, especially when non-bank financial institutions such as mortgage institutions and the Urban Development Bank were established.¹⁹

Soon, the Merchant Banks began to complain about how the banking industry was tilted in favour of the commercial banks as commercial banks were allowed to participate in areas that are exclusive preserve of the merchant banks such as leasing and related fee-based services. Commercial banks also enjoyed the advantages of stability.²⁰

However, the then Governor of CBN in the exercise of the power conferred on him by the provisions of section 61 of Banks and other Financial Institutions Decree (BOFID) 1991 as amended approved the issuance of guidelines for the implementation of universal banking in Nigeria. Under the universal banking arrangement, banks were no longer categorized as

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ *ibid*

commercial or merchant but were issued a uniform license, with each bank determining the market in which it intends to operate.²¹

Literature Review

Many authors have written on banks or banking generally, so also are the functions of the CBN. Most of the relevant literatures relating to this paper are either generally on banks, banking or CBN or on specific aspect of banking. Thus, Iyade²² examined the roles of both the Central Bank of Nigeria and Nigeria Deposit Insurance Corporation (NDIC). He did not focus his discussions on CBN *vis-à-vis* its regulatory roles over other banks alone. Offor²³ evaluated the roles of the Central Bank of Nigeria but his work was limited to corporate governance in Nigerian Banks' Post Consolidation. Leye-Isola²⁴ examined bank services in the Nigerian financial industry with particular reference to customer's preference for banking services and his work in this regard was limited to Lagos and Abuja. Dosekun and Senbore²⁵ wrote on banking regulation in Nigeria generally. Their work did not focus on the regulator roles of CBN over other banks. On his part, Goldface-Irokalibe²⁶ wrote on Law of Banking generally. His work did not conceptualise on the regulatory functions of the CBN. Also, Paul Todd²⁷ worked on bankers' documentary credits. His work did not consider Nigerian banking system in any material particular. The conceptual difference between the works under review and this paper is that this paper focuses on the regulatory roles of the CBN over other banks while the reviewed literatures are on different aspects of banks or banking generally.

²¹ Ibid.

²² Iyade, A. I. (2006). *The Impact of Regulation and Supervision on the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC)* (Ph.D Thesis, St. Clements University)

²³ Offor, E. R (2009). *A Critical Evaluation of the Role of the Central Bank of Nigeria in Ensuring Corporate Governance in Nigerian Banks Post Consolidation*. Available at <<http://Ssrn.Com/Abstract=15094545>> Accessed on 16 July, 2022

²⁴ Leye-Isola, A. E. (2009). *Bank Services in Nigeria Financial Industry: A Case Study of Customer's Preference for Banking Services in Lagos and Abuja*. <<http://www.unn.edu.ng/publications/files/isola>> accessed on 16th July, 2022.

²⁵ Dosekun, K. and Senbore, O. (2017). *Banking Regulation in Nigeria: Overview, Practical Law, Global Guide* www.global.practicallaw.com/w-007-9148. accessed on 16 July, 2022

²⁶ Goldface-Irokalibe I. J. (2007). *Law of Banking in Nigeria* (Malthouse Press Limited, Lagos, Nigeria).

²⁷ Paul Todd (2022). *Bills of Lading and Bankers Documentary Credits* (Fourth Edition, Informa Law, London).

The Legal Framework For Banking Regulation In Nigeria

The failure of early indigenous banks brought about the need to regulate banks in Nigeria because it created untold hardship for many banks. As a result of this, the Banking Ordinance of 1952 was enacted. It was, however, amended in 1958 and 1962 respectively. Subsequently, it was repealed in 1969 following the birth of the 1969 banking decree. The 1969 banking decree, although amended several times, was also repealed following the promulgation of the Central Bank of Nigeria Decree No. 24 and Banks and Other Financial Institutions (BOFID) decree No. 25 both of 1991. These decrees cover both banks and non-bank financial institutions.²⁸

Currently, the primary legislation on the regulation of banks in Nigeria is the Banks and other Financial Institutions Act No. 25 of 1991 (BOFIA)²⁹ with the Central Bank of Nigeria (Establishment Act) 2007 (CBN Act) which gives CBN the power to regulate and supervise banks and other financial institutions.³⁰

