

AN ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE CONTROL OF BANKING OPERATIONS IN NIGERIA♦♦

Abstract

Banks are necessary structures that must be in place, for smooth economic transactions to occur. In Nigeria, there have been in existence numerous banks that have contributed to the development of the banking sector. Several of these banks have been phased out due to policies aimed at ensuring that the sector is strengthened to combat the growing economic needs. The presence of a regulator which is the Central Bank of Nigeria has no doubt helped in ensuring that these banks are guided in the right direction. However, despite the available measures, policies and laws that have been made, certain flaws have continued to rear their ugly heads. This paper therefore sets out to investigate by way of analysis the current legal framework of banks and its regulatory institutions in Nigeria. Notably, the paper attempts an highlight of the different kinds of banks in Nigeria while briefly navigating the historical background. An overview of the various bank licences was also considered while an attempt was made to analyse the activities of the various institutions. The above analysis reveals amongst others that there is the need to enhance the legal framework of the banking sector as there are impediments hindering its growth.

Keywords: Banking, Banks, Institution, License, Operation.

1.0 Introduction

Banking in Nigeria has been the case of the proverbial elephant to the six blind men. Various classes of citizens have various experiences and perceive it differently. As far back as history can show, people have been banking albeit under different nomenclatures and circumstances. Banks have come and gone too and the extent to which bank customers suffer the brunt either during the existence or exit of the bank is primarily determined by the legal and institutional framework of the banking operations in the country.

The banking system in any given society is the artery through which economic life blood of the nation runs.¹ Nigeria boasts of one of the strongest banking systems in Africa.²This has necessitated the birth of this paper. The ultimate aim of this paper is to give an in-depth analysis of the legal and institutional framework of banking operations in Nigeria. This is

♦♦ Olukayode O. Aguda, B.A (Ibadan), B.L, LL.B (Unilag), LL.M (Swansea), PhD (Ibadan), Lecturer, Department of Private and Business Law, Faculty of Law, Ajayi Crowther University, Oyo. Email address: kayus2013@gmail.com; o.aguda@acu.edu.ng

¹ Nelson E. Ojukwu-Ogba, (2009), "Banking Sector Reforms in Nigeria: Legal Implications for the Banker-Customer Relationship", < <https://doi.org/10.1080/03050710903387790> on September 2>, 2020.

² C.C. Soludo, 'Nigeria: Update on Banking Sector Reforms', Paper presented by the then Governor of the Central Bank of Nigeria at the Conference on Consolidation of Nigeria's Banking Industry, Abuja, 18-19 November, 2004.

done while also paying attention to the shortcomings and providing recommendations for improvement.

2.0 Definition, Types and Forms of Banks

Banking can be said to be the business of receiving money on deposit, loaning money, discounting notes, issuing notes for circulation, collecting money on notes deposited, negotiating bills, etc.³The case of *Bank v Turner*⁴gives more insight into the meaning of a bank. It could also refer to “the network of institutions and laws that provide a great variety of financial services. At its most basic, banking involves an institution holding money on behalf of customers that is payable to the customer on demand, either by appearing at the bank for a withdrawal or by writing a cheque to a third party.”⁵ Banks also provide loans, trade for their customers, provide investment and insurance services and many more financial services.

As experience has shown worldwide, the failure of the banking sector always invariably leads to the collapse of the economy. This illustration has been seen in USA, Nigeria and Greece where recession in those countries in the past decade emanated from bank failures.⁶ By the Constitution of the Federal Republic of Nigeria, 1999, banking and banking related matters are under the exclusive authority of the federal government. In fact, part 1 of the Second Schedule to the constitution gives the federal government the exclusive authority to make laws and implement the laws it has made with regard to matters connected with bankruptcy and insolvency; banks, banking, bills of exchange and promissory notes; borrowing of monies within or outside Nigeria for the purposes of the Federation or of any state; control of capital issues, currency, coinage and legal tender; and exchange control.⁷

The Black’s Law Dictionary defines bank as a financial establishment for the deposit, loan, exchange, or issue of money and for the transmission of funds.⁸ In *Federal Mortgage Bank of Nigeria v Nigeria Deposit Insurance Corporation*,⁹ the Supreme Court of Nigeria defined a

³ Accessed from <<https://thelawdictionary.org/banking/>> on 31 August, 2020.

