

## **LEGAL AND INSTITUTIONAL FRAMEWORKS FOR CONSUMER PROTECTION IN THE NIGERIAN BANKING SECTOR: AN APPRAISAL**

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### **Abstract**

This article is an appraisal of the legal and institutional framework for consumer protection in the Nigerian banking sector. The banking sector in Nigeria has evolved over the years in terms of service delivery. The speed at which banking services are delivered can be directly linked to the technological development and innovations introduced to banking by the internet. It has become easier to deal with banking transactions outside the precincts of a bank. These innovations introduced a series of legal challenges with regards to the actual relationship between the banks and their customers, thus necessitating the need to appraise the existing body of laws in the area and functionality or effectiveness of the available regulatory institutions. The study adopted a doctrinal research method in conducting this research. The research found among other findings that there are sufficient body of laws to regulate banking transactions as it affects customer banker relationship, most of those laws have become nearly obsolete and unable to accommodate the ever changing landscape of banking in Nigeria. The research therefore, recommended for the review and possible amendment of the existing body of laws. Such suggested amendments should include: a provisions for class actions and an establishment of a special court for dealing specifically with breaches of consumer rights and all other banker-consumer issues. The work concluded that an effective legal and institutional mechanisms in this area will ensure speedy disposition of cases arising from banker customer relationship which are often time sensitive in nature.

**Keywords:** Consumer; Consumer Protection; Anti -Trust/Competition; Banking Products and Services.

### **Definition of keywords:**

**Consumer:** A consumer is someone who buys goods and services for personal, family, or house hold uses, with no intention to resale; a natural person who uses products for personal rather than business purposes.<sup>1</sup> The Federal Competition and Consumer Protection Act<sup>2</sup> on the other hand defines a consumer to include:

- a) person who offers to purchase goods otherwise than for the purpose of resale but does not include persons who purchase any good for the purpose of using same for the production or manufacturing of any other goods or articles for sale;
- b) any person to whom services are render.<sup>3</sup>

**Consumer Protection:** Consumer protection means the protection of buyers of goods and services against low quality or dangerous products and advertisements that deceive people.<sup>4</sup> It is also the practice of safeguarding buyers of goods and services and the public against unfair practices in the

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1. Bryan A. Garner. Black's Law Dictionary, 11<sup>th</sup> Edition (West Publishing Co,1990) 395

2. Hereinafter referred to as "FCCPA".

3. Section 167(1) (b) of the FCCPA.

4. Cambridge Dictionary, 'Consumer Protection', available at ><https://dictionary.cambridge.org/dictionary/english/consumer-protection>< accessed on 23/9/2023.

market place.<sup>5</sup> Consumer protection is the protection of buyers of goods and services against low quality or dangerous products and advertisement that deceive people.<sup>6</sup>

**Anti-Trust/Competition:** Anti-trust refers to the regulation of the concentration of economic power particularly with regards to monopolies and other anticompetitive practices.<sup>7</sup>

**Banking Products and Services:** Banking Products and Services means auto-mobile loans, credit cards, mortgage loans, or any other instalment loan product, certificates of deposit and other deposit products offered by the Bank.<sup>8</sup> The Nigerian banking sector have recorded enormous efficiency in banking service delivery. The introduction of electronic banking has substantially eased out the stress and strain previously associated with carrying out banking transactions thereby making banking transactions more user friendly. Electronic banking has introduced the transfer of money electronically in and out of the country or states. It has become easier to process credit facilities with the banks. However, there are several complaints from stakeholders about service failure stemming from deficit in employee knowledge, gap in technical knowledge and technical failures in systems and servers, offensive staff attitude towards customer's, inadequate legal and institutional framework for the protection of consumers from the effects of these challenges.