Other relevant legislations include Companies and Allied Matters Act 2020, Nigerian Deposit Insurance Corporation Act, Foreign Exchange (Monitoring and Miscellaneous) Provisions Act etc.³¹

Evolution Of Central Bank Of Nigeria

In the early 1950s when indigenous banks were failing, the power of supervision of banks was vested in the financial secretary. Many nationalist leaders at that time began to advocate for the establishment of a central bank to perform the function of banking supervision. The spirited agitations by the nationalists led to the institution of several commissions to examine the desirability and feasibility of establishing a central bank in Nigeria as an instrument for promoting the economic development of the country. However, Mr. Fisher, an adviser to the Bank of England in 1952 and the International Bank for Reconstruction and Development (IBRD) Mission in 1953 considered the establishment of a central bank in Nigeria as premature. One Mr. Loynes, another

²⁸ Ibid.

²⁹ *Cap B3 Vol.2, Laws of Federation of Nigeria 2004.*

³⁰ Dosekun, K. and Senbore, O. (2017). Banking Regulation in Nigeria: Overview, *Practical Law, Global Guide* www.global.practicallaw.com/w-007-9148. accessed on 16 July, 2022.

³¹ Ibid.

adviser to the Bank of England, in his own report in 1957 concurred with the idea of establishing a central bank in Nigeria. The report was said to form the basis for the draft legislation for the establishment of the Central Bank of Nigeria, which was presented to the House of Representatives in March, 1958. The Act became fully implemented on 1st July, 1959 and the CBN came into full operation with an initial capital of N17.0 million.³²

The Central Bank of Nigeria (CBN) was established in 1958 by an Act of Parliament. The Bank commenced operation in July 1959 and was charged, among other things, with the responsibility of promoting monetary stability and a sound financial structure in the country.³³

It was observed that since the commencement of operations of the CBN in 1959, the Nigeria financial service industry recorded a remarkable revolution. The CBN, in carrying out its various responsibilities ensure that all institutions within the industry operate in accordance with the generally accepted practices. With the promulgation of the CBN Decree No. 24 and BOFI Decree No. 25 of 1992, the CBN now has the sole responsibility for the formulation and execution of monetary policy in Nigeria. The CBN directly regulates the activities of commercial and merchant banks. It, however, delegates the supervision of community banks to the National Board for Community Banks which is an agency of the CBN for that purpose. The CBN equally has the power to demand for any financial information from any financial institution within Nigeria.³⁴

Mandate Of The Central Bank Of Nigeria

The core mandates of the CBN are as spelt out in the CBN Act (1958), now CBN Act, 2007 and they include:³⁵

- a.) ensure monetary and price stability;
- b.) issuance of legal tender currency notes and coins in Nigeria;
- c.) maintenance of Nigeria's external reserves to safeguard the international value of the legal currency;
- d.) Promotion and maintenance of monetary stability and a sound and efficient financial system in Nigeria; and

³²Iyade, A. I. The Impact of Regulation and Supervision on the Activities of Banks in Nigeria.

³³ Ibid.

³⁴ Ibid.

³⁵Section 2 CBN Act, 2007.

e.) Acting as banker and financial adviser to the Federal Government.

Functions Of The Central Bank Of Nigeria

i. Issuance of Legal Tender Currency Notes and Coins

The Central Bank of Nigeria issues and distributes currency within the economy. The Bank is said to have been performing these functions since 1959 when it replaced the WACB pound, which was in circulation, with the Nigerian pound. The bank introduced the decimal currency denominations, ‘Naira and Kobo’, in 1973 in order to move to the metric system, which simplifies transactions. In 1976, a higher denomination note N20 was introduced. In 1984, a currency exchange was carried out whereby, the colors of existing currencies were swapped in order to discourage currency hoarding and forestall counterfeiting. In 1991, a currency reform was carried out which brought about the phasing out of 2 kobo and 5 kobo coins, while the 1k, 10k and 25k coins were redesigned.³⁶ The 50k and N1 notes were also made into coins, while the N50 note was put in circulation. In the quest to enhance the payments system and substantially reduce the volume and cost of production of “legal tender notes”, the N100, N200, N500 and N1000 notes were issued in December 1999, November 2000, April 2001 and October 2005 respectively. On February 28th 2007, as part of economic reforms, the N50, N20, N10, and N5 banknotes and N1, 50K coins were reissued in new designs. A new denomination of N2 coin was also introduced.³⁷ On 26th October 2022, the Governor of the CBN, Godwin Emefiele, announced that the highest denominations of the Nigerian currency (N200, N500 and N1000 notes) would be redesigned, giving a deadline of 31 January 2023 (which was later extended to February 10, 2023) for all old notes to be deposited in banks in exchange for new ones. According to the CBN, the new notes would help curb corruption and currency fraud, tackle the growing menace of kidnapping for ransom, lower inflation and address the problem of having too much money in circulation.³⁸ However, upon

