

An Examination of the Ranking of Secured Creditors in Bank Insolvency in Nigeria

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Abstract

Secured creditors rank above unsecured creditors in regular corporate insolvency proceedings. However, the law in Nigeria is silent on the status of bank assets used as collaterals for loans, when insolvency proceedings commence. Therefore, there is uncertainty on whether secured creditors of an insolvent bank should enjoy the same priority that secured creditors have in regular corporate insolvency proceedings. The article examines bank insolvency legislation in Nigeria against best practices to ascertain the status of secured creditors of insolvent banks. It recommends that securities created over banks' assets should be respected in insolvency, and secured creditors should be given top priority when distribution of the assets of an insolvent bank commences.

Keywords: Secured creditors, Creditor ranking, Bank insolvency, Bank resolution, Priority of claims, Deposit liabilities, Bank depositors.

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1. Introduction

Banks are reputed to be the primary providers of credit in most economies because they provide loans to individuals, the real sector, corporations and governments. For example, at the end of December 2024, the total loans and advances granted by deposit money banks in Nigeria was N59.83 trillion.¹ However, banks also borrow funds from diverse lenders to fund their operations because the contributions of shareholders are often not sufficient to meet the capital, regulatory and other operational requirements of banks. Accordingly, banks engage in various kinds of credit transactions and pledge their assets as collaterals. The power of banks to borrow money is derived from the implied powers of a trading company at Common Law to borrow money for the purpose of executing its objects, provided such borrowing is not prohibited by its memorandum and articles of association or legislation. The borrowing company can also provide security for loans advanced to it through mortgages or charges over its assets.² This Common Law position has been codified in Nigeria by the Companies and Allied Matters Act (CAMA), 2020 which allows companies to borrow money and charge their assets as security. CAMA provides that:

A company may borrow money for the purpose of its business or objects and may mortgage or charge its undertakings, property or uncalled capital, or any part thereof and issue debentures, debenture stocks or other securities, whether outright or security for any debt, liability or obligation of the company or any third party.³

¹ Annual Report and Statement of Account of the Nigeria Deposit Insurance Corporation for the Year Ended Dec. 31, 2024. p. 30. Available: <https://ndic.gov.ng/wp-content/uploads/2025/10/2024-Annual-Report.pdf> (January 05, 2026).

² Shoroye, B.S. (2021). Companies' Power to Borrow at Common Law and under Section 191 of the Nigerian Companies' Act, 2020: Identifying the Red Line. *Journal of Law, Policy and Globalisation* 116, 24-31. Available: <https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/57894/59780#:~:text=At%20common%20law%2C%20every%20company,any%20power%20to%20borrow%20money> (December 02, 2025).

³ Section 191 of CAMA.

Furthermore, CAMA prioritises the claims of secured creditors over all other claims during insolvency proceedings against companies in Nigeria.¹ The Banks and Other Financial Institutions Act (BOFIA), 2020 and the Nigeria Deposit Insurance Corporation (NDIC) Act, 2023 on the other hand give priority to bank depositors and other unsecured claims during bank liquidation proceedings, but are silent on the position of secured creditors. Therefore, there have been controversies regarding the status of secured creditors where the company undergoing insolvency proceedings is a bank. The controversy bothers on whether bank depositors, administrative expenses, preferential claims and subrogation claims specified in BOFIA and the NDIC Act² should take priority over the claims of secured creditors, or whether the commencement of insolvency proceedings against a bank nullifies all securities held by creditors against the assets of a failed bank. Accordingly, this paper examines the ranking of secured creditors in Nigeria during bank insolvency proceedings with a view to determining their status among other contending claims.

The paper is divided into five parts: the next part examines the concept of security and common transactions that banks often engage in, and charge their assets as collaterals. The third part reviews treatment of secured creditors in regular corporate insolvency proceedings in select jurisdictions, and examines best practice on ranking of secured creditors during bank resolution proceedings. The fourth part highlights the ranking of creditors in bank insolvency proceedings in Nigeria, and the fifth part concludes the paper.

2. The Concept of Security

Security is an assurance provided by a debtor in addition to his personal promise to repay a loan. It elevates a creditor to the status of a secured creditor and empowers him to exercise certain powers over specified assets of a debtor to enable him secure repayment of his debt before other unsecured creditors.³ The secured assets in a company are usually exempted from all other assets of the company to settle the claims of secured creditors.⁴ Accordingly, a secured creditor has a greater advantage than an unsecured creditor because he has priority over the unsecured creditor.⁵

In many jurisdictions, secured creditors of a company are paid from the assets with which their debts are secured and are not required to queue along with other unsecured creditors when insolvency proceedings commence against the company.⁶ Consequently, creditors have devised different methods of encumbering the assets of their debtors to assure loan repayments. Some of these methods are discussed below.

2.1 Types of Securities

Securities that are often created over the assets of debtors include, mortgages, debentures, charges, liens, pledges, guarantees, receivership, etc. Some of the security arrangements that are commonly used by banks are discussed hereunder.

¹ Section 657(6)(a) of CAMA.

² Section 55 of BOFIA and sections 55(3)(a), 72 & 84 of NDIC Act.

³ Chianu, E. (2004). *Law of Securities for Bank Advances*. Benin City: Ambik Press. p. 1.

⁴ O. Olanipekun. (2016). *Banking: theory, regulation, law and practice*. Lagos: Au Courant. Chapter 14.

⁵ Section 657(6)(a) of CAMA.

⁶ Thompson Reuters Practical Law, (2025), Glosary: Secured Creditors. (Online) Available: [https://uk.practicallaw.thomsonreuters.com/0-382-3801?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/0-382-3801?transitionType=Default&contextData=(sc.Default)) (December 2, 2025).

