

## AN APPRAISAL OF THE LEGAL FRAMEWORK FOR ONLINE BANKING IN NIGERIA AND SOUTH AFRICA \*

### Abstract

*The financial sector particularly banking is one of the strongholds of any economy. Technology has brought with it advancement and thus the nexus between banking and technology is an avenue for endless opportunities. Before the emergence of modern banking system, banking operation was manually done which led to a slowdown in settlement of transactions. This manual system involves posting transactions from one ledger to another which human handles. Nigeria adopted electronic banking system in the early 2000s. During the introduction of electronic banking system, the use of raw cash was said to have bred corruption through the “cash and carry syndrome” usually linked with the swift movement of “Ghana-must go” bags by some politicians. This work is to appraisal of the legal framework for online Banking in Nigeria and South Africa. See how far the laws are effective in the operation of the online banking. It is observed that the laws cannot effectively protect the online banking operations. It is therefore recommended that separate law should be enacted for e –banking and cyber- crimes that should be subject to changes as the need arises.*

### **Introduction**

The financial sector particularly banking is one of the strongholds of any economy. Technology has brought with it advancement and thus the nexus between banking and technology is an avenue for endless opportunities. The Corona Virus pandemic has also brought the world to its knees limiting human interaction encouraging alternative methods i.e. online services particularly e-banking. The enormous potential of electronic banking for the

Nigerian banking sector and the economy at large is not in doubt.<sup>1</sup> Due to emergence of global economy, electronic banking has increasingly become an inevitable tool of banking business strategy and a strong catalyst for economic development.<sup>2</sup>

With this in mind, practitioners and academics all seek ways to evaluate online banking system leading to a wealth of wisdom and plethora of opinions. Various authors have lent their opinions on the issue of banking at a global scale. Some of these writings border on advantages of e-banking, historical development in same, even criminal activities in e-banking as well as banking as an economic tool. It is from this that the legal framework of online banking at length particularly as it relates to two jurisdictions- Nigeria and South Africa is borne.

### **Definition of Online Banking (e-banking)**

According to Clive, W.<sup>3</sup> in his Academic dictionary of banking, electronic banking is defined as a form of banking in which funds are transferred through an exchange of electronic signals between financial institutions, rather than an exchange of cash, cheques or

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**\*Olukayode O. AGUDA B.A (Ibadan), B.L, LL.B (Unilag.), LL.M (Swansea).** Lecturer, Department of Private and Business Law. Faculty of Law, Ajayi Crowther University, Oyo kayus2013@gmail.com; o.aguda@acu.edu.ng 08077940656.

<sup>1</sup> Acha, Ikechukwu A.,(2008), Electronic Banking In Nigeria: Concept, Challenges And Prospects, International Journal of Development and Management Review (INJODEMAR) Vol. 3 No. 1 May, 2008 97.

<sup>2</sup> Onodugo, Ifeanyi Chris, (2015), "Overview Of Electronic Banking In Nigeria", Volume: 2, Issue: 7, 336-342 July 2015 www.allsubjectjournal.com e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762

<sup>3</sup> Clive, W. (2007). Academics Dictionary of Banking, New Delhi, India: Arrangement Academic New Delhi.

other negotiable instruments. Another author<sup>4</sup> defines electronic banking as a system in which funds are moved between different accounts using computerized on line/real time systems without the use of written cheques. Yet another author<sup>5</sup> in international Journal of investment and finance, electronic banking is defined as a system by which transactions are settled electronically with the use of electronic gadgets such as ATMs, POS terminals, GSM phones, and V-cards e.t.c. handled by e-holders, bank customers, and stake holders.

Basically, electronic banking (e-banking) is an umbrella term for the process by which a customer may perform banking transactions electronically without visiting a brick-and-mortar institution. That is, automated delivery of new and traditional banking products and services directly to customers through electronic, interactive communication channels.<sup>6</sup>

### **Brief Historical Development of Online Banking**

In the late '80s the notion "online" became popular, with a history spanning over 3 decades prior to this time and since then innovations in banking have started and are still continuing.<sup>7</sup>

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<sup>4</sup> Omotayo, G. (2007). A Dictionary of Finance, West Bourme, England: West Bourme Business School.

<sup>5</sup> Edet, O. (2008). Electronic Banking in Banking Industries and its Effects. International Journal of Investment and Finance, Vol. 3, A.P 10-16.