### **Introduction**

The relationship of banker/customer is contractual. In the course of carrying on business of banking, a bank enters into several contractual relationships and performs various roles which includes;

- (a) The relationship of creditor and debtor that arises in regard to the customer's funds in the hands of the bank;
- (b) The relationship of creditor and debtor that arises when the bank loans money to the customer or allows him to overdraw on his account;
- (c) The relationship that arises from the role of the bank as a collecting bank of cheques drawn on other banks or branches of the same bank by a third person, and
- (d) The possible role of the bank as a holder for value of a negotiable instrument.<sup>9</sup>

The main objective of this article is to identify the already existing legal regimes and institutional frame works for the protection of consumers of banking products and services in Nigeria and to make recommendations for the amendments of the existing laws to accommodate the changing trends and ensure effectiveness and efficiency of the existing regulatory frame work that will encourage improvements in the area of protection consumers in the Nigerian banking sector and ensure continued economic growth and development. It has been noted that less attention has been paid to consumers of services and even lesser attention paid to financial service consumers. Hence, this study.

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<sup>5</sup> Consumer Protection, available at ><https://en.m.wikipedia.org><. accessed 1/1/2023

<sup>6</sup> Cambridge Advanced Lenders Dictionary and Thesaurus. Cambridge University Press. Available at ><https://dictionary.cambridge.org>< accessed 2/1/2023

<sup>7</sup> Antitrust/Wex/US Law/Lii/Legal Information Institute., available at ><https://www.law.cornell.edu>< accessed 2/1/23

<sup>8</sup> Law Insider, 'Banking Products and Services', available at ><https://www.lawinsider.com/dictionary/banking-products-and-services>< accessed on 23/9/2023.

<sup>9</sup> *Access Bank Plc v. Okpu*, [2021] 6 NWLR (Pt. 1773) 563 at 567. See also the cases of *U.B.N. Plc v Chimaeze* (2014) 9 NWLR (Pt.1411) 166; *U.B.N. Plc v. Ajabule* (2011)18 NWLR (Pt.1278) 152; *Bank of The North Ltd. v YAU* (2001) 10 NWLR (Pt.721) 408; *NDIC . Okem Enterprises Ltd.* (2004) 10 NWLR (Pt. 880) 104; *Merill Guaranty Savings & Loans Ltd. v Worldgate Building Society Ltd.* (2013) 1 NWLR (Pt. 1336) 581; *Ecobank v Anchorage Leisures Ltd.* (2018) 18 NWLR(Pt.1651) 201.

## Legal Framework.

There appears to be a drought of legal instruments specific to the protection of consumers of banking services in Nigeria as most of the laws already existing in this area are laws that regulate the Financial Service Sector in Nigeria generally. They include: the Constitution of the Federal Republic of Nigeria<sup>10</sup>; Federal Competition and Consumer Protection Act,<sup>11</sup> Secured Transactions in Movable Assets Act,<sup>12</sup> The Banking and Other Financial Institutions Act,<sup>13</sup> and The Central Bank of Nigeria Act.<sup>14</sup>

### The 1999 Constitution of the Federal Republic of Nigeria (As Amended)<sup>15</sup>

The Constitution of Nigeria is the *grundnorm*. It is the rock or foundation upon which every other law in Nigeria derives legitimacy. *Section 4* of the 1999 Constitution of Nigeria (as amended) established and empowers the legislature in Nigeria to make laws that govern and protect persons within the territorial boundaries of Nigeria and the various states that make up Nigeria. *Section 5* of the 1999 Constitution of Nigeria (as amended) created the executive to execute laws and *Section 6* of the 1999 Constitution of Nigeria (as amended), created courts and empowered them to give judicial interpretation to the laws. The constitution provides that it is the responsibility of the state to safeguard the lives and properties of the citizens of this country and punish any person or undertaking that puts the lives and property of Nigerians in danger. Most of the laws to be discussed here are made by the legislature and signed by the President of the Federal Republic of Nigeria into law hence, they are commonly called the Acts of the National Assembly.

### Federal Competition and Consumer Protection Act, 2018

The FCCPA made provisions that prohibits monopoly by regulating mergers, acquisition, compromises and company reconstructions and prohibits all agreements that distorts or prevent competition in the market; and it prohibited abuse of dominant position in the market. It has been said that the absence of competition breeds all manner of vices in the market.

