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BANKS AND OTHER FINANCIAL INSTITUTIONS ACT, 2020



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BANKS AND OTHER FINANCIAL INSTITUTIONS ACT, 2020

ACT No. 5

AN ACT TO REPEAL THE BANKS AND OTHER FINANCIAL INSTITUTIONS ACT, CAP. B3, LAWS OF THE FEDERATION OF NIGERIA, 2004 AND ENACT THE BANKS AND OTHER FINANCIAL INSTITUTIONS ACT, 2020 TO, AMONG OTHER THINGS, REGULATE AND SUPERVISE BANKING AND BUSINESS OF OTHER FINANCIAL INSTITUTIONS IN NIGERIA ;
AND FOR RELATED MATTERS.

[12th Day of November, 2020]

Commence-
ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria—

CHAPTER A—BANKS

PART I—LICENSING AND OPERATION OF BANKS

1.—(1) The Central Bank of Nigeria (in this Act referred to as “the Bank”) shall have all the functions and powers conferred and duties imposed on it by this Act.

Functions.
powers and
duties of the
Central Bank
of Nigeria.

(2) The Bank may authorise or instruct any officer or employee of the Bank to perform any of its functions, exercise any of its powers or discharge any of its duties under this Act.

(3) The Bank may, either generally or in any particular case, appoint any person who is not an officer or employee of the Bank to render such assistance as it may specify in the exercise of its powers, the performance of its functions or the discharge of its duties under this Act, or the Central Bank of Nigeria Act, or to exercise, perform or discharge the functions and duties on behalf of, and in the name of, the Bank.

Act No. 7.
2007.

2.—(1) No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under this Act.

Banking
business.

(2) Any person who carries on banking business in Nigeria without a valid licence under this Act, commits an offence and is liable on conviction to—

- (a) imprisonment for a term of not less than five years ;
- (b) a fine of not less than of ₦50,000,000 ;
- (c) two times the cumulative deposits or other amount collected ; or
- (d) both imprisonment and fine.

(3) For the purpose of subsection (2), “any person” includes a body corporate, its promoters, directors, managers, or officers that are in any way connected with superintending, directing or managing the affairs of the company.

(4) For the purpose of refunding the deposits to account holders in subsection (2), the Bank may direct that the money be deposited with a licenced bank appointed for that purpose who shall undertake the refund and report thereon to the Bank.

(5) For the purposes of this Act, a person is deemed to be receiving money as deposits and thus, conducting banking business if the person—

(a) accepts deposits from the general public as a feature of its business or if the person solicits for deposits orally, electronically or through any form of advertisement or otherwise by any other means ; or

(b) receives money as deposits which is limited to fixed amounts, or for which certificates or other instruments are issued in respect of such amounts providing for the repayment to the holder, either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates, or for the payment of interest, dividend, profit or fees on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable :

Provided that the receiving of money against any issue of shares, debentures or non-interest bearing instruments offered to the public in accordance with any enactment in force within the Federation is not deemed to constitute receiving money as deposits for the purpose of this Act.

Application
for grant of
licence.

3.—(1) Any person desiring to undertake banking business in Nigeria shall apply in writing to the Governor for the grant of a licence and shall accompany the application with—

(a) a feasibility report for the proposed bank, including financial projections for at least five years ;

(b) a draft copy of the memorandum and articles of association of the proposed bank ;

(c) a list of the shareholders, directors and principal officers of the proposed bank and their particulars ;

(d) where the application is in relation to non-interest banking, a list of experts on non-interest banking or finance that will serve as its advisory committee of experts ;

(e) the prescribed application fee; and

(f) such other information, documents and reports as the Bank may specify.

(2) After the applicant company has provided all such information, documents and reports as the Bank may require under subsection (1), the shareholders of the proposed bank shall deposit with the Bank a sum equal to

the minimum paid-up share capital that may be applicable under section 9 of this Act

Upon the payment of the sum referred to under subsection (2), the Governor may, with the approval of the Board, issue a licence with or without conditions or refuse to issue a licence, and the Governor need not give any reason for such refusal.

(4) Where a licence is granted, the Bank shall duly notify the applicant and upon being notified, the applicant shall pay the prescribed licence fee within the time stipulated by the Bank.

(5) Any foreign bank or other entity which does not have a physical presence in its country of incorporation, or which is not licensed in its country of incorporation and which 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 bank or other entity.

(6) Any bank that contravenes subsection (5) is liable to a penalty of not less than ₦20,000,000 and to an additional penalty of ₦500,000 for each day the contravention continues.

4.—(1) The Bank may invest any sum deposited with it pursuant to section 3 (2) of this Act in treasury bills or such other securities or where the sum is deposited in pursuance of an application for a non-interest bank in non-interest bearing securities or similar non-interest banking compliant product or investment, until such a time as the Governor shall decide whether or not to grant a licence.

Investment and release of prescribed minimum share capital.

(2) Where the sum deposited is invested in pursuance of subsection (1) and a licence is not granted, the Bank shall repay the sum deposited to the—

(a) applicant together with the investment income after deducting administrative expenses and tax on the income ; or

(b) licenced institution together with the investment income and the investment income shall be treated as income of the licenced institution.

5.—(1) The Bank may vary or revoke any condition subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.

Power to revoke or vary conditions of license.

(2) Where the grant of a licence is subject to conditions, the bank shall comply with those conditions to the satisfaction of the Bank within such period as the Bank may deem appropriate in the circumstances.

(3) Any bank which fails to comply with any of the conditions of its licence commits an offence and is liable on conviction to—

(a) a penalty of not less than ₦20,000,000 ; and

(b) an additional penalty of ₦500,000 for each day during which the condition is not complied with.

(4) Where the Governor proposes to vary, revoke or impose fresh or additional conditions on a licence, the Governor shall, before exercising such power, give notice of his intention to the bank concerned and give the bank an opportunity to make representation to him thereon.

(5) Any bank which fails to comply with any fresh or additional condition imposed in relation to its licence is liable to—

(a) a penalty of not less than ₦5,000,000 ; and

(b) an additional penalty of ₦100,000 for each day during which the fresh or additional condition is not complied with.

(6) Any person who, being a director, manager or officer of a bank fails to take reasonable steps to secure compliance with any of the conditions of the licence of the bank, commits an offence and is liable on conviction to imprisonment for a term of not less than three years or a fine of not less than ₦2,000,000 or both.

Opening and
closing of
branches.

6.—(1) No bank shall open or close any branch office, cash centre or representative office anywhere within or outside Nigeria except with the prior written consent of the Bank.

(2) Any bank intending to close any of its branches or subsidiaries outside Nigeria shall give notice in writing to the Governor of its intention, at least six months before the date of the intended closure or within such shorter period as the Governor may, in any particular case, allow.

(3) The Bank may direct any bank to divest from any of its subsidiaries where the Bank determines that the continued investment of a bank imperils the financial health of the bank, or where the Bank determines that the oversight by the bank, or supervision by the host regulator over such subsidiary is not adequate relative to the risks the subsidiary presents, or if the Bank cannot gain access to the information required to assess the risk posed to a bank by such subsidiary on a continuous basis.

(4) Any bank which contravenes the provisions of subsections (1) or (2) or which fails to comply with a directive of the Bank made under subsection (3) is liable to a penalty of not less than ₦5,000,000 and an additional penalty of ₦100,000 for each day during which the contravention continues.

(5) Without prejudice to the provisions of subsection (4), the Governor may order the—

(a) closure of any branch office, cash centre or representative office or any other banking outlet opened without the prior written consent of the Governor in contravention of subsection (1) or (2); or

(b) re-opening of any branch office, cash centre or representative office or any other banking outlet closed without the prior written consent of the Governor in contravention of subsection (1).

7.—(1) Except with the prior written consent of the Governor, no bank shall enter into an agreement or arrangement—

(a) which results in—

(i) a change in the control of the bank, or

(ii) the transfer of a significant shareholding in the bank;

(b) for the sale, disposal or transfer of the whole or any part of the business of the bank;

(c) for the amalgamation or merger of the bank with any other person;

(d) for the restructuring, reconstruction or re-organisation of the bank; or

(e) to transfer the whole or any part of the business of the bank to any agent.

(2) Where a bank proposes to enter into any agreement or arrangement under subsection (1), the Bank may, on the application of any of the banks to be affected, order separate meetings of the banks to be summoned in such manner as the Bank may direct.

(3) Any transaction in contravention of subsection (1) is void and any transfer of interest thereunder shall be ineffectual except where such transaction is subsequently ratified in writing by the Bank.

(4) The Bank may approve an agreement or arrangement covered by subsection (1) if the Bank is satisfied that—

(a) such agreement or arrangement is not likely to cause a restraint of competition, or tend to create a monopoly in the banking industry;

(b) the significant shareholders or directors of the bank that results from the agreement or arrangement are not disqualified under section 47 of this Act;

(c) the agreement or arrangement is consistent with public interest; and

(d) the bank that results from the agreement or arrangement meets the capital requirements prescribed under sections 9 and 13 of this Act.

Restructuring,
reorganisation,
merger and
disposal, etc.
of banks.

(5) Upon the grant of a new banking licence by the Bank to a bank which results from the agreement or arrangement in subsection (1), all the assets and liabilities of the banks that are parties to the agreement or arrangement shall, by virtue of the grant of the new banking licence, be transferred to and become the assets and liabilities of the new bank.

Cap. 18.
LFN 2018.

(6) The provisions of this Act apply notwithstanding the provisions of the Federal Competition and Consumer Protection Act.

(7) Any person who contravenes subsection (1), commits an offence and is liable on conviction to a penalty of not less than ₦20,000,000 and in the case of a continuing breach, to an additional penalty of ₦500,000 for each day during which the contravention continues.

Operations
of foreign
banks in
Nigeria and
offshore
banking.
Cap. 59.
LFN. 2004.

8.—(1) Except with the Prior approval of the Bank, a foreign bank shall not operate branch offices or representative offices in Nigeria.

(2) Without prejudice to the provisions of Nigeria Processing Zones Authority Act or any other related enactment or law, the Bank may, subject to such conditions as it may impose, grant to any bank registered in Nigeria or a foreign bank licensed to undertake domestic or off-shore banking business within a designated free trade or special economic zone in Nigeria.

(3) A bank or other person shall not undertake offshore banking business from Nigeria except with the prior approval of the Bank.

(4) For the purpose of subsections (2) and (3), the term, “offshore banking”, means the provision from within Nigeria of cross-border intermediation of funds and the provision of banking and financial services to non-residents of Nigeria, other than non-residents that are Nigerian citizens.

Cap. N117.
LFN. 2004.

(5) Subject to the provisions of subsection (1), nothing in the provisions of the Nigerian Investment Promotion Commission Act or any other law or enactment, shall be construed as authorising any person, whether as a citizen of Nigeria or a non-Nigerian, to carry on any banking business in Nigeria without a valid banking licence issued by the Bank under this Act.

(6) Any person who contravenes subsection (1) or (3), commits an offence and is liable on conviction to a penalty of not less than ₦10,000,000, and every director of any such foreign bank or banks is liable to imprisonment for a term of not less than three years or a fine of not less than ₦2,000,000 or both.

9.—(1) The Bank shall determine the minimum paid-up share capital requirement of each category of banks licensed under this Act which shall be complied with by each bank within the time prescribed by the Bank.

(2) Failure to comply with the provisions of subsection (1) within such period as may be determined by the Bank, is a ground for the revocation of any licence issued under this Act or any other Act repealed by it.

Minimum paid-up share capital of banks and compliance with the minimum paid-up share capital requirement.

10. Notwithstanding the provisions of the Companies and Allied Matters Act or any agreement or contract, the voting rights of every shareholder in a bank shall be proportional to individual contributions to the paid-up share capital of the bank.

Shareholder's voting rights to be proportional to shareholding. CAMA. Act No. 3. 2020.

11. Notwithstanding anything contained in any law, contract or instrument, a suit or other proceedings shall not be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share is vested in a person other than the registered holder :

Restriction of legal proceedings in respect of shares held in the name of another.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from mental illness.

12.—(1) Notwithstanding the provisions of this Act or any other law, the Governor may, with the approval of the Board and by notice published in the Federal Government *Gazette*, or print and electronic media, revoke any licence granted under this Act if a bank—

Revocation of banking licence.

(a) ceases to carry on in Nigeria the type of banking business for which the licence was issued for any continuous period of six months or any period aggregating six months during a continuous period of 12 months ;

(b) goes into liquidation or is wound up or otherwise dissolved ;

(c) fails to fulfil or comply with any condition subject to which the licence was granted ;

(d) has insufficient assets to meet its liabilities ;

(e) conducts its business in an unsound manner or its directors engage in unsafe practices ;

(f) is involved in a situation, circumstance, action or inaction which constitutes a threat to financial stability ;

Act No. 7.
2007.

(g) fails to comply with any obligation imposed upon it by or under this Act, or the Central Bank of Nigeria Act or any other rule, regulation, guideline or directive made hereunder ;

(h) is, in the opinion of the Bank critically undercapitalised with a capital adequacy ratio below the prudential minimum or such other ratio as the Bank may prescribe ;

(i) fails to commence banking operations within 12 months following the grant of a licence ; or

(j) fails to comply with the provisions of section 9 or 13 of this Act.

CAMA. Act
No. 3, 2020.

(2) Where the licence of a bank has been revoked under this Act and the Governor is satisfied that it is in the public interest to do so, the Governor may, subject to the approval of the Board and without waiting for any period prescribed for doing anything under this Act or any law to lapse, appoint the Nigeria Deposit Insurance Corporation (in this Act referred to as "the Corporation") as a liquidator of the affected bank and the Corporation shall have the powers conferred on a liquidator by or under the Companies and Allied Matters Act and shall be deemed to have been appointed a liquidator by the Federal High Court for the purpose of this Act.

CAMA. Act
No. 3, 2020.

(3) Notwithstanding the provisions of this Act, the Companies and Allied Matters Act or any other law, where the Bank has revoked any licence granted under this Act and the Bank has appointed the Corporation as a liquidator pursuant to subsection (2), the Corporation shall immediately proceed with the liquidation of the bank whose licence has been revoked and the payment of assured deposit liabilities pursuant to the Nigeria Deposit Insurance Corporation Act.

Cap. N102.
LFN. 2004.

(4) An action to challenge the revocation of the licence of a bank, specialised bank or other financial institution on any ground shall only be instituted in the Federal High Court, and such action and any appeal arising therefrom heard and determined on an expedited and accelerated basis.

(5) No action in respect of the revocation of the licence of a bank, specialised bank or other financial institution shall be filed or maintained unless such action is filed within 30 days from the date of the revocation.

(6) Notwithstanding the provisions of this Act or any other enactment, no restorative or like order shall be granted against the Bank or Governor in any action, suit or proceeding in relation to the revocation of a licence by the Bank under this Act, and the remedy of any claimant or applicant against the Bank or Governor in any such action, suit or proceeding is limited to monetary compensation not exceeding the equivalent of the value of the paid-up capital of the bank at the time of the revocation of its licence.

13.—(1) A bank shall maintain, at all times, capital funds unimpaired by losses, in such ratio to all or any asset or to all or any liability or to both such assets and liabilities of the bank and all its offices in and outside Nigeria as may be specified by the Bank.

Minimum
capital ratio.

(2) Notwithstanding subsection (1), the Bank may prescribe a higher or lower capital adequacy ratio with respect to any category of banks.

(3) The Bank may require a bank to maintain additional capital as the Bank considers appropriate in respect of specific risks.

(4) The Bank may require a bank that has—

(a) a holding company;

(b) a subsidiary; or

(c) a holding company and a subsidiary,

to calculate and maintain minimum capital adequacy ratio on a consolidated basis.

(5) Any bank which fails to observe any such specified ratios may be prohibited by the Bank from—

(a) advertising for or accepting new deposits ;

(b) granting credit or finance and making investments ;

(c) paying cash dividends to shareholders ;

(d) paying bonus to its directors, other than the approved emoluments and benefits ; or

(e) engaging in other activities as the Bank may specify.

(6) Notwithstanding the provisions of subsection (5), the Bank shall have power to impose such additional holding actions, prohibitions and conditions as it may deem fit for failure to comply with the specified capital adequacy ratio.

(7) The bank may be required to draw up within a specified time, a capital reconstitution plan acceptable to the Bank.

14.—(1) Every bank shall maintain with the Bank, cash reserves, and special deposits or any non-interest banking instruments as may be approved by the Bank and hold specified liquid assets or other securities, as the case may be, not less in amount than as may, be prescribed by the Bank by virtue of section 45 of the Central Bank of Nigeria Act.

Minimum
holding of
cash
reserves,
specified
liquid
assets,
special
deposits and
stabilisation
securities.

(2) Where both assets and liabilities are due from and to other banks, they shall be offset accordingly, and any surplus of assets or liabilities shall be included or deducted, as the case may be, in computing specified liquid assets.

Act No. 7.
2007.

(3) In the case of the long-term advances to a bank or by an overseas branch or office of a bank, the advances may, with the approval of the Bank, be excluded from the demand liabilities of the bank.

(4) Every bank shall—

(a) furnish within the specified time, any information required by the Bank to satisfy the Bank that the bank is observing the requirements of subsection (1) ;

(b) not allow its holding of cash reserves, specified liquid assets, special deposits and securities to be less than the amount which may be prescribed by the Bank ; and

(c) not, during the period of any deficiency, grant or permit increases in advances, loans or credit facilities to any person without the prior approval in writing of the Bank.