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

<sup>7</sup> Mashood Mukhtar, (2014), "Perceptions of UK Based Customers toward Internet Banking in the United Kingdom", Journal of Internet Banking and Commerce, [www.icommercecentral.com/open-access/perceptions-of-uk-based-customers-toward-internet-banking-in-the-united-kingdom-.php?aid=50531](http://www.icommercecentral.com/open-access/perceptions-of-uk-based-customers-toward-internet-banking-in-the-united-kingdom-.php?aid=50531) 1/24, ISSN: 1204-5357.

Before the emergence of modern banking system, banking operation was manually done which led to a slowdown in settlement of transactions. This manual system involves posting transactions from one ledger to another which human handles. Figures or counting of money which should be done through computers or electronic machine were computed and counted manually which were not 100% accurate thereby resulting to human errors. Most banks back then used only one computer in carrying out transactions which slightly ameliorated the sluggish nature of banking transaction.<sup>8</sup>

In a bid to give data on the speed of growth of internet banking around the world, a brief comparison was done between internet users in Nigeria and those in the United Kingdom and United States of America. In the UK for instance, a 2014 report showed that bank customers used internet banking facilities 7 billion times in just one year and these services were used almost 800,000 times every hour.<sup>9</sup> In contrast, the United States of America in a recent survey by the Federal Reserve Bank<sup>10</sup> shows that 52% of Smartphone owners with a bank account have used mobile banking in the 12 months prior to the survey, up from 51% a year earlier.

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<sup>8</sup> Onodugo, Ifeanyi Chris, (2015), "Overview of Electronic Banking in Nigeria", Volume: 2, Issue: 7, 336-342 July 2015 [www.allsubjectjournal.com](http://www.allsubjectjournal.com) e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762.

<sup>9</sup> <https://www.bba.org.uk/news/press-releases/britains-bank-customers-use-internet-banking-7-billion-times-injust-one-year/#.VmQIM9KrTcc> accessed on the 11th day of December, 2015

<sup>10</sup> <http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201503.pdf> accessed on the 11th day of December, 2015

## **Brief Historical Development of Online Banking in Nigeria and South Africa**

The Global System of Mobile communication, otherwise known as GSM was introduced into the Nigerian market in the year 2001. Since the introduction, the demand has rapidly expanded.<sup>11</sup> An overview of e-Banking in the Nigerian banking industry reveals that Conventional banking system started in Nigeria in 1952.<sup>12</sup> Evidence from various researches, as well as published reports of the mobile service operators suggests that less than 4.6% of the population had access to the telephone in 2003. Recent reports by the NCC,<sup>13</sup> states that Nigeria now has the highest number of mobile phone subscriptions in Africa - more than 93 million, representing 16% of the continent's total mobile subscriptions. The report further states that the numbers of subscribers are expanding at about 40% every year, and is forecast to continue over the next few years. The expansions of the mobile phone market in Nigeria<sup>14</sup> are linked to the deregulation of the communication sector and interplay of market forces. However, in comparison to other African countries, NCC,<sup>15</sup> stressed that South Africa, with its more developed infrastructure, has the highest broadband penetration - 6%, followed by Morocco with

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<sup>11</sup> NCC (Nigeria Telecommunication Commission) (2008). Industry Data: Available at: [www.ncc.gov.ng](http://www.ncc.gov.ng). Accessed June 6, 2012

<sup>12</sup> Onodugo, Ifeanyi Chris, (2015), "Overview Of Electronic Banking In Nigeria", Volume: 2, Issue: 7, 336-342 July 2015 [www.allsubjectjournal.com](http://www.allsubjectjournal.com) e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762

<sup>13</sup> NCC (Nigeria Telecommunication Commission) (2013). Industry Data: Available at: [www.ncc.gov.ng](http://www.ncc.gov.ng). Accessed March 29, 2013

<sup>14</sup> Ibid.

