The Banking Regulation Review

Twelfth Edition

Editor
Jan Putnis

The Law Reviews

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For further information please contact Nick.Barette@thelawreviews.co.uk

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Jan Putnis

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CONTENTS

PREFACE.. vii
Jan Putnis

Chapter 1 INTERNATIONAL INITIATIVES.. 1
Jan Putnis and Tolek Petch

Chapter 2 ANGOLA.. 36
Nuno de Miranda Catanas and Laura Maia Lucena

Chapter 3 ARGENTINA.. 45
Pablo José Torretta and Francisco Grosso

Chapter 4 AUSTRALIA... 57
Andrea Beatty, Gabor Papdi, Chelsea Payne, Chloe Kim and Shannon Hatheier

Chapter 5 BARBADOS 79
Sir Trevor Carmichael QC

Chapter 6 BELGIUM 87
Anne Fontaine and Pierre De Pauw

Chapter 7 BRAZIL.. 99
Tiago A D Themudo Lessa, Rafael José Lopes Gaspar, Gustavo Ferrari Chauffaille and Vinicius Gonzaga

Chapter 8 CAMBODIA 112
Bun Youdy

Chapter 9 CHINA.. 130
Shengzhe Wang and Fugui Tan

Chapter 10 DENMARK... 146
Morten Nybom Bethe

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Chapter 11 EUROPEAN UNION 155
Jan Putnis, Ben Goldstein and David Kasal

Chapter 12 FINLAND 192
Janne Lauha, Hannu Huotilainen and Julian Lagus

Chapter 13 FRANCE 205
Didier Martin, Samuel Pariente, Jessica Chartier, Béna Mara and Gaël Rivière

Chapter 14 GERMANY 227
Sven H Schneider and Jan L Steffen

Chapter 15 HONG KONG 240
Peter Lake

Chapter 16 INDIA 264
Vineetha M G, Khyati Sanghvi and Pratik Patnaik

Chapter 17 ITALY 278
Giuseppe Rumi, Andrea Savigliano and Giulio Vece

Chapter 18 JAPAN 295
Hirohito Akagami and Yuhei Watanabe

Chapter 19 KAZAKHSTAN 307
Marina Kahiani

Chapter 20 LIECHTENSTEIN 330
Mario Frick and Christine Reiff-Näscher

Chapter 21 MALAYSIA 346
Rodney Gerard D'Cruz

Chapter 22 MEXICO 374
Federico De Noriega Olea and Juan Enrique Lizardi Becerra

Chapter 23 MONACO 385
Mireille Chauvet

Chapter 24 NETHERLANDS 396
Mariken van Loopik and Maurits ter Haar

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Chapter 25 NEW ZEALAND......413
Guy Lethbridge and Debbie Booth

Chapter 26 NIGERIA......427
Ibrahim Hassan, Oluwatobi Pearce, Basirat Raheem and Daniel Jayeoba

Chapter 27 NORWAY......445
Markus Nilssen, Vanessa Kalvenes and Marcus Cordero-Moss

Chapter 28 PHILIPPINES......458
Rafael A Morales

Chapter 29 POLAND......472
Andrzej Foltyn, Magdalena Skowrońska, Tomasz Kalicki and Filip Lisak

Chapter 30 PORTUGAL......488
Pedro Ferreira Malaquias and Domingos Salgado

Chapter 31 SINGAPORE......501
Francis Mok

Chapter 32 SOUTH AFRICA......512
Natalie Scott

Chapter 33 SPAIN......527
Juan Carlos Machuca and Alfonso Bernar

Chapter 34 SWEDEN......551
Fredrik Wilkens and Henrik Schön

Chapter 35 SWITZERLAND......562
Shelby R du Pasquier, Patrick Hünerwadel, Marcel Tranchet, Valérie Menoud and Maria Chiriaeva

Chapter 36 TAIWAN......583
James C C Huang and Maggie Huang

Chapter 37 UNITED ARAB EMIRATES......596
Bashir Ahmed, Rahat Dar and Adite Aloke

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Chapter 38 UNITED KINGDOM 605
Jan Putnis, Nick Bonsall and David Shone

Chapter 39 UNITED STATES 624
Luigi L De Ghenghi, John W Banes and Karen C Pelzer

Appendix 1 ABOUT THE AUTHORS 677

Appendix 2 CONTRIBUTORS' CONTACT DETAILS 701

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PREFACE

The past year in banking regulation has been dominated, in most parts of the world, by the severe economic effects of the coronavirus pandemic. Governments and regulators have taken unprecedented steps to support businesses and individuals through the crisis. In financial terms, much of this support has been channelled through banks, and banks have had to work hard to continue to lend and to serve their customers in this difficult period.

Despite the human suffering and long-term economic damage that the pandemic has caused, there has been no significant banking crisis in the past year and, in most countries, no real sign that banks are failing to weather the storm so far. While there are of course exceptions, this is in large part a consequence of the relatively strong capital and liquidity position that banks around the world were in before the pandemic struck, which was itself a position that would not have arisen in many countries without the comprehensive prudential regulatory reforms that followed the global financial crisis of 2007–2009. Indeed, some regulators have commented that the pandemic is proving to be the first real test of those reforms and that, at least so far, the rules and institutional frameworks for banking regulation that were created after the global financial crisis have proven their worth.

As in all ongoing crises, there are causes for both pessimism and optimism. A pessimistic assessment with which it is hard to argue in many parts of the world is that we are still at an early stage in the economic damage that the pandemic has caused. The gradual withdrawal of government support programmes for businesses and the consequent further increases in non-performing loans with which banks have to deal will pose a further severe test for the banking systems of many countries at a time when governments will be relying on banks to support economic recovery. In some countries the strong links between bank viability and the ability of governments to issue sovereign debt at sustainable interest rates may re-emerge as a significant problem.

The optimistic assessment is necessarily a longer-term one given the challenges that the pandemic continues to present. The pandemic has undoubtedly provided the banking sector with an opportunity to show that it can be a force for financial stability and economic renewal at a time of crisis, in marked contrast to the blow to confidence that the sector suffered following the global financial crisis. This opportunity is closely linked to moves by many banks to consider their corporate purpose, the sustainability of their activities in environmental and social terms, and the quality, and in many cases the diversity, of their governance. This somewhat disparate collection of objectives, referred to as ESG in many parts of the world, is increasingly dominating discourse between banks and their regulators and investors. Whether this would have happened in quite the way it has without the pandemic is impossible to know, but it does not seem much of an exaggeration to suggest

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that in many countries the banking sector that will emerge from the pandemic will have a series of cultural and business objectives that are quite different to those that existed before.

Regulators have become more assertive on these matters, particularly with regard to environmental objectives, and we will increasingly see a harder edge to the expectations that they are forming of banks' adherence to policies designed to address climate change. The repricing of many risks that is expected to take place as opinion settles on the pace at which transition to a low carbon economy should take place will have a profound effect on the balance sheets of many banks. Shareholder pressure will force change in some banks; and banks with significant exposures to the petroleum economy will have to consider radical changes to their business models.

