

An Examination of Laws Regulating Banking in Nigeria: Review of the Banks and other Financial Institutions Act, 2007

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Abstract

Banking business is one of the fastest growing sectors of the Nigerian economy which requires a fundamental framework that will enhance the business and to regulate its operations to meet the challenging aspect of the sector. The coming into force of the revised Banks and Other Financial Institutions Act in the year 2007 has sent a signal to all players of the sector that banking business must be in conformity with the relevant laws and therefore no bank in Nigeria will start business without recourse to the Act which is the enabling law of the sector. Things like license and others must be properly checked before operation. The Central Bank of Nigeria being the Apex bank in the country has a role to play in terms of granting license to all proposed banks before start of business. The Act has given the Bank the powers to supervise and monitor the activities of banks in Nigeria, be it commercial, merchant, agricultural, development, infrastructural or micro finance bank.

1. Introduction

The Nigerian banking industry is the backbone of Nigeria's economy in this 21st century. It is the most vibrant, reliable and effective sector of the Nation's economy after the petroleum industry. Hence, it requires constant and proper supervision in terms of granting of license and operations. Customers who made deposits must know that their monies are in safe hands. The Central Bank of Nigeria Act,¹ the Banks and Other Financial Institutions Act,² more particularly the Nigeria Deposit Insurance Corporation Act,³ being the institution charged with the responsibility of insuring all deposits made in Nigeria by depositors in all the licensed banks and other financial institutions in Nigeria⁴ and other laws that are put in place to safeguard the deposits made by depositors in the Nigerian banks and to further strengthen the operational framework of Nigerian banks. The combine effect of these laws have made the banking business in Nigeria more stable compared to some years back when deposits were made with fear and doubt of whether depositors will meet their deposits the next day.

The examination of the banking industry in Nigeria will be done taking into cognizance the relevant laws regulating the industry and the measures put in place to avert economic meltdown and recession that will require a bail-out which occurred in Greece, Italy, Spain and other parts of Europe. The length and breadth of the 2007 Act will be examine thoroughly in terms of establishment, granting of license to banks, operations, nature of business, capital ratio, duties, opening, maintaining and closing of bank accounts, supervisions by the apex Bank and other general and incidental matters connected therewith.

2. Evolution of Banks in Nigeria

Modern banking business started in Nigeria when the African Banking Corporation through the instrumentality of Messrs. Elder Dempster Company was established in the year 1892.⁵ Later in the year 1893, the British Bank of West Africa was formed to carry on banking activities with 10,000 Pound Sterling capital,⁶ thus this marked the genesis of banking business in Nigeria.⁷ And later, in the year 1899, the Anglo-African Bank was established in the Old Calabar by the Royal Niger Company (now United African Company, UAC) to compete with the British Bank of West Africa⁸ and that was followed by the formation of Barclays Bank DCO (now the Union Bank of Nigeria Plc) in 1917 and the British and French Bank (now called the United Bank for Africa Plc, UBA) in 1949.⁹

3. What is a Bank, Banking Business or a Banker?

The definition of the term bank, banker or banking business has been regarded as synonymous by many including Statutes. In whichever way defined, the terms meant the same because they are aimed at the same

¹ Central Bank of Nigeria, Act No. 7, 2007.

² Banks and Other Financial Institution Act, Cap. B3, Revised Edition, (Laws of the Federation of Nigeria), 2007.

³ Nigerian Deposit Insurance Corporation, Act, 2006.

⁴ Section 2 (1) (a) of the Nigerian Deposit Insurance Corporation, Act, 2006.

⁵ Adeniji, O. A., *Law Relating to Banking*, (F & A Publishers Ltd, Lagos, 1984), Pg. 1.

⁶ Adekanye, F., *The Elements of Banking in Nigeria*, (Graham Burn, Bedfordshire, 1984), Pg. 81.

⁷ Watila, I., & Cyril, C., *Law and Ethics of Banking in Nigeria*, (Madika Publishing Company, Maiduguri, 2011), Pg. 1.

⁸ Adekanye, F., *Op. Cit.* Pg. 81.

⁹ *Ibid.*

direction.