2.1.1 Mortgage

A mortgage refers to the transfer of title to a property as security for repayment of a loan, subject to a condition that the title shall be transferred back to the owner whenever the loan is repaid. The kernel of a mortgage is a right of property which is vested in the lender (mortgagee) which gives him the right to enforce the security by selling or foreclosing it, if the borrower (mortgagor) fails to pay back the loan.¹ Mortgages can be created over diverse assets like land, ships, shares, life insurance policies, etc. But the most common type of mortgage that is created for bank loans is mortgage of land. The immovable nature of land and its registration gives the creditor a firm control of the security.² A mortgage can be either legal or equitable.

When a legal mortgage is created, the mortgagee is regarded in law as the legal owner of the property, and is seen as the beneficial owner of the mortgaged property.³ The mortgagee can enforce the security in diverse ways to recover the loan if the mortgagor fails to repay the loan in accordance with the loan agreement.

2.1.2 Debentures

A debenture is a written acknowledgment of the indebtedness of a company to its creditors and spells out the condition(s) for realisation of the debt. Debentures are of diverse forms such as secured and unsecured debentures,⁴ perpetual debentures,⁵ redeemable debentures and convertible debentures.⁶ However, only secured debentures create security over the assets of a company in favour of its creditors. Accordingly, when a debenture is created, creditors of the company often require the company to charge its assets as security.⁷ A secured debenture is one which is either secured by a fixed charge on specific asset(s) of the company, or by a floating charge over the entire undertakings of the company and its assets.⁸ Where a company defaults in repaying a secured debenture, ownership of the asset used as collateral for the debenture passes from the company to the debenture holders who can sell the asset and recover their debts therefrom.⁹

2.1.3 Receivership

Receivership is a long-standing equitable remedy which is only available to secured creditors of a company. The receiver is usually appointed to assume control of the debtor company and realise its assets to pay up its debt to secured creditors.¹⁰ Receivership originated from the agreement of secured creditors with their debtors, and was subsequently established in statute. Thus, a legal mortgagee of real property has the statutory power to appoint a

¹Aina, K., Adeogun, F. (2025). Mortgage as Security for Loan in Nigeria. *Journal of Law, Policy and Globalisation* 149, 39-50.

² Enyia, J.O. & Udungeri, K. (2018). The Use of Land as a Collateral Security for Credit in Nigeria: Problems and Challenges. *International Journal of Managerial Studies and Research* 7(6), 44-56. Available: <https://www.arcjournals.org/pdfs/ijmsr/v6-i7/5.pdf> (December 2, 2025).

³However, equity sees the mortgagee as a beneficial owner whose interest is regarded as a mere security for the loan that was given to the mortgagor. See Smith, I.O. (2001). *Nigerian Law of Secured Credit*. Lagos: Ecovatch Publication (Nigeria) Ltd. p. 60.

⁴ Section 198 of CAMA.

⁵ Section 196 of CAMA.

⁶ Section 197 of CAMA.

⁷ Kaushal, D. (2021). The Concept of Debentures: A Doctrinal Analysis. *International Journal of Law* 7(4), 38-43. Available: <https://www.lawjournals.org/assets/archives/2021/vol7issue4/7-3-76-389.pdf> (December 02, 2025).

⁸ Section 198(2), CAMA.

⁹ Karle, N. (2021). Debentures and Their Appeal to Investors and Companies. *International Journal of Law Management and Humanities* 4(1), 1657-79. Available: <https://www.ijlmh.com/wp-content/uploads/Debentures-and-their-Appeal-to-Investors-and-Companies.pdf> (December 2, 2025).

¹⁰ Aina, K. (2015). Rethinking the Duties of a Receiver and Powers of Directors of Companies in Receivership under Nigerian Law. *The Gravitas Review of Business and Property Law*, 6.2, 60-73.

receiver.¹ Similarly, debenture holders can apply to the court to appoint a receiver, and can also appoint one directly pursuant to a clause in the debenture deed.² When a receiver is appointed, the assets cease to be available to the company and come under the general control of the receiver. The company can therefore, no longer deal with its assets without the consent of the receiver, and the authority of the company's directors or liquidators to deal with the company's assets also cease until the security is realised or the receiver is discharged.³

3. Transactions commonly secured with bank assets

There are many transactions that banks engage in, which often require the use of their assets like land, treasury bills, bonds, cash or cash equivalents as collaterals. The borrowing banks can lose these assets when they fail to settle the liabilities that are secured with the assets.⁴ Some of the transactions are discussed below.

3.1 Open Buy Back (OBB)

The Open Buy Back (OBB) is a concept that is unique to the inter-bank credit system in Nigeria. It is a lending instrument that Nigerian banks use to raise short term funds among themselves, and use government securities as collaterals for the funds borrowed. A bank in need of funds can utilise the Open Buy Back to borrow from another bank and offer assets like Treasury Bills as collateral.⁵ The OBB is used to manage temporary liquidity needs among banks.

3.1.1 Central Bank of Nigeria (CBN) Discount Window Operations

A bank that is unable to raise funds from other banks can resort to the Central Bank for funds to meet temporary liquidity shortfall. The CBN provides different facilities to such banks, but charges higher interest rates in order to encourage banks to first approach the inter-bank market for funds before resorting to the CBN.⁶ One of the mechanisms that the CBN utilises in this regard is its discount window. The CBN discount window includes the Standing Lending Facility (SLF), the Funding for Liquidity Facility (FRLF), the Automated Repo Conversion (AREPO) and the Tenored Repurchase Transactions (REPO) among others.⁷ Banks that access these facilities provide assets like Treasury Bills, FGN bonds and land as collaterals to the CBN.⁸ Some of the facilities available through the CBN discount window are highlighted below.