On social matters, financial inclusion and fair treatment of vulnerable customers are motivating legal and regulatory reform in many countries. There is a strong link between financial inclusion and the adoption of new technologies and business models, particularly in payment services. Many of the businesses that are contributing to the adoption of these technologies are not banks but rely on banks (or payment systems that are owned or controlled by banks) in order to operate. Allied to this are the increasingly serious and well-resourced attempts by firms using distributed ledger technologies to develop new means of payment, including stablecoins.

Regulators struggle to keep pace with these developments, but they hold back at their peril on addressing the implications for banks. The concept that the same or similar services and activities should be regulated in the same way is proving to be difficult to apply in practice, not least because there is a fundamental difference in financial stability terms between institutions that take deposits and those that do not. But the challenge of how to supervise banks and non-bank payment firms and lenders on a level playing field is one that must surely be addressed, and addressed soon, by regulators in a coordinated way around the world. The time for regulators to congratulate themselves on the effectiveness of financial sector reform following the global financial crisis has come to an end. It is now time to think hard about where risks lie and how risks will develop in the emerging tech-enabled financial system, and the possible causes of the next financial crisis.

It is perhaps surprising, given all the disruption caused by covid-19, that some countries have managed to push through significant legal and regulatory reforms in banking in the past year. These measures have included significant overhauls of the whole bank regulatory regime in some countries, and in other countries further moves to implement Basel III standards. We have already seen some important changes of policy and emphasis in the United States under the new Biden administration. Legal and regulatory reform has continued in the European Union, albeit many initiatives have been delayed by the pandemic. The final departure of the United Kingdom from the European Union single market on 31 December 2020 and the resulting decoupling of London as a major banking centre from the European Union legal framework will continue to have reverberations and structural implications for banks operating in Europe. The long-term implications of Brexit for banks remain hard to predict; in particular, whether it will be a prelude to further fragmentation in banking regulation around the world.

This edition of *The Banking Regulation Review* covers 37 countries and territories in addition to the usual chapters on International Initiatives and the European Union. My thanks go to the authors for continuing to prepare informative chapters in the difficult and uncertain conditions in which many of them have been working over the past year. They

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continue to make this book the useful overview and guide to banking regulation around the world that it is.

Thank you also to the partners and staff of Slaughter and May in London and Hong Kong for continuing to support and contribute to this book, and in particular to Nick Bonsall, Ben Kingsley, Peter Lake, Emily Bradley, Ben Goldstein, Selmin Hakki, David Kasal, Tolek Petch, David Shone, Adrien Yeung and Ada Zhang.

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Chapter 26

NIGERIA

Ibrahim Hassan, Oluwatobi Pearce, Basirat Raheem and Daniel Jayeoba[1]

I INTRODUCTION

The Nigerian banking sector plays a key role in the economic growth of the country and is therefore one of the most heavily regulated sectors in Nigeria. In its role as the Nigerian apex bank and primary regulator of the banking sector, the Central Bank of Nigeria (CBN) has, over the years, implemented various reforms and policies aimed at ensuring that the Nigerian banking sector remains reliable and capable of driving efficiency in economic activities. As at February 2021, there were 29 licensed banks in Nigeria (excluding microfinance banks, mortgage banks, specialised banks and other entities licensed by the CBN), comprising 22 commercial banks,[2] five merchant banks[3] and two non-interest banks.[4]

The following banks are the five largest banks in Nigeria by their market capitalisation on the Nigerian Stock Exchange (NSE):

a Guaranty Trust Bank Plc;
b Zenith Bank Plc;
c Access Bank Plc;
d United Bank for Africa Plc; and
e Union Bank of Nigeria Plc.[5]

In November 2020, the new Banks and Other Financial Institutions Act (BOFIA 2020) was signed into law, repealing the hitherto existing principal banking legislation enacted in 1991. BOFIA 2020 provides a revised legal regime for the Nigerian banking industry. One of the key highlights of BOFIA 2020 is the introduction of a CBN-led regulatory regime for mergers, restructurings and other business combinations involving banks in Nigeria, which were hitherto subject to the principal regulatory supervision of the Federal Competition and Consumer Protection Commission (FCCPC).[6] Under the former regime, business combinations involving Nigerian banks were required to be reviewed and approved by the

1 Ibrahim Hassan, Oluwatobi Pearce, Basirat Raheem and Daniel Jayeoba are associates at Banwo & Ighodalo.
2 www.cbn.gov.ng/Supervision/Inst-DM.asp.
3 www.cbn.gov.ng/Supervision/Inst-MB.asp.
4 www.cbn.gov.ng/Supervision/Inst-NI.asp.
5 www.nse.com.ng/market_data-site/Pages/Indices.aspx; accessed on 12 March 2021.
6 The Federal Competition and Consumer Protection Commission has the responsibility of regulating business combinations generally, which, until the enactment of the new Banks and Other Financial Institutions Act (BOFIA 2020), included business combinations involving banks.

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FCCPC,[7] and the FCCPC only required a no objection statement from the CBN as one of the conditions for its approval of such business combinations. However, based on the provisions of BOFIA 2020,[8] all business combinations involving banks in Nigeria are now primarily supervised and approved by the CBN. Other key highlights of the new legislation (such as the introduction of bail-in provisions and related banking resolution or rescue tools, restrictions on granting unsecured credit and the establishment of a special tribunal for recovery of eligible loans) are discussed below.

With the continued focus on financial inclusion, the Nigerian banking industry now features an increased presence of mobile money agents, agent banks and other related platforms that provide financial services (typically limited to sending and receiving money, bill payments, etc.) in rural areas and unbanked locations. In relation to this, there have also been increased activities and engagements (regulatory and otherwise) within the financial technology space (see Section VII).

On a general note, the Nigerian economy slid into a recession in the third quarter of 2020. This was mainly attributed to the lull in economic activities associated with the low prices in the oil market, as well as the effects of the coronavirus pandemic. As part of its efforts to reduce the negative impact of the pandemic, the CBN reduced the monetary policy interest rate from 13.5 per cent to its present rate of 11.5 per cent.[9] As an additional measure to stimulate the economy, the CBN retained its cash reserve requirements at 27.5 per cent, specifically to stimulate lending activities. Other measures taken by the CBN in this regard are discussed in Section VII.

II THE REGULATORY REGIME APPLICABLE TO BANKS

BOFIA 2020 is the principal legislation that sets out the regulatory framework for banking activities in Nigeria.[10] It provides for the regulatory and supervisory powers of the CBN over Nigerian banks, including the issuance and revocation of banking licences, the opening and closing of bank branches and the restructuring and reorganisation of banks, as well as the operation of foreign banks in Nigeria. Under Nigerian law, no entity shall undertake any banking business[11] in Nigeria unless it is duly incorporated in Nigeria and holds a banking licence issued by the CBN.

In October 2010, the CBN changed the Nigerian banking model from a universal banking model, which hitherto allowed licensed banks to engage in non-core banking

7 Sections 92 and 93 of the Federal Competition and Consumer Protection Act.
8 Section 65(3) of BOFIA 2020.
9 In January 2021, the Monetary Policy Committee retained the monetary policy rate at 11.5 per cent.
10 Other relevant enactments include the Central Bank of Nigeria (Establishment) Act 2007, the Nigeria Deposit Insurance Corporation Act 2006 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, Laws of the Federation of Nigeria, 2004.
11 Section 131 of BOFIA 2020 defines 'banking business' as 'the business of receiving deposits or current account, savings deposit account or other similar account, paying or collecting cheque drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such businesses are conducted digitally, virtually or electronically only or such other business as the Governor may, by order published in the Gazette, designate a banking business'.