⁴ 202 N.C. 162

⁵ Accessed from <<https://financial-dictionary.thefreedictionary.com/Banking> on accessed_September_1, 2020.

⁶ Matthew Enya Nwocha, (2017), “Banking Law and Economic Development in Nigeria: Contributions and Constraints of the Banks and Other Financial Institutions Act”, Beijing Law Review Vol. 8 No. 4, December 2017, doi: 10.4236/blr.2017.84025 accessed from <<https://m.scirp.org/papers/80996>> on 2 September, 2020.

⁷ Items 5,6,7,12,15 and 24 of Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁸ B.A. Garner, (2009), *Black’s Law Dictionary* (9th ed.), St. Paul, MN: West Publishing Co.

⁹ (1999) 2 NWLR (Pt. 59) 333 at 361. This definition has been adopted in subsequent decisions of the Supreme Court such as in *Associated Discount House Ltd. Vs. Amalgamated Trustee Ltd.* (2009) 26 NSCQR 1240 at

bank simply as an organisation or place that provides financial services. Furthermore, a bank is defined to mean a bank licensed under the Act.¹⁰The law proceeds to define banking business as the business of receiving deposits on current account, savings account or other similar account; paying or collecting cheques drawn by or paid in by customers; provision of finance; or such other business as the governor of the Central Bank may by order published in the gazette designate as banking business.¹¹

In modern times, e-banking i.e. electronic banking also exists as part of banking operations. Basically, electronic banking (e-banking) is an umbrella term for the process by which a customer may perform banking transactions electronically without visiting a brick-and-mortar institution. That is, automated delivery of new and traditional banking products and services directly to customers through electronic, interactive communication channels.¹²

2.1 Type Of Bank In Nigeria

- I. Commercial banks
- II. Merchant banks
- III. Microfinance banks
- IV. Primary mortgage banks
- V. Other financial institutions

2.2 Forms Of Bank

- I. State owned banks
- II. Universal banks
- III. commercial and retailbanks
- IV. Investment banks
- V. Other banks: micro-finance banks, non-interest banks, primary mortgage banks

2.3 Duties of a Bank

2.3.1 According to section 16,¹³it is charged with the maintenance of reserve fund as provided under subsection 1(a) and (b) with its sanction in subsection 2.

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¹⁰ Section 61, Bank and Other Financial Institutions Act, 1999, CAP B3, LFN 2004.

¹¹ Ibid

¹² P. Imiefoh, (2012). Towards Effective Implementation of Electronic Banking in Nigeria. *International Multidisciplinary Journal*, Ethiopia, Vol. 6 (2), Serial No. 25.

¹³ Bank and Other Financial Institutions Act, 1999, CAP B3 Laws of Federation of Nigeria, 2004.

2.3.2 Restriction on dividend as stated in section 17¹⁴

3.0 Brief Overview of Banking in Nigeria

Notably, before the emergence of modern banking system, banking operation was manually done which led to a slowdown in settlement of transactions. This manual system involves posting transactions from one ledger to another with human handles. Figures or counting of money which should be done through computers or electronic machine were computed and counted manually which were not 100% accurate thereby resulting to human errors. Most banks back then used only one computer in carrying out transactions which slightly ameliorated the sluggish nature of banking transaction.¹⁵

Studies show that conventional banking system started in Nigeria in 1952.¹⁶ Over the years, banking quickly evolved to accommodate e-banking (Electronic banking) in all its various forms. The first electronic banking services in Nigeria were ATM machines (Automated Teller Machines), which were introduced by some banks in the early 1980's. By the 1990's they went a step further to introduce tele-banking mostly among their corporate customers. These corporate customers were to also enjoy intranet bank services. Basically, what this means is that bank customers could transact business with their banks through their personal computers using a dial up intranet software.¹⁷ Smart cards were later to join the electronic banking offerings of Nigerian banks.¹⁸

Nigeria adopted electronic banking system in the early 2000s. During the introduction of electronic banking system, the use of raw cash was said to have bred corruption through the “cash and carry syndrome” usually linked with the swift movement of “Ghana-must go” bags by some politicians. Such bags as some analysts say, are a major source of corrupt practices as dubious persons seek to bribe their way to avoid been checked in some sensitive areas or places in a corrupt society.¹⁹

¹⁴ Bank and Other Financial Institutions Act, 1999, CAP B3 Laws of Federation of Nigeria, 2004.

