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Revisiting the Legal and Regulatory Framework for Banking Business in Nigeria

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Abstract

In almost every economy, banking industry is one of the most regulated and supervised industries. Nevertheless, as banking business continue to evolves, new banking risks and challenges also continue to emerge, thereby prompting legal and policy reforms. In Nigeria, the banking industry has recently witnessed fundamental legal and policy reforms through enactment of the new Banks and Other Financial Institutions Act (BOFIA) 2020; the Nigeria Deposit Insurance Cooperation (NDIC) Act 2023; Central Bank of Nigeria (CBN) Circular of 2nd September 2021 directing all banks in Nigeria to implement Basel III standards in Nigeria; and CBN Guidelines for digital banking amongst others. This study, therefore, revisited these new regulatory and supervisory framework for banking in Nigeria. The objectives were to examine the critical reforms introduced under the new legal regime for the regulation and supervision of banks and banking business in Nigeria; and also to determine the adequacy, or otherwise, of these new reforms in controlling the emerging risks and challenges for Nigeria's banking industry. The study found that although the new legal and policy reforms in Nigeria are laudable, the banking business in Nigeria is faced with new operational risks and challenges that were not contemplated in the recent legal and policy reforms. Consequently, the study concluded with policy considerations for overcoming the challenges faced by the regulatory and supervisory frameworks for banking business in Nigeria.

Keywords: Banking business; Basel III; Regulation; Policy reforms; Supervision;

1. Introduction

Banking industry is one of the most globally regulated and supervised financial services sectors.[1] In both developed and emerging economies, banking industry are subjected to multifaceted regulations and elaborate system of on-site and off-site supervisions and reporting systems.[2] This is partly attributed to the financial intermediation role of banking industry, which is critical to the socio-economic development of any nation.[3] That is, banking facilitates the pool of funds from savings and redistributes same to socially desirable economic ventures, thereby enhancing the overall socio-economic growth and well-being of any country. Globally, therefore, international institutions and government intervenes in the banking sector for the purpose of enhancing financial stability, safeguarding the benefits of the banking sector, and protect the depositors against the consequences of bank failure and so forth. One of the instruments that international institutions and governments deploy is the regulation and supervision of the banking business.[4]

At the international level, the Basel Committee on Banking Supervision (BCBS) is one of the major institutions that was established with a mandate to strengthen the regulation, supervision and practices

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[1] Generally, there is diverse literature on the regulatory and supervisory framework for banking business. However, see: D Anginer, 'Bank Regulation and Supervision Ten Years after the Global Financial Crisis' [2019] *World Bank Group Policy Research Working Paper Series No.9044*; O Olanipekun, *Banking, Theory, Regulation, Law and Practice* (AU Courent, 2016); O Paseda, 'Banking Regulation in Nigeria: A Review Article' [2020] (25) (8) *Journal of Humanities & Social Sciences* 38-58; D C Hardy, 'Regulatory Capture in Banking' [2006] *IMF Working Paper WP/06/34*; A N Edith *et al*, 'Regulatory Framework and Bank Operations in Nigeria: A VECM Approach' [2021] *Int'l Journal of Dev. & Mgmt Rev.* 148 – 160; Samuel A. Oni, 'Regulation and Supervision of Financial Institutions: the Nigerian Experience' [2012] (50) (4) *CBN Economic and Financial Review* 107 – 129.

[2] Hardy, Ibid, 3.

[3] S Akaayar and C Sijuwade, 'Regulatory and Supervisory Framework for Banking in Nigeria' in O Olanipekun (ed) (n 1) 132 - most of the laws referred to in this previous study has been repealed, which informed the analysis in this present study.