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financial activities, to a core-banking model.[12] Under the current banking model, the CBN restricts banking business to commercial banks, merchant banks and specialised banks, and the activities of such licensed banks are restricted to core-banking business.[13] Accordingly, except for as expressly permitted under BOFIA 2020, a licensed bank cannot hold direct or indirect interests (whether or not as subsidiaries) in enterprises undertaking non-core banking business such as capital markets activities. Promoters of banks that wish to undertake such non-core banking financial services typically adopt a non-operating financial holding company structure, and non-core banking businesses are undertaken by other subsidiaries of the holding company.

The holder of a commercial banking licence has the authority to, inter alia: take deposits; maintain current and savings accounts; provide finance and credit facilities, retail banking, treasury management, and custodial and financial advisory (incidental to commercial banking services) services; and deal in foreign exchange. A merchant banking licence permits, inter alia: the taking of deposits (not below 100 million naira per tranche);[14] providing finance and credit facilities; dealing in foreign exchange; acting as an issuing house or otherwise arranging issuance of securities; and providing custodial, underwriting and treasury management services. Specialised banks include non-interest banks, microfinance banks, development banks and mortgage banks.

Foreign financial institutions are able to provide offshore credit facilities to entities in Nigeria on a 'reach in' basis without the need to obtain a banking licence from the CBN. However, where a foreign bank wishes to establish physical presence in Nigeria and provide credit facilities in Nigeria, the bank will be required to incorporate a limited liability company in Nigeria and obtain a banking licence.[15] Also, BOFIA 2020 empowers the CBN to grant a licence to foreign banks to undertake domestic or offshore banking business within a designated free trade or special economic zone in Nigeria.[16] Foreign banks may also apply to the CBN for a licence to open and operate a representative office (typically licensed to only interact and meet with potential clients, and to conduct research activities) in Nigeria.

Furthermore, BOFIA 2020 provides that any Nigerian bank intending to undertake offshore banking business must obtain a licence from the CBN and comply with the CBN's guidelines in that regard. Pursuant to the CBN Circular to all Banks on Offshore Expansion,[17] any Nigerian bank wishing to open an offshore subsidiary must, inter alia,

12 The Central Bank of Nigeria (CBN) repealed the Universal Banking Guideline 2000 and issued new rules and guidelines for banking licences, entitled the Regulation on the Scope of Banking Activities and Ancillary Matters, No. 3, 2010.

13 Such as receiving deposits on current accounts, savings accounts or other similar accounts, paying or collecting cheques drawn by or paid in by customers, the provision of financial consultancy and advisory services relating to corporate and investment matters, making or managing investments, advancing loans (however, BOFIA 2020 prohibits banks, specialised banks and other financial institutions from granting any unsecured advance, loan or credit facility without the CBN's written approval, except where the advance conforms with the CBN's collateralisation regulation), issuing letters of credit and bank guarantees, and the general provision of finance.

14 Or other minimum amount that the CBN may periodically prescribe.

15 Currently, four of the licensed commercial banks in Nigeria are owned or operated by foreign or international bank groups: Citibank Nigeria Limited, Ecobank Nigeria Limited, Stanbic IBTC Bank Plc and Standard Chartered Bank Limited. The South African group FirstRand Bank Limited also owns one of the merchant banks in Nigeria, Rand Merchant Bank Limited.

16 Section 8(2) of BOFIA 2020.

17 Dated 7 October 2008.

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have been in sound financial condition (in terms of liquidity, capital adequacy, etc.) for at least the previous 12 months, and must have operated profitably for the previous two years, as reflected in the audited financial statements of the applying bank. The Nigerian bank is also required, as part of the application process, to give details of how the operation of the offshore subsidiary would be monitored from Nigeria.

Other than the CBN, which is the primary regulator with the core objectives of ensuring monetary and price stability and promoting a sound financial system in Nigeria, the following statutory bodies also exercise regulatory oversight on Nigerian banks:

a the Nigeria Deposit Insurance Corporation (NDIC)[18] has regulatory oversight over deposit money banks (DMBs) – also known as commercial banks – and is responsible for insuring all deposit liabilities of licensed commercial banks and providing assistance to insured institutions in the interest of depositors in cases of financial difficulty;

b the Corporate Affairs Commission[19] is responsible for the incorporation of all corporate entities in Nigeria, including banks and other financial institutions;

c the Financial Reporting Council of Nigeria[20] is responsible for developing and enforcing compliance with accounting, auditing, corporate governance and financial reporting standards by public interest entities, including banks and other financial institutions;

d the Securities and Exchange Commission (SEC)[21] regulates capital market activities and public companies in Nigeria. While a licensed bank will not in the ordinary course of its banking activities fall within the regulatory purview of the SEC, where such a bank is a public company or its affiliate undertakes capital market activities, the bank or the relevant affiliate will fall within the SEC's purview; and

e the NSE regulates companies, including banks, that are listed on the NSE.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

While some countries have separated their financial regulators along the lines of licensing, prudential regulation and consumer protection, in Nigeria all roles are primarily performed by the CBN. In February 2011, the CBN released its Supervisory Intervention Framework for the Nigerian Banking Sector (the Supervisory Framework 2011), which was designed to complement the CBN's Prudential Guidelines for Deposit Money Banks in Nigeria 2010 (the DMB Prudential Guidelines).[22] It reflects the fact that the CBN has adopted a risk-based supervisory approach.

The risk-based supervisory approach is a continuous process of updating risk assessments through on-site and off-site examinations of financial institutions to create an early warning

18 Established pursuant to the Nigeria Deposit Insurance Corporation Act 2006.

19 Established pursuant to the Companies and Allied Matters Act 2020 (CAMA 2020).

20 Established under the Financial Reporting Council of Nigeria Act of 2011 and supervised by the Federal Ministry of Industry, Trade and Investment.

21 Established under the Investment and Securities Act 2007 (ISA).

22 In August 2019, the CBN issued an exposure draft of revised Prudential Guidelines for Commercial, Merchant and Non-Interest Banks. Although the revised guideline is yet to be effective, it is poised to deal with significant changes (such as the foreign exchange crisis, liquidity issues, increase in the incidence of non-performing loans, deteriorating corporate governance practice, increasing competition from fintech companies and the review of major global prudential standards) that have occurred in the Nigerian banking landscape since the issuance of the DMB Prudential Guidelines in 2010.

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system so the CBN can anticipate and deal with emerging issues. This approach results in the CBN producing a composite risk rating for financial institutions. Under the Supervisory Framework 2011, financial institutions will be awarded one of the following risk scores:

a 1: for institutions with low risk profiles;

b 2: for institutions with moderate risk profiles;

c 3: for institutions with above-average risk profiles; and

d 4: for institutions with high-risk profiles.

Prudential supervisory function

Pursuant to Section 13 of BOFIA 2020, the CBN has the power to establish and enforce capital ratios and prudential standards over all deposit-taking financial institutions operating in Nigeria. The CBN's website sets out all the prudential guidance notes currently in force.[23] The DMB Prudential Guidelines comply significantly with the Basel II framework, but adjust certain sections of the framework to better reflect the distinctive features of the Nigerian economy.