The Bills of Exchange, Act, 1882 defines a banker as “a body of persons, whether incorporated or not, who carry on the business of banking.”¹

In another definition, the term bank is defined as “any person who carries on banking business including a commercial bank, an acceptance house, a discount house, financial institution and merchant bank is said to be a bank.”²

Furthermore, the phrase banking business is defined as a business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance or such other business as the Governor of the Central Bank may, by order published in the Federal Government Gazette, designate as banking business.³

In *N.D.I.C. v. Okem Ent. Ltd.*,⁴ the Supreme Court per *Uwaifo* J.S.C. defined banking business in its ordinary sense as business consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations.

Even though our case study is Nigerian position of banking business, let us look at some definitions put forward in some jurisdictions. The Banking Act of Singapore defined bank to include the making of advances to customers and other businesses however it is not limited to banking alone.⁵

In the totality of the definitions put forward, one can safely conclude that banking business is a serious business and therefore, it requires a Regulation that will enhance its operation since it is business that requires saving of customers monies and valuables. Nonetheless, the definitions are interchangeable for all the concepts since they are meant to perform the same functions.

Having defined the concepts, attempt will now be made to review the 2007 Act with particular reference to banking business in Nigeria.

4. Establishment of Banks in Nigeria:

Banks as they are popularly known are institutions where monies and other valuables are kept for safekeeping. Some are created by a law while others are created through the operation of laws regulating the registration and incorporation of companies who have the mandate to carry on banking business in Nigeria.

The Central Bank of Nigeria being the apex bank is empowered by the 2007 Act as part of its functions, powers and duties to monitor and supervise the establishment of all banks and financial institutions which include directing a non-officer or non-employee of any Bank to perform certain functions, render assistance as it may specify in the exercise of its powers as provided under the Act however, the performance of such functions and duties is to be exercised by that person in the name and on behalf of the Central Bank of Nigeria. Any act of receiving of monies is said to be a deposit for the purpose of banking business or acceptance of deposits from the public as a feature of its business.⁶ However, receiving of money for the sale of shares and debentures are not within the confines of the Act⁷ because, it is regulated by the Companies and Allied Matters Act, 2004.

5. Banking Business in Nigeria, Generally:

In Nigeria, before one carries on business of banking with whatever nature, the proposed bank must be registered and incorporated as a company and must possess a valid license issued to it in accordance with Section 3 (4) of the 2007 Act. Where persons or group of persons carried on the business of banking without a valid license, they are guilty of an offence punishable under this Act to the tune of N 2,000,000:00 or imprisonment of 10 years or both.⁸ This provision is to do away with any unauthorized carrying on of banking business in Nigeria and to curtail financial theft and fraud.

6. Powers of the Central Bank of Nigeria under the 2007 Act:

i. Power to grant banking licence;

Any intending entrepreneur who desires to form a banking business alone or jointly with others in Nigeria shall apply in writing to the Governor of the Central Bank of Nigeria for the grant of licence to start operation.⁹ The application shall contain the following:

¹ Section 2 of the Bills of Exchange Act, 1882.

² Section 55 of the Central Bank of Nigeria Act, 2007 & Section 66 of the BOFIA, 2007

³ Section 66 *ibid*.

⁴ (2004) 10 NWLR Pt. 880 Pg. 107 at 132 Para. 13

⁵ Section 2 of the Banking Act of Singapore

⁶ Section 1 (3-4) of the BOFIA, 2007.

⁷ Section 1 (6) of the BOFIA, 2007.

⁸ Section 2 of the BOFIA, 2007.

⁹ Section 3 (1) of the BOFIA, 2007.