[4] Akaayar and Sijuwade (n 3).

of banks worldwide with the purpose of enhancing financial stability.[5] At national levels, Nigeria, like many other countries, have enacted legal standards for the regulation and supervision of the banking business. At the moment, the major frameworks include: the Companies and Allied Matters Act 2020; the Banks and Other Financial Institutions Act 2020, with introduced new standards of compliance for banks; the Nigeria Deposit Insurance Cooperation (NDIC) Act 2023; Central Bank of Nigeria (CBN) Circular of 2nd September 2021 directing all banks in Nigeria to implement Basel III standards in Nigeria; CBN Guidelines on Operations of Electronic payment Channels in Nigeria 2016 amongst other monetary policies.

These new legal and policy developments on the regulatory and supervisory standards motivated this study. The essence is to examine the critical changes introduced by the recent legal framework, assess the banking issues the legal framework seems to address, investigate the current challenges and explore reform approaches as recommendations for the policy makers.

The paper is divided into six parts. Against the foregoing background, part 2 interrogates the concepts of bank and banking business, while part 3 examines the legal framework for the regulation and supervision of banks in Nigeria. It also examines Basel III framework as an international standard for measuring the current legal framework for banking business. Part 4 considers the licensing and supervisory framework as well as other regulatory requirements. Part 5 is a critique of the emerging challenges confronting the current regulatory and supervisory framework for baking business in Nigeria, and articulates the policy considerations for reform. Part 6 is the conclusion.

2. Interrogating the Concepts of Bank and Banking Business

The concept of 'bank' and 'banking business' can better be described than defined. This is largely because there is no universally acceptable definition of 'bank' and 'banking business' that will serve all purpose. As noted by this author elsewhere,[6] Lord Denning in the case *United Dominion Trust Limited v Kirkwood*,[7] explained that the reason for the difficulty in defining the concepts of 'bank' and 'banking business' with certainty is due to the multiplicity of functions of a bank. That is, banks carried out different functions, hence in defining a bank, certain characteristics should be looked at as a guide rather than as conclusive definition. Nevertheless, attempts were made by both the legislature and the court in described what is 'bank' in Nigeria. For instance, section 131 of the Bank and Other Financial Institutions Act (BOFIA) 2020 defines "bank" to means "a bank licensed under this Act." Similarly, section 60 of the Central Bank of Nigeria (CBN) Act 2007, and section 258 of the Evidence Act 2011 both defines 'bank' to means 'bank licensed under BOFIA.'

The fundamental defects with the foregoing conception is that the legislature deployed the word 'bank' to define what is 'bank'. Accordingly, one would need to search somewhere else for the meaning of 'bank'. Thus, the Blacks' Law Dictionary describe bank to mean a 'financial institution that accepts deposits and makes loans, and may also perform other financial services.'[8] Although the Blacks' Law definition may not satisfy all purposes, the use of the phrase 'financial institution' brings other perspectives in the quest for understanding what is 'bank'. Similarly, section 99 of the Nigeria Deposit Insurance Cooperation (NDIC) Act 2023 defines a bank to "means any person who is licensed by the Central Bank of Nigeria to carrying on the business of acceptance of deposit." It is submitted that by limiting the business of banking to only "acceptance of deposit" is rather too narrow out of touch with reality regarding the scope of banking business. However, section 99 of the NDIC may be credited for using the phrase "any person" rather than the same word 'bank' as it is the case with the other legislation. A 'person' in legal parlance is both natural and artificial persons, such as a registered company,[9] including banks.

[5] Peterson K. Ozili, 'Basel III in Nigeria: making it work' [2021] (45) (1) *CBN Bullion* 16 – 23.
[6] Akaayar and Sijuwade (n 3).
[7] *United Dominion Trust Limited v. Kirkwood* [1966] 2 QB 431.
[8] B A Garner, *Black's Law Dictionary* (8th ed., Thomson & West, 2004).
[9] Companies and Allied Matters Act (CAMA) 2020, ss. 42 and 43.