The Standing Lending Facility (SLF) which enables banks to bridge liquidity gaps is available on all business days and its tenor runs from one business day to the next day.⁹ Similarly, the Intra-day Liquidity Facility (IDLF) allows banks to borrow funds from the CBN and pay back within the same business day without paying any

¹ Section 19 of Conveyancing Act, 1881 and section 131 of Property and Conveyancing Law Cap. 100, LWN 1959.

² Sections 552 & 553 of CAMA.

³ Section 556(4) of CAMA.

⁴ Guidelines for the Conduct of Repurchase Transactions under CBN Standing Facilities. Apr. 12, 2021. p. 8. *CBN Circular*. Available: <https://www.cbn.gov.ng/out/2021/fmd/guidelines%20for%20the%20conduct%20of%20repo.pdf> (May 25, 2025).

⁵ Dutire, S. Fixed Income 101: A Cursory Look at the Repo Market in Nigeria. *Eco215*. Aug. 29, 2022. Available <https://eco215.com/fixed-income-101-a-cursory-look-at-the-repo-market-in-nigeria/#:~:text=The%20Repo%20market%20is%20largely,participants%20accounts%20with%20the%20CBN.> (Aug. 17, 2025).

⁶ CBN. (2021). Guidelines for the Conduct of Repurchase Transactions under CBN Standing Facilities. Op. cit.

⁷ CBN Circular to all Authorised Dealers: Access to the Discount Window. Oct. 7, 2022. Available: <https://www.cbn.gov.ng/Out/2022/FMD/CIRCULA%20TO%20ALL%20AUTHORISED%20DEALERS%20ACCESS%20TO%20THE%20DISCOUNT%20WINDOW.pdf> (Oct. 11, 2025)

⁸ CBN. 2022. Monetary Policy Circular No. 44. pp. 36-37. Available <https://www.cbn.gov.ng/Out/2022/MPD/Credit%20Guidelines%202022%20-2023%2005.2022.pdf> (May 25, 2025).

⁹ *Ibid*, pp. 36-37.

interest. It enables banks to meet intra-day liquidity shortfalls at no cost.¹ Other facilities include Term Repurchase Facility (TRF) which banks can access for periods that range from 4 to 90 days, at interest rates that are anchored on the subsisting Monetary Policy Rate (MPR).² Moreso, the Funding for Liquidity Facility (FtLF) is available to non-interest banks³ on an overnight basis, and terminates on the next business day. In the same vein, the Intra-day Facility is another facility that allows non-interest banks to borrow funds from the CBN to meet liquidity shortages and pay back the funds before the end of the business day.⁴

3.2 Clearing transactions

The CBN is empowered by the Central Bank of Nigeria Act, 2007 to promote a sound financial system and an efficient payment system.⁵ The Bank is also empowered to make rules for the efficient operation of the clearing and settlement system. Accordingly, in 2018, the CBN issued the revised Nigeria Bankers' Clearing System Rules to guide the operation of the Nigeria Bankers' Clearing System (NBCS).⁶ The objective of the Rules include provision of an efficient Automated Clearing System and speedy collection of payment instruments. Membership of the NBCS is open to all deposit money banks, the CBN, and operators of the NBCS.⁷

A bank desiring to become a member of the NBCS is required to apply to the CBN and fulfil specified membership criteria. Banks that meet membership criteria become settlement banks, while those that fail to meet membership criteria are known as non-settlement banks. Settlement banks are required to fund their current accounts with the CBN and maintain settlement collaterals with the CBN which shall include, Nigeria Treasury Bills and FGN Bonds.⁸ The CBN can re-discount the collaterals to recover funds used to settle transactions for a settlement bank where the settlement bank fails to fund its account with the CBN.⁹

On the other hand, a non-settlement bank is required to execute an agency agreement with a settlement bank for settlement of its payment instruments like cheques, drafts and dividend warrants. Under such agency agreement, the settlement bank becomes the sole representative of the non-settlement bank during clearing sessions.¹⁰ In return, the non-settlement bank is obliged to provide collateral to the settlement bank as may be specified in the agency agreement. The CBN stipulates the minimum collateral to be provided by the non-settlement bank.¹¹ Where a non-settlement bank's account with a settlement bank is not adequately funded, the settlement bank may re-discount an appropriate amount of the collateral pledged by the non-settlement bank. The non-settlement bank is required to replace the amount of the collateral that is used to fund the account within 24 hours, failing

¹ CBN. 2022. Monetary Policy Circular No. 44. Op. Cit. p. 38.

² CBN. (2021). Guidelines for the Conduct of Repurchase Transactions under CBN Standing Facilities. Op. cit. p. 2.

³ Non-Interest Banks operate without charging interest. They rather operate on the principles of profit and loss sharing where the bank and the borrower partake in the risk and reward of investment.

⁴ CBN. 2022. Monetary Policy Circular No. 44. Op. cit. p. 40.

⁵ Sections 2(d), 33(1)(b), & 47(2) of CBN Act, 2007.

⁶ Nigeria Bankers' Clearing System Rules. May 2018. Retrieved Oct. 11, 2025, from [https://www.cbn.gov.ng/Out/2018/BPSD/Revised%20Nigeria%20Banker's%20Clearing%20System%20Rules%20\(2018\).pdf](https://www.cbn.gov.ng/Out/2018/BPSD/Revised%20Nigeria%20Banker's%20Clearing%20System%20Rules%20(2018).pdf)

⁷ Nigeria Bankers' Clearing System Rules. Op. cit.

⁸ Ibid. Section 6.1.6.

⁹ Ibid. Section 6.1.11.

¹⁰ Ibid. Sections 6.1.3 & 6.1.4.