- a. Feasibility report of the proposed bank;
- b. A draft copy of the Memorandum and Articles of Association of the proposed bank;
- c. A list of directors, shareholders and principal officers of the bank and their particulars;
- d. The prescribed application fees; and
- e. Such other information, documents and reports as the Central Bank may, from time to time, specify.¹

It is pertinent to note that after the requirement of Section 3 of the 2007 Act is met, the Act requires the shareholders of the proposed bank to deposit a minimum paid-up share capital in case of liquidation for commercial banks² which now stands at 25 Billion Naira instead of the 2 Billion Naira hitherto being deposited with the Central Bank of Nigeria and insured by the Nigerian Deposit Insurance Corporation in accordance with Section 2 (1) (a) of the 2006 Act. This policy was put in place to reposition the Central Bank of Nigeria and the Nigerian financial system to meet the 21st Century challenges and in the quest of pursuing the core mandate of the Central Bank of Nigeria that is the promotion of a sound financial system in Nigeria.³ The Central Bank of Nigeria policy of 2004 brought about the issues of mergers and acquisitions in the banking industry.⁴

It is important to note that where the proposed bank has complied with the requirement of Section 3 (2) of the 2007 Act by depositing 25 Billion Naira with the Central Bank of Nigeria, the Governor of the Central Bank may proceed to issue a licence to the proposed bank with or without conditions or refused to issue same⁵, since issuance of a licence is discretionary. Where he refused to issue licence, he need not give any reason for the refusal⁶ but he will re-pay or release the minimum paid-up share capital deposited with the Central Bank of Nigeria to the applicant as part of the pre-qualification requirements for the grant of licence notwithstanding the money is invested or not. Where it is invested, the investment income be paid by the Central Bank of Nigeria after administrative expenses and income tax has been deducted.⁷ And where the application for licence is granted, the Central Bank shall give written notice to the applicant who is to pay the fees for the licence.⁸

ii. Power to revoke licence granted bank or vary the conditions stipulated in a licence

The Governor of the Central Bank has the power to revoke a licence granted to a licenced bank under the 2007 Act or vary the conditions stipulated in the licence from time to time. Where the Central Bank of Nigeria revoked a license granted to a failed insured bank, the insured deposit of all depositors shall be paid by the Nigerian Deposit Insurance Corporation within 90 days to all depositors the amount equal to the insured deposits.⁹

The Governor of the Central Bank when the need arise, he could add new conditions or vary the existing conditions to suit the exigency of the financial time in force.¹⁰ The Governor can do that with the approval of the Board of the Central Bank and it must be publish in a Gazette. The following situations may warrant the revocation of a licence already granted to a bank:

- a. Where the bank ceases to carry on in Nigeria the type of banking business for which the bank was licensed for period 6 months or any period amounting in aggregate to 6 months;
- b. Went into liquidation or wound-up or dissolved;
- c. Failure to meet the conditions of the grant;
- d. Insufficient fund to meet its liabilities;
- e. Failure to comply with any obligation imposed upon it under this Act or the Central Bank of Nigeria Act.¹¹

It is pertinent to note that this power is given to the Central Bank of Nigeria to checkmate the operation of banks in Nigeria. The Central Bank of Nigeria is the sole authority that can either vary or revoke a licence already granted to a bank that carried on the business of banking in Nigeria which must be in line with the requirements of the 2007 Act and must not derogate from it.¹²

iii. Power to monitor and supervise operation of licenced banks in Nigeria

The 2007 Act, apart from investing the Central Bank with the powers to revoke licence granted to any bank in

¹ Section 3 (1) (a-e) of the BOFIA, 2007.

² Section 3 (2) & 9 (1&2) of the BOFIA, 2007.

³ Section 1 (2) (d) of the CBN, Act 2007

⁴ 25 Billion Naira Recapitalization of Banks in Nigeria, www.academia.edu/Topic_25_Billion_Naira_Recapitalization_of_Banks_in_Nigeria.php. Visited on the 11th August, 2017 at 4:01 pm; Central Bank of Nigeria: Reforms drive robust macroeconomic, www.oecdobserver.org/fullstory.php> visited on the 11th August, 2017 at 4:08 pm; Monetary Policy Measures, https://www.cbn.gov.ng/Monetary_Policy_Measures> visited on the 11th August, 2017 at 4:05.

⁵ Section 3 (3) of BOFIA, 2007.

⁶ Section 3 (3) of the BOFIA, 2007.

⁷ Section 4 of the BOFIA, 2007.

⁸Section 3 (4) of the BOFIA, 2007.