<sup>15</sup> NCC (Nigeria Telecommunication Commission) (2013). Industry Data: Available at: [www.ncc.gov.ng](http://www.ncc.gov.ng). Accessed March 29, 2013

2.8%. ITU <sup>16</sup> reports that the telecommunication industry recognises that continued acceptance and usage as well as expansion, will be based on the development of business models that work for poorer people.<sup>17</sup>

Zarma analysed briefly the historical development of electronic banking in Nigeria. The first electronic banking services in Nigeria were ATMs, which were introduced by some banks in the early 1980's. In the 1990's they went a step further to introduce tele-banking mostly among their corporate customers. These corporate customers were to also enjoy Intranet bank services. In this case, bank customers could transact business with their banks through their personal computers using a dial up Intranet software.<sup>18</sup> Smart cards were later to join the electronic banking offerings of Nigerian banks.<sup>19</sup>

Nigeria adopted electronic banking system in the early 2000s. During the introduction of electronic banking system, the use of raw cash was said to have bred corruption through the “cash and carry syndrome” usually linked with the swift movement of

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<sup>16</sup> ITU (2011) the role of ICT in advancing growth in least developed countries – Trends, challenges, and opportunities. Geneva, Switzerland: International Telecommunication Union

<sup>17</sup> Edwin M. Agwu, Adele-Louise Carter, (2014), Mobile Phone Banking In Nigeria: Benefits, Problems and Prospects, International Journal of Business and Commerce Vol. 3, No.6:[50-70] (ISSN: 2225-2436) Published by Asian Society of Business and Commerce Research accessed at [www.ijbcnet.com](http://www.ijbcnet.com), electronic copy available at <https://ssrn.com/abstract=3120495>.

<sup>18</sup> Zarma, A. B. (2001) Electronic Banking: Practices from other Countries, Associated Risks and Implications. Nigerian Deposit Insurance Corporation Quarterly. Vol. 11, Nos. 3&4 pp. 61-102.

<sup>19</sup> Hilili, M.J. (2005) Overview of Electronic Payment Systems in Nigeria: Strategic and Technical Issues Central Bank of Nigeria Bullion, Vol. 29, No.2 pp. 67-79

“Ghana-must go” bags by some politicians. Such bags as some analysts say, are a major source of corrupt practices as dubious persons seek to bribe their way to avoid been checked in some sensitive areas or places in a corrupt society.<sup>20</sup>

In Nigeria, ATM was conventionally introduced as an electronic delivery channel in 1989, and was first installed by National Cash Registers (NCR) for the defunct Societe Generale Bank of Nigeria (SGBN) in the same year.<sup>21</sup>

In 2014, electronic transactions processed by the Central Switch, Nigeria Inter-Bank Settlement System (“NIBSS”), through electronic platforms (i.e. non-cheque) accounted for 86% of the overall transactions in terms of volume and the trend shows that more people are adopting the use of electronic payment systems<sup>22</sup>. In the same year NIBSS alone also processed over 100million electronic transactions in terms of volume with a corresponding value of over NGN 40 Trillion.

Some of its forms include Automated Teller Machines (ATMs), Telephone Banking, Short Message Service (SMS) Banking, Personal Computer (PC) Banking, Internet Banking, Electronic Funds Transfer (ETF), amongst others.

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<sup>20</sup> Onodugo, Ifeanyi Chris, (2015), “Overview Of Electronic Banking In Nigeria”, Volume: 2, Issue: 7, 336-342 July 2015 [www.allsubjectjournal.com](http://www.allsubjectjournal.com) e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762

<sup>21</sup> Ibid.

<sup>22</sup> <http://www.nibss-plc.com.ng/wp-content/uploads/2015/03/Fraud-Landscape-2014.pdf> accessed on the 11th day of December, 2015

## Merits and Demerits of Online Banking

The advent of the Internet commerce has prompted the invention of several payment tools to help facilitate the completion of business transactions over the Internet.<sup>23</sup> Banks provide customers convenient, inexpensive access to the bank twenty four hours a day and seven days a week.<sup>24</sup> Some of the various advantages of e-banking have been evaluated by different authors. Quite notably, some of the advantages are faster, easier, and more reliable service for customers, and improvement of the bank's competitive position.<sup>25</sup>

Some concerns have also been identified such as confidentiality of consumer data as one of the most important concerns in the adoption of online banking.<sup>26</sup> This will require legal policies and framework to be put in place by government and governing agencies. In Nigeria, the guidelines following from the findings and recommendations of the Central Bank of Nigeria (CBN) Technical Committee on E-Banking<sup>27</sup> include Legal guidelines to

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<sup>23</sup> Hsieh C, (2001), E-commerce payment systems: critical issues and management strategies, *Human Systems Management*, 20, (2), 2001, pp. 13138(8)

<sup>24</sup> Moutinho, L., Davies, F., Deng, S., Miguel P. S. and Alcaniz J. E. (1997), "The future role of bank branches and their managers: comparing managerial perceptions in Canada and Spain", *International Journal of Bank Marketing*, 15 (3), pp. 99-105.