The CBN mandates all banks licensed to carry out banking business[24] in Nigeria to perform an annual internal capital adequacy assessment process and forward copies of their reports to the CBN no later than four months after the end of the year.[25] Failure to comply with this obligation puts a bank at risk of having its banking licence revoked.[26]

Furthermore, the CBN's Framework for the Regulation and Supervision of Domestic Systemically Important Banks 2014 (the D-SIB Framework) mandates that banks classified as systemically important banks maintain a minimum capital ratio of 15 per cent and set aside an additional surcharge of 1 per cent of their respective minimum required capital adequacy ratio (CAR).[27] Any DMB designated as a systemically important bank that fails to comply with the D-SIB Framework or any other CBN-specified standards and requirements applicable to systemically important banks will be liable for a fine of not less than 5 million naira, and an additional penalty of 200,000 naira for each day the failure persists.[28] Failure by any bank to maintain the CAR stipulated by the CBN constitutes a ground for the revocation of the bank's banking licence.[29]

23 www.cbn.gov.ng.

24 See footnote 11.

25 CBN Circular to All Banks and Discount Houses on the Implementation of Basel II/III in Nigeria, reference No. BSD/DIR/CIR/GEN/LAB/06/053, dated 10 December 2013.

26 Section 12 of the Central Bank of Nigeria Act.

27 Section 6 of the CBN's Framework for the Regulation and Supervision of Domestic Systemically Important Banks 2014.

28 Section 70 of BOFIA 2020.

29 Section 12(1)(h)4 of BOFIA 2020.

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NDIC

The NDIC also supports the CBN by implementing the CBN's banking policy. The NDIC, through its off-site surveillance, ensures compliance with the CBN's prudential standards and guidelines.[30] Off-site surveillance is carried out by the NDIC's insurance and surveillance department. This consists of analysing the returns from licensed banks and other deposit-taking financial institutions on a periodic basis to ascertain their compliance with prudential regulations. The analysis culminates with a report on the condition and performance of the bank in question, with recommendations for corrective action in weak areas.

Consequences of a licensed deposit-taking financial institution's failure

Where the financial position of a DMB becomes precarious, the NDIC may, after consulting with the CBN, take over management of the bank to salvage the bank's operations by the creation of a bridge bank.[31] In this regard, the NDIC is empowered to, inter alia, take over the management of the failing bank until its financial position is substantially improved; acquire, manage and dispose of the failing bank's impaired assets either directly or through an asset management company; and incorporate a bridge bank[32] to assume the deposits, assets and liabilities of the failing bank, as the NDIC may determine.

Where the restructuring of the bank proves unsuccessful, the Nigeria Deposit Insurance Corporation Act establishes a legal regime for the winding up of a failed bank. Further details are set out in subsection iv.

ii Management of banks

Corporate governance requirements for banks

The corporate governance requirements for banks in Nigeria are laid out in the 2014 CBN Code of Corporate Governance for Banks and Discount Houses (the Code).[33] The Code is designed to update and align corporate governance in the Nigerian banking industry with international best practices. Compliance with the Code is mandatory for all banks in Nigeria, and they are required to render returns on the status of compliance to the CBN at the end of every quarter.

In this regard, the Code provides that the size of the board of directors (board) of any bank shall be a minimum of five members and a maximum of 20 members, and the board of

30 The Nigeria Deposit Insurance Corporation (NDIC) also performs on-site surveillance with the CBN's banking supervision department for deposit money banks (DMBs), and the CBN's other financial institutions department in respect of microfinance banks and primary mortgage banks. The equivalent departments in the NDIC are the bank examination department, which deals with DMBs, and the special insured institutions department, which carries out on-site surveillance on microfinance banks and primary mortgage banks.

31 For example, following the failure of the now-defunct Skye Bank, the NDIC, in consultation with the CBN, incorporated Polaris Bank as a bridge bank, withdrew Skye Bank's operating licence and transferred its assets and liabilities to Polaris Bank.

32 A bridge bank is an entity incorporated by the NDIC and licensed by the CBN as a bank to act as a stop-gap arrangement between the failure of a bank and the time when the NDIC can arrange the acquisition of this newly incorporated bank by a third party, while the failing bank is wound up.

33 On 26 October 2018, the CBN issued codes of corporate governance in respect of the following other financial institutions: microfinance banks; development finance banks; primary mortgage banks; mortgage refinance companies; finance companies and bureaux de change.

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a bank is required to be composed of more non-executive directors than executive directors. Further to this and to ensure the continuous injection of fresh ideas, the Code stipulates that non-executive directors of banks shall serve for a maximum of three terms of four years each, while the tenure of the MD or CEO shall be subject to a maximum period of 10 years, which may be broken down into periods not exceeding five years at a time.

The Code emphasises the importance of risk governance as part of a bank's general corporate governance framework, and promotes the value of the board and several board committees with effective control functions. Specifically, the Code:

a regulates equity holding in banks by investors;
b discourages a government majority stake in banks by limiting the maximum holding of any government to 10 per cent;
c encourages a whistle-blowing framework and the protection of stakeholders' rights; and
d strengthens disclosure requirements and transparency in banks' annual reports.

In addition to compliance with the Code (which is banking sector-specific), the Financial Reporting Council of Nigeria (FRCN) extended the requirement of compliance with, and the application of, the Nigerian Code of Corporate Governance 2018 (NCCG) to Nigerian banks on 1 January 2020.[34] Similar to the Code, the NCCG contains broad principles and international best practices on corporate governance applicable to each level of management (i.e., the board, the MD and CEO, independent directors, the chairperson, the company secretary and external auditors). The FRCN requires the relevant entities (including banks) to report compliance with the NCCG in their annual reports for each financial year.

The new Companies and Allied Matters Act, 2020 (CAMA 2020) also introduces certain corporate governance principles that are generally applicable to public companies including banks. Some of these principles are in tandem with hitherto existing corporate governance codes but it includes some additional requirements. For instance, CAMA 2020 now requires that every public company shall have at least three independent directors. Accordingly, all Nigerian banks that are public companies are required to have at least three independent directors appointed to their respective boards.

Legal and regulatory duties of management of banks

In accordance with the Code, the management of banks in Nigeria is generally responsible for policy implementation and the development of a sound system of risk management and internal control policies that must clearly define the roles and responsibilities of the board and its risk management committee, as well as the roles and responsibilities of management and the internal audit function.

34 Pursuant to the Financial Reporting Council of Nigeria (FRCN) circular on the 'Adoption and Compliance with Nigerian Code of Corporate Governance 2018', of 15 January 2019, the FRCN extended the application of the Nigerian Code of Corporate Governance 2018 (NCCG) to the following entities, among others: 'all public companies (whether a listed company or not)' and 'all regulated private companies being private companies that file returns to any regulatory authority other than the Federal Inland Revenue Service . . . and [the Nigerian companies' registry,] the Corporate Affairs Commission'. This categorisation includes banks as most Nigerian banks are public companies, and those organised as private companies are statutorily required to file returns to the CBN.

