



## GOVERNANCE AND COMPLIANCE DIGEST

# REGULATORY COMPLIANCE IN THE BANKING INDUSTRY PART (2)

### REGULATORY COMPLIANCE IN THE BANKING INDUSTRY

Flowing from the last article where we looked into the first part of *Regulatory Compliance In The Banking Industry* which embodied the importance of compliance with banking regulations in Nigeria, we shall now delve into the various supervisory provisions that regulates and directs the affairs and operations of banks in Nigeria.

The Primary regulation of the Banking Sector is the Banks and other Financial Institution Act, 2020 (BOFIA or the Act) while the Primary regulator of the Banking Sector is the Central Bank of Nigeria (CBN). The Act grants the CBN the power and authority to supervise and regulate all banks and other financial institutions in Nigeria. Other laws regulating banking activities in Nigeria include the Central Bank of Nigeria Act 2007, the Nigerian Deposit Insurance Corporation Act, Companies and Allied

Matters Act 2020, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995, The Nigerian Deposit Insurance Corporation Act 2006, etc.

## LAWS THAT REGULATE THE BANKING INDUSTRY

### Banks and Other Financial Institutions Act, 2020

In November 2020, the new BOFIA was signed into law by President Muhammadu Buhari, 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). However, based on the provisions of BOFIA 2020, all business combinations involving banks in Nigeria are now primarily supervised and approved by the CBN.

Another key highlights of BOFIA 2020 is the provision 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.



Regarding the application for the grant of a banking licence, section 3(3) of the BOFIA 2020 gives the CBN Governor absolute powers to refuse to grant a banking licence without providing reasons.

On the operation of unlicensed foreign banks, no entity shall undertake any banking business in Nigeria unless it is duly incorporated in Nigeria and holds a banking licence issued by the CBN. Section 3 (5) & (6) stipulates that *“Any foreign bank or other entity which does not have a physical presence in its country of incorporation, or is unlicensed in its country of incorporation and is not affiliated to any financial services group that is subject to effective consolidated supervision, shall not be permitted to operate in Nigeria and no Nigerian bank shall establish or continue any relationship with such a bank.”*

Furthermore, 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 register a limited liability company in Nigeria and obtain a banking licence. 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. Foreign banks may also apply to the CBN for a licence to open and operate a representative office in Nigeria.

### **The Central Bank Of Nigeria Act 2007**

The current legal framework within which the CBN operates is the CBN Act of 2007 which repealed the previous CBN Acts and all their amendments. The CBN is charged with the overall control and administration of the monetary and financial sector policies of the Federal Government in Nigeria as stipulated by the CBN Act of 2007.

Section 2 of the Act stipulates the objectives of the CBN which includes to ensure monetary and price stability, issuing legal tender currency, maintaining external reserves to safeguard the international value of the legal tender currency, promoting a sound financial system in Nigeria; and act as a bank and provide economic and financial advice to the Federal Government.

The Act also empowers CBN to issue guidelines and circulars relating to its responsibility to banks, foreign exchange market, and other financial institutions. The CBN Scope, Conditions and Minimum Standards for Commercial Banks Regulations No 1, 2010 provides that the minimum paid-up share capital to be maintained for a National level banking license is 25 Billion Naira or any such amount that may be prescribed by the CBN, while for a Regional Banking License is 10 Billion Naira and International Commercial Banking License is 50 Billion Naira.

A commercial bank with regional banking authorization is entitled to carry on its banking business operations within a minimum of six (6) and a maximum of twelve (12) States of the Federation, which lies within not more than two (2) geographical zones of the Federation as well as within the Federal Capital Territory. While a commercial bank with national banking authorization is entitled to carry on its banking business operations in every State of the Federation. A commercial bank with international banking authorization, on the other hand, is entitled to carry on its banking business operations within all States of the Federation as well as maintain an offshore banking operation in the jurisdiction of its choice, which will be subject to the approval of the CBN and compliance with the regulatory requirement of the host country.



## **The Companies and Allied Matters Act, 2020**

This Act establishes the Corporate Affairs Commission (CAC), which is charged with the regulatory powers over all registered companies in Nigeria, including banks and other financial institutions. The Corporate Affairs Commission is responsible for the incorporation of all corporate entities in Nigeria, including banks and other financial institutions;

Under CAMA, certain corporate governance principles were introduced which require a public company to have at least three independent directors and prohibit a person from being a director in more than five public companies. These provisions apply to a bank registered as a public company.

As earlier mentioned, to operate a financial institution or banking business in Nigeria, one has to be duly registered and incorporated under the CAMA. This is why this Act governs banking activities.

CAMA also provides various regulations and compliances that banks must follow from issuance of shares to meetings of companies, among others. CAMA stipulates that every registered company must file annual returns with the CAC as a mandatory requirement to which the Banks must adhere.

## **The Nigerian Deposit Insurance Corporation Act 2006**

This Act established the Nigeria Deposit Insurance Corporation (NDIC) which 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. Guaranteeing payment to depositors and assisting monetary authorities in the formulation and implementation of banking policies.

The Act seeks to ensure that liquidation proceeds carried out by banks are orderly. The NDIC takes over the management and control of a failing bank and ensures the efficient closure of the failed bank and financial institutions without any disruption of the banking system. It also ensures the cost-effective realisation of assets and settlement of claims to depositors, creditors, and shareholders.

## **Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995 (FEMM Act)**

This Act provides the regulatory framework for foreign exchange transactions and controls. Transactions in the foreign exchange market must be conducted in convertible foreign currency, and specific money instruments are listed for use in the market.

## **The Financial Reporting Council of Nigeria (FRCN)**

The FRCN 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.

## **The Securities and Exchange Commission (SEC)**

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

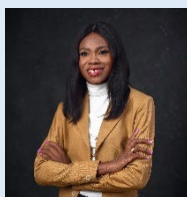
## Conclusion

The banking industry in Nigeria operates under a comprehensive regulatory framework governed by various laws and overseen by regulatory bodies such as the Central Bank of Nigeria and the Nigerian Deposit Insurance Corporation. These regulations ensure the stability, transparency, and accountability of banks while promoting investor confidence and economic growth. Compliance with these regulations is crucial for the effective functioning of banks and the overall health of the financial system in Nigeria.

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