<sup>25</sup> Aladwani, A.M. (2001), "Online banking: a field study of drivers, development challenges, and expectations", *International Journal of Information Management*, 21(3), pp.213-215

<sup>26</sup> Gerrard, P., Cunningham, J. B. (2003), "The diffusion of Internet banking among Singapore consumers", *International Journal of Bank Marketing*, 21 (1), pp.16-28.

<sup>27</sup> Accessed from [www.cbn.ng](http://www.cbn.ng), 2011, Morufu Oladejo, Taibat Akanbi, (2012), Bankers Perceptions of Electronic banking in Nigeria: A Review of Post Consolidation Experience, *Research Journal of Finance and Accounting*,



address issues on banking regulations and consumer rights protection. These Guidelines however do not provide penal consequences for the infraction of its provision.

However, lack of specific laws to govern Internet banking is another important concern for both the bankers and the customers. This relates to issues such as unfair and deceptive trade practice by the supplier and unauthorized access by hackers. An author<sup>28</sup> argued that it is not clear whether electronic documents and records are acceptable as sufficient evidence of transactions. They also pointed out that the jurisdiction of the courts and dispute resolution procedures in the case of using the Internet for commercial purposes are important concerns. Disputes can arise from many sources. For instance, websites are not a branch of the bank. It is difficult for the court to define the location of the branch and decide whether they have jurisdiction.

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Improvement in power supply is also a tool for improving e-banking in Nigeria. In view of this it has been observed that “if Nigeria is to catch up with the rest of the world in e-banking, the government should play an active role by delivering on its promise of uninterrupted power supply. It should also impress on

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Nigeria. Accessed from [www.iiste.org](http://www.iiste.org).

<sup>28</sup> Larpsiri, R., Rotchanakitumnuai, S., Chaisrakeo, S., Speece, M. (2002), "The impact of Internet banking on Thai consumer perception", paper presented at the Conference on Marketing Communication Strategies in a Changing Global Environment, Hong Kong, May,

<sup>29</sup> Rotchanakitumnuai, S. and Speece, M., (2003), “Barriers to Internet banking adoption: a qualitative study among corporate customers in Thailand”, *International Journal of Bank Marketing*, 21 (6/7), pp. 312-323. Salawu

the National Communication Council (NCC) to properly regulate the telecommunications industry with a view to improving the services offered by GSM companies.”<sup>30</sup>

Regulation is a key factor in curbing some of these concerns. Regulation is hard to define. It might be regarded as any control system (formal or informal) that sets standards, and, typically, also monitors those standards and enforces them with the broad aim of shaping behaviour, positively or negatively.<sup>31</sup> Regulation may involve a combination of both statutory and market regulation (e.g. banking is subject to statutory regulation and most banks also subscribed to the voluntary lending code) and a code of practice may be incorporated in a contract and, therefore, is enforceable by parties to that contract.<sup>32</sup> Until 2014 there was no dedicated legislation that clearly articulated the rights and obligations, penalties for infractions attendant with the use of the internet for commerce or any other purpose. For a country whose internet population was over 67 million<sup>33</sup> in 2014 and 83 million in 2015,<sup>34</sup> this certainly is cause for major concern.

The Cybercrime Act recognizes as binding, electronic signatures used in respect of purchase of goods and any other transactions.

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<sup>30</sup> Acha, Ikechukwu A.,(2008), Electronic Banking In Nigeria: Concept, Challenges And Prospects, International Journal of Development and Management Review (INJODEMAR) Vol. 3 No. 1 May, 2008 97

<sup>31</sup> Philip Rawlings, Andromachi Georgosouli, Costanza Russo, (2014), “Regulation of financial services: Aims and methods”, Queen Mary University of London, Centre for Commercial Law Studies.

<sup>32</sup> Ibid.