³⁶Ibid at 57.

³⁷Central Bank of Nigeria, Currency Gallery <<http://www.centralbankofnigeriacurrencygallery>> Accessed on 20 July, 2018.

³⁸ Ayodele Awi, “Cash Politics: the Impact of the Currency Redesign Policy on Nigeria’s 2023 General Election <<https://www.bsg.ox.ac.uk/blog/cash-politics-impact-currency-redesign-policy-nigerias-2023-general-election#:~:text=On%2026%20October%202022%2C%20the,banks%20in%20exchange%20for%20new>> Accessed on 23 February, 2023.

challenge of the CBN's action by some states of the Federation, the Supreme Court ordered that old N200, N500 and N1,000 notes remain in circulation till December 31, 2023.³⁹

ii. Maintenance of Nigeria's External Reserves

The CBN also manages the country's debt and foreign exchange in order to safeguard the international value of the legal tender currency.⁴⁰

iii. Debt Management

The CBN manages its own domestic debt and services external debt on the advice of the Federal Ministry of Finance. On the domestic front, the Bank advises the Federal Government as to the timing and size of new debt instruments, advertises for public subscription to new issues, redeems matured stocks, pay sinterest and principal as at when due, collects proceeds of issues for and on behalf of the Federal Government, and sensitizes the Government on the implications of the size of debt and budget deficit, among others. On external debt service, the CBN also cooperates with other agencies to manage the country's debt.⁴¹

iv. Banker and Lender of Last Resort to Banks

Commercial banks have a current account with the CBN which is being maintained by CBN. CBN equally provide clearing house facilities through which instruments from the banks are processed and settled. In the same vein, it undertakes trade finance functions on behalf of bank customers. Finally, it provides temporaryaccommodation to banks in the performance of its functions as lender of last resort.⁴²

The Effectiveness Of Central Bank Of Nigeria As A Regulatory Body To Other Banks

³⁹ Emmanuel Obaje-Daniels, The Supreme Court Ordered that Old N200, N500 and N1,000 Notes Remain in Circulation till December 31, 2023 <<https://www.channelstv.com/2023/03/03/breaking-supreme-court-orders-old-n200-n500-n1000-notes-to-remains-in-circulation-till-dec-31/#:~:text=The%20Supreme%20Court%20on%20Friday,circulation%20till%20December%2031%2C%202023.&text=The%20apex%20court%20also%20nullified,affront%20to%20the%201999%20Constitution>> accessed on 12 March, 2023.

⁴⁰Iyade, A. I. The Impact of Regulation and Supervision on the Activities of Banks in Nigeria.

⁴¹ Ibid.

⁴² Ibid.

The banking sector has been one of the most dominant and regulated sector in Nigeria⁴³. This is due to the fact that banking business is a highly leveraged one, and every aspect of it has implications for depositors' safety and by extension, the whole financial system. This is why it is very important to regulate the activities of banks in order to ensure the depositors' safety.⁴⁴

The Banks and Other Financial Institutions Act (BOFIA) 1991 (as amended) together with the Central Bank of Nigeria Act 2007 gives the CBN power to supervise and regulate banks and other financial institution in Nigeria in the following aspects:

- **Licensing Regulation**

By virtue of section 2 of BOFIA (1991) all Commercial and Merchant banks have been required to obtain a license to conduct business. The CBN is empowered by the BOFIA to issue licenses to Banks and it is to the effect that no person is permitted to carry on banking business in Nigeria except it is a company duly incorporated in Nigeria under the CAMA and in possession of a valid banking license issued under the BOFIA. To further protect the interest of depositors, the Act disallows any person(s) or body corporate to solicit for any type of deposit from the public except it is a duly licensed bank. This provision is said to prevent exploitation of the public by just any person(s) and / or corporate body which can cause banking instability in the economy.⁴⁵