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Bank holding company structure: decision-making over subsidiaries

The Nigerian bank holding company (HoldCo) subsidiary structure is based on the principle of corporate personality such that the subsidiary banks are different and distinct from their HoldCos. Accordingly, pursuant to the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria, 2014 (the HoldCo Guidelines), no financial HoldCo shall arrogate for itself any of the powers or functions of the board of directors, or internal management responsibilities and obligations of any of its subsidiaries or associates of any such subsidiaries. In addition, no financial HoldCo shall interfere with the day-to-day activities of the subsidiaries; nor shall it be involved in the credit administration and approval process of its subsidiaries.

Restrictions on bonus payments

There are no regulations currently in place in Nigeria that restrict bonus payments to the management and employees of banking groups. However, it is noteworthy that the Code requires every bank to have a remuneration policy established by its board, and to disclose the policy to the shareholders in the bank's annual report. Under the Code, it is also expected that a committee of non-executive directors would be responsible for determining the remuneration of executive directors.

iii Regulatory capital and liquidity

The prudential standards relating to regulatory capital for Nigerian banks are found in the DMB Prudential Guidelines, which are based on the standards of Basel II, and the CBN's Guidance Note on Regulatory Capital 2018 (the Regulatory Capital Guidelines), modelled on Basel III.

Risk-weighted capital

Under the DMB Prudential Guidelines, a DMB with a national banking licence must maintain a minimum of 10 per cent of the total risk-weighted assets as capital funds on an ongoing basis.[35] DMBs that have been authorised by the CBN to carry out banking activities outside Nigeria must maintain a higher CAR of 15 per cent.[36]

Tier 1 capital

The capital a DMB must maintain to achieve its CAR must be made up of Tier 1 and Tier 2 capital. Under Section 2 of the Regulatory Capital Guidelines, Tier 1 capital includes disclosed reserves and shareholder equity, which constitute issued and fully paid up ordinary shares or perpetual non-cumulative preference shares.

Tier 2 capital

Under Section 3 of the Regulatory Capital Guidelines, Tier 2 capital is made up of two components: hybrid debt instruments and subordinated debt. Hybrid debt instruments feature characteristics of equity and debt.

35 Section 3.16 of the DMB Prudential Guidelines.

36 Section 1 of the Regulatory Capital Guidelines.

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The CBN has determined that hybrid instruments may be included in Tier 2 capital where they are able to support losses on an ongoing basis without triggering liquidation. To qualify as Tier 2 capital, hybrid instruments, inter alia:

a must be unsecured, subordinated and fully paid up;

b must be available to participate in losses without the bank being obliged to cease trading;

c must not be redeemable at the initiative of the holder or without the prior consent of the CBN;

d may carry an obligation to pay interest, but that obligation cannot permanently be reduced or waived;

e should allow the obligation to pay interest to be deferred where the profitability of the bank would not support payment; and

f where redeemable, must have an original maturity of at least 10 years, and must clearly specify that repayment is subject to authorisation by the CBN.[37]

In calculating the amount of Tier 1 and Tier 2 capital that comprise a bank's capital base, net of all permitted deductions, the calculation is subject to certain limits. Fundamental Tier 2 capital can constitute, at most, 33.33 per cent of net Tier 1 capital. There is no limit on the inclusion of Tier 1 capital for the purpose of calculating regulatory capital.

Consolidated supervision

Neither the DMB Prudential Guidelines nor the Regulatory Capital Guidelines impose specific requirements for DMBs in Nigeria that form part of a group. The HoldCo Guidelines stipulate that a financial HoldCo must have at least two subsidiaries, and the conglomerate's focus must be in the financial services sector.[38] The consolidated supervision approach for Nigerian banks is the solo-plus approach,[39] complemented by a quantitative and qualitative assessment of the banking group to assess the potential impact of other members of the group on the operations of the supervised bank.

Liquidity

The CBN requires all banks operating in Nigeria to ensure that their level of cash flow is matched by expected receipts, so that banks always have enough cash to meet the requests of their depositors. This is to ensure that each bank's cash balance plus assets, when compared to the total liabilities owed by each bank, is high enough for the bank to meet its obligations as they fall due. The CBN sets out the minimum liquidity ratio benchmarks for the banking sector in its Monetary, Credit, Foreign Trade and Exchange Policy Guidelines (the MCFT Policy Guidelines).

The MCFT Policy Guidelines are a periodic publication of the CBN designed to provide guidance to financial institutions for the medium-term fiscal period, and to demonstrate the CBN's direction and policy objectives. The latest version of the MCFT Policy Guidelines

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37 Subordinated debt can qualify as part of Tier 2 capital only if it satisfies the 13 requirements set out in Section 3.2 of the Regulatory Capital Guidelines.

38 Section 2.3.1 of the HoldCo Guidelines.

39 Solo supervision consists of the risk-based supervision of banks on a solo basis by the CBN and the NDIC.

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covers the period from January 2020 to December 2021. Under the current guidelines, the CBN requires that banks maintain minimum liquidity ratios as follows: DMBs: 30 per cent; merchant banks: 20 per cent; and non-interest banks: 10 per cent.

Local regime divergence from Basel III

The Basel frameworks have been progressively implemented in Nigeria since January 2013. The Basel II and III Framework Guidelines list all areas of national discretion set out under the International Convergence of Capital Measurements and Capital Standards, although these mainly deal with the International Convergence of Capital Measurement and Capital Standards, June 2006 (Basel II framework).

Key areas of divergence include the fact that under the Basel II and III Framework Guidelines, the CBN departs from Paragraph 49(xii) of the Basel II framework by not permitting banks in Nigeria to employ short-term subordinated debt as a third tier of capital.

iv Recovery and resolution

Resolution of failed banks in Nigeria

The NDIC is the main body responsible for the resolution of failed banks in Nigeria. BOFIA 2020 also mandates the CBN to step in when a bank is in crisis, to turn over management and control of such bank to the NDIC. The NDIC is empowered to provide financial and technical assistance to failing or distressed banks in the interest of depositors. Financial assistance can take the form of loans, guarantees for loans taken on by the bank or the acceptance of accommodation bills. Similarly, technical assistance may include taking over the management and control of the bank, changes in management or assistance in a merger with another viable institution.[40]

In 2002, in collaboration with the CBN, the NDIC introduced the Contingency Planning Framework for Banking Systemic Crises to facilitate the prompt resolution of failing banks. The aim of the Framework is to reduce the incidence of systemic distress by improving the supervisory processes, providing transparent and objective thresholds for regulatory intervention, and promoting self-regulation among banks. Some of the mechanisms that the NDIC (in collaboration with the CBN) has adopted for the resolution of failed banks are open bank assistance (OBA), purchase and assumption (P&A) transactions and bridge banks.[41] One of the key innovations introduced by BOFIA 2020 is the establishment of the Banking Sector Resolution Fund, which is to be funded with specified contributions from the CBN, the NDIC and all banks, specialised banks and other financial institutions in Nigeria.[42] The Fund will be utilised exclusively to provide financial assistance to failing banks and bridge banks, as well as generally support any banking resolution process.

OBA

The NDIC may decide to offer a failing bank financial assistance if it meets certain requirements. Financial assistance in the form of OBA is made available to a failing bank without interrupting its operation as a going concern. The NDIC does this by offering a

40 http://ndic.gov.ng/failure-resolution/#tab-1-6.

41 ibid.