The FCCPA repealed *Section 118 to 127* of the Investment and Securities Act, 2007 which hitherto empowered Securities and Exchange Commission to regulate and approve mergers and assigned that role to the FCCPC.<sup>16</sup>

The FCCPA was passed into law on the 30<sup>th</sup> day of January, 2019. It repealed the Consumer Protection Act<sup>17</sup> and established the Federal Competition and Consumer Protection Commission<sup>18</sup> to see to the development and promotion of fair, efficient and competitive markets in the Nigeria economy; to facilitate access by all citizens to safe products; and to secure the protection of rights for all consumers in Nigeria as well for related matters. The FCCPA also created Federal Competition and Consumer Protection Tribunal.<sup>19</sup>

The objective of the FCCPA includes:<sup>20</sup> promotion and maintenance of competitive markets in economy; to promote economic efficiency; protect and promote the interest and welfare of

<sup>10</sup>. (as amended) Cap C23 LFN 2004.

<sup>11</sup>. FCCPA, 2018.

<sup>12</sup>. 2017

<sup>13</sup>. Cap B3 LFN 2004;

<sup>14</sup>. 2007

<sup>15</sup>. Herein after called the “the 1999 Constitution”

<sup>16</sup>. *Section 18(3c)* of the FCCPA, 2018

<sup>17</sup>. CAP C25, LFN, 2004

<sup>18</sup>. Hereinafter referred to as “FCCPC”; *Section 3* of the FCCPA, 2018

<sup>19</sup>. *Section 39* of the FCCPA, 2018

<sup>20</sup> *Section 1* of the FCCPA, 2018

consumers by providing consumers with wider variety of quality goods at competitive prices; to prohibit restrictive or unfair business practices which prevents restricts or distorts competition or constitutes an abuse of dominant position of market powers in Nigeria; and to contribute to the sustainable development of the Nigerian economy.

The FCCPA applies to all undertakings and commercial activities within or having effect in Nigeria. It also applies to government owned establishments, and any venture established in Nigeria for profit making or any goods to be supplied in Nigeria or consumed in Nigeria.<sup>21</sup> The FCCPA defines consumers to include any person to whom services are rendered.<sup>22</sup> It also defines services as being of any description, whether industrial, trade or professional.<sup>23</sup> It may therefore be safe to say that commercial banks are producers, marketers, suppliers and retailers of banking and financial services. They are responsible for ensuring that the services they provide meet medium standards and to ensure the satisfaction of their consumers which in the case of banking services are more commonly referred to as customers.<sup>24</sup> Banks come under the definition of undertakings in the FCCPA.<sup>25</sup> Undertakings are said to include any person involved in the production of and trading in goods or provision of services.

The Act also provides certain basic rights and duties of consumers.<sup>26</sup> These rights include rights to information in plain and understandable language; right to disclosure of prices of goods or services; right to proper product labelling and trade descriptions; right to select suppliers amongst others to be discussed fully in the succeeding chapter of this research. The Act also provided for specific offences aimed at guarding against competition<sup>27</sup> like conspiracy, price fixing, bid rigging *etcetera*.

The FCCPA equally made provisions for duties of manufacturers, importers, distributors and suppliers of goods and service<sup>28</sup> and makes them liable in damages for injuries suffered by consumers as a result of defects in goods and services supplied by them. The FCCPA not only identified the rights of consumers it also made provisions for the enforcement of consumer rights by referring the matter directly to the Industry Regulator like CBN in the case of financial services regulation, to the FCCPC or to approach the Court with appropriate jurisdiction to seek redress.

### **Central Bank of Nigeria Act, 2007**

This Act repealed the Central Bank of Nigeria Act of 1991,<sup>29</sup> and all the amendments thereto.<sup>30</sup> The Central Bank Act established a Central Bank of Nigeria<sup>31</sup> to ensure the promotion of sound financial systems in Nigeria and to act as banker to the Federal Government of Nigeria and to provide economic and financial advice to the Federal Government.<sup>32</sup>

The CBN Act established the Unit of Currency in Nigeria to be Naira which is divided into one hundred Kobo and denominates the Naira notes and coins as legal tender in Nigeria.<sup>33</sup> The most

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<sup>21</sup>. Section 2 of the FCCPA, 2018.

<sup>22</sup>. Section 167(1) of the FCCPA, 2018

<sup>23</sup>. *ibid*

<sup>24</sup>. *ibid*

<sup>25</sup>. *Ibid*

<sup>26</sup>. Section 114-122 of the FCCPA.