- **Restriction on Banking Activities**

In order to guard against diversion of depositor's funds to other non-banking areas, as profitable as it may be, CBN forbids all licensed banks from engaging in any form of wholesale or retail trade for profit either on its account or on commission basis without prior approval from CBN.⁴⁶ In furtherance of this, the CBN Governor as part of its regulatory functions introduced the Regulation on the scope of banking activities &

⁴³“Banking Regulation 2018 < <https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/nigeria>>Accessed on 20 July, 2022.

⁴⁴Iyade, A.I. The Impact of Regulation And Supervision On the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC). p.58.

⁴⁵Iyade, A.I. The Impact of Regulation And Supervision On the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC).p.65.

⁴⁶Iyade, A.I. The Impact of Regulation And Supervision On the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC).

Ancillary Matters in 2010 in order to put an end to the anomalies in the banking activities. It introduced a narrower banking model wherein Nigerian banks are no longer allowed to perform non-banking activities such as insurance and security businesses. This led to the divestiture of non-banking activities of banks, and the further reconstitution of banks into holding companies that own separate banking and non-banking subsidiaries.⁴⁷

- **Foreign Exchange Control**

Nigerian economy was heavily reliant on oil which according to OPEC represents over 90% of the country's total export revenue. The collapse in world oil prices is said to have resulted in a sudden decline in foreign currency revenues coming into the country and to corresponding erosion in Nigeria's foreign currency reserves. As a result of the low demand for Naira and a decline in the Nigeria foreign currency reserves, the CBN took series of measures which was aimed at addressing the issues. For instance, it was said that CBN in a bid to promote stability and liquidity of the foreign exchange (FX) market introduced the Revised Guidelines for the Operation of the Nigerian Inter-Bank Foreign Exchange Products (the Primary Dealership Guidelines) in 2016.⁴⁸

The highlights of the guidelines include the following:⁴⁹

- The FX market shall operate as a single market structure via the interbank market and through authorized dealers-i.e banks licensed by the CBN to deal in FX.
- The FX exchange rate will be purely market driven via FMDQ Thomson Reuters platform.
- The CBN will participate in the interbank FX market through periodic interventions to either buy or sell FX spot as the need arises.
- The introduction and registration of FX primary dealers who will deal with the CBN on a two-way quote basis for large deal sizes:
 - Abolition of pre-determined spreads on FX transactions, and transferability of FX purchases were introduced.

⁴⁷ Banking Regulation 2018. <<https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/nigeria>>. Accessed on 20 July, 2022.

⁴⁸Ibid.

⁴⁹ Revised guidelines for the operation of the Nigerian Inter-bank foreign exchange market 2016.

-The introduction of a Naira-settled OTC FX futures market as an effective exchange rate management tool. This measure was expected to ease the movement of non-urgent FX demand from the spot to the futures market.

Furthermore, the CBN established various special windows for FX trading for specified users (such as investors and exporters) in order to boost liquidity in the FX market, and ensure timely execution and settlement of eligible transactions.

- **Management of Failing or Failed Banks**

The Central Bank of Nigeria by virtue of sections 35 and 36 of BOFIA is empowered to take over any bank perceived to be failing or to have failed, and subsequently apply appropriate failure resolution options. Such take-over, it is envisaged, would precipitate a situation where a bank would wind itself up just like any other company. Whatever necessary failure resolution option is applied, the CBN is further empowered to appoint a receiver or liquidator as the case may be and in this regard the NDIC is given priority over any other person(s) as official receiver or provisional liquidator⁵⁰. For instance, as a result of the 2008 global financial crises which was said to have affected the Nigerian capital market, banks were exposed to 1.6 trillion Naira in Non-performing loans (NPLs).⁵¹ 8 banks were found to be in 'grave situation'.⁵² CBN took proactive steps to prevent the further deterioration of the banks instead of revoking their licenses or handing over the banks to the Nigerian Deposit Insurance Corporation (NDIC). The CBN did this by injecting 620 billion Naira convertible loan that amount to Tier II capitals into the banks, it also replaced the chief executives and managing directors of those failing 8 banks with competent and experienced managers, it equally introduce the guarantee of local interbank market to ensure continued liquidity for all banks and guaranteeing foreign creditors and

⁵⁰Iyade, A.I. The Impact of Regulation And Supervision On the Activities of Banks in Nigeria (An Assessment of the Role of the CBN and NDIC).