<sup>33</sup> <http://www.internetlivestats.com/internet-users/nigeria/> accessed on the 15th day of December, 2015

<sup>34</sup> <http://www.vanguardngr.com/2015/05/83m-internet-users-in-nigeria-ncc/> accessed on the 15th day of December, 2015

This is a major step away from Regulations 3.0 of the Central Bank of Nigeria Guideline on Electronic Banking which expressly prohibited the reliance on digital signatures. The Cybercrime Act also penalizes the following acts: fraudulent or dishonest use of an electronic signature, password or any other unique identification feature of a person; fraudulent issuance of e-instructions by persons charged with the responsibility of confirming electronic fund transfer.

### **Need for Regulations**

The Advance Fee Scheme or 419, which is one of the most popular of all Internet frauds, has its origin from Nigeria in the 1980s. Its development and spread follows the path of the developments in information technology. At inception, postal letters were used as key media for committing 419 frauds. The country is currently rated as having one of the highest records of Internet frauds in the whole world. According to the National Consumers League (2002), the country is the third highest ranked in Internet 'money offer' frauds.<sup>35</sup>

Lack of regulations right under lack of enabling environment has often been mentioned as one of the reasons for the stunted growth of online banking. In 2014, the National Assembly passed the Cybercrimes (Prohibition, Prevention, ETC) Act ("The Cybercrimes Act") and it was enacted in May, 2015, a watershed in the history of legislating on electronic and internet-related crimes. Hitherto, there was no legislation that dealt specifically with crimes committed or perpetrated through the use of the internet. With the deficiencies in the existing electronic banking guidelines and the seemingly lack of proactive measures in other

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<sup>35</sup> Onodugo, Ifeanyi Chris, (2015), "Overview Of Electronic Banking In Nigeria", Volume: 2, Issue: 7, 336-342 July 2015 [www.allsubjectjournal.com](http://www.allsubjectjournal.com) e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762

banking regulations in the country, the right environment for Internet banking remains presently not in existence.<sup>36</sup>

There have been various examinations of the challenges of electronic banking in Nigeria particularly for the end user detailing what could be done to mitigate these disadvantages. The emphasis is on the priority steps towards the promotion of e-banking as a direct development of the financial services market. Private ordering in the regulation of e-payment systems has been considered alongside its shortcomings. Nigeria was used to exemplify a developing country that is increasingly pushing for adoption of a regulatory framework for e-payment systems based on private ordering.<sup>37</sup> It was argued that although technical standards and self-regulation by the financial industry are important, the law is an essential regulatory mechanism that is largely missing. The article further highlighted Legitimacy and Public Interest Concerns as one of the problems of private ordering. The question of how one can be a judge in his own case was also raised, because the rule maker ultimately expects compliance from itself, as well as others.

There have been suggestions that regulation should contain the idea of a superior authority, which is the State. It has a directive function and compels individuals and groups to behave in particular ways, and threatens sanctions if they do not comply. As

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<sup>36</sup>Abel Ebeh Ezeoha, (2005), “Regulating Internet Banking In Nigeria : Problems and Challenges – Part 1”, Journal of Internet Banking and Commerce, December 2005, vol. 10, no.3  
(<http://www.arraydev.com/commerce/jibc/>)

<sup>37</sup> Omotubora, A and Basu, S., (2018) Regulation for E-payment Systems - Analytical Approaches beyond Private Ordering. Journal of African Law, 62 (2). pp. 281-313. ISSN 0021-8553 orcid.org/0000-0001-5863-854X accessed from <https://doi.org/10.1017/S0021855318000104>

a public law, it enforces requirements that cannot be circumvented by private agreement, because the state plays a central role in its formulation. This suggests that the characteristics of sanctions are often more noticeable in state or formal regulatory regimes and that state regulation is more efficient at modifying behaviour because it carries the threat of state enforcement and sanctions. It may also explain why references to regulation in political rhetoric are seldom taken to mean non-state regulation.<sup>38</sup>

There is need for good regulation as legislative mandate, which implies that a regulatory framework derives authorisation from an elected legislature, is one of the essential criteria of good regulatory regimes.<sup>39</sup> Good regulation must also satisfy four additional criteria. These are one, accountability and control, which underscores the need for regulators to be properly accountable. Two, due process, which presupposes support for regulation because the procedures are fair, open, and accessible. Three, regulatory expertise, which denotes trusted regulator judgment based upon specialised knowledge, skills, and experience; and four, efficiency, which implies that the legislative mandate in support of a regulatory regime is being implemented effectively.<sup>40</sup>

The role of e-payment, especially given the growing importance of e-commerce to economic development, points to the

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<sup>38</sup> A. Ogus, (2004), “Regulation: Legal Form and Economic Theory”, Hart Publishing, 15.