Similarly, the Nigerian courts in a plethora of cases, defined 'bank' in the context of 'organisations that provide financial services'. For instance, in the case of *Patil v F.R.N.*[10], the Court of Appeal stated that:

> *...in its ordinary grammatical meaning the word "bank" mean an organization that provides financial services. It is a financial establishment for the deposit, loan, exchange or issue of money or for transferring of funds.*

Similarly, the Supreme Court of Nigeria in the cases of *Associated Discount House Ltd v Amalgamated Trustees Ltd,*[11] stated that "[t]he word "bank" is not defined in the Constitution and in the Interpretation Act. However, in the grammatical meaning, it means an organization that provide financial services."[12] While the definitions may not be sufficient for all purposes, it is submitted that in the context of this study, a 'bank' may be described as a financial institution or company that is licensed under the BOFIA 2020 to carry on banking business in Nigeria. The financial institution or company may be established by legislation (such as the Central Bank of Nigeria, Federal Mortgage of Nigeria), or by registration (such as the First Bank of Nigeria Ltd and Zenith Bank Plc.). Nevertheless, the object must be for the purpose of carrying banking business. But the question is what is 'banking business' in Nigeria?

In the determination of the concept of 'banking business' in Nigeria, the starting point is the BOFIA 2020.[13] Accordingly, the section 131 of the BOFIA 2020 defines banking business to:

> *means the business of receiving deposits on current account, savings deposit account or other similar accounts, paying or collecting cheques, drawn by or paid in by customers; provision of finance consultancy and adversary services relating to corporate investment matters, making or managing investments on behalf of any person whether such business are conducted digitally, virtually or electronically only or such other businesses as the Governor [of CBN] may, by order published in the Gazette, designate as banking business.*[14]

The fundamental implications of the above are that the modern conception of 'banking business' in Nigeria has changed. Unlike in the past, the present legal regime accommodate non-monetary services, such as, provision of finance consultancy and adversary services relating to corporate investment matters, [15] as forms of banking business. Also, it embraces global digitization of the banking industry by recognising 'banking businesses that are conducted digitally, virtually or electronically only'.[16] It is submitted that the new developments has normative, policy and judicial implications.

Consequently, the previous case law on what amount to 'banking business' in Nigeria may no longer by sufficient laws. For instance in the case of *Akwule v Queen*,[17] the Nigerian Supreme Court in defining bank held that "the Banking Act does not define banker as such, but bank means any person who carries on banking business." On the meaning of 'banking business', the court held it is "the business of receiving money on current account from the general public, of paying or collecting cheques drawn by or paid in by customers and of making advances to customers."

Thus, the decision in *Akwule v Queen*[18] implies that, in Nigeria, the word 'bank' is synonymous with 'banking business', which is not the case. However, such conception of banking as applied in Nigeria, and as rooted from the common law, is not without limitation. For instance, the courts places more emphasis on the traditional functions of commercial banking to the neglect of modern functions of modern day banking, such as, the digital, virtual or online banking business operated by OPay and

[10] *Patil v F.R.N*. (2016)8 NWLR (Pt. 1515) 483 at 505.
[11] *Associated Discount House Ltd v Amalgamated Trustees Ltd* (2006) 16 NWLR (Pt. 989) 635 at 651.
[12] See also *Federal Mortgage Bank of Nigeria v NDIC* (1999)2 NWLR (Pt.591) 333.
[13] This is largely because it is the primary legislation under all banks are licensed to carry banking business in Nigeria.
[14] The foregoing definition is a clear departure from the meaning of 'banking business' under the repealed BOFIA 1991, Cap. B3, Laws of the Federation of Nigeria (LFN) was repealed by BOFIA 2020, s.130.
[15] BOFIA 2020, s.131.
[16] Ibid.
[17] *Akwule v Queen* [2012] 1 BFLR 90 SC.
[18] Ibid.