(5) Any bank which fails to comply with any of the provisions of subsection (4), is liable on conviction to a penalty of not less than ₦5,000,000 and an additional penalty of ₦100,000 for each day during which the contravention continues.

(6) For the purpose of this section, specified liquid assets, provided they are freely transferable and free from any lien or charge of any kind, shall, without prejudice to the provisions of section 45 of the Central Bank of Nigeria Act, consist of all or any—

(a) currency notes and coins which are legal tender in Nigeria ;

(b) balances at the Bank ;

(c) net balances at any licenced bank (excluding uncleared effects) and money at call in Nigeria ;

(d) treasury bills, treasury certificates and any non-interest banking instrument as may be approved by the Bank issued by the Federal Government ;

(e) inter-bank placement, inland bills of exchange and promissory notes re-discountable at the Bank ;

(f) other securities issued by the Federal Government with such dates of maturity as may be approved by the Bank ;

(g) negotiable certificates of deposit approved by the Bank ; and

(h) such other negotiable instruments as may be approved by the Bank for the purpose of this section.

PART II—DUTIES OF BANKS

15.—(1) Every bank shall maintain a statutory reserve fund and shall, out of its net profits for each year after due provision has been made for taxation and before any dividend is declared, where the amount of the reserve fund is—

Maintenance
of reserve
fund.

(a) less than the paid-up share capital, transfer to the reserve fund a sum not less than 30% of the net profits ; or

(b) equal to or in excess of the paid-up share capital, transfer to the reserve fund a sum not less than 15% of the net profit ;

Provided that no transfer under this subsection shall be made until all identifiable losses and accumulated losses have been made good.

(2) Any bank which fails to comply with the provisions of subsection (1) commits an offence and is liable on conviction to a fine of not less than ₦2,000,000.

(3) Notwithstanding paragraphs (a) and (b) of subsection (1), the Bank may, specify a different proportion of the net profits of each year, being either lesser or greater than the proportion specified in paragraphs (a) and (b) of subsection (1) to be transferred to the reserve fund of a bank for the purpose of ensuring that the amount of the reserve fund of such bank is sufficient for the purpose of its business and adequate in relation to its liabilities.

16.—(1) A bank shall not pay dividend on its shares until—

Restriction
of dividend.

(a) all its preliminary expenses, organisational expenses, shares selling commission, brokerage, amount of losses incurred, and other capitalised expenses not represented by tangible assets have been completely written off ;

(b) adequate provisions have been made to the satisfaction of the Bank, for actual and contingent losses on assets, liabilities, off balance sheet commitments and such unearned incomes as are derivable therefrom ;

(c) it has complied with any capital ratio requirement as specified by the Bank pursuant to section 13 of this Act ; and

(d) it has satisfied any other corporate governance and prudential requirements that may be stipulated by the Bank.

(2) Any director, manager or officer who fails to comply with the requirements of this section of this Act commits an offence and is liable on conviction to a term of imprisonment of not less than three years or to a fine of not less than ₦2,000,000 or to both.

Disclosure
of interest
by directors,
managers
and officers.

17.—(1) A manager or any other officer of a bank shall not—

(a) in any manner whatsoever, whether directly or indirectly, have personal interest in any advance, loan or credit facility, and if the manager or officer has any such personal interest, such manager or officer shall declare the nature of such interest to the bank ; or

(b) grant any advance, loan or credit facility to any person, unless it is authorised in accordance with the rules and regulations of the bank and in line with the regulations on collateralisation issued by the Bank.

(2) Any manager or officer who contravenes or fails to comply with any of the provisions of subsection (1), commits an offence and is liable on conviction to imprisonment for a term of not less than three years or a fine of not less than ₦5,000,000 or both, and any gain or benefit accruing to any person convicted under this section, by reason of such contravention, is forfeited to and vested in the bank.

(3) A director of a bank who is in any way, whether directly or indirectly, interested in the grant of an advance, loan or credit facility by the bank, shall declare the nature of such interest before the meeting of the board of directors of the bank, at which the request for the advance, loan or credit facility is first taken into consideration.

(4) Where the director becomes interested in any advance, loan or credit facility after it is granted, the declaration shall be made to the board of directors immediately.

(5) For the purpose of this section, a general notice given to the board of directors of a bank by a director to the effect that such director is a member of a company or firm seeking an advance, loan or credit facility from the bank shall be regarded as a declaration of his interest in the grant of the advance, loan or credit facility which may, after the date of the notice, be granted to that company or firm, and is deemed to be a sufficient declaration of interest in relation to any such advance, loan or credit facility so granted :

Provided that the notice shall not have effect unless it is in writing and given at a meeting of the board of directors of the bank which shall be required to do all things reasonably necessary to ensure that it is brought up and read at the next meeting of the board of directors of the bank after it is so given.

(6) A director of a bank who is in any way, whether directly or indirectly, interested in the grant of an advance, loan or credit facility with a bank other than the bank in which such person is a director, shall declare the nature of such interest in writing to the Bank prior to the grant of the advance, loan or credit facility by that other bank and in a case where the director becomes

interested in any advance, loan or credit facility from another bank after it is granted, the declaration shall be made to the Bank immediately.

(7) Subsections (3) and (6) do not apply in any case—

(a) where the interest of the director consists only of being a person holding less than 5% of the shares of the company which is seeking an advance, loan or credit facility from the bank, or such percentage as the Bank may prescribe ; or

(b) if the interest of the director may properly be regarded by the Bank as immaterial.

(8) For the purpose of subsection (5), a general notice given to the board of directors of a bank by a director is deemed to be a sufficient declaration of interest in relation to any advance, loan or credit facility, if —

(a) the notice specifies the nature and extent of interest in the company or firm ;

(b) the interest is not different in nature from or greater in extent than the nature and extent specified in the notice at the time any advance, loan or credit facility is made ; and

(c) the notice is given prior to the meeting of the board of directors of the bank.

(9) Every director of a bank who holds any office or possesses any property, whether directly or indirectly, or who by reason of holding such office or possessing such property, or otherwise has duties or interests which might conflict with such director's duties or interests as a director of a bank, shall declare, before a meeting of the board of directors of the bank, the fact and the nature, character and extent of the duties or interests.

(10) The declaration referred to in subsection (9) is required to be made at the first meeting of the board of directors of the bank held—

(a) after such person becomes a director of the bank; or

(b) if already a director, after such person takes office or came into possession of the property.

(11) The secretary of the board of the bank shall—

(a) cause to be brought up and read any declaration made under subsection (3), (8) or (9) at the next meeting of the board of directors of the bank after it is made ; and

(b) record any declaration made under this section in the minutes of the meeting at which it was made or at the meeting at which it was brought up and read.

(12) A director who contravenes subsection (3), (6) or (9), commits an offence and is liable on conviction to a fine of not less than ₦5,000,000 or imprisonment for a term of three years or both.

Prohibition
of inter-
locking
directorship.
etc.

18. (1) No bank shall—

(a) employ or continue the employment of any person who is, or at any time has been, adjudged bankrupt or has suspended payment to or has compounded with his creditors or who is or has been convicted by a court for an offence involving fraud, or dishonesty or professional misconduct ; or

(b) be managed by a management agent except as may be approved by the Bank.

(2) Except with the approval of the Bank, no bank shall have, as a director, any person who is a director of —

(a) any other bank ; or

(b) any company or entity which has significant influence on the bank :

Provided that in the case of a financial holding company, the aggregate number of directors from the subsidiaries and associates shall not exceed 30% of the members of the board of directors of the financial holding company, and the number of directors of the financial holding company in the board of a subsidiary or associate shall not exceed 30% of the members of the board of such subsidiary or associate.

(3) For purposes of subsection (2) (b), “significant influence” means direct or indirect ownership of 5% or more of the voting rights in the bank or controlling influence in the decision-making process of the bank.

(4) A bank shall not be managed by a person who is—

(a) a director of any other company not being a subsidiary of the bank ; or

(b) engaged in any other business or vocation whether remunerated or not except such personal or charitable causes as may be determined by the Bank and which do not conflict with or detract from their full-time duties.

(5) Every director of a bank shall sign and adhere to a code of conduct in such form or manner as the Bank may prescribe.

(6) The chief executive of a bank shall cause all the officers of the bank to sign and adhere to a code of conduct as may be approved by the board of directors.

Restrictions
on certain
banking
activities.

19.—(1) A bank, specialised bank or other financial institution shall not, without the prior approval in writing of the Bank, grant—

(a) to any person any advance, loan or credit facility or give any financial guarantee or incur any other liability on behalf of any person so that the

total value of the advance, loan, credit facility, financial guarantee or any other liability in respect of the person is at any time more than 20% of the shareholders' funds unimpaired by losses in the case of a commercial bank, and 50% of the shareholders' funds unimpaired by losses in the case of a merchant bank, and in the case of specialised banks and other financial institutions, such percentage as the Bank may determine :

Provided that Bank may prescribe—

- (i) such other percentages as it may determine, and
- (ii) single obligor limits specific to non-interest banks having regard to their peculiarities ;
- (b) any advance, loan or credit facility against the security of its own shares ; or
- (c) any unsecured advance, loan or credit facility except it is in line with the regulation on collateralisation as may be issued by the Bank.

(2) For the purpose of subsection (1) (a), all advances, loans or credit facilities extended to any person shall be aggregated and shall include all advances, loans or credit facilities extended to any subsidiary or affiliate of a body corporate or such other related party as the Bank may, by regulation, prescribe :

Provided that subsection (1) (a) does not apply to transactions between banks or between branches of a bank or to the purchase of clean or documentary bills of exchange, telegraphic transfers or documents of title to goods the holder of which is entitled to payment for exports from Nigeria or to advance made against such bills, transfers or documents.

(3) A bank shall not, without the prior approval in writing of the Bank —

(a) permit to be outstanding, unsecured advances, loans or unsecured credit facilities of an aggregate amount in excess of ₦1,000,000 or such amount as may be prescribed by the Bank to—

(i) its directors, significant shareholders or any of them whether such advances, loans or credit facilities are obtained by its directors or significant shareholders jointly or severally,

(ii) any firm, partnership or private company in which it, or any one or more of its directors or significant shareholders, is interested as director, partner, manager or agent or any individual firm, partnership or private company of which any of its directors or significant shareholders is a guarantor, or

(iii) a public company or private company in which it, or any one or more of its directors or significant shareholders jointly or severally whether

directly or indirectly, maintains shareholding of not less than 5% or such percentage as may be specified by the Bank.

(b) permit to be outstanding to its officers and employees, unsecured advances, loans or unsecured credit facilities which, in the aggregate for any one officer or employee, is in excess of one year's emolument to such officer or employee, or such amount as may be specified by the Bank ; and

(c) remit, either in whole or in part, the debts owed to it by any of its directors, or past directors or significant shareholders.

(4) Any loan, advance, or credit facility granted to a director, shall continue to be treated and continue to be reported as insider related until it is fully liquidated irrespective of whether such director remains on the board of the bank or not.

(5) A bank shall—

(a) not lend more than 5% of its paid-up capital to any of its directors or significant shareholders provided that the aggregate of the bank's exposure to all its directors and significant shareholders does not exceed 10% of its paid-up share capital or such percentage as the Bank may prescribe ;

(b) in extending credit to any of its directors or significant shareholders, ensure that—

(i) it does so on the same terms and conditions as those prevailing at the time, for comparable transactions by the bank with persons who are not directors or shareholders of the bank,

(ii) the grant of the credit does not involve more than the normal risk of repayment or present other unfavourable features,

(iii) it follows credit appraisal procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not directors or shareholders of the bank ;

Provided that nothing in this subsection shall prohibit any extension of credit made pursuant to a benefit or compensation programme that is widely available to employees of the bank, and

(iv) it does not give preference to any director or shareholder.

(6) In this section—

“*director*” includes director's wife, husband, father, mother, brother, sister, son, daughter, their spouses, a company in which the director is also a director or shareholder or holds at least 5% shareholding of the company, a company whose board, or managing director, is accustomed to act in accordance with the advice, directions or instructions of the director and all other related parties as may be determined by the Bank ;

“significant shareholder” means a person holding not less than 5% of the shares of the bank or such other percentage as may be prescribed by the Bank and this shall include the shareholding of a wife, husband, father, mother, brother, sister, son, daughter, their spouses and all other related parties as may be determined by the Bank ;

“unsecured advances and loans” or “unsecured credit facilities”, means advances, loans or credit facilities made without security, or, in respect of any advances, loans or credit facilities made with security, any part thereof which at any time exceeds the market value of the assets constituting the security or where the Bank is satisfied that there is no established market value, the value of the assets as determined on the basis of a valuation approved by the Bank.

(7) All the directors of a bank are liable jointly and severally to indemnify the bank against any loss arising from any advance, loan or credit facility granted in contravention of this section.

(8) Without prejudice to section 20 of this Act, a bank shall not, without the prior approval in writing of the Bank—

(a) engage, whether on its own account or on a commission basis, in wholesale or retail trade, including import or export trade, except in so far as may exceptionally be necessary in the course of the banking operations and services of that bank or in the course of the satisfaction of debts due to it :

Provided that nothing in this paragraph shall be construed as precluding a bank from undertaking equipment leasing business or debt factoring ;

(b) acquire or hold any part of the share capital of any financial, commercial or other undertaking, except—

(i) any shareholding approved by the Bank in any company set up for the purpose of promoting the development of the money market or capital market in Nigeria or of improving the financial machinery for financing economic development or related to the normal business undertakings of non-interest banks ;

(ii) any shareholding approved by the Bank under subsection (8) (b) (i), the aggregate value of which does not at any time exceed 10% of the shareholders’ funds unimpaired by losses or such other limit as the Bank may prescribe ; or

(iii) all shareholding acquired by a merchant bank while managing an equity issue :

Provided that the aggregate value of such acquisition does not at any time exceed the paid-up share capital of that bank or any other limit as the Bank

may determine and that this paragraph does not apply to any nominee company of a bank which deals in stock and shares for, or on behalf of, the bank's customers or clients or majority interest acquired by a bank in a company while managing an equity issue ;

(c) acquire or hold, either wholly or in part, the share capital of any financial, commercial or other undertaking in any foreign country ;

Provided that the aggregate shareholding of a bank in foreign subsidiaries does not exceed 10% of its shareholders' funds unimpaired by losses or such other percentage as the Bank may prescribe ;

(d) purchase, sell, dispose, acquire or lease any real estate for whatever purpose.

(9) Notwithstanding subsection (8) of this section, a bank may secure debt on any real or other property and, in default of repayment, may acquire such property and exercise any power of sale, as may be provided for in any instrument or by law prescribed, immediately upon such default or soon thereafter as may be deemed proper.

(10) Any director, manager or officer of a bank, specialised bank or other financial institution who fails to comply with the requirements of this section, commits an offence and is liable on conviction to imprisonment for a term of not less than three years or a fine of not less than ₦5,000,000 or both.

(11) Any bank which after the commencement of this Act, enters into any transaction which is inconsistent with any provision of this section is liable to a penalty of not less than ₦20,000,000.

Acquisition
of shares in
small and
medium
scale
industries.
etc.

20.—(1) Subject to the approval of the Bank, a bank may acquire or hold part of the share capital of any agricultural, industrial, private equity or venture capital company—

(a) subject to the private equity or venture capital company is set up for the purpose of promoting the development of indigenous technology or a new venture in Nigeria ;

(b) subject to the shareholding of the bank is in small or medium-scale industries and agricultural enterprises as defined by the Bank ;

(c) subject to the shareholding of the bank in any medium scale industry, agricultural enterprise or venture capital company or any other business approved by the Bank shall not be more than 10% of the bank's shareholders' funds unimpaired by losses and shall not exceed 20% of the paid-up share capital of the company or such other percentage as the Bank may prescribe ;

(d) without prejudice to section 19 (8) (b) (ii), and paragraph (c) of this subsection, the aggregate value of the equity participation of the bank in all enterprises shall not at any time exceed 20% of its shareholders' funds unimpaired by losses or such other percentage as the Bank may prescribe ; and

(e) in the case of a non-interest bank, the activities of the agricultural, industrial, private equity or venture capital company shall be such as are permissible under non-interest banking principles.

(2) Subject to the prior written approval of the Bank, a bank may hold shares acquired in the course of the satisfaction of any debt owed to it, provided the shares acquired are not those of the bank's subsidiary, holding company, associate or such other related party as the Bank may by regulation prescribe.

(3) Without prejudice to subsection (1), a bank may hold or acquire the share capital of any other business, subject to the approval of the Bank.

(4) Every bank shall, within 21 days of the acquisition of any shareholding pursuant to subsections (1) and (3), give full particulars thereof to the Bank.

(5) Any bank which fails to comply with the provisions of this section is liable to a penalty of not less than ₦5,000,000 and an additional penalty of ₦100,000 for each day during which the contravention continues.

21.—(1) A merchant bank shall not—

(a) accept any deposit withdrawable by cheque ;

(b) accept any deposit below an amount which shall be prescribed, from time to time, by the Bank ; or

(c) hold, for more than six months, any equity interest acquired in a company while managing an equity issue, except as stipulated in section 20 of this Act.

(2) Any merchant bank which contravenes any of the provisions of this section is liable to a penalty of not less ₦20,000,000 and an additional penalty of ₦500,000 for each day during which the contravention continues.