<sup>39</sup> R Baldwin, M Cave and M Lodge *Understanding Regulation Theory, Strategy and Practice* (2nd ed. 2012 OUP) at 25

<sup>40</sup> R Baldwin, M Cave and M Lodge *Understanding Regulation Theory, Strategy and Practice* (2nd ed. 2012 OUP) at 25-39.

importance and need for regulation.<sup>41</sup> The paper critically examined the regulatory and supervisory roles of CBN and NDIC as well as other relevant statutory agencies on electronic banking in Nigeria. The paper recommended that lots of legislative and judicial reforms must be embarked upon while the supervisory agencies should improve on surveillance of the banks. The Anti-graft agencies needs to be empowered more to perform their statutory functions in the economy.<sup>42</sup>

The issue of electronic signature (e-signature) for admissibility as evidence in court must be taken seriously to address the culpability or otherwise of offenders in electronic transactions or business especially in Nigeria.<sup>43</sup> It has been reported that customers are often sceptical of security issues and are afraid of the security risks and frauds usually posed by this system especially in Nigeria.<sup>44</sup> Some factors affecting the growth of e-banking in Nigeria have also been identified to be epileptic power supply, customer illiteracy, prevalence of fraud and Infrastructure

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<sup>41</sup> Nnamdi Ukanba, (2016), “Legislating Stricter Standards for Electronic Banking in Nigeria”, *Advocaat Law Newsletter*.

<sup>42</sup> Tajudeen Tewogbola Lawal, Nureni Adekunle Lawal and Adeniyi Adejuwon Akanbi, (2018), “An Evaluation of the Legal and Regulatory Challenges of Electronic Banking System in Nigeria”, Vol 4 (3) pp. 21-29 accessed from <http://www.pyrexjournals.org/pjbfmr> ISSN: 2550-7877.

<sup>43</sup> Idigbe, A. (2010). The legal and institutional frameworks for electronic commerce in Nigeria. Paper delivered at the Bankers’ House, The Chartered Institute of Bankers of Nigeria, Victoria Island, Lagos- Nigeria on the 9th of June, 2010

<sup>44</sup> Idowu, A.A. (2016). Determinants of financial innovation adoption in deposit money banks in Nigeria. PhD thesis of Jomo Kenyatta University of Agriculture and Technology, (JKUAT) Kenya

deficit.<sup>45</sup> This paper gives an overview of challenges faced by regulators and supervisors in e-banking

The ITU<sup>46</sup> report states that Nigeria has overtaken South Africa to become the continent's largest mobile market with now close to 100 million subscribers with market penetration at only 60% in early 2012.<sup>47</sup> Thus there arises a need to evaluate the legal framework already in place in these two jurisdictions. These regulations should focus particularly on authorization, consumer protection and education, risk management, money laundering and cross-border supervisory issues.<sup>48</sup>

### **Legal Framework for Online Banking in Nigeria**

There is no stand alone or specific legal framework for online banking yet in Nigeria however the Bank and other Financial Institutions Act (BOFIA)<sup>49</sup> still remains the go-to legislation on all matter relating to bank and banking services. Under the Bank and other Financial Institutions Act, the Central of Nigeria (CBN) is empowered to regulate banking transactions. Although the Act does not specifically provide for the regulation of electronic banking, nevertheless it empowers the Governor of the CBN to

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<sup>45</sup> Ernest, S. and Fadiya, B. (2012). Cashless Banking in Nigeria: Challenges, Benefits and Policy implication. *European Scientific Journal*, June Edition, Vol.8, No.12.

<sup>46</sup> ITU (2011) the role of ICT in advancing growth in least developed countries – Trends, challenges, and opportunities. Geneva, Switzerland: International Telecommunication Union

<sup>47</sup> Abel Ebeh Ezeoha, (2005), Regulating Internet Banking in Nigeria: Problems and Challenges – Part 1, *Journal of Internet Banking and Commerce*, <https://www.researchgate.net/publication/26433898>.