MoniePoint online banks in Nigeria.[19] It also exclude modern advisory functions of the modern banking as well as other financial services such as custody of valuables, the payment of domiciled bills, discounting of bills, foreign exchange business, trustees and executors business and acting in relation to stock exchange transaction, amongst others.

However it is submitted that if the court is called upon to determine the meaning of 'banking business' in Nigeria, the decision will be different. This is largely because the Nigerian court are not adverse to embracing technology. In fact, the Nigerian courts has long time acknowledged in the case of *Esso West Africa Inc v Oyegbola,*[20] where it was held that "the law cannot be and is not ignorant of modern business methods and must not shut its eyes on the mysteries of the computer."

The totality of the foregoing reveals that 'bank' is a financial institution or company established by legislation or registration and licence for the purpose of carrying on banking business in Nigeria. The activities that may amount to carrying on 'banking business' is as stipulated by section 131 of the BOFIA 2020.

Similarly, it must be pointed out that there is a distinction between 'banking business' and 'money lending business.'[21] Accordingly, in the case of *Ojikutu v. Agbonmagbe Bank and 2 Others,*[22] the issue was whether the Money Lending Act apply to a licensed bank whose interest rate are normally prescribed by the central bank is illegal. Alexander J., held that banking business differs from money lending business in that the latter includes every person whose business is money lending, but excluding any person *bona fide* carrying on the business of banking. Similarly in *Attorney-General of the Federation v. John Umoh Ekpa*,[23] it was held that the business of daily collecting money from market women and paying same into bank does not constitute banking business. From the totality of above legal conceptions bank/banking business, it is submitted that while it is difficult to define banking in a manner that will encompass all purpose, a business cannot amount to banking unless the core of that business is banking. In construing the common features of banking business in Nigeria, section 131 of the BOFIA 2020 should be taken into account as it provides regulatory guides on financial transactions that may amount to 'banking business' in Nigeria.

3. Legal Framework for the Regulation and Supervision of Banks

3.1. Overview of Current Statutory Framework

There are numerous statutes that provide for the regulation and supervision of banks in Nigeria. The detail examination of these statutes is beyond this work. For the present purpose, a brief overview of some of these statutes is carried out below.

3.1.1. Central Bank of Nigeria Act, No. 7, 2007

The Central Bank of Nigeria is established as a body Corporate under Section 1 of the CBN Act. It is constituted by a Board which is chaired by the CBN Governor. The Governor is empowered by this Act to carry on day to day administration of the CBN Act and other allied statutes on banks and banking business. Accordingly, section 19 of the CBN Act places restrictions on certain banking activities in Nigeria, except the consent of the Governor of the CBN is sought and obtained. Similarly, section 23 of the CBN Act requires banks to keep proper books and records of account with respect to all the transactions in the bank. Above all, the CBN regulates and supervises banking business in Nigeria by issuing regulations, guidelines and policies to the banks,[24] or by appointment of one or more designated officers to carry on supervisory functions over the banking business in Nigeria.[25]

[19] OPAY and MONIEPOINT are some of the examples of online banking in Nigeria.
[20] *Esso West Africa Inc v Oyegbola* (1969)1 NMLR 194.
[21] Akaayar and Sijuwade, 'Regulatory and Supervisory Framework for Banking in Nigeria' 132.
[22] *Ojikutu v Agbonmagbe Bank and 2 Others* [1966] All NLR 533.
[23] *Attorney-General of the Federation v. John Umoh Ekpa* [1976] 2 FNR 206.
[24] CBN Act 2007, s.30.
[25] CBN Act 2007, s.31.