22.—(1) Every bank shall display at its offices and on its website—

(a) its lending and deposit interest rates and shall render to the Bank information on such rates as may be specified by the Bank ;

Provided that the provisions of this subsection does not apply to non-interest or profit and loss sharing banks ;

Restriction
on
operations of
merchant
bank.

Display of
information.

(b) its obligation to report transactions above the limits stipulated in the Anti-Money Laundering, Combating Financing of Terrorism guidelines and regulations and suspicious transactions to the Nigeria Financial Intelligence Unit ;

(c) foreign exchange rates ;

(d) certified true copy of its certificate of incorporation ;

(e) abridged version of its last approved audited accounts ; and

(f) such other information as the Bank may require.

(2) Any bank which contravenes any of the provisions of this section is liable to a penalty of not less than ₦5,000,000 and an additional ₦100,000 for every day during which the contravention continues.

PART III—BOOKS AND RECORDS OF ACCOUNT

Proper
books and
records of
account.

23.—(1) Every bank shall cause to be kept proper books of account with respect to all the transactions of the bank.

(2) For the purpose of subsection (1), proper books of account are deemed to be kept with respect to all transactions, if such books, as are necessary to explain such transactions and give a true and fair view of the state of affairs of a bank, are kept by the bank and are in compliance with the accounting standards as may be prescribed for banks by relevant authorities.

(3) The books of account shall be kept in English language at the principal administrative office of a bank and at each branch of the bank.

(4) Where the books of account, kept by a bank with respect to all its transactions, are prepared and kept in such a manner that, in the opinion of the Bank, have not been properly prepared and kept, or where a bank renders returns in accordance with section 24 of this Act which, in the opinion of the Bank, are inaccurate, the Bank may appoint a firm of qualified accountants to prepare proper books of account or render accurate returns, as the case may be, for the bank and the cost of preparing the accounts and rendering the returns shall be borne by the bank.

(5) If any person being a director, manager or officer of a bank—

(a) fails to take all reasonable steps to secure compliance with any of the provisions of this section, or

(b) has, by any wilful act, been the cause of any default of by the bank, such director, manager or officer—

(i) is liable, in respect of paragraph (a), to a penalty of not less than ₦2,000,000, and

(ii) in respect of paragraph (b), commits an offence and is liable on conviction to imprisonment for a term of not less than five years or to a fine of not less than ₦5,000,000 or both.

24.—(1) Every bank shall submit to the Bank not later than five days after the last day of each month or such other interval as the Bank may specify, a statement showing—

Returns by banks.

(a) the assets and liabilities of the bank ; and

(b) an analysis of advances and other assets, at its head office and branches in Nigeria and branches and subsidiaries outside Nigeria, in such form as the Bank may specify.

(2) Every bank shall submit such other information, documents, statistics or returns as the Bank may deem necessary.

(3) Where a bank is affiliated to any other person, the Bank may require such bank to prepare and furnish any return required to be made under this Act or the Central Bank of Nigeria Act on a consolidated basis.

Act No. 7.
2007.

(4) For the purpose of this section, the word, “affiliated”, includes a subsidiary or holding company or such other relationship as may be determined by the Bank.

(5) The statements and information submitted by a bank under this section shall be regarded as confidential :

Provided that the Bank may furnish any such statement or information to any agency of Government as required by law.

(6) Any bank which fails to comply with any of the requirements of this section is, in respect of each such failure, liable to a penalty of not less than ₦5,000,000 and ₦500,000 for each day during which the contravention continues.

25. Notwithstanding anything in section 24 of this Act, the Bank may prepare and publish consolidated statements aggregating the statements furnished under section 24 of this Act for each category of banks.

Publication of consolidated statements.

26.—(1) A bank or other financial institution shall, not later than three months after the end of its financial year, forward to the Bank for approval to publish its financial statement which is prepared in accordance with the relevant accounting standards as may be prescribed by the relevant authorities and, in the case of a non-interest bank, an independent report of the advisory committee of experts on the compliance status of the bank's activities with non-interest banking principles shall, additionally be furnished.

Publication of financial statements.

(2) Every bank or other financial institution shall thereafter, but not later than seven days after approval for publication by the Bank—

(a) cause to be published in not less than two national daily newspapers printed and circulating in Nigeria ;

(b) exhibit in a conspicuous position in each of its offices, branches and website ; and

(c) forward to the Bank, copies of the bank's published Statement of Financial Position and Statement of Profit and Loss and Other Comprehensive Income duly signed with the full names of the directors of the bank who signed the financial statements, and in the case of a non-interest bank, a copy of the report of its advisory committee of experts.

(3) Every published account of a bank under subsection (2), shall disclose in detail penalties paid for the contravention of the provisions of this Act, any policy or guidelines in force during the financial year and the auditor's report shall reflect such contraventions.

(4) The Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income of a bank shall—

(a) bear on their face the report of an approved auditor ; and

(b) contain statements on such matters as may be specified by the Bank, from time to time.

(5) For the purpose of subsection (4), an "approved auditor" is an auditor approved for the purpose of section 28 of this Act.

(6) Any bank which fails to comply with any of the requirements of this section is, in respect of each such failure, liable to a penalty of not less than ₦5,000,000 and an additional penalty of ₦100,000 for each day the contravention continues.

Contents
and form of
accounts.

27.—(1) The Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income of a bank shall give a true and fair view of the state of affairs of the bank as at the end of the reporting period.

(2) The Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income of a bank forwarded to the Bank in accordance with section 26 of this Act shall comply with the requirements of any circular which has been issued by the Bank.

(3) A director of any bank who fails to take all reasonable steps to secure compliance with any of the provisions of this section in respect of any account, commits an offence and is liable on conviction to a fine of not less than ₦2,000,000 and, in addition, the Governor may suspend or remove such director from office.

28.—(1) Subject to the approval of the Bank, every bank shall appoint a firm of auditors, (in this section referred to as “the approved auditor”) whose duties shall be to present to the shareholders a report of the annual Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income of the bank and every such report shall contain statements as to the matters pertaining thereto and such other information as may be prescribed by the Bank :

Appointment.
power and
report of
approved
auditor.

Provided that the Bank shall have power to direct, in appropriate cases—

(a) the appointment of more than one firm of auditors for any bank which shall act jointly in auditing the bank’s Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income and all expenses and fees of the auditors shall be borne by such bank; and

(b) the removal of an auditor of a bank who, in the opinion of the Bank, is not discharging its duties effectively.

(2) Where, for any reason, an auditor ceases to act for a bank, the bank shall within 14 days of the cessation, appoint another auditor and obtain the approval of the Bank for the appointment.

(3) Where an auditor ceases to act for any bank, the bank, shall within seven days of the cessation inform the Bank of the fact of, and reason for, the cessation.

(4) For the purpose of this section, the approved auditor shall be—

(a) an auditor who is—

(i) a member of one of the relevant professional bodies recognised in Nigeria,

(ii) approved by the Bank,

(iii) resident in Nigeria, and

(iv) carrying on professional practice in Nigeria as accountant and auditor ; or

(b) a firm comprising persons to whom paragraph (a) applies.

(5) A person—

(a) having any interest in a bank otherwise than as a depositor,

(b) who is a director, significant shareholder, officer or agent of a bank,

(c) which is a firm in which a director or significant shareholder of a bank has any interest as partner or director, or

(e) who is indebted to a bank,

is not eligible for appointment as the approved auditor for that bank, and a person appointed as such auditor who subsequently—

(i) acquires such interest,

(ii) becomes a director, significant shareholder, officer or agent of that bank, or

(iii) becomes indebted to a partner in a firm in which a director or significant shareholder of a bank is interested as partner or director, shall cease to be such auditor.

(6) An approved auditor shall be appointed for a period of not more than 10 years and is not eligible for reappointment until a period of 10 years has elapsed after each appointment :

Provided that the Bank shall determine and prescribe the tenure of approved auditors from time to time.

(7) If any bank—

(a) fails to appoint an approved auditor under subsection (1), or

(b) at any time, fails to fill a vacancy for such person, the Bank shall—

(i) appoint a suitable person for that purpose, and

(ii) fix the remuneration to be paid by the bank to such auditor.

(8) Every approved auditor of a bank—

(a) has a right of access at all times to the books, accounts, vouchers and all records of the bank ; and

(b) is entitled to require from directors, managers and officers of the bank, such information and explanation as such auditor thinks necessary for the discharge of such auditor's duties under this Act.

(9) The report of the approved auditor shall be read together with the report of the board of directors at the annual general meeting of the shareholders of the bank and two copies of each report together with the auditor's analysis of bad and doubtful advances in a form specified, from time to time, by the Bank shall be sent to the Bank.

(10) The approved auditor shall immediately report to the Bank if the auditor is satisfied that—

(a) there has been a contravention of this Act or that an offence under any other law has been committed by the bank or any other person ;

(b) losses have been incurred by the bank which substantially reduce its capital funds ;

(c) any irregularity which jeopardises the interest of depositors or creditors of the bank, or any other irregularity has occurred ; or

(d) he is unable to confirm that the claims of depositors or creditors are covered by the assets of the bank.

(11) The approved auditor shall forward to the Bank two copies of the domestic reports on the bank's activities, not later than three months after the end of the bank's financial year.

(12) An approved auditor under this section who acts in contravention of or fails deliberately or negligently to comply with any of the provisions of this section, commits an offence and is liable on conviction to a fine of not less than ₦2,000,000 and where the approved auditor is a firm, the individual partner or partners are, in addition, liable on conviction to imprisonment for a term of not less than three years or a fine of not less than ₦2,000,000 or both.

(13) The appointment of an approved auditor shall not be determined by a bank without the prior approval of the Bank.

29.—(1) Notwithstanding anything to the contrary contained in this Act or in any other enactment, the Bank shall have and exercise regulatory and supervisory power over banks, other financial institutions and specialised banks to the exclusion of any other agency or institution :

Exclusive
regulatory
and
supervisory
powers.

Provided that the Bank may share information on banks, other financial institutions or specialised banks with other agencies or institutions or permit such other agencies or institutions to have access to the books and records of banks, other financial institutions or specialised banks subject to the conditions set out in subsection (4) or such other additional conditions as the Bank may determine.

(2) Without prejudice to section 64 of this Act, where a bank, other financial institution or specialised bank is affiliated to any other entity, the Bank shall have power to supervise such bank, other financial institution or specialised bank and all entities affiliated with such bank, other financial institution or specialised bank on a consolidated basis.

(3) For the purposes of subsection (1), the word, "affiliated" has the same meaning ascribed to it under section 24 (4) of this Act.

(4) For the purpose of this section, the Governor may appoint examiners who shall—

(a) under condition of confidentiality, examine periodically the books and affairs of each bank, other financial institutions and specialised banks ;

(b) have a right of access at all times, to the books, accounts and vouchers of banks, other financial institutions and specialised banks ;

(c) have power to require from directors, managers and officers of banks, other financial institutions and specialised banks such information and explanation as they deem necessary for the discharge of their duties ; and

(d) have the right to attend (as observers) management and board meetings of banks, other financial institutions or specialised banks to which they are assigned.

(5) Every bank, other financial institution or specialised bank shall produce to the examiners at such times as the examiners may specify, all books, accounts documents and information which they may require.

(6) If a bank, other financial institution or specialised bank fails to produce any book, document or information in accordance with the requirement of an examiner under this section or under section 31 of this Act, or produces or furnishes to an examiner any book, document or information that is false in any material particular, the bank, other financial institution or specialised bank is liable, in the case of—

(a) a bank, to a penalty of not less than ₦20,000,000 and in addition, to a penalty of ₦500,000 for each day during which the contravention continues ; or

(b) other financial institutions or specialised banks, to a penalty of not less than ₦2,000,000 and an additional penalty of ₦50,000 for each day during which the contravention continues.

(7) The reports and findings of the Bank, together with the recommendations in relation to the specialised banks owned by the Federal Government of Nigeria, shall be forwarded to the supervising Minister of such specialised bank and, at the sole discretion of the Governor, may be forwarded to the President.

(8) Specialised banks and other financial institutions shall be treated in the same manner as banks with respect to the requirements of section 23 of this Act.

30.—(1) Notwithstanding anything to the contrary in this Act or in any other enactment, the Governor shall have power to issue regulations, guidelines and policies to banks, specialised banks and other financial institutions in Nigeria, to—

(a) ensure responsible conduct ;

(b) protect the interest of consumers of products and services of banks, specialised banks and other financial institutions ;

(c) promote competition in the Nigerian financial system ; and

(d) engender and sustain public trust and confidence in the use of financial services in Nigeria.

Conduct,
supervision
and
competition.

(2) All banks, specialised banks and other financial institutions shall adopt policies to ensure compliance with consumer protection and competition standards and obligations under extant laws, regulations, and to implement appropriate internal controls in that regard.

31.—(1) The Governor shall appoint one or more officers of the Bank, not below the rank of director, charged with supervisory functions over regulated entities, who shall be known by such titles as the Governor may specify and who shall be responsible, on behalf of the Bank, for the supervision of banks and other financial institutions, specialised banks as the Governor may specify.

Appointment
of directors
with
supervisory
functions
and other
examiners.

(2) The director or directors appointed under subsection (1) shall have the power to carry out supervisory duties in respect of banks, other financial institutions and specialised banks, as the Governor may specify, and, for that purpose, shall—

(a) under conditions of confidentiality, examine periodically the books and affairs of each bank, other financial institution or specialised bank ;

(b) have a right of access at all times to the books, accounts and vouchers or like documents of banks, other financial institutions and specialised banks ;

(c) have power to require from directors, managers and officers of banks, other financial institutions and specialised banks such information and explanation as the Governor deems necessary for the discharge of their duties under this section.

(3) The Governor shall appoint to assist the directors appointed under subsection (1), such other officers of the Bank as the Governor may determine.

(4) The officers may be designated examiners or have such other titles as the Governor may specify.

(5) For the purpose of this section, references to examiners are references to the director appointed under subsection (1) and any officer of the Bank appointed under subsection (3).

(6) In examining the affairs of any bank, other financial institutions or specialised banks under this Act, an examiner at all times shall avoid unreasonably hindering the daily business of the bank, specialised bank or other financial institution.

(7) Every bank shall produce to the examiner, at such times as the examiners may specify, all books, accounts, documents and information which they may require.

Examination
and report.

32.—(1) The Governor shall have the power to direct the officers appointed under section 31 to carry out examinations of banks, other financial institutions and specialised banks including maiden, routine, special, and target examinations.

(2) The Governor shall, in the case of routine examination, forward a copy of the report arising from the examination together with the recommendations of the Bank, to the bank, other financial institutions and specialised banks concerned with instruction that it be placed before the meeting of the board of directors of the bank specially convened for the purpose of considering the report and the recommendations.

(3) The bank, other financial institution or specialised bank shall, not later than 30 days after receiving the report, convey to the Governor, the reaction of its board of directors to the report and its proposals for implementing the recommendations of the Bank.

(4) Any bank, other financial institution or specialised bank which contravenes this section—

(a) in the case of a bank, is liable to a penalty of not less than ₦5,000,000 and an additional penalty of ₦100,000 for each day during which the contravention continues ;

(b) in the case of a specialised bank or other financial institution, is liable to a penalty of not less than ₦2,000,000 and an additional penalty of ₦50,000 for each day during which the contravention continues ; and

(c) in all other cases, if the contravention continues for more than 30 days, the Bank may, in addition to the penalty, withdraw any privilege or facility granted to that bank, other financial institution of specialised bank.

Special
examination.

33.—(1) The Governor shall have power to order a special examination or investigation of the books and affairs of a bank, other financial institution or specialised bank where—

(a) it is in the public interest to do so ;

(b) the bank, other financial institution or specialised bank has been carrying on its business in a manner detrimental to the interest of its depositors or creditors ;

(c) the bank, other financial institution or specialised bank has insufficient assets to cover its liabilities to the public ;

(d) the bank has been contravening the provisions of this Act or any other relevant law ; or

(e) an application is made by—

(i) a director or shareholder of the bank, other financial institution or specialised bank ; or

(ii) a depositor or creditor of the bank, other financial institution or specialised bank :

Provided that in the case of paragraph (e), the Governor may not order a special examination or investigation, of the books and affairs of a bank, other financial institution or specialised bank if the Governor is satisfied that it is not necessary to do so.

(2) For the purpose of subsection (1), the Governor shall have power to appoint one or more qualified persons other than the officers of the Bank to conduct special examination or investigation under conditions of confidentiality, of the books and affairs of a bank, other financial institution or specialised bank.

(3) The Governor shall have power to order that all expenses of, or incidental to an examination or investigation be paid by the bank, other financial institution or specialised bank examined or investigated.

PART IV—FAILING BANKS AND RESCUE TOOLS

34.—(1) Where a bank informs the Bank that—

(a) it is likely to become unable to meet its obligations under this Act ;

(b) it is about to suspend payment to any extent ;

(c) it is insolvent ; or

(d) where, after an examination under section 33 of this Act, the Bank is satisfied that the bank is in a grave situation as regards the matter referred to in section 33 (1) of this Act, the Governor may by order in writing, exercise any one or more of the powers specified in subsection (2).

(2) The Governor may, by an order in writing under subsection (1)—

(a) prohibit the bank from extending any further credit facility for such period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions as may be set out in the order, and from time to time, by further order similarly made, extend the period ;

(b) suspend any payment or delivery obligations pursuant to any contract to which the bank is a party ;

(c) require third party service providers to the bank, to continue to provide services to the bank for such period as may be set out in the order ;

Intervention
powers in
failing bank.