<sup>27</sup>. Sections 107-113 of the FCCPA.

<sup>28</sup>. Sections 134-141 of the FCCPA.

<sup>29</sup>. Herein after called "CBN, Act."

<sup>30</sup>. Section 59 of the CBN, Act, 2007

<sup>31</sup>. Herein after called "the CBN"

<sup>32</sup>. See the Explanatory Memorandum to the CBN Act, 2007.

<sup>33</sup>. Section 15- 19 of the CBN Act, 2007

significant provision of the Act as it relates to the protection of consumers of financial services are *Sections 43 and 44* of the CBN Act that provided for Establishment of Financial Services Regulation Co-ordinating Committee. The committee is made up of: the Governor of the CBN as chairman; the Managing Director of Nigerian Deposit Insurance Corporation,<sup>34</sup> the Director General of the Securities and Exchange Commission; the Commissioner for Insurance; the Registrar General of The Corporate Affairs Commission; and a representative of the Federal Ministry of Finance not below the rank of a Director. The objective of the Committee includes: to-

- a. coordinate the supervision of financial institutions especially conglomerates;
- b. cause reduction of arbitrage opportunities usually differing regulations and supervision standards amongst Supervisory Authorities in the economy;
- c. deliberate on problems experienced by any member in relation with an financial institution;
- d. eliminate any information gap encountered by any regulatory agency in its relationship with any group of financial institutions;
- e. articulate the strategies for the promotion of safe and sound practices by financial intermediaries; and
- f. deliberate on other such issues as may be specified from time to time.

This is by far the most significant provisions of the CBN Act in respect of regulations of financial institutions like commercial banks to ensure that they are safe to do business with. This committee provides a frame work for the actual supervision of financial institutions.

The Act established the Monetary Policy Committee and empowered it to maintain price stability and support economic policies of the Federal Government of Nigeria.<sup>35</sup> The MPC shall have the responsibility within the CBN for formulating monetary and credit policy.<sup>36</sup> Membership of the MPC shall be as set out in *Section 12(2)* of the CBN Act.

### **Banks and Other Financial Institutions Act, 2020<sup>37</sup>.**

The BOFIA, 2020 repealed the Banks and Other Financial Institutions Act, Cap B2 LFN 2004. CBN is empowered by *Section 1* of the BOFIA to administer this Act. It provides that any organization wishing to do business of banking must first be registered as a company in Nigeria<sup>38</sup>. The BOFIA ascribed to the CBN the power to grant and or revoke banking licenses and insists that no bank can open or close branches or cash centers without first obtaining the consent of the CBN.<sup>39</sup> *Section 29* of the BOFIA granted the exclusive regulatory and supervisory power over all financial institutions in Nigeria to the CBN. To protect consumers from sudden loss of deposited funds, the BOFIA provides that every bank must maintain Statutory Reserve Funds with the CBN and mandates any bank with less than the Statutory required reserve fund to transfer 30% of their net profit and before dividend is declared to the reserve fund. But where the reserve fund is equal or in excess of the statutory requirement then such a bank can transfer 15% of their net profit to their reserve fund. Failure to comply with this provision attracts a fine of not less than N2,000,000.<sup>40</sup>

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<sup>34</sup> Herein after referred to as "NDIC"

<sup>35</sup> Herein after called the "MPC". See *section 12* of the CBN Act, 2007

<sup>36</sup> *Section 12(3)* of the CBN Act, 2007.

<sup>37</sup> Herein after referred to as "BOFIA.

<sup>38</sup> *Section 2* of the BOFIA

<sup>39</sup> *Sections 3, 4, 5, and 6* of the BOFIA

<sup>40</sup> *Section 15* of the BOFIA, 2020.