42 See, generally, Sections 74 to 78 of BOFIA 2020.

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loan to the failing bank, guaranteeing a loan that the bank has taken on or accepting an accommodation bill. In addition to the conditions that may be stipulated by the NDIC, the bank must also meet the liquidity threshold prescribed by the NDIC.

P&A transactions

This is a resolution transaction in which a healthy bank purchases some or all the assets of a failed bank and assumes some or all its liabilities. If the whole bank is purchased, the acquirer may receive a government payment covering the difference between the market value of assets and liabilities. If only some deposits are assumed, the acquirer may be given the option of assuming any of the others, and take their pick of the failed bank's assets.

Bridge bank

A bridge bank is a temporary bank established and operated by the NDIC to acquire the assets and assume the liabilities of a failed bank until a final resolution can be accomplished. In some instances, the bridge bank will retain the failed bank's licence, but it will operate under a different name in the same premises used by the failed bank. In other instances, the CBN may revoke the failed bank's licence and issue a new licence to the bridge bank. The bridge bank would permit continuity of banking services to all customers and fully protect the depositors and creditors of the failed bank.

Another form of bank resolution for failed banks is the acquisition of non-performing loans of failed banks by the Asset Management Corporation of Nigeria.[43]

In accordance with BOFIA 2020, in the event that a failed bank over which NDIC has assumed control cannot be rehabilitated, the NDIC may recommend other resolution measures to the CBN, which may include revocation of the failed bank's licence. Where the licence of a failed bank has been revoked, the NDIC may apply to the relevant court for a winding-up order in respect of the failed bank. Upon the court's order for the winding up of the failed bank, the NDIC shall give notice by advertising in national newspapers or other news media for all depositors with the failed bank to forward their claims to the NDIC. The NDIC, acting as liquidator of the failed bank, shall have power to realise the assets of the failed bank.

Bail-in powers

Under Sections 37 to 39 of BOFIA 2020, the CBN is empowered (for the purpose of rescuing a failing bank, a specialised bank or any other financial institution) to cancel, modify, convert or change the form of an eligible instrument[44] (issued by a bank or to which a bank is subject or a party), or determine that such eligible instrument has effect as if a right of modification,

43 The Asset Management Corporation of Nigeria was established on 19 July 2010 to be a key stabilising and revitalising tool aimed at reviving the financial system by efficiently resolving the non-performing loan assets of Nigerian banks.

44 'Eligible instrument' is defined in BOFIA 2020 as an: (1) equity instrument or other instrument that confers or represents a legal or beneficial ownership of a bank, except an ordinary share; (2) unsecured liability or other unsecured debt instrument that is subordinated to unsecured creditors' claims of the bank, specialised bank or other financial institution that are not so subordinated; or (3) instrument that provides for a right for the instrument to be written down, cancelled, modified, changed in form or converted into shares or another instrument of ownership when a specified event occurs.

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conversion or change of form had been exercised.[45] The CBN may take action where it is of the opinion that the eligible instrument ought to be bailed-in to facilitate the rescue of the bank or the bank's available assets do not, or are unlikely to, support the bank's payment of its liabilities as they become due and payable.[46] Before taking such action, the CBN may appoint one or more persons to conduct an independent assessment, to determine the extent to which the exercise of the CBN's bail-in powers are necessary. Under Section 38 of BOFIA 2020, following the delivery of the assessment report, the CBN governor issues a bail-in certificate that must specify the name of the bank it applies to and the details of any eligible instrument to be cancelled, modified, changed or converted (as applicable). The provisions in the bail-in certificate shall have effect notwithstanding any restrictions set out in the provisions of any written contract or any law in force prior to the date the bail-in certificate comes into effect.[47] Furthermore, any claims or judgment debt enforcement in respect of an eligible instrument (to which a bail-in certificate relates) existing or being pursued as of the date of the bail-in certificate shall be automatically suspended and unenforceable against the failing bank for the duration period specified in the bail-in certificate or any period as may be determined by the CBN governor.[48]

IV CONDUCT OF BUSINESS

BOFIA 2020 is the primary legislation that governs banks' conduct of business in Nigeria. Other laws and rules that govern banks' conduct of business include:

a CAMA 2020;
b the Nigerian Deposit Insurance Corporation Act;
c the Foreign Exchange (Monitoring and Miscellaneous) Act;
d the Financial Reporting Council of Nigeria Act; and
e the Code of Conduct in the Nigerian Banking Industry (the Code of Conduct).

Where banks act in contravention of the provisions of BOFIA 2020, they may be subject to civil or criminal liabilities (or both) and regulatory sanctions, as well as a revocation of their banking licence. For example, where a bank fails to comply with the conditions of its banking licence, this amounts to an offence and is liable (on conviction) to a penalty of not less than 20 million naira and an additional daily penalty of 500,000 naira while the non-compliance continues.

In addition, the CBN Consumer Protection Framework 2016, made pursuant to the Central Bank of Nigeria Act (the CBN Act), sets high standards for efficient customer service delivery and market discipline, and provides that financial institutions are obliged to safeguard the privacy of their customers' data. The Code of Conduct also imposes confidentiality obligations on banks and their employees. In particular, Section 1(1.2) of the Code of

45 Additional banking resolution or rescue tools introduced under BOFIA 2020 include the CBN's power to suspend counterparties' termination rights under contracts that a failing bank (its affiliate) is a party. See, generally, Part IV of BOFIA 2020.

46 Section 37(3) of BOFIA 2020.

47 Section 38(7) of BOFIA 2020.

48 Section 39 of BOFIA 2020.

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Conduct requires banks to observe a strict duty of confidentiality about their customers' and former customers' affairs, and prohibits them from disclosing details of customers' accounts, transactions, names and addresses to third parties.

Furthermore, the Code of Conduct requires banks to insist that all directors, management and staff sign a declaration of secrecy to ensure the confidentiality of customers' information. The foregoing confidentiality obligations are subject to the general reporting obligations borne by Nigerian banks:

a to anti-graft and anti-money laundering agencies in respect of transactions exceeding certain thresholds;
b when compelled to make disclosures pursuant to court orders in proceedings (such as a garnishee process);
c where the interests of the bank require disclosure; and
d where disclosure is made at the request, or with the consent (express or implied), of the customer.

V FUNDING

Nigerian banks primarily raise funds to carry out their activities from customer deposits. In addition, Nigerian banks access funding from the capital market through the issuance of bonds and other financial instruments; and access loans from development finance institutions, foreign institutional (impact) lenders and international banks, the proceeds of which are typically on-lent to customers and used to fund other activities. They also source their funds from trading in securities (particularly treasury bills and other government-backed securities) as well as from interest on moneys lent to customers.

The CBN is also empowered under the CBN Act to lend money to Nigerian banks facing liquidity issues on terms and interest rates that it deems fit. To guide banks in the management of their liquidity, the CBN in 2003 issued the Guidelines for the Development of Liquidity Management Policies[49] (the Liquidity Management Guidelines). The Liquidity Management Guidelines seek to monitor banks' liquidity at all times, ensuring that banks maintain adequate and sufficient liquidity to meet the financial obligations of their operations.