(d) require the bank to take any steps or any action or to do or not to do any act or thing, in relation to the bank, its business, its directors or officers which the Bank may consider necessary and which is set out in the order, within such time as may be stipulated therein;

(e) remove, for reasons to be recorded in writing with effect from such date as may be set out in the order, any manager or officer of the bank, notwithstanding anything in any written law or any limitation contained in the memorandum and articles of association of the bank ;

(f) notwithstanding anything in any written law or any limitation contained in the memorandum and articles of association of the bank and, in particular, any limitation therein as to the minimum or maximum number of directors, for reasons to be recorded in writing—

(i) remove from office, with effect from such date as may be set out in the order, any director of the bank, or

(ii) appoint any person or persons as director or directors of the bank and provide, in the order, for the person or persons so appointed to be paid by the bank such remuneration as may be set out in the order.

(g) appoint any person to advise the bank in relation to the proper conduct of its business, and provide, in the order, for the person so appointed to be paid by the bank such remuneration as may be set out in the order ;

(h) transfer the bank, the whole or part only of the banking business, to third party private purchasers ; or

(i) employ any other intervention tool as the Bank may deem fit.

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2007.

(3) Without prejudice to the provisions of subsection (2), and notwithstanding the provisions of section 34 of the Central Bank of Nigeria Act or anything in any written law or contract or any limitation contained in the memorandum and articles of association of any bank, the Bank shall have power at any time to acquire the shares of any failing bank up to a level that guarantees its control by the Bank:

Provided that the Bank shall dispose of such equity investment in the bank at the earliest suitable time.

(4) If, after taking any or all of the steps stipulated in subsection (2) or such other measures as in the opinion of the Bank may be appropriate in the circumstance including but not limited to the measures and steps under sections 37-42 of this Act, the state of affairs of the bank concerned does not improve, the Bank may invoke its power to revoke the licence of the bank under section 12 of this Act.

35. Where the licence of a bank has been revoked under section 39 of this Act, the Corporation shall apply to the Federal High Court for a winding up order of the affairs of the bank.

Application to the Federal High Court for winding up.

36.—(1) Notwithstanding the provisions of any other enactment, relevant agencies shall cooperate with, render such assistance, grant such waivers or forbearances as may be required by the Governor which, in the opinion of the Governor, are necessary or expedient to resolve a banking crisis occasioned whenever two or more of the following conditions occur—

Cooperation, etc. with bank in banking crisis.

(a) banks that are critically distressed control 12.5% or more of the total assets in the industry ;

(b) 12.5% or more of total industry deposits are threatened ;

(c) 12.5% or more of the banking system's total loans are non-performing ; or

(d) 25% or more of banks have applied for liquidity support in excess of 50% of the aggregate takings from the Bank's window or total interbank funds in the market or have been suspended by their settlement banks for failure to meet clearing obligations :

Provided that the Governor may vary the conditions set out in (a)-(d) or prescribe such other conditions as he deems fit.

(2) For the purpose of this section, relevant agencies include—

(a) the Federal Ministry of Finance, Budget and National Planning ;

(b) the Nigeria Deposit Insurance Corporation ;

(c) the Corporate Affairs Commission ;

(d) the Federal Inland Revenue Service ; and

(e) any ministry, department or agency as may be determined by the Governor.

37.—(1) Without prejudice to section 34 of this Act or any provision of this Act and notwithstanding anything to the contrary in any law or contract, the Bank may take the additional measures provided for in this Part as it may deem necessary in respect of a failing bank, specialised bank or other financial institution.

Bail-in of a failing bank, specialised bank or other financial institution.

(2) For the purpose of rescuing a failing bank, specialised bank or other financial institution, the Bank may, subject to subsection (3), make a determination that any eligible instrument issued by a bank, specialised bank or other financial institution or to which a bank, specialised bank or other financial institution is a party or is subject—

(a) is cancelled ;

(b) is modified, converted or changed in form ; or

(c) has effect as if a right of modification, conversion or change of its or their form had been exercised.

(3) The Bank may make a determination under subsection (2) if the Bank is of the opinion that—

(a) the eligible instrument or instruments ought to be bailed-in to facilitate the rescue of the bank, specialised bank or other financial institution ; or

(b) the available assets of the bank, specialised bank or other financial institution do not, or are unlikely to support the payment of its liabilities, as they become due and payable.

(4) The Bank may, before making a determination under subsection (2), appoint one or more persons to—

(a) perform an independent assessment of the extent to which the acts mentioned in subsection (2) (a), (b) and (c) are carried out for all or any eligible instrument ; and

(b) furnish the Bank with a report on the assessment.

(5) The remuneration and expenses of any person appointed under subsection (4) (a) are to be paid by the bank, specialised bank or other financial institution on which the assessment is conducted.

Bail-in
certificate.

38.—(1) Upon delivery of the report of assessment under section 37 (4) (b) of this Act, the Governor shall, as soon as practicable, issue a bail-in-certificate.

(2) The bail-in certificate comes into effect on such date as the Governor may determine by a written instrument or notice (in this section referred to as “the appointed date”).

(3) The bail-in certificate may make provision for one or more of the following—

(a) the cancellation of one or more eligible instruments ;

(b) the modification, conversion, or change in the form of one or more eligible instruments ;

(c) that one or more eligible instruments is or have effect as if a right of modification, conversion or change of its or their form had been exercised under it or them ;

(d) where provision under paragraph (c) is made, the details of the modification, conversion or change of the form of the eligible instrument or instruments ; and

(e) incidental, consequential and supplementary matters, including a requirement that the bank or any other person shall comply with a general or specific direction set out in the bail-in certificate.

(4) The bail-in certificate shall specify—

(a) the name of the bank, specialised bank or other financial institution ;

(b) where the certificate provides for the cancellation of one or more eligible instruments issued by the bank, specialised bank or other financial institution, or to which it is a party or is subject, details of the eligible instrument or instruments to be cancelled, including the types or classes of eligible instrument or instruments ; and

(c) where the certificate provides for the modification, conversion, or change in form of one or more eligible instruments issued by the bank, specialised bank or other financial institution or to which it is a party or is subject, details of the eligible instrument or instruments to be modified, converted, or changed in form, including the types or classes of eligible instrument or instruments.

(5) The bail-in certificate may—

(a) make provisions generally or only for specified purposes, cases or circumstances ; and

(b) make different provisions for different purposes, cases or circumstances.

(6) The Governor may, at any time before the appointed date, add to, vary or revoke any matter specified in the bail-in certificate.

(7) A provision in a bail-in certificate has effect despite any restriction arising by reason of written contract or any law in force before the appointed date of the bail-in certificate.

(8) Where a bail-in certificate provides for the cancellation, modification, conversion, or change in the form of an eligible instrument, or that an eligible instrument is to have effect as if a specified right had been exercised under it—

(a) the cancellation, modification, conversion, or change in form takes effect or the eligible instrument has effect as if the specified right had been exercised under it from (and including) the appointed date, without other or further act by the bank, specialised bank or other financial institution ; and

(b) the certificate has effect according to its tenor and is binding on any person affected by it.

(9) A person that fails to comply with any direction in the bail-in certificate commits an offence and is liable, in the case of an individual, to imprisonment for a term of not less than six months or a fine of not less than ₦2,000,000 or both.

Moratorium
and
regulations
on bail-in
eligible
instruments.

39.—(1) Subject to any other provision of this Act, all claims, judgment debt enforcement, in respect of an eligible instrument existing or being pursued as of the date on the bail-in certificate, shall automatically be suspended and unenforceable against the bank, specialised bank or other financial institution during the period covered by the bail-in certificate, or any period as may be determined by the Governor by a written notice.

(2) To ensure the effective operation of the provisions of this section, the Bank may make regulations to impose a requirement on a bank, specialised bank or other financial institution to ensure that the contract governing the eligible instrument contains a provision to the effect that the parties to the contract agree for the eligible instrument to be the subject of a bail-in certificate and that the parties agree to be bound by a bail-in certificate issued by the Bank pursuant to sections 37 and 38 of this Act.

(3) The regulations which the Bank is empowered to make under subsection (2) may—

(a) specify the eligible instruments or class of eligible instruments, and banks, specialised banks or other financial institutions to which the requirement applies ; and

(b) provide for incidental, consequential or transitional matters.

(4) In exercising any power under this section, the Bank may have regard to the desirability of giving each pre-resolution creditor or pre-resolution shareholder of a financial institution the priority and treatment the pre-resolution creditor or pre-resolution shareholder would have enjoyed had the financial institution been wound up.

(5) In determining whether to exercise its powers in accordance with the priority and treatment a pre-resolution creditor or pre-resolution shareholder of a financial institution would have enjoyed had the financial institution been wound up, the Bank may consider—

(a) any widespread adverse impact that the bank's failure would have on the financial system in Nigeria or the economy of Nigeria, or both ;

(b) the need to maximise value for the benefit of all creditors of the bank, specialised bank or other financial institution as a whole ;

(c) public interest ; and

(d) any other matter that the Bank considers relevant.

(6) For the purposes of this Part of this Act, “eligible instrument” means any—

(a) equity instrument or other instrument that confers or represents a legal or beneficial ownership in the bank, except an ordinary share ;

(b) 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

(c) 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.

(7) For the purposes of this section, a reference to cancelling an eligible instrument includes cancelling it in whole or in part, and a reference to modifying, converting, or changing the form of an eligible instrument is a reference to—

(a) converting the whole or a part of the eligible instrument from one form or class to another ;

(b) replacing the whole or a part of the eligible instrument with another instrument or liability of a different form or class ;

(c) creating a new instrument of any form or class or liability in connection with the modification of the eligible instrument ; or

(d) converting the whole or a part of the eligible instrument into shares or other similar instruments issued by any resulting bank, specialised bank or other financial institution.

40.—(1) This section applies to a contract where one of the parties is—

(a) a bank that is the subject or proposed subject of a resolution measure ; or

(b) an entity that is part of the same group of companies as that of a bank where—

(i) the bank is the subject or proposed subject of a resolution measure,

(ii) the contract has a termination right that is exercisable if the bank becomes insolvent or is in a certain financial condition, and

(iii) the obligations of the entity under the contract are guaranteed or otherwise supported by the bank.

(2) The Bank may, by notice in writing signed by of the Governor, suspend the exercise of any termination right in a contract to which subsection (1) applies for a specified period.

Termination
of rights.

(3) A notice pursuant to subsection (2) may—

(a) relate to all or a class only of the contracts to which subsection (1) applies ;

(b) make different provisions for different classes of contracts to which subsection (1) applies ; and

(c) be of general or specific application.

(4) When exercising a power under subsection (2), the Bank shall have regard to its impact on the safe and orderly functioning of the financial market and financial market infrastructures operating in Nigeria.

(5) A suspension by notice under this section takes effect from, and including the time of publication of the notice.

(6) During the period of suspension of a termination right under a contract, and despite any provision of a written law or contract, any purported exercise of that right has no effect.

(7) A person whose termination right under a contract is suspended shall not, without the prior written consent of the Bank, exercise that right before the expiry of the suspension.

(8) On the expiry of the suspension period of a termination right under a contract, the person who holds that right may exercise the right in accordance with the terms of the contract, but not—

(a) on a resolution measure taken in relation to the bank ;

(b) on the occurrence of an event directly linked to such resolution measure ; or

(c) if the contract forms part of any business of the bank that has been transferred to another person under this Act.

Asset
separation
tool.

41.—(1) Notwithstanding anything contained in any law, contract or instrument, the Bank may transfer the assets of a bank, specialised bank or other financial institution to one or more private asset management vehicles and, for this purpose, the Bank may issue instruments transferring any of that property.

(2) The transfer referred to in subsection (1) shall take place without obtaining the consent of the shareholders of the bank, specialised bank or other financial institution, or any third party other than the private asset management vehicle, and without complying with any procedural requirements under any law or written contract.

(3) The Bank or a person as may be directed by the Bank, shall determine the consideration for which assets are transferred to the private asset management vehicle and such consideration may be paid in the form of debt issued by the private asset management vehicle :

Provided that nothing in this subsection shall prevent such consideration from having a nominal or negative value.

(4) The Bank may, for the purposes of subsection (1), issue an instrument of transfer to the private asset management vehicle:

Provided that nothing in this section shall be construed as precluding the Bank from directing that the private asset management vehicle transfers the assets back to the bank, specialised bank or other financial institution, and the bank, specialised bank or other financial institution shall be obliged to take back such assets.

(5) Shareholders or creditors of the bank, specialised bank or other financial institution and other third parties shall not enforce any right, judgment or claim howsoever described against the assets transferred to the private asset management vehicle.

(6) The private asset management vehicle shall manage the assets transferred to it with a view to maximising their value for an eventual sale or organised and measured winding up.

(7) The obligations of a private asset management vehicle under this section does not imply any duty or responsibility to shareholders or creditors of the bank, specialised bank or other financial institution, and the management of a private asset management vehicle shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless in the case of fraud or gross misconduct which directly affects the rights of such shareholders or creditors.

42.—(1) The Bank shall have the power to transfer to a purchaser—

(a) shares or other instruments of ownership issued by the bank ; and

(b) all or any asset, right or liability of the bank.

(2) A transfer made under this section shall be made on commercial terms, and the Bank shall take all reasonable steps to obtain commercial terms for the transfer, having regard to the circumstances.

Sale of
business
tool.

PART V—GENERAL AND SUPPLEMENTAL PROVISIONS

Restriction
on the use
of certain
names.

43.—(1) Except with the written consent of the Governor—

(a) no bank shall be registered or incorporated with—

(i) a tribal or ethnic name, or

(ii) any name which includes the words “Central” “Federal,” “Federation,” “National,” “Nigeria,” “Reserve,” “State,” “Christian,” “Islamic,” “Muslim,” “Quranic,” or “Biblical”;

(b) no person, other than a bank licensed under this Act, shall use or continue to use the word, “bank”, or any of its derivatives, either in English or in any other language in the description or title under which the person is carrying on business in Nigeria; and

(c) no person with objects to offer payments or other financial services required by this Act shall be registered by the Corporate Affairs Commission with the word, “fintech” or any of its derivatives either in English or in any other language included in the description or title under which the person is carrying on business in Nigeria.

(2) Every bank shall use, as part of its description or title, the word, “bank”, or anyone or more of its derivatives, either in English or in any other language.

(3) Subsection (1) does not apply to any registered association of banks, bankers or bank employees formed for the protection of their mutual interest or in furtherance or promotion of education and training of personnel of financial institutions in Nigeria.

(4) Any person who contravenes this section, commits an offence and is liable on conviction to a fine of not less than ₦2,000,000 and ₦100,000 for each day during which the contravenes continues.

General
restriction
on
advertisement.

44.—(1) No person, other than a bank or any other person authorised to take deposits, shall issue any advertisement inviting the public to deposit money with it.

(2) Any person who issues an advertisement in contravention of the provisions of subsection (1), commits an offence and is liable on conviction to—

(a) a fine of not less than ₦50,000,000 or two times the cumulative deposits or other amount collected on account of any such advertisement;

(b) imprisonment for a term of not less than five years; or

(c) both such fine and imprisonment.

(3) All advertisements issued by any bank shall be in compliance with regulations on advertisements issued by the Bank from time to time.

(4) Any bank which contravenes subsection (3), is liable to a penalty of ₦5,000,000 and an additional penalty of ₦100,000 for each day during which the contravention continues.

(5) In this section, “advertisement” includes any form of advertising whether—

- (a) in publication ;
- (b) by the display of notice ;
- (c) by means of circular or other documents ;
- (d) by any exhibition of photographs or cinematograph ;
- (e) by way of sound broadcasting or television or loudspeakers ;
- (f) other public address systems ; or
- (g) electronic mail, internet or other electronic media.

(6) An advertisement which contains information calculated to lead directly or indirectly to the deposit of money by the public shall be treated as an advertisement inviting the public to deposit money.

(7) An advertisement issued by any person on behalf of, or to the order of, another person shall be treated as an advertisement issued by that other person and for the purpose of any proceeding under this Act, an advertisement inviting the public to deposit money with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the person.

45.—(1) No bank, specialised bank or other financial institution shall incur any liability to any of its customers by reason only of failure on the part of the bank, specialised bank or other financial institution to open for business during a strike, an epidemic or pandemic.

Closure of bank during a strike, an epidemic or pandemic.

(2) If, as a result of a strike, an epidemic or pandemic, a bank, specialised bank or other financial institution fails to open for business, the bank, specialised bank or other financial institution shall, within 24 hours of the beginning of the closure, obtain the approval of the Bank for any continued closure.

46.—(1) Any director, manager, officer or employee of a bank or any other person receiving remuneration from the bank, who solicits, receives, consents or agrees to receive any gift, commission, employment, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relations, from any person for—

Prohibition of the receipt of commissions etc by staff of banks.

(a) procuring or endeavouring to procure for any person any advance, loan or credit facility from the bank,

(b) the purpose of the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by that bank,

(c) permitting any person to overdraw any account with that bank without proper authority or compliance with rules and guidelines for that purpose, or

(d) any other service rendered in line with his duty as an employee of the bank,

commits an offence and is liable on conviction to—

(i) a fine of ₦5,000,000,

(ii) imprisonment for a term of five years, or

(iii) both such fine and imprisonment and, in addition, any such gift or other commission shall be forfeited to the bank.

(2) The provisions of subsection (1) shall not in any manner derogate from, and shall be without prejudice to, any other written law relating to corruption or illegal gratification.