¹¹ Ibid. Section 6.1.7.

which the settlement bank may decline to receive or present payment instruments on behalf of the non-settlement bank.¹

3.3 Standby Letter of Credit (SBLC)

A Standby Letter of Credit (SBLC) is used in international trade to facilitate sale transactions between parties in different countries who are not known to each other. Usually, a party desiring to buy goods overseas (applicant) applies to his bank (issuing bank) for a SBLC in favour of the seller who resides in a different country (the beneficiary). The issuing bank then notifies the seller's bank (confirming bank) of its commitment to pay for the goods if the buyer defaults in paying for them, and also provides evidence of the buyer's capacity to pay for the goods.² As the name connotes, a SBLC serves as a backup payment arrangement to be utilised when the purchaser defaults in paying for the goods or services supplied to him. In the event of such default, the issuing bank steps in to ensure payment to the seller (beneficiary). Accordingly, SBLC plays the role of insurance in international trade. The distinguishing factor between the SBLC and the conventional letters of credit (LC) is that while SBLC are not meant to be utilised unless there is a default by the purchaser, conventional LCs are originally designed to facilitate payment to an international supplier from the onset.³

The issuing bank usually requests the applicant to provide collateral for the SBLC. This may be in the form of cash or cash equivalents, stocks or bonds, real property, bank guarantees and corporate assets like equipment.⁴ Factors such as the risk associated with the business and the amount secured usually determine the level of collateral that will be required. Where the buyer defaults in paying for the goods due to factors like bankruptcy or unavailability of funds, his (issuing) bank pays the seller for the goods.⁵ Banks utilise SBLC to import goods such as Automated Teller Machines, debit cards, IT equipment and other items from overseas suppliers. Where there is default in payment, the issuing bank pays for the items and falls back on the collateral provided by the applicant bank. Thus, where an applicant bank goes into liquidation without paying for goods or services supplied by an overseas supplier, the issuing bank would be under obligation to pay for the goods or services.

In general, banks pledge their assets as collaterals in diverse transactions and lose those assets when they fail to fulfil their obligations thereunder. However, the unresolved issue is whether the assets used by a bank as collateral in these transactions should be surrendered to the liquidator when the bank goes into liquidation, or whether the lender, whose loan is secured with the collateral, can enforce the collateral when the debtor bank goes into liquidation. The succeeding paragraphs examine this question.

4. Ranking of Secured Creditors in Regular Corporate Insolvency and Bank Resolution Proceedings

The position of secured creditors is one of the most important questions that jurisdictions face in the design of insolvency procedures. Accordingly, jurisdictions have adopted different approaches in dealing with secured

¹Ibid. p. 7.

² Corporate Finance Institute. 2015-2015. Standby Letter of Credit. Available:

<https://corporatefinanceinstitute.com/resources/commercial-lending/standby-letter-of-credit-sblc/> (October 1, 2025).

³ Suisse Bank. 2025. Standby Letter of Credit vs. Letter of Credit: Which One is Right for Your Business Needs? Available: <https://www.suissebank.com/en/standby-letter-of-credit-vs-letter-of-credit-which-one-is-right-for-your-business-needs.html> (October 7, 2025).

⁴ LinkedIn. 2024. Collateral requirements for a Standby Letter of Credit. Available:

<https://www.linkedin.com/pulse/collateral-requirements-standby-letter-credit-scamf> (October 1, 2024).

⁵ Corporate Finance Institute. Op. cit.

creditors during corporate insolvency proceedings.¹ For instance, in Germany and the United States, secured creditors are paid first before all other creditors.² In Nigeria also, CAMA gives priority to the claims of secured creditors above all other creditors, including preferential payments and winding up expenses.³ Furthermore, fixed charge holders rank top, ahead of all other creditors in England.⁴ It is pertinent to understand the rationale for the favourable disposition towards secured creditors in many jurisdictions. Research shows that jurisdictions that give priority to secured creditors during insolvency have higher volumes of lending activities and cheaper credits than jurisdictions where secured creditors are not accorded priority during insolvency.⁵ Hence, it has been observed that:

There is a direct relationship between the legal framework and the attitude of the investor. If there is a ... law which is seen to give practical protection and remedies in the case of non-payment of a debt, then the security can become a major part of the investment decision. ... If the investor is not persuaded that the law gives real protection and remedies, then it (security) becomes irrelevant...⁶

Hence, it is safe to say that the favourable disposition to secured creditors in many jurisdictions, including Nigeria is informed by the need to encourage lending at affordable rates.

It is noteworthy that secured creditors also enjoy top priority during bank resolution proceedings as they are not included in the class of creditors that are expected to absorb losses. The Financial Stability Board (FSB)⁷ in its recommendations (popularly referred to as the 'Key Attributes')⁸ exempted secured creditors from the class of creditors who should absorb losses during bank resolution proceedings. It repeatedly emphasised that resolution authorities should ensure that banks are resolved in ways that respect the hierarchy of claims in liquidation, and losses should be absorbed by shareholders and unsecured and uninsured creditors. The preamble to the Key Attributes states that:

The objective of an effective resolution regime is to make feasible the resolution of financial institutions ... through mechanisms which make it possible for *shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation*...⁹
An effective resolution regime should allocate losses to *shareholders and unsecured and uninsured creditors* in a manner that respects the hierarchy of claims.¹⁰

One of the Key Attributes also states that:

Powers to carry out bail-in within resolution should enable the resolution authority to ... write-down, ... *equity..., unsecured and uninsured creditor claims* to the extent

¹Eidenmuller, H. (2023). *Comparative Corporate Insolvency Law*, (2nd ed.) Law Working Paper No. 738/2023. University of Oxford and ECGI. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4625897. (June 2, 2025).

²Ibid.

³ Section 657(6a) of CAMA.

⁴Eidenmuller, H. Op. cit.

⁵ Eidenmuller, H. Op. cit. page17.