¹⁵ I.C. Onodugo, (2015), “Overview of Electronic Banking in Nigeria”, Volume: 2, Issue: 7, 336-342 July 2015 www.allsubjectjournal.com e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762.

¹⁶ I.C. Onodugo, (2015), “Overview Of Electronic Banking In Nigeria”, Volume: 2, Issue: 7, 336-342 July 2015 www.allsubjectjournal.com e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762.

¹⁷ A. B. Zarma, (2001) Electronic Banking: Practices from other Countries, Associated Risks and Implications. Nigerian Deposit Insurance Corporation Quarterly. Vol. 11, Nos. 3&4 pp. 61-102.

¹⁸ M.J. Hilili, (2005) Overview of Electronic Payment Systems in Nigeria: Strategic and Technical Issues Central Bank of Nigeria Bullion, Vol. 29, No.2 pp. 67-79.

¹⁹ I.C. Onodugo, (2015), “Overview Of Electronic Banking In Nigeria”, Volume: 2, Issue: 7, 336-342 July 2015 www.allsubjectjournal.com e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762.

In Nigeria, ATM was conventionally introduced as an electronic delivery channel in 1989, and was first installed by National Cash Registers (NCR) for the defunct Societe Generale Bank of Nigeria (SGBN) in the same year.²⁰

Nigeria is estimated to have a population of 206 million people²¹ which is reflective of the fact that a large portion of that number will bank with various financial institutions. In fact, it has been estimated that thirty-five percent of Nigerian adults now have a registered financial account versus the thirty-seven percent in 2015.²² Nigeria is also a peculiar country in that it is rare to find customers who only have one bank account, regardless of the amount in the account. Banking sector is also a very important aspect of the economy as it contributes immensely either to the growth or otherwise of a country's economy. It is with this in mind that it is important to evaluate and critically analyse the level and effectiveness of control over banking operations in Nigeria.

4.0 Bank Licenses in Nigeria

No person is permitted to carry out any banking business unless it is a company duly incorporated in Nigeria and holds a valid banking license issued under the Banks and Other Financial Institutions Act (BOFIA).²³ This banking license is issued by the Central Bank of Nigeria (CBN) and it authorises a duly incorporated company to engage in banking business in Nigeria.

A banking license can be a commercial banking license, merchant banking license or a specialised banking license.

4.1 Commercial Banking License: this licenses commercial banking operations on a national, regional or international basis and authorises banks²⁴ to take deposits, provide finance and credit facilities, provide retail banking services, deal in foreign exchange, etc.

4.2 Merchant Banking license: this license allows financial institutions to provide specialist services such as wholesale banking or investment banking services as set out in guidelines.²⁵

²⁰ Ibid.

²¹ As of September 1, 2020 based on Worldometer elaboration of the latest United Nations data accessed at <<https://www.worldometers.info/world-population/nigeria-population/>> accessed on 1 September, 2020.

²² Accessed from <<https://www.finclusion.org/file/reports>> accessed on September 1, 2020.

²³ Section 3, Banks and other Financial Institutions Act, CAP B3, Laws of the Federation of Nigeria, 2004.

²⁴ par. 3 CBN Scope Conditions and Minimum Standards for Commercial Banks Regulations No 01, 2010.

²⁵ Guidelines made under the CBN Scope, Conditions and Minimum Standards for Merchant Banks Regulations No. 02, 2010).

4.3 Specialised Banking License: specialised banks include non-interest banks, microfinance banks, development banks, mortgage banks and any other banks designated by the Central Bank of Nigeria.

4.4 Foreign Exchange Authorised Dealership license: this is issued by the Central Bank of Nigeria and permits the holder to deal in foreign currency and provide exchange services in the Nigerian foreign exchange market subject to the requirements of the Foreign Exchange (Monitoring & Miscellaneous Provisions, etc) Act among others and CBN Regulations made under it.

4.5 Certificate of Registration as a Capital Market Operator: this is issued by the Securities and Exchange Commission (SEC) and permits the holder to operate in the Nigerian capital market and carry on investments and securities business in Nigeria.

5.0 Framework for Control of Banking Operations in Nigeria

The primary legislation for the regulation of banks in Nigeria is the Banks and Other Financial Institutions Act (BOFIA) which, with the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act), gives the Central Bank of Nigeria (CBN) powers to supervise and regulate banks and other financial institutions in Nigeria. Prior to its amendment on 22 July, 2020, the Banks and Other Financial Institutions Act (BOFIA) was enacted in 1991. The new amendment has given the CBN Governor the power to impose and review penalties on prevalence of infractions in the banking sector to a maximum amount of ₦100 Million.²⁶

The new amendment has also allowed for creation of a special tribunal for the enforcement and recovery of eligible loans as well as the speedy resolution of loan related matters.