Disqualification
and
exclusion of
certain
individuals
from
management
of banks.

47.—(1) Every bank shall, before appointing any director, chief executive or management staff of such grade as may be specified from time to time by the Bank, seek and obtain the Bank's written approval for the proposed appointment.

(2) No bank shall employ or continue the employment of any person as a director, manager, secretary or an officer who—

(a) is of unsound mind or, as a result of ill health, is incapable of discharging his duties ;

(b) is dismissed from the service of the Federal, State or Local Government or any of the agencies of such government ; or

(c) is declared bankrupt or suspends payments or compounds with his creditors, including his bankers ;

(d) is convicted of any offence involving dishonesty or fraud ;

(e) is guilty of serious misconduct in relation to his duties ; or

(f) in the case of a person who possesses a professional qualification, is disqualified or suspended otherwise than of his own request from practising his profession by the order of any competent authority made in respect of him personally.

(3) No person who has been a director of, or directly concerned in the management of, a bank which has been wound up by the Federal High Court shall, without the express authority of the Governor, act or continue to act as a director of, or be directly concerned in the management of, any other bank.

(4) Any person whose appointment with a bank has been terminated or who has been dismissed for reasons of fraud, dishonesty or convicted for an offence involving dishonesty or fraud shall not be employed by any bank in Nigeria.

(5) The Bank shall remove from office any person to whom any of the provisions of subsection (2) applies :

Provided that in the case of paragraphs (b)-(f), the Bank may also prohibit any such person from serving on the board of, or from managing or from being employed by any institution under its supervision.

(6) Any bank which contravenes this section, commits an offence and is liable to a penalty of not less than ₦5,000,000 and an additional ₦100,000 for each day during which the contravention continues.

(7) Where a bank contravenes this section with the knowledge or connivance of any director, manager, secretary or any other officer of the bank, such officer, is liable to a penalty of not less than ₦2,000,000.

(8) Every institution regulated under this Act is required to submit to the Bankers' Committee Secretariat or any other body or office designated by the Bank, not later than two weeks after the date of termination or dismissal of any staff—

(a) the name,

(b) designation,

(c) reasons for termination or dismissal, and

(d) any other information that may be required by the Bankers' Committee Secretariat.

(9) It is not a defence for any director, manager or officer of a bank to claim that he is not aware of the provisions of subsection (4), unless such director, manager or officer can prove that prior clearance had been obtained for such a person from the Secretary of the Bankers' Committee Secretariat who maintains a register of terminated, dismissed or convicted staff of banks on the ground of fraud or dishonesty.

48.—(1) Where any offence against any provision of this Act has been committed by a body corporate or firm, a person who was a director, manager, secretary or other similar officer of the body corporate or firm purporting to and in such capacity is, in addition to the body corporate or firm, deemed to have committed that offence unless he proves that—

Offences by
companies.
servants.
agents. etc.

(a) the offence was committed without his consent or connivance ; and

(b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person is liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of the clerk or servant of such agent :

Provided that such act, omission, neglect or default was committed by the clerk or servant in the course of his employment or by the agent when acting in the course of his employment in such circumstances that has the act, omission, neglect or default been committed by the agent, his principal would have been liable under this section.

PART VI—MISCELLANEOUS MATTERS

Offences by directors and managers of banks.

49. Any person being a director, manager or officer of a bank who fails to take all reasonable steps to secure—

- (a) compliance by the bank with the requirements of this Act, or
- (b) the correctness of any statement submitted under the provisions of this Act, commits an offence and is liable on conviction to—

(i) a fine of not less than ₦2,000,000 or imprisonment for a term of not less than three years or to both such fine and imprisonment and, in addition, the Governor may suspend or remove from office or blacklist any such officer, manager or director.

Penalties for offences not otherwise provided for.

50. Any bank, specialised bank, other financial institution or any person who contravenes any of the provisions of this Act or regulations made for which an offence or penalty is not expressly provided, commits an offence and is liable to a fine of not less than ₦2,000,000.

Protection against adverse claims.

51. The Federal Government, the Bank or any officer of the Federal Government or the Bank, shall not be subject to any action, claim or demand by, liability to, any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of, any power conferred upon that Government, the Bank or such officer, by or under this Act or the Central Bank of Nigeria Act or any rule, regulation, guideline or directive issued or under any other relevant law.

Act No. 7, 2007.

Jurisdiction of the Federal High Court.

52. Notwithstanding the provisions of this Act or any law, the Federal High Court shall have jurisdiction to try any offence under this Act and to impose the penalty prescribed.

53.—(1) The provisions of this Act shall apply notwithstanding the provisions of the—

Application of Companies and Allied Matters Act. etc.

(a) Companies and Allied Matters Act ;

CAMA. Act No. 3. 2020.

(b) the Nigeria Deposit Insurance Corporation Act ;

Act No. 16. 2006.

(c) Federal Competition and Consumer Protection Act ;

Act No. 1. 2018.

(d) Nigerian Financial Intelligence Unit Act ;

Act No. 9. 2018.

(e) Federal Mortgage Bank of Nigeria Act ;

Cap. F16. LFN. 2004.

(f) Mortgage Institutions Act ;

Cap. M19. LFN. 2004.

(g) Nigerian Export-Import Bank Act ; and

Cap. N106. LFN. 2004.

(h) other applicable laws, in so far as they relate to banks, other financial institutions and specialised banks.

(2) Where any of the provisions of the Acts mentioned in subsection (1) or any other law or enactment is inconsistent with any of the provisions of this Act, the provisions of this Act shall prevail.

54. (1) Notwithstanding the provisions of this Act or anything to the contrary in the Companies and Allied Matters Act, any other law, subsidiary legislation, rule, procedure or practice, where the licence of a bank or other financial institution is revoked pursuant to the provisions of this Act or is wound up by an order of a court of competent jurisdiction, or a liquidator is appointed for the bank or other financial institution, any provision contained in a written netting agreement to which the bank or other financial institution is a party, or any netting rule or practice applicable to the bank or other financial institution, is binding upon the liquidator in respect of—

Netting.

CAMA. Act No. 3. 2020.

(a) any payment or settlement instruction which has been delivered to another bank or other financial institution, a service provider or to the Bank prior to the revocation, winding up order, or appointment of the liquidator and which instruction—

(i) is subject to calculation and determination through clearing or netting, or

(ii) may result in a payment or settlement obligation, which obligation is to be discharged on, or after, the date of the revocation, the winding up order, appointment of the liquidator, or the discharge of which was overdue on the date of the winding up order, or appointment of the liquidator, as the case may be ; or

(b) any payment or settlement obligation—

(i) which has been determined through netting prior to the revocation, the issue of the winding up order or appointment of the liquidator, or

(ii) which is to be discharged on, or after, the date of the revocation, the winding up order, appointment of the liquidator, or the discharge of which was overdue on the date of the winding up order or appointment of the liquidator.

CAMA. Act
No. 3. 2020.

(2) Notwithstanding anything to the contrary in the Companies and Allied Matters Act, any other law, subsidiary legislation, rule, procedure or practice, any asset of a bank or other financial institution which the bank or other financial institution, prior to the revocation or issue of its winding up order, has provided—

(a) to the Bank or any other bank, other financial institution or any person as security for a loan in respect of its settlement obligation, may be utilised by the Bank to the extent required for the discharge of that settlement obligation ; or

(b) under the terms of a written agreement with a service provider, to the service provider as security in respect of its payment obligation, may be utilised by the service provider to the extent required for the discharge of that payment obligation.

Priority of
deposit
liabilities.

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

Power to
make
regulations.

56.—(1) The Governor may make regulations, published in the Federal Government Gazette or in any other medium, pursuant to the objectives of this Act.

(2) Without prejudice to the provisions of subsection (1), the Governor may make rules and regulations for the operation and control of all institutions under the supervision of the Bank.

CHAPTER B—SPECIALISED BANKS AND OTHER FINANCIAL INSTITUTIONS

PART VII—ESTABLISHMENT OF SPECIALISED BANKS AND OTHER FINANCIAL INSTITUTIONS

57.—(1) Without prejudice to the provisions of Chapter A of this Act, no person shall carry on specialised banking or business of other financial institution in Nigeria other than insurance, pension fund management, collective investment schemes and capital market business as defined respectively in the Insurance Act, the Pension Reform Act and the Investment and Securities Act except it is a company duly incorporated in Nigeria and holds a valid licence granted under this Act.

Prohibition
of unlicensed
financial
institutions.

Cap. 117.
LFN. 2004.

Act No. 4.
2014.

Act No. 29.
2007.

(2) In this section, “business of other financial institutions” include—

- (a) business of a discount house ;
- (b) bureau de change ;
- (c) credit bureau ;
- (d) finance company or money brokerage ;
- (e) international money transfer services ;
- (f) mortgage refinance company ;
- (g) mortgage guarantee company ;
- (h) credit guarantee ;
- (i) financial holding company or payment service providers ; and
- (j) businesses whose objects include—
 - (i) factoring,
 - (ii) project financing,
 - (iii) equipment leasing,
 - (iv) debt administration,
 - (v) private ledger services,
 - (vi) investment management,
 - (vii) local purchases order financing,
 - (viii) export finance, and
 - (ix) such other business as the Bank may, from time to time, designate, regardless of whether such businesses are conducted digitally, virtually or electronically only.

(3) Any person or institution which, before the commencement of this Act, was carrying on any business of other financial institution shall apply in writing to the Bank for a licence within three months of the date of commencement of this Act.

(4) Any person who fails to apply as provided in subsection (3) or who so applies and is not granted a licence within three months of such application shall cease to carry on such business of other financial institutions.

(5) Any person who conducts or is involved in conducting the business of other financial institutions without a valid licence in contravention of subsection (1) or (4), commits an offence and is liable on conviction —

(a) in the case of a body corporate, to a fine of not less than ₦10,000,000 and an additional fine of not less than ₦200,000 for each day during which the offence continues ; and

(b) in any other case—

(i) to imprisonment for a term of not less than five years,

(ii) a fine of not less than ₦2,000,000 and an additional fine of not less than ₦50,000 for each day during which the contravention continues, or

(iii) both such imprisonment and fine.

Application
for licence.

58.—(1) Any person wishing to carry on the business of other financial business other than insurance and stock broking and pension fund management in Nigeria shall apply in writing to the Bank for the grant of a licence and shall accompany the application with—

(a) a feasibility report for the proposed financial business, including the financial projections for not less than five years ;

(b) a draft copy of the memorandum and articles of association of the proposed financial business ;

(c) such other information, documents and reports as the Bank may, from time to time, specify ; and

(d) the prescribed non-refundable application fee.

(2) After the applicant has provided all such information, documents and reports as the Bank may require under subsection (1), the Bank may grant the licence with or without conditions or refuse to grant the licence.

(3) Where a licence is granted, the Bank shall give written notice of that fact to the applicant and the licence fee shall be paid.

(4) The Bank may vary or revoke any condition subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.

(5) Any person who transacts a business without a valid licence under this section, whether in the case of an individual or a body corporate, commits an offence and is liable on conviction to—

- (a) imprisonment for a term of not less than three years ;
- (b) a fine of not less than ₦10,000,000 two times the cumulative amount collected ; or
- (c) both such imprisonment or fine.

59.—(1) Any person who fails to comply with any of the conditions of a licence granted under section 58 is liable to a penalty of not less than ₦2,000,000 and an additional fine of not less than ₦50,000 for each day during which the contravention continues.

Failure to comply with conditions of licence, etc.

(2) Every person carrying on any financial business referred to in section 57 of this Act shall—

- (a) comply with the monetary policy directives and other guidelines as the Bank may, from time to time, issue ; and
- (b) furnish, within the stipulated time, any statistical and other returns as the Bank may, from time to time, require.

(3) Any person who fails to comply with the provisions of subsection (2) is liable to a fine of not less than ₦2,000,000 and an additional penalty of not less than ₦50,000 for each day during which the offence continues.

(4) Any person who, being a director, manager or officer of a specialised bank or other financial institution, fails to take reasonable steps to secure compliance with any of the conditions of the licence of the bank, commits an offence and is liable on conviction to—

- (a) imprisonment for a term of not less than three years ;
- (b) a fine of not less than ₦2,000,000 and an additional penalty of ₦50,000 for each day during which the offence continues ; or
- (c) both such imprisonment and fine.

(5) Failure to comply with the guidelines or other directives of the Bank or refusal to supply returns in the prescribed form may be a ground for the revocation of a licence granted under this Act.

60.—(1) Without prejudice to the provisions of sections 31 and 32 of this Act the Bank shall—

- (a) supervise and regulate the activities of other financial institutions and specialised banks ;
- (b) prescribe the minimum paid-up share capital requirement of other financial institutions and specialised banks ; and
- (c) appoint examiners or any other person to carry out regular or routine examination of the books and affairs of specialised banks and other financial institutions.

Supervisory power of the Bank over other financial institutions and specialised banks.

(2) The Bank may appoint examiners and other person to carry out regular or routine examination of the books and affairs of other financial institutions and specialised banks.

(3) Where the Governor is satisfied that it is in the public interest to do so, such person may, in addition to the routine or regular examination, order a special examination or investigation of the books and affairs of any other financial institution or specialised bank and, for that purpose, the Governor shall appoint one or more qualified persons other than the officers of the Bank to conduct special examination or investigation under conditions of confidentiality of the books and affairs of such other financial institution or specialised bank.

(4) The cost and expenses of the Bank or remuneration of the person so appointed, as the case may be, shall be payable from the fund and property of the other financial institution or specialised bank.

(5) For the purpose of implementation of this section, other financial institutions and specialised banks shall be treated in the same manner as banks with respect to the requirements of section 23 of this Act.

Application
of Chapter
A of this
Act to
specialised
banks and
other
financial
institutions.

61.—(1) Without prejudice to the provisions of this Part, the provisions of Chapter A of this Act, including all its offences, penalties and the powers of the Bank shall apply with such necessary modifications to specialised banks and other financial institutions.

(2) No person or authority other than the Bank shall, as from the coming into effect of this section, exercise any regulatory or supervisory authority over specialised banks and other financial institutions.

(3) The Governor shall appoint such expert or experts on non-interest banking or to constitute a panel of such experts to advise the Bank on matters of non-interest banking, as the Governor may determine.

(4) The cost and expenses of the Bank or the remuneration of the person so appointed pursuant to subsection (3) shall be payable from the fund and property of the specialised bank or other financial institution concerned.

Management
and control
of failing
specialised
banks and
other
financial
institutions.

62.—(1) Where the Bank is satisfied that a specialised bank or other financial institution is in a grave situation, the Governor may by order in writing exercise any one or more of the powers specified in section 34 of this Act.

(2) The Bank may grant advances to non-interest banks in a grave situation or which the Bank otherwise determines requires liquidity support on such terms other than as to interest as the Bank may deem fit.

(3) If after taking any of the steps stipulated in subsection (1) or such other measures as in the opinion of the Bank may be appropriate in the circumstance, the state of affairs of the specialised bank or other financial institution concerned does not improve, the Bank shall revoke the licence of such specialised bank or other financial institution.

(4) Any specialised bank or other financial institution whose licence is revoked under subsection (1) shall be wound up by the Corporation or a person appointed by the Bank.

CHAPTER C—GENERAL REGULATORY POWERS

PART VIII—OTHER REGULATORY POWERS OF THE BANK

63.—(1) The Bank may, by notice in writing, require any bank, specialised bank or other financial institution to maintain capital funds of such amount (not being less than the minimum prescribed in section 9, as the case may be) and in such manner as the Bank considers appropriate, having regard to the risks arising from the activities of the bank, specialised bank or other financial institution, and such other factors as the Bank may consider relevant.

Risk-Based
capital
requirements.

(2) Without limiting the generality of subsection (1), a notice by the Bank may prescribe—

(a) the appropriate level (which may be expressed in the form of a ratio) and quality of capital that is commensurate with the type and concentration of risk of the bank, specialised bank or other financial institution ;

(b) the manner and process for calculating the level or quality of capital of the bank, specialised bank or other financial institution ;

(c) the internal processes of each bank, specialised bank or other financial institution in assessing the adequacy of its level and quality of capital, having regard to the risks arising from the activities of the bank, specialised bank or other financial institution may consider relevant ;

(d) the reports to be submitted by each bank, specialised bank or other financial institution ; and

(e) restrictions on the distributions by a bank, specialised bank or other financial institution of dividends, bonuses, commissions, payments as a result of a buyback of shares, and any other payment, in the event that it fails to maintain the level or quality of capital prescribed under subsection (1).

(3) The Bank may, if it considers appropriate in a particular circumstance, having regard to the risks arising from the activities of a bank, specialised bank or other financial institution and such other factors as the Bank considers relevant, vary any capital adequacy requirement imposed by a notice under section 9 of this Act by a notice on that bank, specialised bank or other financial institution.

(4) Without prejudice to subsection (3), the Bank may restrict or suspend the operations of a bank which fails to comply with a notice under this section.

(5) A bank, specialised bank or other financial institution which fails to comply with a notice under this section or any restriction or suspension imposed by the Bank under subsection (4) is liable to a penalty of not less than ₦2,000,000 and an additional penalty of not less than ₦50,000 for every day during which such offence continues.

Consolidated
supervision.

64.—(1) The Bank may, by regulations, prescribe the framework for the exchange of information among regulators of entities related to, associated with, or otherwise affiliated to banks, specialised bank or other financial institutions.