⁹ Section 21 (1) (b) of the NDIC Act, 2006.

¹⁰ Section 5 of the BOFIA, 2007

¹¹ Section 12 of the BOFIA, 2007.

¹² The essence of given the Central Bank of Nigeria the powers to grant, revoke and or vary the conditions stipulated in a licence is to control the financial and banking system in particular and the Nigerian economy in general. This will attract foreign investment thereby the legal framework has satisfied the need of having it in place from the very beginning.

Nigeria, it has the power to monitor and supervise the scope of operations of all banks in Nigeria which includes the internal operations of all banks for example, the opening and closing of all branches of banks within and outside Nigeria which must be done with the prior consent of the Bank,¹ the operation of foreign banks in Nigeria which must be done with the prior consent of the Bank under the Act whether by Nigerian or non-Nigerian even the Nigerian Investment Promotion Commission Act cannot authorize such operations without being authorized by the Bank,² any unauthorized operations is an offence punishable with fine of N1,000,000. The Bank is also authorized by the Act to monitor re-structuring, re-organizing, merger and disposal of interests in any bank in Nigeria whether for change of ownership and control, sale and disposal, transfer wholly or partly, amalgamation or merger with any person, reconstruction or above all to employ the management agent or to transfer its interests to such agent without the consent of the Bank and where such occurs, then any or all persons are liable of an offence punishable with N1,000,000.³

iv. Power to approve the appointment of Auditors and their powers;

The Bank shall approve the appointment of persons as auditors annually whose duty(s) is to report the shareholders the annual balance sheet and profit and loss account of the bank which must be in line with the directives of the Central Bank from time to time.⁴ The person appointed as approved auditor for that purpose must be someone who must be a member of one of the professional bodies recognised in Nigeria approved by the Central Bank, resident in Nigeria and carries on business in Nigeria as a professional accountant or auditor.⁵

v. The Power to examine specialised banks and other finance houses;

The Central Bank of Nigeria has the power to examine the accounts and other books of specialised banks and other finance houses for periodic reports and findings for onward transmission to the President through the Minister. The specialised banks are:

- a. The Nigeria Industrial Development Bank;
- b. The Nigeria Agricultural and Co-operative Bank;
- c. The Nigeria Bank for Commerce and Industry;
- d. The Urban Development Bank;
- e. All Mortgage Institutions;
- f. Community Banks;
- g. The Peoples Bank;
- h. Bureau de Change,
- i. Discount houses and
- j. Other specialised banks and financial institutions as the Central Bank of Nigeria may specify from time to time.⁶

It is instructive to note that the Governor of the Central Bank of Nigeria can only do the examination or special examination or investigation of the accounts, books and affairs of the specialised banks and other finance houses in the interest of the public or the bank has been carrying on its business in a manner detrimental to the interest of depositors and creditors or the bank has insufficient assets to cover its liabilities to the public or the bank has been contravening the provisions of this Act.⁷

vi. Power of supervision over banks, financial institutions and specialised banks

The Governor of the Central Bank has the power to appoint an officer of the Central Bank of Nigeria as Director of Banking Supervision who has the power to carry out supervisory duties in respect of banks, specialised banks and other financial institutions to examine in confidence the books and affairs of the banks, specialised banks and other financial institutions periodically; to access at all times books, accounts and vouchers of banks; to require information from directors, managers and officers for explanation as he deems necessary from time to time.⁸

vii. Power over Failing Banks;

The Governor of the Central Bank of Nigeria in exercise of powers vested in him by Section 35 of this Act, upon being informed by the bank that it cannot meet its financial obligations under this Act; there is likelihood that the bank will suspend payment to any extent; it is insolvent, then the Governor may issue an order to prohibit the bank from extending any credit facility, require the bank take steps to do or not to do any action, remove any manager or officer of the bank in writing with effect from such date as may be set out in the order.⁹ Where the affairs of the failing bank did not improve despite all steps taken as stipulated in section 35 of the Act, then the

¹ Section (6) of the BOFIA, 2007.

² Section (8) of the BOFIA, 2007.

³ Section (7) of the BOFIA, 2007.