⁶James, D.L. & Deji, O. (2019). Appraising the Legal Regime Framework on Secured Credit Transaction in Nigeria. *Babcock Essays on Contemporary Legal Issues: Law, Science and the Politics of Knowledge in Africa*, 2, 95-111.

⁷ The FSB is a global body that coordinates the activities of financial authorities of different jurisdictions and international standard setting bodies. It works to build and promote implementation of sound regulatory and other policies in the financial sector at the global level.

⁸ FSB. (2025). Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes): Revised Version. April 2025. Available: <https://www.fsb.org/2024/04/key-attributes-of-effective-resolution-regimes-for-financial-institutions-revised-version-2024/> (October 13, 2025).

⁹ Ibid. p. 4.

¹⁰ Ibid.

necessary to absorb the losses, convert into equity ... all or parts of *unsecured and uninsured creditor claims* in a manner that respects hierarchy of claims in liquidation.¹

Accordingly, it can be inferred from the foregoing provisions that the claims of secured creditors are not expected to be written down or bailed in during bank resolution proceedings, but their security is to be respected and not diluted.² Also, the hierarchy of claims in regular insolvency proceedings is to be respected in bank resolution proceedings. Furthermore, resolution authorities are empowered to deploy a number of resolution tools to resolve systemically important banks (SIBs). These resolution tools include bridge banks, sale of business tools, asset separation tools, bail-in tools, etc.³ These tools allow resolution authorities to interfere with creditors' rights and write down equity or convert debts or deposits to equity in order to capitalise a failing bank.⁴ For instance, the bail-in tool was first used in 2013 during the banking crisis in Cyprus to convert uninsured deposits into equity in order to stabilise distressed financial institutions.⁵ A decade later, it was used in the UK to mandatorily reduce capital instruments in Silicon Valley Bank.⁶

Furthermore, the Key Attributes contain specific safeguards for secured creditors which the IMF considers to be very essential for an effective resolution regime.⁷ The first safeguard is that there should be statutory requirement for a resolution authority to respect collateral arrangement during bank resolution.⁸ Secondly, bank resolution proceedings are required to be carried out in a manner that respects the hierarchy of claims in liquidation.⁹ It was noted earlier that secured creditors are accorded top priority during company liquidation in most jurisdictions. Significantly, the Key Attributes are considered best practice in bank resolution, and most of the recommendations therein have been incorporated into the legal frameworks for bank resolution and insolvency in many jurisdictions. For instance, in the United Kingdom, secured creditors rank top in the creditor hierarchy during bank liquidation as they enjoy priority over all creditors when distribution of a bank's assets commences.¹⁰ Protected depositors who may appear to be paid first, are actually not paid from the bank's assets, but by the Financial Services Compensation Scheme (FSCS), which is eventually re-imbursed by the liquidator after secured creditors have been paid.¹¹ Furthermore, EU member states are required to dis-apply most limits for giving secured creditors absolute preference to the collateralised assets in insolvency proceedings.¹²

¹ Ibid. p. 10.

² Ibid. pp. 10 & 12.

³ FSB. (2025). Key Attributes.

⁴ In Nigeria, these resolution tools are contained in sections 34-42 of BOFIA.

⁵ Ellina, S. (2023). Cyprus after the 2013 Banking Crisis: The Journey Towards Recovery'. *Bank Insolvency Law in Developing Economies*. (Akintola, K. & Adeyemo, F. eds, 1st ed.). United Kingdom: Routledge: 150-152.

⁶ Bank of England. (2023). Statement on Silicon Valley Bank. March 13, 2023. Available: <https://www.bankofengland.co.uk/news/2023/march/statement-on-silicon-valley-bank> (October 18, 2023).

⁷ IMF. (2025). Cabo Verde: Review and Operationalization of the Resolution Framework. pp. 21-22. Available: <https://www.imf.org/en/Publications/technical-assistance-reports/Issues/2025/03/14/Cabo-Verde-Technical-Assistance-Report-Review-and-Operationalization-of-the-Resolution-565175> (June 7, 2025).

⁸ Ibid.

⁹ FSB. (2025). Op. cit, page 10.

¹⁰ Bank of England. (2023). Bank of England's approach to resolution. Available: <https://www.bankofengland.co.uk/paper/2023/the-bank-of-englands-approach-to-resolution> (May 07, 2023).

¹¹ Ibid.

¹² University of Oxford. (2023). Creditor Priority in European Bank Insolvency Law. Available: <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/03/creditor-priority-european-bank-insolvency-law> (Feb. 9, 2024).

Moreso, in the United States, secured creditors do not queue with other creditors, but are usually settled ahead of other creditors from the assets with which their debts are secured.¹ For instance, when The Santa Anna National Bank closed in the United States on Jun. 27, 2025, the FDIC transferred the insured deposits in the bank to Coleman County State Bank and announced that other claims would be settled in the following order:² administrative expenses, depositors, general unsecured creditors, subordinated debts, and stockholders. It would be observed that secured creditors were conspicuously omitted from this list of creditors as a clear evidence that they would be settled from the assets with which their debts were secured. As such, they did not need to be included in the list of creditors that the FDIC was going to settle. The specific mention of unsecured creditors in the list clearly explains the reason for the omission of secured creditors. The succeeding paragraphs examine the treatment of secured creditors during bank insolvency proceedings in Nigeria.

4.1 Creditor Hierarchy in Bank Insolvency Proceedings in Nigeria

BOFIA is the principal legislation that regulates management of distressed banks in Nigeria. It empowers the Central Bank of Nigeria to revoke banking licences and appoint liquidators for failed banks where efforts to rehabilitate a bank proves abortive.³ Although BOFIA did not outline a detailed order for settling creditors' claims, it singled out bank depositors and accorded them priority over all other creditors during insolvency proceedings. Section 55 of BOFIA provides that:

Where a bank is unable to meet its obligations or suspends payment or where its management and control has been taken over by the Bank or where its licence has been revoked under the provisions of this Act, the assets of the bank shall be available to meet all the deposit liabilities of the bank and such deposit liabilities shall have priority over all other liabilities of the bank.