⁵¹ Banking Regulation 2018. <https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/nigeria>. Accessed on 20 July, 2022.

⁵² These are: Oceanic Bank International Nigeria Plc, Union Bank of Nigeria Plc, Intercontinental Bank Plc, Bank PHB Plc, Afribank Nigeria Plc, Finbank Plc, Equitorial Trust Bank Ltd, Spring Bnak Plc and Wema Bank Plc.

correspondent banks' credit lines to ensure confidence and maintain important correspondent banking relationships.⁵³

Furthermore, the CBN in 2016 took over Skye Bank Plc and dissolved her Board of Directors. This was due to the bank's estimated non-performing loan portfolio of N700billion as a result of her overexposure in the oil and gas sector.⁵⁴ It was reported that the CBN Governor at a press briefing at its head office annex in Lagos said that the bank appointed new Board and management for Skye Bank Plc following the resignation of the Chairman and Managing Director. The governor further said that CBN took over Skye bank because it did not want the liquidity and adequacy ratio to worsen to a situation where depositors' fund gets into risk.⁵⁵

In 1992, the CBN/NDIC following the protracted shareholder's crisis in the then Fidelity Union Merchant Bank removed the bank's board and appointed an interim Management Board that managed the bank for one year. The bank was handed over to its shareholders after resolving their differences. Similarly, an interim Management Board was constituted for the then Alpha Merchant Bank Plc on the receipt of protest from some shareholders that the bank was being mismanaged through careful manipulation of some board members and management staff after confirming that the protest had merit. The presence of CBN/NDIC in the management of the bank is said to have revealed a lot of insiders' abuse and financial mismanagement which later led to the revocation of the bank's license and liquidation. Furthermore, in 1992, the CBN took over control and delegated the management of the distressed National Bank of Nigeria (NBN) to the NDIC pursuant to the provisions of sections 34 and 36 of the BOFI Decree now BOFIA. The bank was taken over because the bank's operation was suspended and the capital deficiency of the bank had grown beyond the financial capacity of the shareholders.⁵⁶

⁵³ Recapitalisation of Eight Nigerian Banks- CBN"<https://www.proshareng.com/news/INVESTORS%20NEWSBEAT/Recapitalisation-of-Eight-Nigerian-Banks---CBN13998>.accessed on 20 July, 2022.

⁵⁴ CBN takes over Skye Bank. <<https://www.dailypost.ng/2016/07/04/breaking-cbn-takes-over-skye-bank/>>Accessed on 20 July, 2022.

⁵⁵ CBN takes over Skye Bank. <<https://www.google.com.ng/amp/sunnewsonline.com/cbn-takes-over-skye-bank/amp/>> Accessed on 20 July, 2022.

⁵⁶ Emefiele, G. Ownership Structure, Political Interference in the Management of Banks<<https://www.nigerianobservernews.com/2015/03/ownership-structure-political-interference-management-banks/>>.Accessed on 20 July, 2022.

The CBN also established the Asset Management Corporation of Nigeria (AMCON) to reach a resolution on the banking crisis with minimal impact on depositors, other creditors of the banks, and taxpayers. AMCON was used by CBN as a means of freeing the banks from the weight of non-performing assets and accelerate the resolution process in the banking industry. As at 2013, it was found that AMCON had raised bonds worth up to 5.6 trillion Naira from other banks to finance the non-performing loans and other toxic assets in the system. The bonds were said to be guaranteed by Nigeria's Ministry of Finance. The CBN equally makes annual contribution of 50 billion Naira into the banking sector Resolution Cost Fund which was established for the purpose of paying the AMCON bonds from 2011-2020. The CBN and NDIC in line with the global trend developed a framework for the regulation and supervision of domestic systemically important banks (DSIBs) in Nigeria in 2015. The framework is said to specify a higher loss absorbency, more stringent liquidity standards, quarterly capital, liquidity stress-testing for the DSIBs and submission of the first set of DSIBs first set of recovery plans to the CBN/NDIC on January 1, 2016 and on the same day every year thereafter. The recovery plans were developed to prevent bank crisis and the quick resolution of failing banks in order to reduce the impact of failing banks on the public and real economy.⁵⁷