<sup>48</sup> Andrea Schaechter, (2002), "Issues in electronic banking: an overview" IMF Policy Discussion Paper PDP/02/06

<sup>49</sup> Banks and other Financial Institutions Act of 1991 (BOFIA).

make regulations for the purpose of regulating Nigerian banks.<sup>50</sup> Over the years, some other legislations have also proved supportive, some of them are:<sup>51</sup>

- i. The failed Bank (Recovery of Debt and Financial Malpractice in Banks) Act No. 18 of 1994- which was promulgated to check the cases of money laundering and insider abuses by bank officials in the country.
- ii. The Money Laundry Act of 1995; the Advance Fee Fraud (419) Act of 1995; and the comprehensive amendments of the Banks and Other Financial Institutions Act (BOFIA) and the Central Bank of Nigeria Act in 2002. These instruments were rendered ineffective by poor enforcement.
- iii. The Anti-Corruption Act of 1999 which established the independent and Corrupt Practices and other Related Offences Commission. In 2001, for instance there was a proposition for the establishment of a National Electronic Commerce Council (NECC) under the Federal Ministry of Science and Technology. The body was later dumped in 2003 it was expected to serve as the regulatory body for e-commerce and would be made up of professionals from the public and private sector.
- iv. In 2001, the Nigerian government also inaugurated the National Committee on Advance Fee Fraud (NCAFF) and charged the body with the task of formulating the more

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<sup>50</sup> BOFIA ss.55 and 59(1)(a)

<sup>51</sup> Abel Ebeh Ezeoha, "Regulating Internet Banking in Nigeria: Some Success Prescriptions- Part 2" Journal of Internet Banking and Commerce, ISSN: 1204-533 accessed at <http://www.icommercecentral.com/open-access/regulating-internet-banking-in-nigeria--some-success-prescriptions-part-2.php?aid=38508> on 28 August, 2020.



effective strategy for fighting fraud perpetrators and their agents in the country. This was against the backdrop of the plan by the United States, Britain and France amongst others in November 2001 to sanction Nigeria unless some serious steps were taken to solve the menace of Nigerian financial crimes. This eventually led to the promulgation of the Economic and Financial Crimes Commission (EFCC). The 19-member commission was set up to specifically deal with cases of 419 and enforce the various laws relating to banking in Nigeria.

- v. Then the amendment of Evidence Act, the only pointer of e-commerce in Nigeria.<sup>52</sup> This amendment gave recognition to electronically generated documents as valid evidence in the court of law. This became a landmark development in the growth of e-commerce in Nigeria.
- vi. Consumer Protection Council Act also deals albeit with restriction with e-banking complaints.<sup>53</sup>
- vii. Earlier efforts made to this effect included the enactment of the Failed Banks (Recovery of Debts) and Malpractices in Banks Decree No.18 of 1994, and the Money Laundering Decree of 1995.<sup>54</sup>

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<sup>52</sup> Uchenna Jerome Orji, (2011), "Creating a Sustainable Legal and Regulatory Environment for Electronic Banking", accessed from [https://www.researchgate.net/publication/322082604\\_Creating\\_a\\_Sustainable\\_Legal\\_and\\_Regulatory\\_Environment\\_for\\_Electronic\\_Banking\\_in\\_Nigeria](https://www.researchgate.net/publication/322082604_Creating_a_Sustainable_Legal_and_Regulatory_Environment_for_Electronic_Banking_in_Nigeria) on 28 August, 2020.

<sup>53</sup> Orifowomo, Odunola Akinwale, (2015), "legal implications of electronic banking in Nigeria", accessed from <https://ir.oauife.edu.ng/handle/123456789/3093> 28 August, 2020.

<sup>54</sup> Onodugo, Ifeanyi Chris, (2015), "Overview Of Electronic Banking In Nigeria", Volume: 2, Issue: 7, 336-342 July 2015 [www.allsubjectjournal.com](http://www.allsubjectjournal.com) e-ISSN: 2349-4182 p-ISSN: 2349-5979 Impact Factor: 3.762

## **Legal Framework for Online Banking in South Africa**

The South African banking sector has undergone significant changes and developments over the past few years, particularly in the regulatory environment with the enactment of several new laws and the promulgation of a host of new regulations that will play an important role in how a sector is regulated going forward. These changes notwithstanding, it is still generally accepted that South Africa continues to have a sound and stable banking environment.