Apart from these two legislations, there are other instruments which are occasionally consulted as part of the legal framework for controlling banking operations in Nigeria. They are:

5.1 Companies and Allied Matters Act (CAMA)²⁷ which regulates companies generally. The CAMA is an Act to establish the Corporate Affairs Commission, provide for incorporation of companies and incidental matters, registration of same, amongst other things.

²⁶ Adekunle Abiona, (2020), “Senate Passes BOFIA Amendment Act after 29-years”, accessed from <<https://businesstraffic.com.ng/senate-passes-bofia-amendment-act-after-29-years/>> on 1 September, 2020.

²⁷ Cap 59, Laws of the Federal Republic of Nigeria 1990. This legislation is not reflective of the latest amendment but it is the CAMA prior to 7 August 2020.

5.2 Nigerian Deposit Insurance Corporation Act, 2006: this Act is responsible: for issuing all deposit liabilities of licensed banks. What deposit liabilities basically mean is “the money that people and companies have put into banks, and that banks will have to pay back at some time in the future whereas; the duty of the bank is to ensure that their assets are worth enough to meet their deposit liabilities”.²⁸

5.3 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act,²⁹ which established the Autonomous Foreign Exchange Market and provides the regulatory framework for foreign exchange transactions in Nigeria. Trading in the foreign exchange market is one of the dealings of a bank; however the foreign exchange market in itself is not one without its peculiarities. It is due to these peculiarities that it requires a separate legislation to address concerns emanating from it as well as regulate the actions of the actors in that market.

5.4 The failed Bank (Recovery of Debt and Financial Malpractice in Banks) Act No. 18 of 1994- which was promulgated to check the cases of money laundering and insider abuses by bank officials in the country.

5.5 Consumer Protection Council Act also deals albeit with restriction with e-banking complaints.³⁰

Since, its inception, there have been some concerns over BOFIA which calls for close attention, they are:

5.6 Over regulation: the provision in section 1 that the license can be revoked or additional condition added with penal sanctions for non-compliance may result in the uncertainty which the Act was enacted to prevent. This is reflective of too much discretionary power assigned by the act to the governor of the CBN.

5.7 Section 12 (1) with the use of “may” makes it discretionary rather than obligatory for the governor of the CBN upon the approval of the Board of Directors to revoke the operating license of any bank that commits any of the infractions listed under section 12.

5.8 The power conferred by the BOFIA on the president to proscribe any trade union if he thinks that their activities are disruptive of the economy should be reversed as it gives autocratic tendencies. A president may view workers’ agitation for better welfare or their

²⁸ Accessed from <<https://www.idoceonline.com/deposit-liabilities>> on 1 September, 2020.

²⁹ CAP F34 (Decree No 17 of 1995), Laws of Federation of Nigeria, 2004.

³⁰Orifowomo, Odunola Akinwale, (2015), “*Legal Implications of Electronic Banking in Nigeria*”, accessed from <<https://ir.oauife.edu.ng/handle/123456789/3093>> 28 August, 2020.

embarkation on strikes as disruptive of the economy and as such unilaterally proscribe their union which would long term not be in the interest of the economy. This power should be left to the judiciary.

5.9 Section 41 (5) which talks about conviction, fine and imprisonment for erring officers cannot be done except by the court of law without raising constitutional problems.³¹

5.10 Since Community banks are also specialised banks just like a dozen others, section 52 should be amended such that they are not exempted as this will create a weak end of the chain.

5.11 In sections 53 and 54 of BOFIA, section 53 provides that BOFIA shall apply without prejudice to the Companies and Allied Matters Act as it relates to banks and to winding up by the Federal High Court.³² By ordinary interpretation, this means that the provisions of BOFIA shall not obstruct the application of the Companies and Allied Matters Act with regard to the above subject matter. But, not only are the rules laid down by both Acts for winding up of companies and the role of the Federal High Court different, section 53 (2) of BOFIA curiously declares that where both Acts conflict, the provisions of BOFIA shall prevail. This is quite ambiguous and contradictory especially seeing as the declaration is not supported by any legal authority with regard to the hierarchy of legislations in Nigeria. If anything, both the Companies and Allied Matters Act and the Banks and Other Financial Institutions Act are of equal status in the legislative hierarchy and it would not be in the position of any to claim superiority. The same things occurred in section 54 of BOFIA where superiority was also claimed over the Nigerian Deposit Insurance Corporation.