The BOFIA makes it an offence for any bank manager or bank head to have undisclosed interest in any lone or credit facility. Any branch head that fails to disclose any such interest shall on conviction be liable to 3 years in imprisonment or fine of N5,000,0000 or both and any gains accruing to such a person as a result of the contravention.<sup>41</sup> *Section 67* of the BOFIA provides the basis for the Nigerian Code of Corporate Governance<sup>42</sup> and is aimed at ensuring incidences of bad loans are reduced. There is no doubt that the WorldCom<sup>43</sup> and Ecron stories made this provision necessary for the protection of consumers of financial services products especially depositors whose funds provide the cash required for advancement of credit facilities and indeed other stake holders in the financial services sector. This factor accounts for more bank failures than any other factor.<sup>44</sup> *Section 18* of the BOFIA prohibit interlocking directorship, appointing of bankrupts as directors or persons who have been previously convicted for offences involving fraud, dishonesty or professional misconduct. *Section 19* of the BOFIA also prohibits commercial banks from advancing credit facilities or guarantees which is more than 20% of the shareholders' funds without consent in writing from the CBN. The Act also prohibits the grant of unsecured loans of more than one million Naira.<sup>45</sup> In line with the provisions of the FCCPA,<sup>46</sup> all banks shall cause to be displayed on its office or website information with regards to interest rates and other obligations such as reporting guidelines stipulated by the Anti-Money Laundering /Combating Financing Terrorism Guidelines/ Regulations to report all suspicious transactions to the Nigerian Financial Intelligence Unit.<sup>47</sup> The BOFIA also in line with *Section 111* of the FCCPA, requires banks to cause to be kept proper books of account with respect to all transactions of the bank.<sup>48</sup>

*Section 30* of the BOFIA provides that the CBN Governor shall have powers to issue regulations and guidelines for to all financial institutions to:

- a. ensure reasonable conduct;
- b. protect the interest of consumers of products and services of banks, specialized 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

The BOFIA at *Section 30(2)* provides that all banks including specialized banks and other financial institutions shall adopt policies to ensure compliance with consumer protection and competition standards and obligation under the extant laws, regulations and to implement appropriate internet controls in that regard. *Section 33* of the BOFIA gives the Governor of CBN the powers to carry out special investigations and examination of books affairs and activities of the commercial banks, specialized banks and other financial institutions where:

- a. it is in the interest of the public to do so;
- b. the banks or other financial institution or specialized bank have been carrying out its business in a manner that is detrimental to interest of depositors or creditors;
- c. the banks or other financial institution or specialized bank have insufficient assets to cover its liability to the public; or

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<sup>41</sup>. *Section 17* of the BOFIA, 2020

<sup>42</sup>. 2018

<sup>43</sup>. Investopedia. 'The Rise and Fall of WorldCom: The Story of Scandal'. *Investopedia*. {2022} ><https://www.investopedia.com>< accessed on the 27/1/2023.

<sup>44</sup>. NDIC. 'Why Some Nigerian Banks Fail'. *NDIC*. Premium Times Nigeria.[2020] ><https://www.premiumtimesng.com>< accessed on 27/1/2023.

<sup>45</sup>. *Section 19(3)* of the BOFIA.

<sup>46</sup>. *Section 114 and 125* FCCPA

<sup>47</sup>. *Section 22 and 66* of the BOFIA, 2020

<sup>48</sup>. *Section 23* of the BOFIA, 2020

- d. The bank has been contravening the provisions of this Act or any other law; or
- e. An application is made by:
  - i) A director or shareholder of the banks or other financial institution or specialized bank; or
  - ii) A depositor or creditor of the banks or other financial institution or specialized bank.

Though the BOFIA did not make specific provisions with regards to consumer rights violation, some of the provisions provide some level of protection for consumers of banking services especially depositors of funds. Those provisions include:

- a. *Section 34* provide for interventions by CBN where after investigations the CBN finds that a bank or other financial institution or specialized bank is unable to meet up its payments or any such report that indicates that the bank is going into distress, the governor of the CBN may make an order in writing prohibiting such a bank or other financial institution or specialized bank from advancing further facilities, suspend payments or delivery of obligations pursuant to any contract which the bank is a party, invite third party service providers to provide certain services for such periods, direct the change of leadership of bank, reduce number of directors and generally employ any intervention tool that it may consider necessary to save the bank from failing including acquiring in whole or in part the shares of the bank. The CBN governor may also revoke the license of ailing bank where it becomes necessary to so do.
- b. *Sections 46* of the BOFIA makes it an offence punishable by imprisonment for 5 years and or fine of N5,000,000 for a staff of the banks or other financial institution or
- c. specialized bank from asking for or receiving commission or gift for employment, for paying service money like gratuity or of facilitating credit facilities.
- d. *Section 47* disqualifies the employment of certain persons like insolvent persons, a bankrupt, a person convicted for financial impropriety or from working in a bank. To ensure some level of uniformity in the banking systems.
- e. *Section 69* of the BOFIA provides for the standard governing operations for payments, settlements and clearance activities of bank taking into consideration excising prudential requirements and international best practices.
- f. The BOFIA established a Banking Sector Resolution Fund<sup>49</sup> into which the CBN shall pay the sum of ten Billion into on the first business day of every year,<sup>50</sup> the NDIC pays four Billion.<sup>51</sup> Whereas the banks or other financial institution or specialized bank are expected to pay in such amount equivalent to 10 basis point or such amount as may be determine by the CBN from time to time.<sup>52</sup> The purpose of the fund is to amongst others purposes pay operating cost of bridge Bank; to defray cost of running the Fund. The funds shall have a Board of Trustee.

### **Credit Reporting Act, 2017.<sup>53</sup>**

The Act consists of 28 sections divided into 9 parts. The objectives of the Act as set out in *Section 1* are to: facilitate and promote access to credit and enhance risk management in credit transactions; promote access to accurate fair and reliable credit information and protect the privacy of such

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<sup>49</sup>. *Section 74* of the BOFIA

<sup>50</sup>. *Section 75* of the BOFIA

<sup>51</sup>. *Section 76* of BOFIA

<sup>52</sup>. *Section 77* of the BOFIA

<sup>53</sup>. Hereinafter called the CRA,2017.

information; set standards and conditions for the establishment, regulation and operation of credit Bureaux; promote fair and competitive crediting reporting system; promote responsibility in the credit market by encouraging responsible borrowing, avoidance of over indebtedness and fulfilment of financial obligations by consumers and discouraging reckless credit granting by credit providers and contractual default by consumers; and facilitate credit information sharing.

The CRA, 2017 provides that any person wishing to set up business as a credit Bureau in Nigeria must first obtain a license to that effect from the CBN. Such an applicant must be incorporated as limited liability Company with Corporate Affairs Commission (CAC); such a company must satisfy the minimum capital requirement and other such conditions. The Credit Bureau<sup>54</sup> performed the following functions: creating and maintaining a database for credit and credit related information; to receive, compile and collect credit information from credit information providers, users and such other persons as prescribed by the CBN; investigating at request of credit information users, an application for credit on behalf of the person that the application for credit is made and such other functions as the CBN may require of it to perform.<sup>55</sup> The basic aim of the credit bureau is the management of data collected in respect of credit facilities. The bureau provides a center for information managed by the bureau.<sup>56</sup> Its core duty is to breach the gap between information users and information providers and satisfying the needs of credit providers on a data subject. The bureau is licensed, regulated, reviewed, monitored by CBN.<sup>57</sup> The purpose of the Act is to ensure safety in credit transactions and provide basis for accessing an applicant for credit facility. Businesses thrive on credits and the bulk of transactions which goes to the issue of credit, hence the need to be sure that a person or business is credit worthy before credit facilities may be advanced. This keeps the banks afloat and ensures the safety of consumers' deposit.<sup>58</sup>

*Section 9* of the CRA provides for the rights, obligations and responsibilities of the various persons in the credit chain whose data is supplied to the Bureau: Data Subject, Data Providers and Data Users. Though there is no specific provision of this Act that directly affects protection of consumers of banking services, the fact that banks can access easily through the Credit Bureau information on the credit rating and standing of a person seeking credit facility, it can ascertain with relative certainty whether the loan or credit will turn out toxic and altogether avoid doing the business and thereby protecting depositor's funds which are used to fund lending activities.