Under the Liquidity Management Guidelines, each bank is expected to have a steady cash flow, hold a reasonable stock of liquid assets and have the capacity to borrow. The Liquidity Management Guidelines thus suggest different liquidity management strategies that may be adopted by banks to ensure adequate liquidity, including:

a having a well-defined mix of assets and liabilities;
b diversifying their funding base;
c maintaining an adequate stock of liquid assets; and
d restricting dependence on intra-group liquidity.

49 www.cbn.gov.ng/OUT/CIRCULARS/BSD/2003/BSD-10-2003.PDF.

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VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

There is a broad spectrum of control mechanisms set out in various pieces of legislation that are used to regulate the holding of a substantial stake in a commercial bank. The most instructive of these regulations is the Code of Corporate Governance for Banks and Discount Houses 2014, which provides that an equity holding of 5 per cent and above by any investor shall be subject to the CBN's prior approval. Where this 5 per cent share capital threshold is acquired through the capital market, the bank shall apply for a no objection letter from the CBN immediately after the threshold is reached.

CAMA 2020 also introduced certain disclosure and notification requirements generally applicable to private and public companies. For instance, every person with significant control over, or who is a substantial shareholder[50] in, a Nigerian company (including a bank), is required to make disclosure of that control or shareholding to the company, and the company is required to make a return to the Corporate Affairs Commission in respect of the control or substantial shareholding notification.[51]

The ownership and control of the holding company is also regulated by the HoldCo Guidelines, which provide that the prior approval of the CBN shall be obtained for any shareholding of 5 per cent and above or any change in ownership that results in a change in the control of a financial holding company. In situations where such shares are acquired through the secondary market, the financial holding company shall apply for approval from the CBN within seven days of the acquisition.

The HoldCo Guidelines contain provisions that deal with the ownership, control and permissible activities of HoldCos. Where a HoldCo loses control in one or all of the banking subsidiaries in the group for a period exceeding six consecutive months, the HoldCo shall cease to be a HoldCo for the purposes of the HoldCo Guidelines and will be required to return its licence to the CBN for cancellation.[52] Furthermore, the Guidelines prohibit a HoldCo from engaging in any transaction or maintaining any business relationship with any of its subsidiaries unless the transaction is conducted at arm's length.[53]

ii Transfers of banking business

Following the enactment of the Federal Competition and Consumer Protection Act (FCCPA),[54] the transfer of business activities in Nigeria pursuant to mergers, acquisitions and other forms of business combinations is primarily regulated by the FCCPC, which is empowered to promote and maintain competitive markets in Nigeria.[55] Thus, once a proposed merger or other relevant business combination results in a transfer of control and exceeds certain thresholds stipulated by the FCCPC, that business combination cannot be implemented without first being approved by the FCCPC. However, by virtue of the provisions of BOFIA 2020,[56] it would appear that all business combinations involving banks in Nigeria (including

50 A person is said to have significant control over or be a substantial shareholder of a company if that person holds, directly or indirectly, at least 5 per cent of the shares in that company.

51 See, generally, Sections 119 and 120 of CAMA 2020.

52 Section 4.1(e) of the HoldCo Guidelines.

53 Section 6.2.1(i) of the HoldCo Guidelines.

54 The Federal Competition and Consumer Protection Act (FCCPA) was signed into law on 30 January 2019.

55 Section 1(a) of the FCCPA.

56 Particularly, by the combined reading of Sections 7, 30(1)(c), 53(1) and 65 of BOFIA 2020.

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competition or antitrust issues within the Nigerian banking industry) will now be supervised and approved by the CBN. Although BOFIA 2020[57] provides that the business combination provisions of the FCCPA (contained in Sections 92(1), (2) and (3), 94 and 98) shall apply to business combinations involving banks or other financial institutions, Section 65(3) provides that references to the FCCPC under the aforementioned sections shall be construed as reference to the CBN. Except for in respect of the foregoing, BOFIA 2020[58] provides that the FCCPA shall not apply to any function, act, financial product or financial services issued or undertaken and any transaction by a bank or other financial institution licensed by the CBN. In light of the foregoing, while we are not aware of any business combination involving a bank that has been undertaken or concluded since the enactment of BOFIA 2020 (so as to provide a precedence for the CBN-led approval process), it is apparent from the provisions of BOFIA 2020 that the CBN will now be the primary regulator for business combinations involving banks and other financial institutions.

That said, considering the SEC's position as the primary regulator of public companies in Nigeria, where business combinations (such as mergers and takeovers) involve banks that are public companies, it may also fall within the regulatory purview of the SEC in addition to that of the CBN. For example, the provisions of the Investment and Securities Act 2007 (ISA) that govern takeover bids[59] or the SEC's innate power to make rules and regulations prescribing the procedure and criteria for the approval of takeovers under Section 313(1)(e) of the ISA remain extant. This means that Sections 131 to 151 of the ISA and Rules 445 to 449 of the SEC Rules, which regulate takeovers, are still applicable and will govern any proposed takeover bid for a Nigerian bank that is a public company.

Also, where a bank is publicly quoted on the NSE, the Rulebook of the NSE states that the NSE's consent to the merger must also be obtained.

VII THE YEAR IN REVIEW

The Nigerian banking industry continues to make significant strides and developments. In 2020, the most significant development in banking legislation was the repeal and re-enactment of the principal statute governing the industry (i.e., BOFIA 2020). Highlights of BOFIA 2020 and a summary of other notable events that occurred in the year under review are considered below.

i BOFIA 2020

Additional highlights from BOFIA 2020 are as follows:

a Nigerian banks and other financial institutions are prohibited from granting any unsecured advance, loan or credit facility except for those that conform with the CBN's collateralisation regulations or where the CBN's prior written approval is obtained;[60]

57 Section 65(2).

58 Section 65(1).

59 Sections 131 to 151 of ISA and Rules 445 to 449 of the Securities and Exchange Commission (SEC) Rules govern takeover bids in Nigeria. Section 131 of the ISA and Rule 445 of the SEC Rules require that a takeover bid be submitted to the shareholders of a public quoted company, where a person or group of persons acquires or wishes to acquire a minimum 30 per cent share of such a company with the intention of taking over control of that company.

60 Section 19(1)(c).

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b the Special Tribunal for the Enforcement and Recovery of Eligible Loans has now been established, to adjudicate matters pertaining to the enforcement and recovery of eligible loans[61] as well as to their security or guarantee;[62]

c foreign banks or other entities without physical presence in their country of incorporation, or that are not licensed in that country, or those not affiliated to any supervised financial group that is subject to effective consolidated supervision are not permitted to operate in Nigeria or establish or continue any relationship with Nigerian banks;[63]

d the conditions under which an operating licence can be revoked by the CBN now include situations in which a bank conducts its business in an unsound and unsafe manner, is undercapitalised with a CAR below the prudential minimum, and fails to commence banking operations within 12 months of being granted a licence;[64]

e the CBN now has powers to order a Nigerian bank to divest from subsidiaries in which continued investment, among other things, may jeopardise its financial health;[65] and

f netting provisions have been introduced, such that where a bank or financial institution is a party to a written netting agreement or is subject to any netting rule or practice and goes into liquidation, the provisions of the netting agreement or the applicable netting rule or practice shall be binding on the liquidator in respect of due and mature payment and settlement obligations. This is in tandem with Section 721 of CAMA 2020 and is certainly a welcome development.