(2) The Bank may, from time to time, cause an examination, to be carried out by an examiner appointed by it in writing, of the books, accounts and records of any bank, specialised bank other financial institution and entities associated with or otherwise affiliated to the bank, specialised bank or other financial institution, as the case may be.

(3) When an examination is conducted pursuant to subsection (2), the institution concerned and every officer and employee thereof shall produce and make available to the person conducting the examination all the books, accounts, records and other documents of the institution and such correspondence, statements and information relating to the institution, its business and the conduct as the person conducting the examination may require and failure to produce any book, account, record, document, correspondence, statement or information contravenes this Act.

(4) The examiner may make copies of any book, account and other document required for the purposes of the examiner's report, and all information obtained in the course of the examination shall be treated as confidential and used solely for the purposes of this Act.

(5) The examiner shall submit the examiner's report to the Bank, drawing attention to any breach or non-observance of the requirements of this Act and any regulation made thereunder—

- (a) any irregularity in the manner of conduct of the business of the entity ;
- (b) any mismanagement of the business or lack of management skills ; and
- (c) the institution and any other matter revealed or discovered in the course of the examination warranting, in the opinion of the examiner, remedial action or further investigation.

(6) For purposes of this Act, the Bank shall be the coordinator of the consolidated supervision of a group to which a regulated entity belongs, and as such may appoint a competent authority from any other entity or entities with expertise in the relevant field to carry out an inspection of the operations of the associated, holding or subsidiary company of a bank, specialised bank or other financial institution, or of any person who exercises control over such institution, in order to satisfy itself that the operations of such associated company are not detrimental to the operations of the bank, specialised bank or other financial institution concerned.

(7) The Bank may upon receipt of a report under subsection (5), require changes to the legal or management structure of a group or banking group if it determines that such structures in their current form constitute an impediment to the performance of the Bank's supervisory functions and require a group or banking group to retain a single auditor to provide an overall review of the group or banking group, including the preparation of consolidated financial statements as the Bank may prescribe.

65.—(1) The provisions of the Federal Competition and Consumer Protection Act shall not apply to—

Competition.

(a) any function, act, financial product, or financial services issued or undertaking, and transaction howsoever described by a bank or other financial institutions licensed by the Bank ; and

Act No. 1.
2018.

(b) the Bank, the Governor, or other executive officer or staff of the Bank.

(2) Notwithstanding anything to the contrary in this Act but subject to subsection (3) of this section, sections 92 (1), (2) and (3), 94 and 98 of the Federal Competition and Consumer Protection Act shall apply to a merger, acquisition or other form of business combination which involves a bank, specialised bank or other financial institution.

Act No. 1.
2018.

(3) All references to the Federal Competition and Consumer Protection Commission in sections 92 (1), (2) and (3), 94 and 98 of the Federal Competition and Consumer Protection Act, shall be deemed and construed as a reference to the Bank.

Act No. 1.
2018

(4) Notwithstanding anything to the contrary in this section, the Governor may prescribe additional or other rules and procedures for mergers, acquisitions and other business combinations involving banks, specialised banks and other financial institutions.

Anti-Money
Laundering
and
Combating
Financing of
Terrorism
(AML/
CFT).

66.—(1) All banks, specialised banks and other financial institutions shall adopt policies stating their commitments to—

(a) comply with Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) obligations under subsisting laws, regulations and regulatory directives ; and

(b) implement internal control measures to prevent any transaction that facilitates criminal activities, money laundering or terrorism.

(2) Notwithstanding anything to the contrary in this Act or any other enactment, the Governor shall make regulations, guidelines and policies from time to time to fight money laundering and combat the financing of terrorism for banks and other financial institutions, in line with international best practices and standards.

(3) The Governor shall liaise with relevant bodies in other countries with similar objectives for the purposes of sharing information and relevant data that would aid the fight against money laundering and combat the financing of terrorism.

Corporate
governance
and ethics.

67.—(1) The Governor shall make regulations and issue guidelines for or with respect to—

(a) corporate governance, including the appointment of principal officers of banks and other financial institutions in Nigeria, their affiliates or other entities in which the banks and other financial institutions acquire or hold, directly or indirectly, a major stake ;

(b) prohibition or restriction on mutual holding of shares or other interests between banks, specialised banks and other financial institutions, related corporations or other entities ; and

(c) risk management of banks, specialised banks and other financial institutions.

(2) Regulations made under this section may—

(a) relate to all, or any class, category or description of persons or banks and other financial institutions ; and

(b) specify different provisions for different classes, categories or descriptions of persons banks and other financial institutions or a particular person or bank and other financial institution or of general or specific limited application.

Cybersecurity
regulation by
the bank.

68.—(1) The Bank may make regulations and issue guidelines to banks, specialised bank or other financial institutions to address cybersecurity issues in the delivery of financial or banking services.

(2) All banks, specialised bank or other financial institutions shall comply strictly with the cybersecurity regulations and guidelines made or issued by the Bank under subsection (1).

(3) Any officer of a bank, specialised bank or other financial institution who, through an action or omission, fails to comply with subsection (2) is liable to a penalty of not less than ₦2,000,000 and an additional penalty of ₦50,000 for each day during which such offence continues.

69.—(1) Subject to the provisions of this Act, the Bank may, by regulation, prescribe the administration and standards, governing the operations relating to the payment, clearing, and settlement activities of banks, specialised banks or other financial institutions, taking into consideration existing prudential requirements and relevant international standards.

Standard for payment, settlement and clearance activities.

(2) in this section, the term, “payment, clearing, and settlement activity” means an activity carried out by one or more financial institutions to facilitate the completion of financial transactions, but does not include any offer or sale of a security under the Investment and Securities Act.

Act No. 29. 2007.

70.—(1) The Bank shall by regulation prescribe the assessment criteria for designating systemically important banks or such other designation, as the Governor may from time to time determine, and the policy measures considered appropriate, to address the risks posed by such designated banks including—

Designation of systemically important banks.

- (a) liquidity standards ;
- (b) stress testing requirements ;
- (c) recovery and resolution plan ;
- (d) enhanced supervision ; and
- (e) disclosure requirements.

(2) The Governor may, in furtherance of subsection (1), designate any bank as a systemically important bank or such other designation as the Governor may specify, and a bank so designated shall be obliged to immediately apply and comply with the standards and requirements of a systemically important bank as may be prescribed by the Bank under subsection (1).

(3) Any bank which fails to comply with any of the policy measures in the guidelines issued by the Bank under this section is, in respect of each such failure, liable to a fine of not less than ₦5,000,000 and an additional penalty of ₦200,000 for each day during which such offence continues.

(4) The Bank, in taking any resolution measure in connection with a failing systemically important bank or any failing bank, may request for the cooperation of any government agency or corporation in Nigeria, with regulatory oversight in respect of such failing bank or whose mandate would be impacted

by the resolution measures and such government agency or corporation shall be obligated to cooperate with the Bank.

Restriction
on
operations
of agents of
banks.

71.—(1) The Bank may, by guidelines, regulate the operations of agents of banks.

(2) An agent shall not accept any—

(a) withdrawal by cheque or be a direct member of the Nigeria Bankers Clearing System; or

(b) deposit above an amount which shall be prescribed, from time to time, by the Bank.

(3) For the purpose of this section, “agent” means a person, or an entity contracted by an institution and approved by the Bank to provide the services of the bank on behalf of the bank, in such manner as may be prescribed by the Bank.

(4) Any agent which contravenes any of the provisions of this section, commits an offence and is liable to a fine of not less than ₦50,000 and an additional penalty of ₦5,000 for each day during which such contravention continues.

Unclaimed
funds or
abandoned
property.

72.—(1) Where a current or savings account has not been operated for a period of one year or such other period as the Bank may specify, from time to time, no withdrawal shall be made on the account except with the approval of two authorised signatories of the bank, specialised bank or other financial institution involved.

(2) The account referred to in subsection (1) shall be transferred to a separate register of dormant accounts and remain deposit liabilities in the books of the bank, specialised bank or other financial institution, and the bank, specialised bank or other financial institution shall immediately notify the account holder by electronic email and in writing at the account holder’s last known address, informing him of the dormancy of the account.

(3) Where an account which is transferred under subsection (2) is subject to a service charge, the charge may continue to be levied up to the date on which the account was transferred to the register of dormant accounts.

(4) Where an account which is transferred under subsection (2) is interest bearing, interests shall be applied to the account up until the time when the balance is transferred to the Bank in accordance with subsection (8).

(5) Where an account is transferred to the register of dormant accounts and has been on the register for 10 years, the bank, specialised bank or other financial institution shall advertise, in at least two daily newspapers with national

circulation, giving notice that the account has been transferred to the register of dormant accounts.

(6) Each bank, specialised bank or other financial institution shall submit to the Bank quarterly reports on all dormant accounts stating the efforts made by the bank, specialised bank or other financial institution to locate the account holders.

(7) An account which has been transferred under subsection (2) may only be transferred out of the register following a request by the depositor or the legal representative of the depositor, where such depositor is dead or incapacitated, once all necessary identification and evidence of account ownership have been established by the bank, specialised bank or other financial institution.

(8) Where an account has been in the register of dormant accounts for 10 years, the bank, specialised bank or other financial institution shall, after the advertisement under subsection (5), transfer the balance on the account including the interest earned to an account earmarked for that purpose at the Bank.

(9) Where a balance has been transferred under subsection (8), the Bank shall refund the balance to the depositor or, if the depositor is deceased, to the legal representative of the depositor's estate, once the Bank is satisfied that the claimant is the owner of the funds requested.

(10) The Bank shall invest the funds deposited with it under subsection (8), in treasury bills or other securities as the Bank may determine and interest accrued on any such sums shall be payable to any claimant under subsection (9).

(11) The Bank shall issue guidelines on the administration of unclaimed funds in banks, specialised banks and other financial institutions pursuant to the provisions of this Act.

73.—(1) The liquidator of a bank, specialised banks and other financial institutions may set aside the following transactions affecting the assets of the banks, specialised banks and other financial institutions and recover the assets from the transferee or other beneficiary of the transaction :

Avoidance of
pre-
liquidation
transfers.

(a) gratuitous transfers to, or to persons related to, affiliates, insiders or key management personnel of the bank, specialised banks and other financial institutions made within five years prior to the effective date of the liquidation ;

(b) transactions with affiliates, insiders or key management personnel of the banks, specialised banks and other financial institutions conducted within five years prior to the effective date of the liquidation, if detrimental to the interest of depositors and other creditors ;

(c) gratuitous transfers to third parties made within three years prior to the effective date of the liquidation ;

(d) transactions in which the consideration given by the bank considerably exceeded the received consideration, made within three years prior to the effective date of the liquidation ;

(e) a transaction based on a forged or fraudulent document that the bank, specialised banks and other financial institutions has executed to the detriment of creditors ;

(f) any act done with the intention of all parties involved to withhold assets from the creditors of the bank, specialised banks and other financial institutions or otherwise impair their rights, within five years prior to the effective date of the liquidation ;

(g) transfers of property of the banks specialised banks and other financial institutions to, or for the benefit of, a creditor on account of a debt incurred within one year prior to the effective date of the liquidation which has the effect of increasing the amount that the creditor would receive in a liquidation of the banks, specialised banks and other financial institutions :

Provided that payment of deposits otherwise than by the transfer of property of the bank (other than money), specialised bank or other financial institution shall not be subject to this provision ; and

(h) any attachment or security interest, except one existing six months prior to the effective date of the liquidation.

(2) Any action to set aside a transfer pursuant to subsection (1) shall be taken by the liquidator within one year following the effective date of the liquidation.

(3) Notwithstanding the provisions of this section, the liquidator may not set aside a payment or transfer by a bank, specialised bank or other financial institution—

(a) if it was made in the ordinary course of business ;

(b) if it was part of a contemporaneous exchange for reasonably equivalent value ; or

(c) to the extent that following the transfer the recipient extended new unsecured credit to the bank, specialised bank or other financial institution which had not been satisfied by the bank, specialised bank or other financial institution as of the effective date of the liquidation.

(4) The liquidator may recover property or the value of property transferred by the bank, specialised bank or other financial institution from a transferee of an initial transferee only if the second transferee did not give

fair value for the property and knew or reasonably should have known that the initial transfer could be set aside under this Act.

(5) The liquidator may order that notice of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in such property after the filing of such a notice takes his title or interest subject to the rights of the bank, specialised bank or other financial institution to recover the property.

CHAPTER D—RESOLUTION FUND

PART IX—RESOLUTION FUND AND RESOLUTION TOOLS

74.—(1) Without prejudice to the provisions of the Asset Management Corporation of Nigeria Act, there is established the Banking Sector Resolution Fund (in this Act referred to as “Resolution Fund”) which shall be domiciled with the Bank, and into which shall be paid all contributions and levies imposed under this Part :

Establishment
of Banking
Sector
Resolution
Fund.

Provided that the Governor shall, with the approval of the Board, determine the date of commencement of the Resolution Fund (commencement date).

Act No. 4,
2010.

(2) The Resolution Fund are not subject to tax and accordingly, all money accruing to, payments made from, and instruments and transactions relating to, the Resolution Fund shall be exempt from all forms of taxes, levies, duties, charges or imposition howsoever described.

75.—(1) On the commencement date of the Resolution Fund, and on the first business day in each calendar year thereafter, the Bank shall pay, into the Resolution Fund, the sum of ₦10,000,000,000 or such amount as the Board of the Bank may determine.

Contribution
by bank.

(2) For the purposes of making the payment required under subsection (1), the Bank shall appropriate the said sum of ₦10,000,000,000 or such amount determined by the Board of the Bank under subsection (1) from the general reserves or other funds of the Bank, and cause the sum so appropriated to be paid into the Resolution Fund in the immediately available funds.

76. At the commencement date, and thereafter on the first business day in each calendar year following the commencement date, the Corporation shall pay into the Resolution Fund the sum of ₦4,000,000,000 or such amount as the Board of the Bank may determine.

Contribution
by the
Corporation.

Levy on banks, specialised banks and other financial institutions.	77. There is imposed with effect from the commencement date, on each bank, specialised bank and other financial institution in Nigeria, an annual levy, in an amount equivalent to 10 basis points (or such basis points as may, from time to time, be determined by the Bank) of its total assets as at the date of its audited financial statements for the immediately preceding financial year published under this Act, and which shall be payable on the commencement date, and on or before the 30th day of April in each subsequent calendar year following the commencement date.
Purpose of the Resolution Fund.	78. The Resolution Fund shall be utilised exclusively— (a) to pay the operating costs of a bridge bank ; (b) to pay the costs of transferring the whole or any part of the business at the bank, specialised bank or other financial institution pursuant to a resolution measure ; (c) to provide a loan, advance, overdraft or other credit facility to a bank, specialised bank or other financial institution, financial institution under resolution or a bridge bank ; (d) to pay any other cost reasonably incurred in the resolution measure, such as legal cost, cost of any advisory services, and the cost of an independent valuation of the bank, specialised bank or other financial institution under resolution ; (e) for such other purposes in support of resolution measure as may be prescribed by the Governor ; and (f) to pay expenses and costs specifically incurred for the administration and management of the Resolution Fund, up to an annual limit of an amount equivalent to 0.5% of the total amount paid into the Resolution Fund for the calendar year in which the expenses or costs are incurred.
Tax deductibility of annual levy and vested contributions.	79. Any annual levy paid by a bank, specialised bank or other financial institution under this Act shall be deductible for the purposes of the companies' income tax of the paying bank, specialised bank or other financial institution, under the Companies Income Tax Act.
Act No. 11. 2007.	
Prohibition on payment of dividend and bonuses by defaulting eligible financial institution.	80. A bank, specialised bank or other financial institution that is in default of payment of the levy imposed under this Act or any Part is prohibited from paying dividends or similar distribution to its shareholders, and from paying any bonus to its directors or employees, while such payment default continues.

81. There is established, for the Resolution Fund, a Board of Trustees which shall consist of—

Establishment and composition of Board of Trustees.

(a) two representatives of the Bank nominated by the Governor, one of whom shall be a Deputy Governor who shall be appointed as the Chairman of the Board of Trustees ;

(b) four representatives of banks appointed by the Bank from among officers of four banks, not below the level of a director, on a two-year rotational basis ;

(c) one representative of the Corporation from among its officers not below the level of a director ; and

(d) one representative from other financial institutions appointed by the Bank.

82.—(1) The Board of Trustees is responsible for the supervision, administration and management of the Resolution Fund and shall discharge the following duties—

Duties and responsibilities of Board of Trustees.

(a) collection of the contributions and levies levied under this Act as and when due ;

(b) disbursement of money standing to the credit of the Resolution Fund ;

(c) formulating investment policies for the Resolution Fund and causing money standing to the credit of the Resolution Fund to be invested in accordance with the provisions of this Act ; and

(d) performing other functions that are consistent with the purpose of the Resolution Fund as specified in this Act.

(2) The Board of Trustees may—

(a) delegate any part of its responsibilities under this Act as it may deem fit ; and

(b) appoint independent service providers, professional advisers and consultants for the performance of any of its functions and for running the Secretariat.

(3) In the discharge of their responsibilities and duties, members of the Board of Trustees are deemed to stand in a fiduciary relationship with the Bank, the Corporation, banks, specialised banks and other financial institutions and shall act with due care and skill, in utmost good faith.

83. (1) Subject to subsection (2), members of the Board of Trustees, except the members nominated by banks and other financial institutions, shall hold office for as long as they continue to hold the office by virtue of which they were appointed to the Board of Trustees.