6.0 Institutional Framework for Control of Bank Operations in Nigeria

Other than these legislations put in place for control, there are also certain regulators which serve as the institutional framework for the control of banking operations in Nigeria. They are the lead bank regulators. The lead bank regulator is the Central Bank of Nigeria (CBN) which was established by the Central Bank of Nigeria (Establishment) Act.³³

³¹ For instance section 36(1) of the Constitution of Nigeria, 1999, provides that in determining a person's civil rights and obligations, such a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. Similarly, section 36(4) of the constitution states that whenever a person is charged with a criminal offence, he shall be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

³² The Companies and Allied Matters Act, 1990, a legislation just like the BOFIA.

³³ Kofo Dosekun, Oludare Senbore, (2018), "Banking Regulation in Nigeria: Overview", accessed from [https://uk.practicallaw.thomsonreuters.com/w-007-9148?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-007-9148?transitionType=Default&contextData=(sc.Default)&firstPage=true) on 31 August, 2020.

The CBN derives its powers from section 1 of part 1 of BOFIA. Section 2(1) states that nobody can carry on any banking business in Nigeria without a valid banking license. The punishment in subsection 2 is imprisonment for a term not exceeding 10 (ten) years or to a fine of 2,000,000.00 or to both such imprisonment and fine.

The procedure for obtaining a license is stipulated under section 3. The CBN may also revoke such license or input additional conditions. This also extends to opening of branches both within and outside writing which requires that there be prior consent in writing, section 6 with subsection 2 providing for its sanction which is a done not exceeding 2,000,000.00 and a fine of 100,00.00 “for each day which the offence continues”.³⁴

The principal objectives of the CBN are to:³⁵

6.1 Ensure monetary and price stability.

6.2 Issue legal tender currency.

6.3 Maintain external reserves to safeguard the international value of the currency.

6.4 Promote a sound financial system.

6.5 Act as banker and provide economic and financial advice to the Federal Government.

Under the Banks and Other Financial Institutions Act (BOFIA), the Central Bank of Nigeria is responsible for granting banking licenses to carry on the business of banking and for supervising and regulating banks and other financial institutions.

The Central Bank of Nigeria is also responsible for the supervision and monitoring of the Autonomous Foreign Exchange Market and has the power to issue guidelines under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act. The Central Bank of Nigeria regularly issues circulars and guidelines in line with its oversight responsibilities over banks, other financial institutions and the foreign exchange market.

The CBN also has the powers to intervene when as a result of its various examinations and supervisory powers it considers that a bank is failing by directing that the management and control of the bank should be turned over to the Nigerian Deposit Insurance Corporation (NDIC).

³⁴ This is as per BOFIA 1999 B3 LFN 2004 and not the new amendment.

³⁵ (section 2, CBN Act)

In 2018, the CBN issued a number of Corporate Governance Codes (the “Codes”),³⁶ these include:

6.6 Code of Corporate Governance for Finance Companies: aims to promote efficiency and transparency in the financial services business to ultimately build public confidence and attract investments.

6.7 Code of Corporate Governance for Microfinance Banks: upholds ethical standards, outlines the standard corporate governance criteria for licensed Microfinance Banks (MFBs) and enhances public confidence in the MFBs.

6.8 Code of Corporate Governance for Bureaux De Change: complements existing guidelines that regulates the Bureaux de Change and addresses issues or factors that affect the operations of the ecosystem.

6.9 Code of Corporate Governance Development Finance Institutions (DFIs) exercise safe practices and business prudence in the provision of financial support services to critical sectors of the economy.

6.10 Code of Corporate Governance for Primary Mortgage Banks: upholds ethical standards, outlines the standard corporate governance criteria for licensed Primary Mortgage Banks (PMBs) and enhances public confidence in the PMBs.

6.11 Code of Corporate Governance for Mortgage Refinance Company: applies to all licensed Mortgage Refinance Company (MRC) and is a guide on the governance structure of an MRC.