3.1.2. Banks and Other Financial Institutions Act (BOFIA) 2020.

Another major statute that is designed primarily for the regulation and supervision of the banks and banking business in Nigeria is the BOFIA 2020. It provides for the functions, powers and duties of the CBN and other financial institutions and for matters connected therewith. In accordance with section 2(1) of the BOFIA 2020, 'no person shall carry on any banking business in Nigeria, except it is a company duly registered in Nigeria and holds a valid banking licence. Other areas includes: duties of banks, examination (on-site and off-site), supervision, take over and control of management of distressed banks, prescription of capital requirement, revocation of licences, and general control over banks and other financial institutions operating in Nigeria. It incorporated into the banking regulations the principles embodied in the Anti-money Laundering and Combating Financing of Terrorism (AML/CFT) policy of the government.[26]

3.1.3. Nigeria Deposit Insurance Corporation (NDIC) Act 2023

The NDIC Act 2023, establishes the Nigeria Deposit Insurance Corporation (NDIC) for the purpose of insuring all deposit liabilities of licensed banks and other financial institutions operating in Nigeria. Similarly, the functions of the NDIC is to, among other things, with concurrence of the CBN, supervise the insured banks to mitigate the risk of failure.[27] It has the power to appoint examiners who has the right to access and examine the records and books of the insured banks.[28] The essence is to provide assistance in the interest of depositors in case of imminent or actual financial difficulties. It guarantees payments to depositors in case of imminent suspension of payments by insured banks or other financial institutions; and assist in the formulation and implementation of banking policies.

3.1.4. Companies and Allied Matters Act (CAMA), 2020.

As earlier stated in 3.3.2. above, section 2(1) of the BOFIA 2020 provide that no person shall carry on any banking business in Nigeria, except it is a company duly registered in Nigeria. The CAMA 2020 provides the framework for the registration companies in Nigeria. Therefore, banks must first be incorporated as a company under the CAMA by complying with the requirements in respect of registration. After the registration the bank becomes a body corporate by the name contained in the memorandum of association to carry out business pursuant to sections 42 and 43 of CAMA 2020. Accordingly, a company intending to be a bank will have no such authority or rights of a bank until it has Certificate of Registration with the Corporate Affairs Commission as required by the CAMA 2020, and licenced by the CBN under BOFIA 2020. In the case of *Guardian Express Bank Plc v. Odukwu,*[29] it was held that any provisions of CAMA are inconsistent with the provisions of BOFIA, the provisions of BOFIA will prevail.[30]

3.1.5. Investment and Securities Act 2007

The Investment of Securities Act (ISA) 2007 provide the framework for the regulation of securities and capital market in Nigeria. It is a rich market for the sale and acquisition of bank shares and securities in Nigeria. The ISA establishes the Securities and Exchange Commission (SEC) as a regulatory authority. The powers of the SEC include regulation of investment and securities in Nigeria, registration of banks securities to be offered for subscription or sale to the public, securities trading, regulation of Nigerian capital market, protect securities and market against abuse; and to review, approve and regulate merger and acquisition, among other regulatory and supervisory functions.

3.2. International Standard: Basel Capital Framework

The regulation and supervision of banking business in Nigeria is supported the international standards framework.[31] Most importantly, the Basel Committee on Banking Supervision (BCBS) may be credited with being the famous international organisation that is leading in providing international capital framework for countries to consider in the establishment of regulatory and supervisory standards for the

[26] BOFIA 2020, s. 66.
[27] NDIC Act 2023, s.3.
[28] NDIC Act 2023, s.38.
[29] *Guardian Express Bank Plc v. Odukwu* [2012] 1 BFLR 321 CA.
[30] Ibid.
[31] Akaayar and Sijuwade (n 3).