Tenure, cessation of membership, and casual vacancy.

(2) A member of the Board of Trustees shall cease to hold office as such member if such person ceases for any reason howsoever to hold the office by reason of which such person holds membership of the Board of Trustees.

(3) If a vacancy occurs as a result of the death, resignation, retirement, disqualification or removal of a member of the Board of Trustees, the entity or entities that such member represents on the Board of Trustees shall nominate another member to fill the vacancy so occasioned, for the remainder of the term of office of the member whose death, resignation, retirement, disqualification or removal occasioned the vacancy.

Secretariat of
the Board of
Trustees.

84.—(1) There is established, for the Board of Trustees, a Secretariat which shall be situated, at the head office of the Bank, or such other place as the Bank may determine, and shall be staffed by such number of persons to be seconded from the Bank or any of the other institutions on which a levy or contribution is levied under this Part as the Board of Trustees may, from time to time, determine.

(2) The Secretariat shall have such functions as are, from time to time, prescribed by the Board of Trustees.

Proceedings
of the Board
of Trustees.

85. The Board of Trustees shall—

(a) meet for the conduct of its business at the Secretariat or such other place at such times and on such days as the Chairman of the Board of Trustees may decide ; and

(b) subject to the provisions of this Act, have power to regulate its proceedings.

Non
remuneration
for members
of Board of
Trustees.

86. No remuneration is payable to members of the Board of Trustees, except sitting allowances as the Governor may, from time to time, determine :

Provided that members of the Board of Trustees are entitled to be reimbursed in full for all reasonable expenses incurred in pursuit of the business of the Board of Trustees and in the discharge of their duties.

Investment
of
Resolution
Fund.

87.—(1) All moneys standing to the credit of the Resolution Fund which are not immediately required to be utilised shall be invested in any of the following—

(a) debt securities issued, or which are guaranteed by the Federal Government of Nigeria or the Bank ;

(b) with the prior written consent of the Bank, debt securities issued, or which are guaranteed by the central government of a sovereign country ;

(c) with the prior written consent of the Bank, debt securities issued, or which are guaranteed by an international financial institution of which Nigeria is a member ;

(d) repurchase agreements fully collateralised by debt securities of the governments and institutions mentioned in paragraphs (a)-(c), with a maximum maturity of 30 days ; and

(e) such other debt securities or instruments that the Board of Trustees may with the approval of the Bank from time to time, designate:

Provided always that in the case of paragraphs (b), (c), and (d), such debt securities or instruments shall be freely tradable securities.

(2) All bonuses, profits and other returns which accrue on investments made under subsection (1) shall form part of the Resolution Fund and may be re-invested in accordance with subsection (1).

88. At the dissolution date of the Resolution Fund prescribed by the Bank, the Resolution Fund shall stand dissolved and the Board of Trustees shall appoint, on such terms as it deems fit, one or more liquidators to—

Dissolution
of
Resolution
Fund.

(a) wind up the affairs of the Resolution Fund ;

(b) realise all assets of the Resolution Fund ; and

(c) distribute, in accordance with such directions as may be issued by the Bank, the proceeds of realisation and all money then standing to the credit of the Resolution Fund.

89. The Board of Trustees shall cause to be kept, for the Resolution Fund, proper books of accounts with respect to all levies and contributions paid to the Resolution Fund, and all the transactions and investments of the Resolution Fund, which shall give a true and fair view of the state of affairs of the Resolution Fund in such form and in compliance with such accounting standards as may be prescribed by the Bank.

Books of
accounts.

90.—(1) The Board of Trustees shall cause the accounts of the Resolution Fund to be submitted for audit within six weeks after the end of each financial year to such independent firm of auditors as the Board of Trustees may appoint, and, to qualify for such appointment, such independent firm of auditors shall be—

Audit of
Resolution
Fund.

(a) a member of one of the professional bodies recognised in Nigeria ; and

(b) resident in Nigeria and carry on in Nigeria, professional practice as an accountant and auditor.

(2) The Board of Trustees shall cause the audited accounts of the Resolution Fund to be submitted to the Governor, Corporation and each bank, specialised bank and other financial institution, within 12 weeks after the end of the financial year to which such account relates.

Annual
report of
Resolution
Fund.

91. The Board of Trustees shall, not later than three months after the end of each financial year, beginning with the financial year following the commencement date, submit a report of its activities during the financial year concerned in such form and with such information as may be specified by the Bank (in this Act referred to as an “annual report”) to the Governor, the Corporation, and each bank, specialised bank and other financial institution to which the levy imposed under section 77 of this Act applies.

Financial
year of
Resolution
Fund.

92. The financial year of the Resolution Fund shall begin on the 1st day of January and end on the 31st day of December.

Limitation of
action in
relation to
Resolution
Fund. etc.

93.—(1) Without prejudice to subsection (3), no suit shall—

(a) lie or be instituted against the Resolution Fund, a member of the Board of Trustees or any person acting on behalf of the Resolution Fund for any act done or omitted to be in pursuance or execution or intended execution of this Act unless it is commenced within three months after the act, neglect or default complained of, or in the case of a continuing act, neglect or default, within three months after the ceasing thereof; and

(b) be commenced against the Resolution Fund, a member of the Board of Trustees or any person acting on behalf of the Resolution Fund before the expiration of one month after written notice of intention to commence the suit shall have been served upon the Board of Trustees by the intending plaintiff or his agent, and the notice shall clearly state the—

- (i) cause of action,
- (ii) the particulars of the claim,
- (iii) the name and place of abode of the intending plaintiff, and
- (iv) the relief which the intending plaintiff claims.

(2) In any action or suit relating to the Resolution Fund, no injunction or order in the nature thereof shall be issued against the Resolution Fund or any asset of the Resolution Fund, and no execution or attachment or processes in the nature thereof shall be issued against money standing to the credit of the Resolution Fund but any sum of money which may, by the judgment of a court be awarded against the Resolution Fund, shall, subject to any direction given by the court where notice of appeal has been given by the Resolution Fund, be paid from money standing to the credit of the Resolution Fund.

(3) The Resolution Fund, the Board of Trustees, or any person engaged by the Resolution Fund or Board of Trustees, in connection with the performance of the functions of the Board of Trustees or the business of the Resolution Fund, shall not be subject to any action, claim, or demand by or liability to any person

in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power or function conferred upon the Board of Trustees.

(4) Every member of the Board of Trustees or agent for the time being of the Resolution Fund shall be indemnified out of the assets of the Resolution Fund against any liability incurred by him in defending any civil proceeding, if such proceeding is brought against him in his capacity as such member or agent :

Provided that nothing in this Act shall be construed as entitling a member of the Board of Trustees to be indemnified against liability arising from the breach of the fiduciary or other duties imposed by the law.

94. Without prejudice to the powers of the Bank to make regulations and issue guidelines and directions under this Act, the Bank shall have power to make rules and regulations for giving effect to the provisions of this Part and without limitation, for regulating the management and operations of the Resolution Fund, and the proceedings of the Board of Trustees.

Regulation of
Resolution
Fund.

95. Without prejudice to any other provision of this Act, the Governor may impose any one or more of the following sanctions on any bank, specialised bank, other financial institution, or person for failure to comply with any of the provisions of this Act, the Central Bank of Nigeria Act or any other law relating to banking or any rule, regulation, guideline or directive made under it—

Failure to
comply with
rules, etc.

Act No. 7.
2007.

(a) suspension of the authorised foreign exchange dealership licence for any period of time as the Bank may prescribe ;

(b) prohibition from participation in any medium for transaction in foreign exchange ;

(c) suspension from participation in bank clearing systems ;

(d) forfeiture to the Bank of any pecuniary benefit obtained as a result of the violation or breach ;

(e) suspension of any licence issued or given to any bank, specialised bank or other financial institution ;

(f) imposition of a fine of at least ₦100,000,000 ; and

(g) any other sanctions the Bank may deem appropriate.

96.—(1) Notwithstanding the provisions of any law, the Governor may, in the event that an offence is punishable under this Act, the Central Bank of Nigeria Act, the Foreign Exchange (Monitoring and Miscellaneous) Provisions Act, the Credit Reporting Act or any other law relating to banking, accept such sums as the Governor thinks fit, not exceeding the minimum amount of penalty to which that person would have been liable under any of these Acts.

Power to
compound
offences.

Act No. 7.
2007.

Cap. F34.
LFN. 2004.

Act No. 2.
2017.

(2) Any money paid to the Governor under subsection (1), shall be paid into the Bank's penalty account which is established for that purpose.

Power to
freeze
accounts.

97.—(1) Notwithstanding anything contained in any other enactment, where the Governor has reason to believe that transactions undertaken in any account with any bank, specialised bank or other financial institution are such as may involve the commission of any criminal offence under any law, the Governor may make an ex-parte application for an order of the Federal High Court verifying on oath the reasons for the Governor's belief, and on obtaining such court order direct or cause a direction to be issued to the manager of the bank, specialised bank or other financial institution where the account is situated or believed to be, or in the alternative to the head office of such bank, specialised bank or other financial institution directing the bank, specialised bank or other financial institution to freeze the account.

(2) The manager of a bank, specialised bank or other financial institution in which a direction has been issued on an account under subsection (1) shall, on receipt of such direction, suspend all transactions related to such account for such period as may be specified in the direction.

(3) Where an account has been frozen under this section, the Governor shall refer the matter to the—

- (a) Nigeria Police Force ;
- (b) National Drug Law Enforcement Agency ;
- (c) Economic and Financial Crimes Commission ; or
- (d) any other law enforcement authority or appropriate regulatory authority :

Provided that where the matter relates to the contravention of the provisions of this Act or other enactments administered by the Bank, the Governor may cause such matter to be investigated by the Bank.

(4) Where it is not possible for the Bank, the Nigeria Police Force, the National Drug Law Enforcement Agency, the Economic and Financial Crimes Commission, or any other appropriate regulatory authority to conclude its investigations within the period stipulated in the court order, the Governor shall apply to the Federal High Court for an order for the continued freezing of the account concerned.

Right to
appear in
court.
Cap. C23.
LFN. 2004.

98.—(1) Subject to the provisions of section 174 (1) of the Constitution of the Federal Republic of Nigeria, any legal practitioner in the employment of the Bank may, with the consent of the Governor, prosecute or defend criminal, civil or other proceedings in the name of, and on behalf of, the Bank in respect of matters relating to the business or operations of the Bank, any bank,

specialised bank or other financial institution in the course of attaining the objectives of—

- (a) this Act ;
- (b) the Central Bank of Nigeria Act ;
- (c) the Foreign Exchange (Monitoring and Miscellaneous) Provisions Act ; or
- (d) any other law relating to banking or the business of other financial institution.

Act No. 7.
2007.

Cap. F34.
LFN. 2004.

(2) Notwithstanding the provisions of any enactment to the contrary, a person appointed under subsection (1) is, while so appointed, entitled to represent the Bank as a legal practitioner for the purpose and in the course of such person's employment in any civil or criminal proceeding, without prejudice to the power of the Bank to engage private legal practitioners in any proceeding.

99. Notwithstanding the provisions of this Act or any other law the Governor may by notice published in the print and electronic media and in the Federal Government Gazette, reduce or increase the monetary penalty payable for the contravention of any of the provisions of this Act.

Power to
impose and
review
penalties.

100. The Governor may exempt any other financial institution, non-interest bank or specialised bank from any of the provisions of this Act by a notice published in the print and electronic media and in the Gazette.

Power to
grant
exemptions.

101. Notwithstanding the provisions of this Act or the Central Bank of Nigeria Act, the Bank may charge such fees as the Board may consider appropriate for any of its services.

Power to
charge fees.
Act No. 7.
2007.

CHAPTER E—SPECIAL TRIBUNALS FOR THE ENFORCEMENT AND RECOVERY OF ELIGIBLE LOANS

102.—(1) There is established the Special Tribunal for the Enforcement and Recovery of Eligible Loans (in this Act referred to as “the Tribunal”).

Establishment
of the
Special
Tribunal for
the
Enforcement
and
Recovery of
Eligible
Loans.

(2) The Tribunal shall exercise the jurisdiction, powers and authority as conferred on it in this Chapter.

Composition
of the
Tribunal.

103.—(1) The Tribunal shall consist of at least 11 persons to be appointed as full-time members by the President.

(2) The President of the Tribunal who shall be a legal practitioner of at least 15 years post call, with a minimum of seven years' experience in—

- (a) banking and financial services,
- (b) law and practice ; or
- (c) in the banking and financial services sector.

(3) Other members of the Tribunal shall be legal practitioners of not less than 12 years post call, with a minimum of five years' experience in—

- (a) banking and financial services industry ;
- (b) law and practice ; or
- (c) in the banking and financial services sector.

(4) A person appointed as a member of the Tribunal shall not be removed from office except in accordance with the provisions of this Chapter.

(5) The President of the Tribunal is the chief executive and accounting officer and is responsible for the overall control, supervision and administration of the Tribunal.

(6) No member of the Tribunal shall perform any administrative function except as otherwise delegated by the President of the Tribunal.

Functions of
the National
Judicial
Council.

104. The National Judicial Council shall have the power to recommend to the President any disciplinary action against the President of the Tribunal or any member of the Tribunal including the removal of the President of the Tribunal or a member or members of the Tribunal, on any or all the grounds provided for in this Chapter.

Vacancy in
the office of
the Tribunal.

105. In the absence of the President of the Tribunal, the most senior member of the Tribunal by virtue of date of appointment or in the event of a tie, by virtue of date of call to the Bar, shall act as the President of the Tribunal pending the return of the President of the Tribunal or appointment of a new President of the Tribunal.

Constitution
of the
Tribunal.

106.—(1) The Tribunal shall have and exercise jurisdiction throughout the Federation and for that purpose, the President of the Tribunal shall, for administrative purpose divide the entire Federation into such number of divisions as may be deemed appropriate, having regard to the volume of cases likely to be instituted, and provided that the total number of divisions in operation at any point in time shall not be less than two.

(2) For the purpose of exercising the jurisdiction conferred on it by this Act, the Tribunal shall be duly constituted by one member of the Tribunal sitting alone.

107. The President and members of the Tribunal shall hold office from the date of appointment to the Tribunal until the date of dissolution of the Tribunal:

Term of office.

Provided that no person above 65 years shall be appointed or remain in office as a member of the Tribunal.

108. A member of the Tribunal ceases to hold office if such member—

Disqualification of members of the Tribunal.

(a) attains the age of 65 ;

(b) becomes of unsound mind or, owing to ill health, is incapable of discharging his duties ;

(c) is adjudged bankrupt or such member makes a compromise with his creditors ;

(d) is convicted of a felony or any offence involving fraud or dishonesty by a court of competent jurisdiction ;

(e) is guilty of serious misconduct in relation to his duties ;

(f) is disqualified or suspended (other than at his own request) from practising the legal profession in any part of Nigeria or outside Nigeria by the order of any competent authority made in respect of him personally, or has an interest in or is a director or shareholder of a financial services provider ;

(g) has an interest in or is a director or shareholder of a bank, specialised bank or other financial institution ; or

(h) convicted of a sexual offence.

109.—(1) A member of the Tribunal may, by notice in writing under his hand addressed to the President through the National Judicial Council, resign from office.

Resignation and removal of members of the Tribunal.

(2) A member of the Tribunal may be removed from office by an order made by the President on the recommendation of the National Judicial Council based on any of the grounds referred to in section 108 of this Act and after such member has been given a fair hearing, or on the ground of a proven charge of misbehaviour or incapacity after due inquiry has been made and the member concerned has been informed of the charge against him and given an opportunity of being heard in respect of the charge.

Salaries,
allowances
and other
conditions of
service of
members of
the Tribunal.

110.—(1) The salaries and allowances of the President of the Tribunal, members and Chief Registrar of the Tribunal shall be equivalent to remuneration of the Chief Judge, Judges and Chief Registrar of the Federal High Court respectively.

Cap. C23.
LFN. 2004

(2) Any amount payable under this section shall be charged to and paid out of the Consolidated Revenue Fund of the Federation in accordance with section 81 (3) of the Constitution of the Federal Republic of Nigeria, 1999.

Filling up of
vacancies.

111. If, for a reason other than temporary absence, any vacancy occurs in the office of a member of the Tribunal, then the President shall appoint another person in accordance with the provisions of this Chapter to fill the vacancy.

Vacancies.

112. The Tribunal is deemed to be duly constituted notwithstanding any vacancy in the membership of the Tribunal.

Chief
Registrar of
the Tribunal.

113.—(1) The Chief Registrar of the Tribunal shall be appointed by the President of the Tribunal.

(2) The Chief Registrar of the Tribunal shall—

(a) be a legal practitioner of at least 10 years post call experience ; and

(b) discharge such duties in exercise of the powers and authority of the Tribunal as may, from time to time, be assigned to him by the Tribunal, Rules of the Tribunal and the President of the Tribunal.

(3) The Chief Registrar, or any other officer of the Tribunal so authorised, shall have power to administer oaths and discharge such other duties with respect to any proceedings in the Tribunal as may be prescribed by the rules or by any special order of the President of the Tribunal.

Other staff
of the
Tribunal.

114.—(1) The President of the Tribunal may appoint such number of persons as may be required to be commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceeding in the Tribunal, and any order of the Tribunal for the attendance and examination of witnesses or production of documents before any such commissioner shall be enforced in the same manner as an order to attend and be examined or produce documents before the Tribunal.