ii Response to covid-19

The Nigerian banking system's response to the covid-19 pandemic is also noteworthy in the review of the events of the past year. To mitigate the effects of the pandemic, the Nigerian government (through the CBN) introduced new monetary and fiscal policy measures. These measures include the reduction of interest rates on all applicable CBN intervention loans from 9 per cent to 5 per cent, as well as a one-year moratorium on intervention facilities, the creation of credit facilities targeted at the health sector, the manufacturing sector, micro, small and medium-sized enterprises and households, and the introduction of regulatory forbearance to restructured loans in impacted sectors.

iii Foreign exchange

Due to the drop in international crude oil prices and its attendant impact on the country's foreign reserves, the value of the Nigerian naira dropped significantly in the international market. In response to this, the CBN devalued the Nigerian currency in a bid to bridge the gap and unify the multiple exchange rate windows,[66] among other foreign exchange policy measures, including intermittent foreign exchange liquidity injections into the economy

61 'Eligible loan' is defined to mean 'any credit facility, overdraft, loan, risk asset to the tune of at least [25 million naira] or such other amount as may be prescribed by the CBN which repayment obligations have become due for not less than 90 days and has been designated under the hand of the CBN Governor as being eligible for enforcement and recovery before the Tribunal'.

62 See, generally, Chapter E of BOFIA 2020.

63 Section 3(5) of BOFIA 2020.

64 Section 12(1) of BOFIA 2020.

65 Section 6(3) of BOFIA 2020.

66 See https://fmdqgroup.com for current exchange rates.

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to reduce the pressure on the national currency. The CBN continues to periodically issue guidelines and circulars that set out regulatory measures aimed at stabilising the value of the naira, and curbing currency round-tripping and arbitrage.

iv Repeal and re-enactment of the principal companies' legislation

On 7 August 2020, CAMA 2020 was signed into law, ushering in a robust statutory regime applicable to the affairs of all companies (and other entities captured thereunder) including banks. While most of the innovations introduced by CAMA 2020 are not peculiar to the banking industry, it is imperative to note that CAMA 2020 includes provisions that would enhance the provision of secured credit by banks and other financial or lending institutions. For example, CAMA 2020 provides for the reduction in the perfection costs payable to the Corporate Affairs Commission in respect of registrable security created by a Nigerian company.[67]

v Increased activity in the fintech space

2020 also witnessed increased activities and regulatory engagements within the fintech space. Between 2019 and 2020, Nigeria witnessed a major boost in its reputation as one of the leading African markets leveraging technology to democratise financial services, and the fintech space has continued to witness increased activity and engagement, both regulatory and otherwise. Also, with the covid-19 pandemic, there was a considerable increase in the reliance on digital infrastructure to service the needs of customers. Separately, the CBN also recently published the Payments Licensing Circular,[68] approving new licence categorisations for the Nigerian payments system, which has streamlined licensing under the Nigerian payments system in relation to: (1) switching and processing; (2) mobile money operations; (3) payment solution services; and (4) regulatory sandbox. The Circular brought some clarity to the scope of activities that licence holders within the payments system can undertake.

Another notable event within the fintech space is the CBN's recent directive to all banks and other financial institutions,[69] reiterating the prohibition on dealing in cryptocurrencies or facilitating payments in respect of the same, and directing the closure of all accounts of persons or entities transacting in or operating cryptocurrency exchanges within their system. According to the CBN,[70] the anonymity and lack of identification of cryptocurrency patrons and users encourages illegal activities such as money laundering and terrorism financing, and given that cryptocurrencies are issued by unregulated and unlicensed entities, their use runs against the key mandate of the CBN (under the CBN Act) as the issuer of legal tender in Nigeria. As Nigeria is considered one of the largest markets for cryptocurrencies globally, this directive has impacted cryptocurrency trading in Nigeria.

67 Section 222(12) of CAMA 2020.

68 Dated 9 December 2020.

69 CBN Letter to All Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions dated 5 February 2021 (REF:BSD/DIR/PUB/LAB/014/001).

70 CBN Press Release, 'Response to Regulatory Directive on Cryptocurrencies', dated 7 February 2021.

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VIII OUTLOOK AND CONCLUSIONS

With the introduction of BOFIA 2020 and CAMA 2020 and the continuing development in the banking sector, more efficient operations in banking activities are expected. With the cash reserve requirements retained at 27.5 per cent, increased lending activities within the industry are anticipated.

Furthermore, with the increased activities in the fintech industry, conventional banks will continue to face immense competition from the smaller fintech companies, telecommunications companies and other industry players within the fintech field in relation to the provision of financial services. We expect this to ultimately result in efficiency and the delivery of better service within the financial services sector. In relation to the restriction on trading in cryptocurrencies, while we continue to observe the full reaction of the Nigerian crypto market, it would appear that cryptocurrency trading platforms and exchanges in Nigeria have devised an interim peer-to-peer structure whereby customers or users looking to buy cryptocurrency (buying party) are provided the bank account details of a customer or user looking to sell cryptocurrency (selling party), and instructed to make direct credit of the relevant settlement amount to the selling customer's account, following which the crypto exchange credits the buying party's wallet with the purchased cryptocurrency and debits the selling party's wallet.

In relation to the general economic outlook, although the Nigerian economy slid into recession in the third quarter of 2020, the growth recorded in certain non-oil sectors of the economy (primarily, agriculture and telecommunications) during the fourth quarter offset the sharp drop in oil production, thereby pulling the economy out of recession by the end of the year. Overall, the medium-term outlook for the economy is projected as showing improved prospects of continued recovery, especially in light of the recent moderate increase in crude prices and increased optimism over the procurement and distribution of covid-19 vaccines. The fiscal and monetary authorities are also expected to sustain their interventions through broad-based stimulus and liquidity injections.

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Appendix 1

ABOUT THE AUTHORS

IBRAHIM HASSAN

Banwo & Ighodalo

Ibrahim Hassan's core practice areas are banking and loan syndication, project and corporate finance, securitisation, and corporate and commercial law. He advises international and domestic financial institutions as well as borrowers in various loan syndications and corporate and project finance transactions.

OLUWATOBI PEARCE

Banwo & Ighodalo

Oluwatobi Pearce sits in Banwo & Ighodalo's corporate securities and finance practice group, focusing on project finance and cross-border loan syndications. He enjoys finding practical and innovative solutions to complex legal issues. Tobi brings a charismatic structured approach to solving problems and an unwavering commitment to achieving clients' goals.

BASIRAT RAHEEM

Banwo & Ighodalo

Basirat Raheem is a member of Banwo & Ighodalo's banking and finance practice group. She advises multinational clients on a broad range of legal transactions relating to banking and finance, project finance, asset and share acquisitions and general corporate practice.

DANIEL JAYEOBA

Banwo & Ighodalo

Daniel Jayeoba's core practice areas are banking and loan syndication, financial technology, and project and corporate finance. He advises fintech companies and international and domestic financial institutions as well as borrowers in finance transactions.

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BANWO & IGHODALO

48 Awolowo Road
South-West Ikoyi
Lagos
Nigeria
Tel: +234 906 000 3561 / 3562
+234 805 087 5883
ihassan@banwo-ighodalo.com
opearce@banwo-ighodalo.com
braheem@banwo-ighodalo.com
djayeoba@banwo-ighodalo.com
www.banwo-ighodalo.com

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