business of banking.[32] The purpose of Basel capital framework is to preserve the stability of international banking system.[33] Nigeria adopts Basel capital framework for the capital regulation in the banking industry.[34] The BCBS standards may or may not embody a conceptually coherent view of the regulatory tasks in Nigeria, but it certainly reflect, and at the same time unify and consolidate, the regulatory and supervisory efforts in Nigeria.[35] This is contained in Basel I, II and III. In brief, Basel I was issued in 1988, but as at 1997, the BCBS issued the "Core Principles for Effective Banking Supervision" technically known as Basel I. The aim of these principles was to enhance the understanding of the key supervisory issues that countries may take into account in designing supervisory rules that will improve quality banking system. Again the BCBS introduced Basel II in 1999 as capital framework financial soundness and aligning bank regulation with international best practices in risk management. Basel III was introduced in response to the global financial crisis of 2007–2009. It aimed to preserve banking stability by imposing minimum liquidity requirements for banks and reduce systematic risks of banks failure. It also prevents banks from taking excessive risks that can hurt the economy. On the 2nd day of September 2021, the CBN issued a Circular to all banks in Nigeria to implement Basel III capital framework in Nigeria.

There are core principles of BCBS which requires that nations should specifically establish supervisory authorities with clear objectives and responsibilities. The said authorities should be sufficient equipped with the powers for bank licensing, ongoing supervision, enforcement of compliance with applicable legal norms, and the taking of timely corrective actions to address safety and soundness concerns.[36] It states that the primary objective of banking supervision is "to promote the safety and soundness of banks and the banking system."[37] Furthermore, the BCBS principles recognize that "banking supervision" is only part of the arrangements necessary to ensure stability in financial markets. It identifies other "preconditions" that are indispensable for the effectiveness of banking regulation to include: sound and sustainable macroeconomic policies; a well-established framework for financial stability policy formulation; a well-developed public infrastructure; a clear framework for crisis management, recovery and resolution; an appropriate level of systemic protection (or public safety net); and effective market discipline.[38] However, as Christos rightly observed, the BCBS's objectives are confined to the core (prudential and/or stability-related) tasks of banking regulators and do not include other bank-related objectives, such as competition, financial inclusion, the fight against financial crime, or the protection of bank clients in their capacity as consumers.[39]

4. Licencing and Supervisory Framework

4.1. Licencing of Banking Business

Licensing of business of banking involves compliance with several statutory provisions, some of which are provided for under the CAMA 2020, CBN Act 2007 and BOFIA 2020. However, the fundamental starting point is section 2 (1) of the BOFIA 2020 which stipulate that "[n]o 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."[40]

The implication of the above quoted section is that licencing of banking business in Nigeria centres on two major requirements which are: (i) company duly incorporated; and (ii) obtaining banking licence.[41] The first step for authorization of banking business in Nigeria is to be incorporated as a company. This entails compliance with the provisions of the CAMA 2020. In particular, the object clause in the

[32] C Hadjiemmanuil, 'A Heavily Regulated Industry: The Varied Objectives of Financial Regulations' in C Hadjiemmanuil, *Criminal/Punitive Law Protection of Financial Sector* (4 EUCRIM, 2015) 138.
[33] Ozili (n 5).
[34] Ibid.
[35] Hadjiemmanuil (n 32)
[36] Ibid.
[37] Hadjiemmanuil (n 32).
[38] Ibid.
[39] Ibid.
[40] Emphases added are mine.
[41] Akaayar and Sijuwade (n 3).

Memorandum and Articles of the company must be to carry on banking business.[42] Once all the incorporation requirements under the CAMA 2020 are complied with and satisfied by the Corporate Affairs Commission (CAC),[43] a certificate of incorporation is granted to that company by the CAC. Consequently, section 41(6) of CAMA 2020 states as follows:

> *The certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the association is a company authorized to be registered and duly registered under this Act.*

Thus, the important implication of section 41 (6) in relation to licencing of banking business is that, a certificate of incorporation is not only an evidence that the provisions of CAMA 2020 are complied with, but also that the first requirement under section 2(1) of BOFIA 2020 is satisfied. That is, the 'company is duly incorporated' to carry on banking business.

The second step after obtaining certificate of incorporation is the application for banking licence from company (bank) to the CBN. On the procedure for the application for banking licence, section 3 (1) of the BOFIA 2020 states as follows:

(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 the following:-
   (a) A feasibility report of the proposed bank;
   (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;
   (d) A prescribed application fees;
   (e) Such other information, documents and reports as the bank may, from time to time, specify.