These codes provide for the governance structure and cover issues such as board and management, shareholders, rights of other stakeholders, disclosure and transparency, risk management, ethics, professionalism and conflict of interest, compliance and sanctions. These codes were issued on 24th October, 2018; they came into effect on 1st April, 2019.

The CBN Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations (the “Regulation”) is the collaborative effort of the CBN and the Office of the Attorney General of the Federation for an administrative sanctions

³⁶ Genevieve Henshaw, (2019) “Nigeria: Regulatory Summary of 2018- Banking & Finance” accessed from <<https://www.mondaq.com/nigeria/financial-services/852992/regulatory-summary-of-2018-banking-finance>> accessed September 2, 2020.

regime for financial institutions under the supervision of the CBN. The Regulation outlines forty eight (48) actions required for anti-money laundering and combating the financing of terrorism (AML/CFT) for banks and other financial institutions as well as the administrative sanctions for default. The Regulation is sequel to the requirements of the Financial Action Task Force (FATF) Recommendation.

Section 32 of BOFIA also empowers the CBN to conduct special examinations where:

- a. Bank cannot meet its liabilities
- b. Bank contravenes the provisions of the BOFIA
- c. Such examination would be in the interest of the depositors and the general public

An application is made to the governor by a director, shareholder, depositor or creditor of the bank and the CBN Governor deems it necessary to conduct such examination.

In cases of revocation of license, Nigerian courts have had ample opportunity to interpret the revocation of license by the CBN³⁷ as seen in the case of *Savannah Bank of Nigeria v CBN and Ors*,³⁸ *NDIC v CBN & Anor*,³⁹ *CBN v Industrial Bank Ltd*⁴⁰ all with a requirement of bad faith. This power of abrupt revocation has been seen as one of the reasons for uncertainty in the banking sector.

Other institutions are:

6.12 The Monetary Policy Committee (MPC) was established pursuant to section 12 of the CBN Act. The role of the Monetary Policy Committee is to facilitate price stability and to support the economic policy of the Federal Government. The MPC is responsible for formulating monetary and credit policy for the Nigerian financial system.

³⁷ Ifedayo Adekeye, (2018), "The Impact of Section 53 (1) of BOFIA on the Ability to Challenge the Revocation of a Banking License in Nigeria", accessed from https://www.researchgate.net/publication/333224185_THE_IMPACT_OF_SECTION_53_1_OF_BOFIA_ON_THE_ABLITY_TO_CHALLENGE_THE_REVOCATION_OF_A_BANKING_LICENCE_IN_NIGERIA> accessed on September 1, 2020.

³⁸ (2006) 6 NWLR (PT 1137) 237-The Appellant filed an action against the CBN & 2 Ors challenging the revocation of its banking license by the CBN. The trial court dismissed the action stating that it has no jurisdiction to entertain same due to the fact that no bad faith was alleged as provided under section 53(1) of BOFIA.

³⁹ (2012) 1 BFLR Pg. 446- the 2nd Respondent (Republic Bank Limited) commenced an action at the lower court for the reinstatement o its banking license that was revoked by the 1st Respondent (CBN). The trial court held that it lacked jurisdiction to entertain the suit since no element of bad faith was shown in the revocation of the licence by the CBN. The 2nd Respondent appealed to the Court of Appeal where the appeal was allowed, the Appellant subsequently appealed to the Supreme Court.

⁴⁰ (1997) 9 NWLR (Pt. 522) 712.

6.13 The Nigerian Deposit Insurance Corporation (NDIC) is responsible for insuring all deposit liabilities of licensed banks and other deposit taking financial institutions operating in Nigeria and assisting monetary authorities in formulating and implementing banking policy to ensure sound banking practice and fair competition among financial institutions.

6.14 The Corporate Affairs Commission (CAC): under the Companies and Allied Matters Act, the Corporate Affairs Commission has regulatory powers over all registered companies in Nigeria including banks and other financial institutions particularly in respect of certain statutory filings required by them.

6.15 The Financial Reporting Council of Nigeria (FRCN) was established under the Financial Reporting Council of Nigeria Act and has the powers to enforce compliance with accounting, auditing, corporate governance and financial reporting standards. The Financial Reporting Council of Nigeria also develops and publishes accounting and financial reporting standards for the preparation of financial statements of public interest entities, which includes banks, and other financial institutions.