- **Bank Governance and Internal Control**

In accordance with the code of corporate governance, the board of directors of a bank and its senior management are saddled with the responsibility of ensuring the smooth and effective running of a bank's operation.⁵⁸ The Code of Corporate Governance for Banks and Discount Houses 2014 provides that the board shall be made up of qualified persons of proven integrity who shall be knowledgeable in businesses and financial matters and who shall be in compliance with the CBN Guidelines on Fit and Proper Persons Regime.⁵⁹ The Guidelines provide the qualification criteria for the appointment of a person to the management team of a bank and it is to the effect that to access the competence of candidates for board and top management positions, their capacity to fulfill the responsibilities of their positions and their ability to understand the technical requirements

⁵⁷ Banking Regulation 2018 <<https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/nigeria>>. Accessed on 20 July, 2022.

⁵⁸ Ibid.

⁵⁹ Paragraph 2.2.2 Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

of the business, the CBN shall take into account all relevant considerations, including but not limited factors listed against each of the positions.⁶⁰

The Code further provides for the number of directors and it states that there shall be a minimum number of 5 directors and maximum of 20 directors on the board. The board shall consist of executive, non-executive directors and independent directors, with the number of non executive directors exceeding the executive directors.⁶¹

To ensure continuity and injection of fresh ideas, the code limits the tenure of a non-executive director to a maximum of three(3) terms of 4years each.⁶²

The code, in determining the remuneration to be paid to directors, state that particular attention shall be paid to ensure that banks align the executive and board remuneration with long-term interests of the bank and its shareholder. And to ensure accountability, a Committee of non-executive directors shall determine the remuneration of the executive directors and the executive directors shall not be entitled to receive sitting allowances or directors' fees.⁶³

Banks are also expected to disclose the following regarding the remuneration in their annual reports:⁶⁴

- i. Details of the shares held by directors and their related parties.
- ii. The remuneration policy of the bank put in place by the board;
- iii. Total executive compensation , including bonuses paid/payable;
- iv. Total non-executive director's remuneration, including fees, allowances and
- v. Details of directors, shareholders and their related parties who won 5% or more of the bank's shares.

Importantly, the board is responsible for overseeing the management of the bank's compliance with laid down rules, regulations and laws. This task is said to be made easier when banks designate a unit or department solely focused on compliance.⁶⁵ In furtherance of this and in a bid

⁶⁰Paragraph 3.0 Revised Assessment Criteria for Approved Persons' Regime For Financial Institutions 2015

⁶¹Paragraph 2.2 Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

⁶²Paragraph 2.4.3 Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014

⁶³paragraph 2.7 Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014

⁶⁴ Ibid.

⁶⁵Banking Regulation 2018 .

to combat the laundering of proceeds of crime or other illegal acts, the Money Laundering Prohibition Act 2011 mandates every financial institution and designated non-financial institution to assign an officer who is at management level at its head office and all its branches, who shall be the compliance officer.⁶⁶ The CBN in a bid to make compliance with the above directive easier approved the establishment of zonal compliance officers for banks who-at the minimum- must be at the same level with the management of the zone where they work. In other words, there is no need to have a compliance officer for every bank branch.⁶⁷

Furthermore, the CBN in a ‘circular to all Deposit Money Banks 2016’ directed all banks to appoint a Chief Compliance Officer (CCO), who shall not be below the rank of a General Manager, as well as an Executive Compliance Officer (ECO) who shall not be below the rank of an Executive Director. The CCO reports to the ECO, who in turn reports to the Board. The CBN shall penalize any ECO and /or CCO found wanting in his/her duties.⁶⁸

- Bank Capital Requirements.