Upon compliance with section 3(1) above, section 3(2) of the same BOFIA 2020 provide that the shareholders of the proposed bank shall deposit within the bank a sum equal to the minimum paid-up capital that may be applicable under section 9 of the same BOFIA 2020. After the payments required by section 3 (2) is deposited, section 3(3) empowers the CBN Governor with the discretion to issue a licence with or without conditions or refuse to issue a licence. Where an application for banking licence is refused, the CBN Governor need not give reason for the refusal. However, if an application for a licence is granted, the CBN Governor is required to notify the applicant. Upon receiving the notice, the applicant shall pay the licence fee and thereafter commence the banking business in Nigeria, subject to other rules that may be required under other statutes.

4.2. Authorized Minimum Share Capital for Banks

Authorized minimum share capital is one of the important requirements for obtaining bank licence in Nigeria. According, section 9(1) of the BOFIA 2020 stipulates that CBN shall from time to time prescribe the authorized minimum capital for each category of the bank. Presently, the prescribed authorized minimum share capital is ₦50 billion, ₦25 billion and ₦10 billion for international, national or regional banking licence respectively,[44] while the Microfinance Banks is ₦20 million. A bank with a merchant banking licence is required to have a minimum paid up share capital of ₦15 billion.[45] A regional banking licence entitles a holder to carry on its banking business operations within a minimum of six (6) and a maximum of twelve (12) contiguous States in Nigeria all of which states are required to fall within a maximum of 2 Geo-Political Zones of the country including Abuja, the Federal Capital

[42] On the incorporation see section CAMA 2020, s. 27 (1) (c).
[43] CAMA 2020, s.40.
[44] CBN Scope, Conditions and Minimum Standards for Commercial Banks Regulations No 01, 2010, Regulation 2, para 5, 6 & 7.
[45] CBN Scope, Conditions and Minimum standards for Merchant Banks Regulations No 02, 2010, Regulations 2 and 5(a).

Territory.[46] A national commercial banking licence entitles a holder to carry on banking business operations throughout all the States in Nigeria, while an international commercial banking licence allows a holder to carry on its banking business operations throughout all the States in Nigeria as well as to establish and maintain offshore banking operations in other jurisdictions of its choice, subject to the approval of the CBN and compliance with the regulatory requirements of the host country.[47]

Recently, however, CBN in a 'Recapitalisation Circular' dated 28 March 2024 announced an upward review of the minimum requirement for commercial, merchants, and non-interests banks in Nigeria. According to the 'Circular', the recapitalisation is aimed at strengthening the Nigerian financial system and achieve a USD£1 trillion economy in a gross domestic product (GDP) by 2030. Under the 'Circular', the new recapitalisation for commercial banks will be: N500billioon for international banks, N200billion for national banks, and N50billion for regional banks. The merchant banks is increased from N15billioon to N50billion. In respect of the non-interest banks: N20billion is introduced for national merchant banks, while N10billion is introduced for regional merchant bank. The CBN has set a timeline of 24 months, which starts from 1 April 2024 and ends on the 31 March 2026.

5. Emerging Challenges and Policy Considerations

Despite the existing regulatory and supervisory frameworks, there are emerging challenges that requires new policy considerations. In view of want of space, only some of the challenges will be considered here. The regulatory and supervisory framework is challenged by the technological disruption of the banking ecosystem, which manifested in the digitization of the banking sector. The advent of Information and Communication Technology (ICT) or internet banking has brought about drastic global changes in carrying out banking business. This is manifest in the emergence of a new era of banking known as electronic banking or e-banking. The era of electronic or e-banking has brought about both opportunities and challenges. It brought about opportunities because it introduces flexibility in the performance of banking operations. It is easier to carrying on banking business without necessarily going into banking hall.