6.16 Financial Services Regulations Co-ordinating Committee was established by the CBN Act to co-ordinate the supervision of financial institution and to articulate the strategies for the promotion of safe, sound and efficient practices by financial intermediaries. The members of the Financial Services Regulations Co-ordinating Committee are:

- a. The Governor of the Central Bank of Nigeria, who chairs the committee.
- b. The Managing Director of the Nigerian Deposit Insurance Corporation (NDIC).
- c. The Director-General of the Securities and Exchange Commission (SEC).
- d. The Commissioner for Insurance.
- e. The Registrar-General of the Corporate Affairs Commission.
- f. A representative of the Federal Ministry of Finance and below the rank of a Director.
- g. Auditors: the role of auditors (internal and external) include financial checks, operational accounting, evaluation and reviewing of the system of internal control of the banks to ensure they are line with the applicable standards set by the CBN and other regulatory authorities.

7.0 Other Regulators

Every bank must have a committee responsible for oversight of risk management and audit functions.⁴¹ Every bank must have a risk management framework specifying the governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risks inherent in its operations.

8.0 International Standards

On December 10 2013, the Central Bank of Nigeria (CBN)⁴² issued guidance notes for the implementation of Basel II/III in Nigeria (Guidance Notes on Regulatory Capital Measurement and Management for the Nigerian Banking System; Basel Guidance Notes) the Basel Guidance Notes sets its basic approaches to be adopted by banks for the computation of credit risk, market risk and operational risk.

9.0 Recommendations and Conclusion

Even though already in place are some legal and institutional framework to control banking operations in Nigeria, there is always more to do. Starting with up-to-date legislation and subject specific regulation where none existed before. It is important to note that legal framework will be more effective when it is specific to a particular subject matter while too many institutions will only lead to mediocrity as duties will overlap. Notwithstanding, specific regulation targeted at specific subject matter is highly recommended.

There is need for good regulation as legislative mandate, which implies that a regulatory framework derives authorisation from an elected legislature, is one of the essential criteria of good regulatory regimes.⁴³ Good regulation must also satisfy four additional criteria. These are one, accountability and control, which underscores the need for regulators to be properly accountable. Two, due process, which presupposes support for regulation because the procedures are fair, open, and accessible. Three, regulatory expertise, which denotes trusted regulator judgment based upon specialised knowledge, skills, and experience; and four, efficiency, which implies that the legislative mandate in support of a regulatory regime is being implemented effectively.⁴⁴

⁴¹ (par 2.5.1, CBN Code of Corporate Governance for Banks and Discount Houses).

⁴² Accessed from www.cbn.gov.ng on 7th September 2020.

⁴³ R. Baldwin, M. Cave and M. Lodge Understanding Regulation Theory, Strategy and Practice (2nd ed. 2012 OUP) at 25.

⁴⁴ R. Baldwin, M. Cave and M. Lodge Understanding Regulation Theory, Strategy and Practice (2nd ed. 2012 OUP) at 25-39.

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This paper has attempted an analysis of both the legal and institutional framework i.e. laws and authorities in charge of the control of banking operations in Nigeria. Some of the shortcomings have been highlighted and recommendations made as to how these weaknesses can be turned into strengths. Finally, the plethora of laws and institutions in charge of this control may have been doing more harm than good, as some institutions perform overlapping functions such as the CBN⁴⁷ and NDIC⁴⁸ in situations of supervision, control and Management of distressed banks in Nigeria perhaps even bank licensing.

Thus mergers should occur where necessary and creation of subject specific regulation and/or institutions also where necessary in order to grab a hold of the reins of control of banking operations in Nigeria.

⁴⁵R. Baldwin, M. Cave and M. Lodge Understanding Regulation Theory, Strategy and Practice (2nd ed. 2012 OUP) at 25.

⁴⁶R. Baldwin, M. Cave and M. Lodge Understanding Regulation Theory, Strategy and Practice (2nd ed. 2012 OUP) at 25-39.

⁴⁷ Collins Nweze, (2020), "BOFIA Amendment: Licensing, supervision of banks divide CBN, NDIC" accessed from <https://thenationonlineng.net/bofia-amendment-licensing-supervision-of-banks-divide-cbn-ndic/amp/> on September 2, 2020.

⁴⁸ Babajide Komolafe, (2020), "BOFIA Amendment: NDIC, CBN clash over authority to manage distressed banks", accessed from <https://www.vanguardngr.com/2020/07/bofia-amendmentndic-cbn-clash-over-authority-to-manage-distressed-banks/amp/> on September 2, 2020.