### **Nigerian Deposit Insurance Corporation Act, 2006<sup>59</sup>**

The NDIC Act repealed the NDIC Act of 1988<sup>60</sup> and established the Nigerian Deposit Insurance Corporation<sup>61</sup> to be an insurer of all deposit liabilities of licensed banks and other financial institutions.<sup>62</sup> The NDIC Act prohibits the incorporation of any other Deposit Insurance Corporation in Nigeria.<sup>63</sup> The NDIC Act prescribes the authorized share capital of the corporation to be five Billion Naira and established a reserve fund for the corporation into which shall be paid all surpluses and donations to the Corporation.<sup>64</sup> This provision of the NDIC Act ensures that the Corporation is always liquid and able to discharge its functions promptly. The NDIC Act requires

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<sup>54</sup>. Herein after called The Bureau.

<sup>55</sup>. *Section 3* of the CRA.

<sup>56</sup>. *Section 6* of the CRA.

<sup>57</sup>. *Section 8* of the CRA.

<sup>58</sup>. *Section 27(i)* of the CRA.

<sup>59</sup>. Hereinafter called NDIC, Act

<sup>60</sup>. *Section 58* of the NDIC Act

<sup>61</sup>. Herein after called the Corporation.

<sup>62</sup>. *Section 1* of the NDIC Act.

<sup>63</sup>. *Section 3* of the NDIC Act.

<sup>64</sup>. *Section 11&12* of the NDIC Act.



all banks and financial institutions receiving deposits in Nigeria to be insured by the Corporation<sup>65</sup> and such institutions must insure all their deposits with the exception of those listed in *Section 16* and *17* of the NDIC Act. *Section 18* of the NDIC Act also prohibits any Insured Institution from paying dividend on capital where it is in default of premium payments to the Corporation. And no such premium assessed shall be affected or adjusted on the basis of any set-off that an Insured Institution may have against the Corporation.<sup>66</sup>

*Section 20* of the NDIC Act provides protection of the interest of financial services consumers. The NDIC Act also benchmarks the maximum claim that a depositor may be entitled to in the event of the revocation of the license of the Insured Institution and places same at N200,000.00 for commercial banks and N100 000.00 if the Insured Institution is not a bank. The full import of this law is that where a commercial bank goes into distress and their license is revoked irrespective of how much a depositor has in the bank, he will only receive N200,000.00 or the amount he has as deposit if same is less than N200, 000. 00. The provision is however qualified by the proviso which allows the Corporation with the approval of the Board to review same upwards. All such payments in respect of deposits shall be made by the Corporation within 90days by cash or other negotiable instruments or transfer to another insured institution where the depositor has an account.

#### **Assets Management Corporation of Nigeria Act, 2010.<sup>67</sup>**

The AMCON Act<sup>68</sup> created the Asset Management Corporation of Nigeria,<sup>69</sup> with the primary purpose of resolving issues associated with non performing loans assets in Nigeria. The Act was passed as a crisis management strategy for the management of non performing loan assets to curb crisis in the financial services sector. AMCON is charged with responsibility of acquiring non - performing loans from banks and other financial institutions under the Act designated Eligible Financial Institutions (EFI).<sup>70</sup> AMCON then resolves same by receiving the underlining collateral and then filling up the capital deficit or financial inadequacy necessary to make the economy stronger.

AMCON in collaboration with CBN work to improve the liquidity of toxic assets by purchasing them through the secondary markets thereby helping the affected EFI to balance their books and avoid further financial distress.<sup>71</sup> AMCON can issue bonds, and other forms of debt instrument as consideration for the acquisition or purchase of these toxic assets.<sup>72</sup> AMCON is also empowered to hold portfolio of diverse assets including equities. By buying off from EFI their liquid, difficult-to-value assets, banks will have the morale to continue lending thereby stimulating economic recovery and viability of the financial service sector.

One huge challenge with the AMCON Act is that it gave AMCON the discretion and latitude to choose the Eligible Bank Assets (EBA) that it would purchase and also allows it purchase Tainted Eligible Bank Asset (TEBA) which are bad loans obtained by affiliates and persons in authority in the EFI. After the acquisition of the toxic assets, AMCON takes the place of the EFI in dealing with the collateral and matters relating to the purchased asset<sup>73</sup>.

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<sup>65</sup>. *Section 15* of the NDIC Act.