On the other hand, it brought about challenges because the ICT has produced a new model of financial intermediation and services that cannot be easily determined by the traditional principles of banking regulation and supervision. The regulators are also responding. For instance, in April 2016, the CBN introduced the Guidelines on Operations of Electronic Payment Channels in Nigeria. The aim is to promote and facilitate the development of efficient and effective systems for the settlement of transactions, including the development of electronic payment systems.

Nevertheless, the regulatory response is not sufficient when compare with the level of incursion of ICT into banking business. For instance, beyond payment channels, the interactions between bank and customers is predominantly digital. The Artificial Intelligence (AI) is being applied at different stages of banking industry, such as, risk assessment and fraud detection.[48] ICT has reduced the intermediary role of banks and financial institutions by decentralising the mechanisms for negotiating and settling banking transactions. For instance, bank loans can be applied online, processed and funds disposed online without physical contact between the bank and the customer. It also created new financial providers, such as FinTech, and also digital assets, such as, crypto assets, software for digital banking, and other digital collaterals. These FinTech provide new services ranging from payment services, credit provisions, wealth management and other related banking services being carried on without banking licence. Although section 131 of the BOFIA 2020 defines banking business to include digital and electronic banking, there is are no adequate supervisory tools and resources to monitor the digital and electronic operations.

The foregoing has led to new operational risks in the banking business. This is as a result of banks growing reliance on new technologies, especially external technologies which may be outside the

[46] Ibid, Regulation 1, para 2(2) (a).
[47] Ibid, para 2(2) (b) and (c).
[48] Fernando Restoy, 'Current Challenges for the Banking Industry: the Role of Public Policy', being a paper presented at Mexican Banking Association Finance and Market Seminar Virtual, 24 November 2023.

regulatory powers of the CBN, NDIC and other bank regulators in Nigeria. In Nigeria, the banking industry experience such technological challenges in October 2024 when customers could not access their funds in Guarantee Trust Bank Ltd and Zenith Bank due to technological disruption, and the bank regulators could not control it.

In view of these new operational risks, there is an urgent need for policy review for banking industry in Nigeria. It is, therefore, submitted that in addition to monitoring regulated entities compliance, supervision must characterize the risk profile of the digital institutions and identify the main threat brought by the e-banking. Base on the outcomes, design the most appropriate regulatory and supervisory measures to address them. In addition, the CBN in conjunction with NDIC should introduce additional risk assessment requirements, which should be integrated into banks strategic decisions and its management systems and internal procedures.

Furthermore, the supervisory institutions, such as CBN and NDIC should redefine their responsibilities in view of the new challenges faced banks in Nigeria. Supervision should be more intrusive. The CBN and NDIC, for instance, should be given the necessary tools, mandate and resources to push banks to take appropriate measures in a timely manner. Similarly, the existing policy measures focused more on prudential rules. It is now time to develop more rules for banks supervision that the prudential rules. This is largely because regulatory interventions aimed at protecting the solvency of the banks may, if not carefully regulated, affects banks inability to serve their client efficiently and effective. Above, there should be a new supervisory culture that would embrace the principle of risk sensitivity, which requires adjusting actions and resources to the profile of each institution and the risk concerns.[49]

6. Conclusion

This study revisits the regulatory and supervisory framework for banking business in Nigeria. In particular, it interrogated the legal conception of bank and banking business in Nigeria in view of section 131 of BOFIA 2020 and section 99 of the NDIC Act 2023 amidst case law. It reviews the contention between regulation and supervision and considers Basel standards for international banking. Also, the study examines the current legal framework for bank regulation and supervision, as well as banks supervision and examination. The study concludes that despites the regulatory and supervisory framework, there are emerging challenges that the extant regulations and supervisory measures cannot control. Consequently, the paper end with policy considerations for the reform of the regulatory and supervisory framework for banks and banking business in Nigeria.

[49] Ibid.