Pursuant to section sections 13 and 57(1) of BOFIA, the CBN in exercising its regulatory power issued series of Guidance Notes to regulate capital and liquidity in banks in Nigeria. Some of them are: 2013 Guidance Notes on Regulatory Capital Measurement and Management for the Banking Activities and Ancillary Matters, and the Guidance Notes on the calculation of Regulatory Capital. The contents of these Guidance Notes were said to be derived in a bid to implement the Basel II/III Accords in Nigeria. The Guidance Notes implemented the Three Pillars of Basel II while strengthening the capital and liquidity of banks in accordance with Basel III. In 2011, pursuant to the circular dated October 2010 (Regulation on the Scope of Banking Activities and Ancillary Matters), the CBN repealed the Universal Banking Guidelines and introduced a new licensing model. The new model is said to permit banks/banking groups to retain non-core banking businesses by transforming into a non-operating Holding Company (the Hold Co) structure. The non-operating Holding Company is expected to hold an equity investment in banks and non-core banking businesses in subsidiary arrangement. It was observed that the arrangement attempts to guard against depositors’ funds from risks inherent in the non-core banking businesses.⁶⁹

⁶⁶ See section 9(1) of the Money Laundering Prohibition Act 2011.

⁶⁷Banking Regulation 2018.

⁶⁸ Ibid.

⁶⁹ ibid

The only banks therefore permitted to carry on business in Nigeria under the Circular are Commercial banks and specialised banks. The commercial banks include regional, national and international banks while the specialized banks are non-interest banks like micro-finance banks and primary mortgage institutions. Following this distinction, the bank capital requirements of the banks were increased as follows: (i.) regional commercial banks operating in not more than ten (10) neighboring states are required to maintain a minimum capital base of N15,000,000,000,00 (Fifteen Billion Naira) and a capital adequacy ratio of 10%. (ii.) A national commercial bank operating within every state of the federation is required to maintain a minimum capital base of Twenty-Five Billion Naira (N25,000,000,000.00) and a capital adequacy of 10%. (iii.) an international commercial bank authorized to operate internationally is required to maintain a minimum capital base of One Hundred Billion Naira (N100,000,000,000.00) and a capital adequacy ratio of 15%.⁷⁰

Furthermore, in line with the transition to Basel II/III, a number of Nigerian deposit money banks sought out ways to raise both Tier I and Tier II capital. One of the measures is said to include the setting up of Asset Management Corporation of Nigeria (AMCON) to buy up toxic assets of banks (Non-Performing Loans), which impacted positively on the liquidity of those banks.⁷¹

Conclusion And Recommendation

The banking industry has been one of the most regulated sectors in Nigeria. This is because if banks are left unregulated, failure and distress may result which would in turn make the public lose confidence in the banking system. This paper has been able to appraise the effectiveness of CBN as a regulatory body to other banks. It traced the development of banks in Nigeria. The failure of the indigenous banks brought about the establishment of the Banking Ordinance of 1958 to regulate banks in Nigeria. It was later replaced by the CBN Act of 1958. The BOFIA 1991 and the CBN Act 1958 (now 2007), the primary legislation on regulation of banks, empower the CBN to regulate and supervise banks in Nigeria. In furtherance of this role, CBN has issued several guidelines for the regulation and supervision of the bank.

⁷⁰ ibid

⁷¹ ibid

It is evident from the body of the work that CBN has been really effective in regulating banks in Nigeria; the regulation takes the form of issuance of license to banks, maintenance of failed banks, foreign exchange control, and restriction on banking activities to mention but few. For instance, the effectiveness of CBN as a regulatory body can be seen when there was a decline in the foreign currency revenue that was coming into the country and also a low demand for the Naira as a result of the collapse in the oil prices, the CBN introduced the Revised Guidelines for the Operation of the Nigerian Inter-Bank Foreign Exchange Products (the Primary Dealership Guidelines) in 2016 to address the issue. Also, when there was global financial crisis in 2008, which affected 8 Nigerian banks; the CBN took proactive steps to prevent the banks from deteriorating by injecting 620 billion Naira convertible loans into the banks. The regulation of banks by CBN has therefore yielded laudable impacts in the banking sector in Nigeria.

For effective regulation of other banks by the Central Bank of Nigeria, it is recommended that guidelines should be made pursuant to the powers conferred on the CBN mandating all banks to have compliance officers in order to ensure strict compliance with all CBN regulations. It is also recommended that

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