(2) The Tribunal shall employ the services of such staff as the Tribunal may deem necessary for the efficient performance of its functions under this Chapter.

(3) The remuneration (including allowances) and terms and conditions of service of the staff of the Tribunal shall be as may be determined by the Tribunal provided that it is not less than what is obtainable in the Federal High Court.

(4) Any amount payable under this section shall be charged and paid out of the Consolidated Revenue Fund of the Federation in accordance with section 81 (3) of the Constitution of the Federal Republic of Nigeria, 1999.

Cap. C23.
LFN. 2004.

(5) All employees of the Tribunal are entitled to pensions and other retirement benefits in line with the Pension Reform Act.

Act No. 4.
2014.

(6) Nothing in this section prevents the appointment of a person to any office, on terms which preclude the grant of pension and other retirement benefits.

115.—(1) The Tribunal shall have and exercise jurisdiction on any cause and matter—

Jurisdiction
of the
Tribunal.

(a) pertaining to enforcement and recovery of eligible loans by financial services banks, specialised banks or other financial institutions ;

(b) connected with or pertaining to the enforcement of security or guarantee, or attachment of any asset under an eligible loan made by any bank, specialised bank or other financial institution in Nigeria, to its customers.

(2) Nothing in this subsection affects the jurisdiction and all other powers of the Federal High Court, State High Court or the High Court of the Federal Capital Territory to continue to hear and determine debt recovery and related financial consumer causes and matters before such court at the date of the commencement of this Act:

Provided that such matters before the courts shall be concluded timeously.

(3) The Tribunal, in the exercise of the jurisdiction vested in it by or under this Act, shall, in every cause or matter, have power to grant, either absolutely or on such terms and conditions as the Tribunal deems just, all such remedies as any of the parties may appear to be entitled in respect of any legal or equitable claim properly brought by them in the cause or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided.

(4) For the purpose of exercising its jurisdiction under this Act, the Tribunal shall have power to grant summary judgment on applications filed by a bank, specialised bank or other financial institution where there is an

indebtedness that the debtor has acknowledged in writing and such debt remains unpaid after 90 days of the acknowledgement.

(5) The Tribunal shall also exercise jurisdiction on any other matter as may be prescribed by an Act of the National Assembly.

(6) In the exercise of its jurisdiction under this Act, the Tribunal shall have the power to interpret this Act and any other enactment, rules or regulation as may be applicable.

Power to
stay
proceedings.

116.—(1) If any party to a loan agreement or security agreement with a financial institution has submitted in such agreement to the Tribunal's jurisdiction, and such person commences an action in any court with respect to any matter which is a subject of the agreement, the court to which such action is commenced may, if satisfied that there is no sufficient reason why the action should not be referred to the Tribunal in accordance with the agreement, make an order staying the proceedings.

(2) The order staying proceedings in subsection (1) shall not be made where the financial institution has filed pleadings or taken any step in the action other than applying that the court should refer parties to the Tribunal.

The
Tribunal's
Fund.

117.—(1) The Tribunal shall establish and maintain a fund, which shall be applied towards the performance of its functions under this Act (in this Act referred to as "the Tribunal's Fund").

(2) There shall be paid and credited to the Tribunal's Fund established under subsection (1)—

(a) funds provided to the Tribunal by the Federal Government ;

(b) gifts, grants, donations or endowments or any other money that is inconsistent with its objects under this Chapter ; and

(c) case fees collected for the services rendered by the Tribunal under this Chapter.

Case fees.

118. The case fees payable by banks, specialised banks or other financial institutions shall be 0.5% of the amount of their claim or such other percentage as the President may determine by rules.

Power to
accept gift.

119. The Tribunal may accept any grant of money or contributions on such terms and conditions, if any, as may be specified by the person or organisation making such grant or contribution provided that the terms and conditions are consistent with the functions and objectives of the Tribunal.

120. The Tribunal shall keep proper accounts of its receipts, payments, assets, and liabilities and shall submit the accounts annually for auditing and reporting to the Auditor-General for the Federation who shall submit his reports to the National Assembly, and for that purpose, the Auditor-General for the Federation or any person authorised by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts.

Account and audit.

121. The Tribunal may apply the proceeds of the Tribunal's Fund to—

Application of tribunal's fund.

(a) meet the cost of administration of the Tribunal ;

(b) reimburse members of the Tribunal and staff or any committee for expenses authorised ;

(c) pay the salaries, remuneration or allowances, pensions and gratuities as applicable to the members of the Tribunal and staff of the Tribunal ;

(d) finance staff promotion, training, internships, scholarships, research and similar activities ;

(e) maintain any property acquired by or vested in the Tribunal ;

(f) meet any capital expenditure approved by the Tribunal ; and

(g) implement all or any of the functions of the Tribunal under this Act or any matter connected with those functions.

122.—(1) The President of the Tribunal shall issue or cause to be issued rules regulating its procedures which shall include provision for the expedited and accelerated hearing and determination of causes and matters before the Tribunal.

Powers of the Tribunal and President of the Tribunal.

(2) The Tribunal shall, for the purposes of performing its functions under this Chapter—

(a) grant an injunction or appoint a liquidator by an interlocutory order in all cases in which it appears to the Tribunal to be just or convenient to do so ;

(b) make such orders as it may deem appropriate for the enforcement of security or guarantee, or attachment of any asset under an eligible loan made by any bank, specialised bank or other financial institution in Nigeria ;

(c) make an order of mandamus requiring any act to be done or an order of prohibition prohibiting any proceeding, cause or matter, or an order of certiorari removing any proceeding, for any purpose, notwithstanding that same is against an officer or authority of the Federation ;

(d) upon an ex parte application to the Tribunal, before or after the filing of the action for debt recovery, grant custody or possession of debtor's movable or immovable property to a financial institution pending the hearing

and determination of a debt recovery action, where the financial institution satisfies the Tribunal that the debtor or debtor company is the bona fide owner of such property ;

(e) upon an ex parte application to the Tribunal, before or after the filing of the action for debt recovery, grant an order freezing a debtor or debtor company's accounts pending the hearing and determination of a debt recovery action, where the financial institution satisfies the Tribunal that the debtor or debtor company is the bona fide owner of such account :

Provided that the order of possession and freezing order referred to in paragraphs (d) and (e) shall subsist till judgment or a final determination of the action, unless expressly discharged by the Tribunal ;

(f) summon and enforce the attendance of any person and examine him on oath ;

(g) require the discovery and production of documents and call for the examination of witness or documents ;

(h) promote reconciliation, encourage and facilitate amicable settlement among parties in any proceeding before the Tribunal ; and

(i) do anything which, in the opinion of the Tribunal, is incidental or ancillary to its functions under this Act.

(3) The grant of stay of proceedings, stay of execution or injunction pending appeals, or leave to appeal in favour of any party, shall in the case of stay of—

(a) proceedings and leave to appeal in respect of interlocutory appeals, not be granted under any circumstance and the Tribunal shall, as practicable as possible, sit on a day-to-day basis ; and

(b) execution, injunction pending appeal and leave to appeal in respect of final judgment, be conditional upon deposit by the applicant of the judgment sum into an interest yielding account in the name of the registry of the Tribunal.

(4) Any proceeding before the Tribunal is deemed to be a judicial proceeding and the Tribunal is deemed to be a civil court for all purposes.

(5) Any Federal statute of limitation, statute of limitation of a State or of the Federal Capital Territory or any similar statute or rule limiting the time within which an action may be commenced does not apply or operate to bar or invalidate any claim brought before the Tribunal for the recovery of an eligible debt.

123.—(1) There is established for the Tribunal, a panel of experts who shall provide opinion in cases before the Tribunal as may be required from time to time.

Panel of experts.

(2) The Bank shall appoint the members of the panel of experts established under subsection (1):

Provided that no person shall be appointed unless such person possesses a minimum of 10 years' experience in banking and credit or capital market operations.

(3) There shall be a lead expert who shall be so designated by the Bank and shall be responsible for assigning cases that require expert opinion before the Tribunal to members of the panel.

(4) The panel of experts shall be independent and impartial in the performance of its functions.

(5) The panel of experts shall be paid such remuneration as may be determined by the Bank.

124.—(1) The Tribunal shall, upon an application by any of the parties or on the Tribunal's own motion, decide that an independent expert opinion is required.

Request for an expert.

(2) Where the Tribunal decides in accordance with subsection (1), it shall request that the lead expert assigns an expert to the case.

(3) Any expert appointed under sub section (2) shall provide the opinion within such time as may be prescribed by the Tribunal.

(4) Notwithstanding the provisions of this section or section 123, the opinion of the experts provided to the Tribunal is advisory and not binding on the Tribunal.

125. A party may appear either in person or authorise one or more legal practitioners to represent it before the Tribunal.

Right to legal representation.

126.—(1) The Tribunal shall have all the inherent powers of a superior court of record and shall give its judgment in writing and may make or impose sanctions but not limited to penalties, suspensions, withdrawal of registration or licenses, specific performance, or restitution, imprisonment and such other sanctions as it may deem appropriate in each case.

General powers of the Tribunal and President of the Tribunal.

(2) A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request, subject to payment of the prescribed fees.

(3) The Tribunal shall enforce its judgment and accordingly, may commit any person for contempt.

(4) An award or judgment of the Tribunal shall be enforced, as if it were a judgment of the Federal High Court or State High Court or High Court of the Federal Capital Territory upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court or State High Courts or High Court of the Federal Capital Territory, by the Tribunal.

Appeal to
the Court of
Appeal.

127.—(1) Any person dissatisfied with a decision of the Tribunal may appeal against such decision to the Court of Appeal if—

- (a) it is a final decision, on points of law or mixed law and fact ; or
- (b) it is an interlocutory decision of the Tribunal, on points of law only.

(2) The Court of Appeal shall hear and determine all appeals emanating from the Tribunal on an accelerated basis and in priority to all other appeals, and, for this purpose, the President of the Court of Appeal shall issue or cause to be issued special practice directions for the Court of Appeal exclusively for the expedited and accelerated hearing and determination of appeals emanating from the Tribunal.

Further
appeal.

128.—(1) An appeal against the decision of the Court of Appeal at the instance of either party shall lie to the Supreme Court.

(2) The Supreme Court shall hear and determine all appeals emanating from the Court of Appeal in relation to appeals against the Court of Appeal's decisions on appeals to the Court of Appeal from the Tribunal on an accelerated basis and in priority to all other appeals, except election petition matters and appeals emanating from specially designated courts in pursuance of the Asset Management Corporation of Nigeria Act, and, for this purpose, the Chief Justice of Nigeria shall issue or cause to be issued special practice directions for the Supreme Court exclusively for the expedited and accelerated hearing and determination of such appeals.

Act No. 4.
2010.

Protection of
members of
the Tribunal.

129.—(1) The President of the Tribunal, members of the Tribunal or any other person acting judicially shall not be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of the Tribunal's jurisdiction.

(2) No officer of the court or other person bound to execute the lawful warrant or orders of the Tribunal shall be liable to be sued in any court, for the execution of any warrant or order which such person would be bound to execute, if it is within the jurisdiction of the person issuing the same.

(3) No action shall be brought against any member or staff of the Tribunal in respect of any act or order performed in the execution, or intended execution of the powers or jurisdiction vested in him, except such act or order is in excess of the powers and jurisdiction of the Tribunal.

130. The Banks and Other Financial Institutions Act Cap B3, Laws of the Federation of Nigeria, 2004 is repealed. Repeal.

131. In this Act— Interpretation.

“*associate*” means a company in which another company owns not less than 20% of the paid-up share capital ;

“*bank*” means a bank licensed under this Act ;

“*Bank*” means the Central Bank of Nigeria ;

“*Bankers’ Committee*” means a committee comprising the Bank, the chief executives of all banks and such other members as the Committee as may from time to time admit ;

“*banking business*” means the business of receiving deposits on current account, savings deposit account or other similar account, paying or collecting cheques, 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 as banking business ;

“*Board*” means the Board of Directors of the Central Bank of Nigeria ;

“*chief executive*” means a person, by whatever name called, who either individually or jointly with one or more other person, is responsible, subject to the authority of the Board of Directors, for the conduct of the business and administration of the bank; specialised bank or other financial institution ;

“*the Corporation*” means the Nigeria Deposit Insurance Corporation ;

“*deposit*” means money lodged with any person whether or not for the purpose of any interest, profit or dividend and whether or not such money is repayable upon demand upon a given period of notice or upon a fixed date ;

“*Deputy Governor*” means a Deputy Governor of the Central Bank of Nigeria ;

“*director*” includes any person by whatever name such person may be referred to, performing or empowered to carry out substantially the same functions of a director in relation to the affairs of a company incorporated under the Companies and Allied Matters Act ;

“eligible loan” means any credit facility, overdraft, loan, risk asset to the tune of at least ₦25,000,000.00 or such other amount as may be prescribed by the Bank which repayment obligations have become due for not less than 90 days and has been designated by an instrument under the hand of the Governor as being eligible for enforcement and recovery before the Tribunal ;

“factoring” means the business of acquiring debts due to any person ;

“Federation” means the Federal Republic of Nigeria ;

“Governor” means the Governor or any of the Deputy Governors appointed to act on behalf of the Governor of the Central Bank of Nigeria ;

“leasing” means the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business whatsoever and where the lessor is the owner of the property regardless of whether the letting is with or without an option to purchase the property ;

“licence” means a licence issued under this Act ;

“non-interest bank” otherwise known as profit and loss sharing bank, means a bank which transacts banking business, engages in trading, investment and commercial activities as well as the provision of financial products and services in accordance with the principles and rules of Islamic finance ;

“non-interest banking instruments”, means instruments that do not pay interest but which may entitle the holder to profit in conformity with principles and rules of Islamic finance ;

“other financial institution” means any individual, body, association or group of persons; whether corporate or unincorporated other than the banks licensed under this Bill, which carry on the business of a discount house, bureau de change, finance company, money brokerage, authorized buying of foreign exchange, international money transfer services, mortgage refinance company, mortgage guarantee company, financial holding company or payment service providers regardless of whether such businesses are conducted digitally, virtually or electronically only and companies whose objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases order financing, and such other business as the Bank may from time to time, designate regardless of whether such businesses are conducted digitally, virtually or electronically only ;

“payment, clearing, or settlement activity” means an activity carried out by one or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Investment and Securities Act ;

“payment service provider” means an entity licenced by the Bank to provide payment service ;

“payment service” means technical or technology infrastructure, software solutions or services for facilitating end-to-end electronic payment to third parties and such other services as the Governor may by regulation designate ;

“President” means the President of the Federal Republic of Nigeria ;

“related party” includes spouse, father, mother, child, brother, sister, uncle, aunt and cousins where applicable, and their spouses and such other relationships as the Bank may by regulation prescribe from time to time ;

“shareholders funds” means the aggregate of paid-up share capital, statutory and all other reserves of a bank, specialised bank or other financial institution ;

“significant shareholder” means a person or entity who—

(a) beneficially owns five per cent or more of the paid-up share capital of a bank, specialised bank or other financial institution ;

(b) is entitled to cast a majority of the votes that may be cast at a general meeting of the bank, specialised bank or other financial institution or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity ; or

(c) is able to appoint or to veto the appointment of a majority of the directors of the bank, specialised bank or other financial institution,

and the term *“significant shareholding”* shall be construed accordingly

“specialised banks” include, Bank of Industry, Bank of Agriculture, Development Bank of Nigeria, Nigerian Export Import Bank, The Infrastructure Bank, Federal Mortgage Bank of Nigeria, Nigeria Mortgage Refinancing Company, primary mortgage banks, micro-finance banks, non interest bank and such other banks as may be designated from time to time by the Bank ; and

“State” means any of the States of the Federation.

132. This Act may be cited as the Banks and Other Financial Institutions Act, 2020. Citation.

I, certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

Ojo, O. A., mnia, arcon, fcia
Clerk to the National Assembly
13th Day of October, 2020.

EXPLANATORY MEMORANDUM

This Act, among other things, regulates banking and business of other financial institutions by prohibiting the carrying on of such businesses in Nigeria without a licence and by a company incorporated in Nigeria.

This Act also makes adequate provisions regarding the proper regulation and supervision of such institutions by the Central Bank of Nigeria.

SCHEDULE TO THE BANKS AND OTHER FINANCIAL INSTITUTIONS BILL, 2020

(1) Short Title of the Bill	(2) Long Title of the Bill	(3) Summary of the Contents of the Bill	(4) Date Passed by the Senate	(5) Date Passed by the House of Representatives
Banks and Other Financial Institutions Bill, 2020.	An Act to Repeal the Banks and Other Financial Institutions Act. Cap. B3, Laws of the Federation of Nigeria, 2004 and enact the Banks and Other Financial Institutions Act, 2020 to among other things, regulate banking and business of other financial institutions in Nigeria; and for related matters.	This Bill, among other things, regulates banking and business of other financial institutions by prohibiting the carrying on of such businesses in Nigeria except under a licence and by a company incorporated in Nigeria. This Bill also makes adequate provisions regarding the proper regulation and supervision of such institutions by the Central Bank of Nigeria.	22nd July, 2020.	23rd July, 2020.

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

I ASSENT



OJO, O. A., mnia, arcon, fcia
Clerk to the National Assembly
13th Day of October, 2020.

MUHAMMADU BUTHARI, GCFR
President of the Federal Republic of Nigeria
12th Day of November, 2020.