⁴ Section 29 (1) of the BOFIA, 2007.

⁵ Section 29 (2) of the BOFIA, 2007.

⁶ Sections 30; 34 of the BOFIA, 2007.

⁷ Section 33 of the BOFIA, 2007.

⁸ Section 31 (1-2) of the BOFIA, 2007.

⁹ Section 35 (2) of the BOFIA, 2007.

Central Bank may turn over the control and management of the failing bank to the Nigeria Deposit Insurance Corporation on such terms and conditions as the Central Bank may stipulate from time to time.¹ The management and control of the failing bank remains with the Corporation until when the Central Bank sees it necessary that the Corporation cannot remain in control of the business of the bank, then the Central Bank will invoke the provision of Section 39 of the Act to revoke the licence of the bank of which the Corporation has assumed control over the bank.² Where the Central Bank revoked the licence of the bank, the Corporation shall apply to the Federal High Court for the winding up order of the affairs of the bank.³

7. Share Capital Holding, Paid-up and Ratio:

The Bank is authorised by the Act to determine the minimum paid-up share capital of all banks in Nigeria from time to time and where a bank failed to meet this requirement, the Bank can revoke the license so granted in accordance with this Act or any other Act.⁴ The provisions of Companies and Allied Matters Act, 2004⁵ and any other agreement or contract notwithstanding, every shareholder is entitled to vote proportionate to his contribution of paid-up capital in the bank. A bank at all times must maintain the capital base devoid of loss in such a ratio to all or any of its assets or liabilities whether in Nigeria or outside Nigeria as specified by the Central Bank. Where a bank fails to comply with the specified ratio, the Central Bank will prohibit it from advertising or accepting new deposits, granting credit or making investment and paying cash dividends to shareholders. In addition, the bank may be required to draw up a capital reconstruction plan acceptable to the Bank within a specified time.⁶

8. Prohibition of Employment and Restrictions on Certain Banking Activities of Commercial Banks in Nigeria:

No bank licenced in Nigeria cannot employ the following persons:

- a. An un-discharged bankrupt;
- b. A management agent except the one approved by the Central Bank;
- c. A serving director of another bank;

A company having rights in excess of ten per cent of total voting rights of all shareholders of the bank.⁷

It is instructive to note that a licenced bank shall not without prior approval of the Central Bank, grant loan or credit facility more than twenty per cent of the shareholders fund; advances, loans, or credits unless authorised in accordance with the rules and regulations; engage on its own.⁸ The restrictions extend to giving credit facilities to its directors, any firm or any private or public company jointly or severally without the prior approval of the Central Bank of Nigeria.⁹

9. Restrictions on the operation of Merchant Banks in Nigeria:

A merchant bank in Nigeria cannot and shall not accept any deposit withdraw able with cheques, accept any deposits below any amount prescribed by the Central Bank, hold any equitable interest acquired in a company while managing an equity issue except interest in an agricultural, industrial whether it is medium or small scale industry or venture capital company as permitted by the Act under section 21.¹⁰

10. Offences a licenced bank, a Merchant Bank or an employee commits under the Act:

Banks licenced to operate under the Act including their employees at all levels of banking can be held liable for the following offences:

- a. Directors, managers and officers of a bank who acted in contravention of section 20 of the Act by undertaking certain banking activities of which banks are restricted to do, are guilty of an offence and liable on conviction to a fine or imprisonment for a term of 3 years and in addition to pay the loan, advance or credit facility granted to the third party.¹¹
- b. A bank which fails to give full particulars of acquisition of shareholding within 21 days of the acquisition to the Central Bank is guilty of an offence and liable on conviction to a fine of N1, 000 for each day of default, if the offence continues.¹²

¹ Section 36 of the BOFIA, 2007.

² Section 38 of the BOFIA, 2007.

³ Section 40 of the BOFIA, 2007.

⁴ Section (9) of the BOFIA, 2007.

⁵ Section (10) of the BOFIA, 2007.

⁶ Section (13) of the BOFIA, 2007.

⁷ Section 19 (1-2) of the BOFIA, 2007.

⁸ Section 20 (1) of the BOFIA, 2007.