This provision covers bank resolution and insolvency proceedings because it seeks to protect bank depositors even before initiation of formal insolvency or resolution proceedings. Priority is required to be given to depositors' claims the moment a bank becomes unable to meet its obligations. In other words, once a bank begins to experience difficulty in discharging its obligations to its creditors, steps are to be taken to ensure that the available assets of that bank are preserved to settle the deposit liabilities of the bank, which shall have priority over all other liabilities. This continues up to the time the CBN intervenes and takes over management of the bank and eventually revokes its licence. A similar provision is contained in section 72 of the Nigeria Deposit Insurance Corporation Act, 2023, which reinforces the superiority of depositors' claims over all other claims against a bank in liquidation.

However, The NDIC Act goes further to list the order for settling creditors' claims during bank insolvency proceedings. Section 84 of the NDIC Act gives priority to all expenses and fees of the liquidator over all other claims, except insured deposits. The section segregates deposit liabilities into two categories and inserts liquidation expenses between them. Thus, liquidation expenses rank next to insured deposits, while uninsured deposits rank after liquidation expenses. In effect, this section ranks liquidation expenses ahead of deposit liabilities because the insured deposits are not paid from a failed bank's assets but from the Deposit Insurance

¹ FDIC. (2023). When a Bank Fails- Facts for Depositors, Creditors, and Borrowers. Available: <https://www.fdic.gov/consumers/banking/facts/priority.html> (February 9, 2024).

² FDIC. (2025). Failed Bank Information on The Santa National Bank, Santa Anna, TX. Available: <https://www.fdic.gov/bank-failures/failed-bank-list/santa-anna-national-bank> (Jun. 28, 2025).

³ Sections 12 & 34 of BOFIA, 2020.

Fund.¹ NDIC pays the insured sum in its capacity as a deposit insurer and subsequently recovers the amount it pays out from the bank's assets, when it begins to realise the bank's assets in its capacity as a liquidator.²

Accordingly, section 57 of the NDIC Act provides that the NDIC, while acting as liquidator, shall pay to itself, the amount it shall be entitled to on account of its subrogation to the claims of depositors and shall pay to depositors and other creditors the net amount available for distribution to them.³ A combined reading of sections 84 and 57 of the NDIC Act indicates that in bank liquidation in Nigeria, insured deposits⁴ are settled first, followed by liquidation expenses, subrogation claim, uninsured depositors and other creditors. In essence, the first claim that is settled from the assets of a bank is liquidation expenses, followed by the deposit insurer's subrogation claim and then uninsured deposits. However, in practice, the deposit insurer's subrogation claim is paid simultaneously with uninsured deposits. The NDIC stands on the same footing with uninsured depositors, and both claims are prorated and settled simultaneously. This is similar to the practice in the United States where the Federal Deposit Insurance Corporation (FDIC) stands on the same footing with uninsured domestic depositors and receives its subrogation claim ahead of general creditors.⁵

The next set of claimants that are paid after uninsured depositors are 'other creditors.' The NDIC Act, did not make a distinction among the different classes of creditors, but simply uses the term 'other creditors.' This suggests that all other creditors' claims are also prorated and settled equally, irrespective of whether they are secured or unsecured. Moreover, there is no mention of secured creditors in both the NDIC Act and BOFIA, unlike CAMA that expressly mentions secured creditors and accords them priority over other creditors.⁶

4.2 Identifying the Position of Secured Creditors of Insolvent Banks in Nigeria

Section 53 of BOFIA provides that the provisions of BOFIA shall prevail over the provisions of CAMA in the event of any conflict between the provisions of the two legislation on any issue.⁷ Also, section 75 of the NDIC Act provides that the provisions of the NDIC Act shall prevail over the provisions of any other law that is inconsistent with the NDIC Act, except the provisions of BOFIA. In the same vein, section 657(6)(a) of CAMA provides that the claim of secured creditors shall have priority over all other claims against a company notwithstanding the provisions of any other law. The question that begs for answer is: which claim enjoys priority between the claims of depositors of a bank and secured creditors of the same bank, in the light of these three federal legislation conferring priority on each of the claimants, with each of the legislation seeking to override other legislation? This state of affairs has aptly been described in the following words:

Nigeria is a jurisdiction with several legislation on secured credit transaction which include BOFIA, CBNA, CAMA and ISA. The problem however, is that there is no

¹ Sections 17(7)(a) and 25 of NDIC Act.

² Section 57(3)(a) of NDIC Act.

³ Section 57(3)(a) of NDIC Act.

⁴ For emphasis, this claim is paid before actual liquidation begins; it is paid as an insurance claim, not a liquidation claim. The deposit insurer is later reimbursed from the assets of the bank when liquidation starts. The subrogation claim is listed as No. ii above.

⁵ Bliss, R.R. and Kaufman, G.G. (2006). US Corporate and Bank Insolvency Regimes: An Economic Comparison and Evaluation. Federal Reserve Bank of Chicago. p. 47. Available: <https://www.chicagofed.org/publications/working-papers/2006/wp-01>. (December 29, 2023).

⁶ Section 657(6a) of CAMA 2020.

⁷ Section 53(2) of BOFIA.

synergy, coordination or even harmonisation of such enactments. Sometimes there are issues relating to conflict of laws, duplication of laws or even manifest confusion.¹

That as it may, a deeper reflection on BOFIA and the NDIC Act would reveal that they are simply silent on secured creditors and do not expressly provide that secured creditors should not be prioritised above other unsecured creditors. There is, therefore the need to interrogate the implication of this silence on the position of secured creditors. BOFIA provides that the assets of a failing bank shall be available to settle its deposit liabilities and such deposit liabilities shall have priority over all other claims against the bank.² This makes it imperative to examine the meaning of the term ‘*asset*,’ in order to determine what properties are considered to form part of the ‘*available assets*’ of a company when insolvency proceedings are initiated against the company. We shall use a mortgage security in our examination.