Following the safety of Australia in the Global Financial Crisis,<sup>55</sup> South Africa has adopted the so-called “twin-peak” regulatory model that was established in terms of the Financial Sector Regulations Act 9 of 2017 (“FSRA”). In terms of the FSRA, there are two regulating bodies namely: the Prudential Authority; and the Financial Sector Conduct Authority (“FSRA”), both of which have a common objective of maintaining financial stability.

The prudential Authority is a juristic person which operates under the administration of the South African Reserve Bank (“SARB”) (who remains principally responsible for overall stability and managing systemic risks), with the objective of promoting and enhancing the safety and soundness of market infrastructures and financial institutions.

The National Credit Act 35 of 2005 (“NCA”) affects every person who deals with the credit industry (which extends to a universe

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<sup>55</sup> Ruan Macleod, (2019), “South Africa’s Current Financial Regulatory Framework: Can we Bank on it?” accessed from <https://www.mondaq.com/southafrica/financial-services/839422/south-africa39s-current-financial-regulatory-framework-can-we-bank-on-it> on 28 August, 2020.

of lenders beyond just banks) and aims to make credit services more accessible to consumers, as well as provide an additional layer of protection to the consumer, particularly those who are low-income earners.<sup>56</sup>

The South African government has taken an active role in creating regulations to facilitate the development of bank-based mobile banking. Currently, it has two mobile banking models WIZZIT and MTN Mobile Money, both of which involve non-banks and banks working in partnership.<sup>57</sup> For both, the bank account application is fully integrated with the mobile phone itself as a payment instrument. SARB (Central Bank of South Africa) issued two documents impacting mobile banking:

- i. Position paper on electronic money which stated that only banks will be permitted to issue electronic money. Stored value payments products in South Africa can therefore only be operated by banks.
- ii. Bank Circular 619 allowing banks to open mobile phone-operated bank accounts (within certain transaction and balance limits) without having to undertake face-to-face KYC (Know Your Customer) procedures.

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<sup>56</sup> Dawid de Villiers, Denisha Govender, Eric Madumo, (2020), “Banking Regulation-South Africa accessed from <https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/south-africa> on 28 August, 2020.

<sup>57</sup> Rasheda Sultana, (2019), Mobile Banking: Overview of Regulatory Framework in Emerging Markets, DOI: 10.2139/SSRN.1554160 accessed from [https://www.researchgate.net/publication/228246863\\_Mobile\\_Banking\\_Overview\\_of\\_Regulatory\\_Framework\\_in\\_Emerging\\_Markets](https://www.researchgate.net/publication/228246863_Mobile_Banking_Overview_of_Regulatory_Framework_in_Emerging_Markets) on 28 August, 2020.

## Recommendations

In view of the above, it is hereby recommended that Nigeria on one hand should have in place a separate legislation to deal with e-banking and cyber-crimes in Nigeria. This legislation should take into consideration, the peculiar attributes of the Nigerian people as well as the mode of operation of cyber criminals in Nigeria. It should also be dynamic as to keep up with changing times and improvement in technological advancement.

South Africa on the other hand should create a separate stream for non-banks. The various legal frameworks in place treats bank and non-bank providers as the same which has led to a reduction in impact of this legislation as these two entities albeit similar possess their own peculiarities. Thus for maximum impact, a separate stream should be made for bank providers as well as non-bank providers.

## Conclusion

The mobile banking and payments market opens up exciting opportunities for innovation.<sup>58</sup> Electronic banking or e-banking has changed the face of commercial banking in recent times by bridging geographical, industrial and regulatory gaps as well as creating innovative products and services and more market opportunities for both banks and customers.<sup>59</sup> Unfettered freedom is also dangerous, thus, the need for regulations which are specific and up-to-date cannot be over emphasised.

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<sup>58</sup> Financial Conduct Authority, (2014), “Mobile banking and payments”, Thematic Review TR14/15.

<sup>59</sup> . Cheng, T. C. E., Lam, D.Y.C & Yeung, A.C.L. (2006). Adoption of internet banking: An empirical study in Hong Kong Decision Support Systems, 42 (3), 1558-1572