⁹ Section 20 (2) of the BOFIA, 2007.

¹⁰ Section 21 (1) of the BOFIA, 2007.

¹¹ Section 20 (7-9) of the BOFIA, 2007.

¹² Section 21 (3-4) of the BOFIA, 2007.

- c. A merchant bank which contravenes the provision of section 22 (1) (a-c) by not complying with the provisions of this section, is guilty of an offence and is liable on conviction to a fine not exceeding N25,000 on daily basis, if the offence continues.¹
- d. Any bank which fails to display its interest rates at its offices as lending and deposit interests as stipulated under section 23 (1) of this Act, is guilty of an offence and is liable on conviction to a fine of N5,000 for every day of default, if the offence continues.²
- e. Any director, manager or officer of a bank fails to take all reasonable steps to secure compliance with the provisions of section 24 (1-4) of this Act to prepare books of accounts for the bank, is guilty of an offence and liable on conviction to a fine not exceeding N100, 000 or imprisonment for a term of 10 years or with both.³
- f. Any bank which fails to publish its annual accounts as stated under section 27 (1-4) of this Act, is guilty of an offence and is liable on conviction to a fine of N10,000 daily, if the offence continues.⁴
- g. Any person or body other than a bank, person or body authorised in section 44 (1) of this Act, advertises to the public inviting them to deposit money, is guilty of an offence and liable on conviction to a fine of N500, 000 or to an imprisonment of 10 years or with both.⁵
- h. Any person or officer of a trade union, whose members are employed in a bank and that trade union has been proscribed by the President of the Federal Republic of Nigeria in accordance with section 45 (1-2) of this Act, fails to deliver or surrender to the Registrar of Trade Unions, the certificate of the proscribed union within 14 days, is guilty of an offence and is liable on conviction to a fine of N5,000 or imprisonment of 6 months or with both. Where the person or officer contravened subsection 3 of this section, is guilty of an offence and is liable on conviction to imprisonment of 5 years without an option of fine.⁶
- i. Any director, manager or officer or even an employee of a bank licenced under this Act, received remuneration, gift, commission, service, gratuity, money, property or something of value for his personal use or benefit for the purpose of procuring any advance, loan or credit facility from the bank to third party, discounts any draft, note, cheque or bill of exchange, permits any person to overdraw any account without proper authority as stipulated under section 47 (1) (a-c) of this Act, is guilty of an offence and is liable on conviction to pay to the Central Bank of Nigeria a fine of N50,000 or imprisonment of 5 years or with both and in addition to forfeit the gift or commission he received to the Federal Government of Nigeria.⁷
- j. Anyone other than a bank licenced under this Act uses any of the names prohibited under section 43 (1) (a) of this Act without the written consent of the Governor of the Central Bank of Nigeria, is guilty of an offence and liable on conviction to a fine not exceeding N50,000 for every day, if the offence continues.⁸

11. Conclusion

In conclusion therefore banking business in Nigeria flourishes due to the stringent legal framework put in place by the Nigerian government to regulate the business for the betterment of the economy and to attract foreign investment. Because foreign investors cannot come into Nigeria and invest when the banking industry is not strong statutorily that will cast doubt when the issue of transfer of funds into Nigeria is in the forefront.

It is instructive to note that the Banks and other Financial Institutions Act, 2007 is one of many laws regulating the viable banking industry of Nigeria and it is for now the enabling law of the sector which seems okay but new financial challenges are cropping up across the world; therefore there is the need to review the Act once more to incorporate any new issue relevant to the business landscape of Nigeria and by extension the continent of Africa because if Nigeria got it right economically, the rest of the continent will get it too.

¹ Section 22 (2) of the BOFIA, 2007.

² Section 23 (2) of the BOFIA, 2007.

³ Section 24 (5) of the BOFIA, 2007.

⁴ Section 27 (5) of the BOFIA, 2007.

⁵ Section 44 (2) of the BOFIA, 2007.

⁶ Section 45 (5) of the BOFIA, 2007.

⁷ Section 47 (1) of the BOFIA, 2007.

⁸ Section 43 (4) of the BOFIA, 2007.