We noted earlier that banks usually create mortgage securities over their real assets in an effort to raise funds for their operations.³ When a bank creates a legal mortgage, the beneficial interest in the mortgaged property is conveyed to the mortgagee along with the legal estate, and the mortgagee is regarded as the legal owner of the property in law. As such, a deed of legal mortgage makes the mortgagee the legal owner of the mortgaged property and divests the mortgagor of title over the property. The mortgagor is left with only the equity of redemption and can no longer transfer title in the property while the debt remains outstanding.⁴ Consequently, the mortgagee can sell the mortgaged property and transfer valid title to a purchaser without recourse to the mortgagor or the assistance of the court, where there is default in repaying the loan.⁵

Accordingly, the issue that needs to be resolved is whether a property in respect of which a bank has created a legal mortgage to secure a loan that remains outstanding can be said to form part of the ‘*available assets*’ of that bank when insolvency proceedings commence, considering the fact that a mortgagor bank is divested of the legal estate in a legal mortgage and left with just the equity of redemption.⁶ It is our considered view that the only interest that the bank has, which can form part of its ‘*available assets*’ as contemplated by BOFIA is the equity of redemption that the bank was left with when the legal mortgage was created. As such, the only asset of the bank, which the liquidator can lay claim to at insolvency is the equity of redemption in the mortgaged property.

It is a cardinal principle of property law that a successor-in-title cannot take an interest that is larger than that of his predecessor-in-title;⁷ he can only inherit those rights and obligations that his predecessor in title had, and cannot expand them. This fundamental property law principle is expressed in the latin maxim ‘*nemo dat quod non habet*’ which means a person can only transfer the rights he possesses in a property and cannot give what he does not have.⁸ Thus, the insolvent status of a bank cannot enlarge its interest in a mortgaged property. After all, section 62(1)(h) of the NDIC Act provides that the liquidator of a bank shall have power to succeed to all rights,

¹ James, D.L. Op. cit.

² Section 55 of BOFIA 2020.

³ Adekile, O. (2015). The Mortgage and Property Law, 2010, of Lagos State: An Overview. *Essays on the Lagos State Property and Mortgage Law, 2010*. (I.O. Smith and E.O. Oni Eds.), 245-275. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328555 (June 1, 2025).

⁴ Atiba Iyalamu Savings & Loans Ltd v. Suberu & Anor. (2018) LPELR-44069(SC).

⁵ Chianu, E. Op. cit. pp. 111 and 177.

⁶ Ibid, p. 79.

⁷ Ibid.

⁸ Orewa v. Sunday & Ors. (2023) LPELR-60547 (CA). The Court of Appeal also emphasised that ‘the law is, and has always been *nemo dat quod non habet*, meaning one cannot give out what he does not have. See Segun & Anor v. Amah & Anor (2022) LPELR-58848 (CA).

titles, powers and privileges of the bank. Essentially, the liquidator is only empowered to succeed to rights and titles of the insolvent bank and nothing more. The NDIC Act has not enlarged the interest of a bank in a mortgaged property which the liquidator can succeed to beyond what the bank had left before commencement of insolvency.

The foregoing submission is made in view of the fact that BOFIA and the NDIC Act do not give a clear definition of the phrase ‘*available assets*’ to give a guide as to the nature of bank assets contemplated. The interpretation of the word ‘*assets*’ in these legislation therefore, should be limited to assets that the bank could validly lay claim to before commencement of insolvency. Statutes that seek to diminish property rights are generally construed in a way that restricts the power of the state to do so; they are interpreted narrowly against acquiring entities. In *Melrose General Services Ltd v. EFCC & Ors*,¹ the Supreme Court of Nigeria restated its position that expropriatory legislation must be interpreted strictly against the government, but sympathetically in favour of citizens whose property rights are encroached on.² Accordingly, a *fatissime contra proferentes* interpretation of sections 55 of BOFIA and 72 of the NDIC Act would confine the phrase ‘*available assets*’ as used in these statutes to only the equity of redemption that a bank has in a mortgaged property, and exclude the legal estate and beneficial interest in the property from the available assets of the bank at insolvency because same had been transferred to the mortgagee before insolvency commenced.

Moreover, it is noteworthy that mortgage transactions are generally governed by state laws. Thus, the law that applies to a mortgage transaction is the law that is applicable in the state where the mortgaged property is located.³ For example, the Mortgage and Property Law, 2010 regulates mortgages in Lagos State.⁴ It is submitted therefore, that BOFIA and NDIC Act, being federal legislation on banking and deposit insurance respectively, cannot divest a legal mortgagee of the legal estate validly vested in him under a mortgage deed, since matters relating to mortgage of land fall within the legislative competence of the states. Accordingly, the question of who is the legal owner of a mortgaged property is to be determined by the relevant state laws that regulate mortgage transactions, not federal legislation on banking and deposit insurance like BOFIA and NDIC Act respectively.

Furthermore, it is trite that the mere revocation of a bank’s licence does not bring the life of the bank to an end; rather, the bank retains its juristic personality with full legal capacity to sue and be sued in its name.⁵ Indeed, the business of a company in liquidation can still be continued to the extent necessary for its beneficial winding up.⁶ In *Re: Amolegbe*,⁷ the Supreme Court held that the liquidation of a bank does not mean that the bank is dead. Therefore, commencement of insolvency proceedings against a bank does not alter the rights and obligations of the bank under a mortgage contract which the bank validly entered into with its debtors or creditors. As such, the rights and remedies of the bank as a mortgagee in mortgage transactions with its debtors remain intact and

¹ (2024) LPELR-62733 (SC).

² See also *NUP v. INEC* (2021) LPELR-58407 (SC).

³ Chianu, E. Op. cit., pp. 18-22.

⁴ Essien, E. (2015). Creation of Mortgages under the Mortgage and Property Law of Lagos State. *University of Ibadan Law Journal* 5, 1-22. UNIB+LAW+JOURNAL+Vol+5+2015-7-28(1).pdf.

⁵ Section 588(a) of CAMA. *Bendel Brewery Ltd. v. Fomak Int’l Ltd & Anor* (2024) LPELR-62339 (CA).

⁶ Section 588(1)(b), CAMA. Section 62(1)(c) of NDIC Act.

⁷ (2014) 8 NWLR (Pt. 1408) 76.

enforceable by the liquidator. In the same vein, the rights and remedies of secured creditors of the bank remain intact and are not affected by the revocation of the bank's licence. Any other interpretation would be construed as application of double standards.

Additionally, as noted earlier, BOFIA and the NDIC Act are silent on the status of secured creditors, while CAMA, which is the primary law on corporate insolvency recognises the primacy of their claims in insolvency.¹ Nevertheless, the silence of BOFIA and the NDIC Act cannot be said to be conclusive proof of the legislature's intention to strip secured creditors of their security under CAMA, as the legislature might have deemed it unnecessary to repeat the superiority of the claims of secured creditors since that is already settled in CAMA. We make this assertion because these three legislation that govern bank insolvency in Nigeria all acknowledge the value of security in credit transactions and respect the rights of secured creditors.

Section 59 of the NDIC Act empowers the bank liquidator to sell a collateral even where the loan that was secured with the collateral has been repaid, if the owner of the collateral is found to be owing another bank loan which was not secured with the collateral in question. However, the right of the liquidator to exercise this power is made subject to the rights of secured creditors in that asset that was held as collateral.² This legislation, therefore, acknowledges the priority accorded secured creditors by CAMA in credit transactions. Similarly, section 48 of the NDIC Act empowers the liquidator to sell, foreclose or manage any property that was used to secure a debt owed a failed bank. However, the liquidator's power to deal with the property is again made subject to the rights or interests of other secured creditors in that property. Also, BOFIA³ prohibits banks from granting credit facilities to related parties without security, while the Failed Bank's Act punishes bank officers who grant loans without security.⁴ These statutory provisions underline the value that these banking legislation in Nigeria attach to security and point to the irresistible conclusion that the legislator did not intend to strip secured creditors of their security when insolvency proceedings are initiated against a bank.

Furthermore, we fail to see the rationale for any refusal to recognise secured creditors during bank liquidation proceedings because insured depositors of failed banks are already protected under the deposit insurance scheme. The other class of depositors outstanding are usually uninsured depositors who are not protected by the deposit guarantee scheme in order to guard against moral hazard.⁵ In fact, best practice lists uninsured depositors and unsecured creditors among stakeholders that should absorb losses during bank resolution but excludes secured creditors.⁶ Secondly, Financial system stability is no longer at risk during bank liquidation proceedings because supervisory authorities would already have taken steps to ensure that financial system stability is not jeopardised before putting a bank into liquidation. Consequently, the hierarchy of claims during regular company liquidation which prioritises secured creditors should equally be respected during bank liquidation, in line with

¹ Section 657 (6a) of CAMA, 2020.

² Section 59(3) of NDIC Act.

³ Section 19(1c) & (3) of BOFIA.

⁴ Section 12(1a-b) of Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, CAP F2, LFN, 2004; *Onakoya v. FRN* (2002) LPELR-2670 (SC), page 24.

⁵ Bank of England. 2023. Bank of England's Approach to Resolution. Op. cit.

⁶ FSB. (2025). Key Attributes.

the recommendation of the FSB that bank resolution should be effected in a manner that respects hierarchy of claims during liquidation.¹

Additionally, failure to recognise and respect the claims of secured creditors during bank insolvency could have negative impact on the financial health of banks experiencing financial difficulty. Banks are usually in acute need of financing when they begin to experience liquidity or solvency challenges. Accordingly, they resort to borrowing at such critical times and lenders often ask for security before granting them loans. Refusal to recognise securities created by banks when they eventually go into liquidation would make it difficult for banks to access finance to reverse liquidity and capital challenges which can speed up their insolvency.

Finally, the inability of a lending bank to recover funds lent to a distressed bank can also jeopardise the financial condition of the lending bank. It was stated earlier that banks usually borrow from their counterparts to boost their liquidity and end up pledging their assets as collaterals for loans. It is therefore important that the securities held by the lending banks are respected when a debtor bank goes into liquidation so that the lending bank can remain solvent too. Failure to allow banks recover funds lent to distressed banks has the potential of multiplying bank insolvencies because the operations of banks are interconnected.

5. Conclusion

Securities are very vital in credit transactions and are very critical to availability and cost of credits. It forms an integral part of the credit activities of banks either as lenders or borrowers. Best practice requires that collaterals held by lenders should be respected during bank resolution proceedings and conspicuously omits secured creditors among stakeholders who should absorb losses during resolution proceedings. Advanced economies examined above also respect the claims of secured creditors during bank insolvency proceedings. Although there is no express mention of secured creditors in BOFIA and the NDIC Act, there is also no express exclusion of their claims in these legislation during bank insolvency proceedings. It is therefore our considered opinion that Nigeria's bank insolvency legislation should be interpreted in line with best practices and what obtains in advanced economies as discussed above. On the whole, we recommend that securities created over banks' assets should be respected when banks go into liquidation.