<sup>66</sup>. *Section 19* of the NDIC Act.

<sup>67</sup>. Hereinafter called the AMCON, Act.

<sup>68</sup>. *Section 1* of the AMCON Act.

<sup>69</sup>. Herein after called AMCON.

<sup>70</sup>. *Section 4* of the AMCON Act.

<sup>71</sup>. *Section 5* of the AMCON Act.

<sup>72</sup>. *Section 6* of the AMCON Act.

<sup>73</sup>. *Section 5(c)* of the AMCON Act.

In the discharge of its function the AMCON Act empowers AMCON to appoint Assets Managers in the event that it desires to take over an eligible bank asset that is burdened down by toxic assets. AMCON is empowered under the Act also to appoint Receivers for the debt of the EFI if the debt was charged on the company as security for the loan/debt.

In order to ensure liquidation of debt, AMCON can bring an application *ex parte* without notice to the debtor for an order vesting AMCON with possession of movable or immovable property of the debtor and for an order to freeze the account of the debtor. Any order made pursuant to the application will lapse after 14 days of making same if AMCON does not start recovering proceedings against the debtor. It is contended that this provision runs foul of the provisions of *Section 36* of the Constitution of Nigeria, 1999 (as amended) in that it allows issue pertaining to a citizen's rights to his property to be heard in court in his absence.

There is currently an Asset Management Corporation (Amendment) Act, No. 13 of 2021 which amended the AMCON Act, of 2010 to extend the tenor of the Resolution Cost Fund, grant access to the Special Tribunal established under the BOFIA, 2020 to hear and try matters relating to non-performing loan assets, and to confer on AMCON the power to take possession, manage, foreclose, sell, transfer, assign or otherwise deal with the assets used as collateral or security for other EBA and or other related matters.

### **Institutional Frame Work**

The chief regulator of the banking sector is the CBN. Others include: the FCCPC, FCCPT, AMCON, NDIC, the courts and other such regulatory bodies. The laws already discussed above provides operating guidelines for banks and operator in the banking and financial sectors to ensure that their products meet up consumer expectation and ensure that there is consistency and near uniformity in all banking product so as to stem the adverse effect of excessive competition in this sensitive sector of the economy.

### **Federal Competition and Consumer Protection Commission.<sup>74</sup>**

*Section 3* of the FCCPA established the Federal Competition and Consumer Protection Commission<sup>75</sup> as a corporate legal entity, with perpetual succession and a common seal and capable of suing and being sued. It has the power to acquire and dispose of its property in its name. The FCCPC has its head office in the Federal Capital Territory, Abuja and with the power to establish branch offices in any other part of the country. The FCCPC comprises of a Board consisting of 8 commissioners including a chairman, a vice chairman, 2 executive members and 4 non-executive members<sup>76</sup> who shall all be appointed by the President of the Federal Republic of Nigeria in accordance with the Act<sup>77</sup> from the 6 geopolitical Zones and shall all hold offices for 4 years on part time basis except the chief executive and the executive commissioners who shall be appointed on full time basis.<sup>78</sup>

The FCCPC shall be responsible for the administration and the enforcement of the FCCPA in addition to other functions listed in *Section 17* of the FCCPA, 2018 and any other enactments with respect to the protection of consumers, some of which include: to initiate broad based policies and reviews of economic activities in the Nigeria; to identify anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers and make

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<sup>74</sup> Herein after referred to as FCCPC

<sup>75</sup> *Ibid*

<sup>76</sup> *Section 4 of the FCCPA, 2018.*

<sup>77</sup> FCCPA

<sup>78</sup> *Section 5 of the FCCPA, 2018.*

rules and regulations under the Act and any other enactment with regards to competition and protection of consumers; to protect and promote consumer interest; cause all goods imported into Nigeria to be registered for traceability when the need arises; collaborate with consumer protection groups and associations for consumer protection purposes; to ensure the adaptation of appropriate measures to guarantee that goods and services are safe for intended or normal uses; to ensure that all service providers comply with local and international standards of quality and safe service delivery etcetera.

The FCCPA though a comprehensive law on the protection of consumer rights is obviously more centered around consumption of goods more than services. It really did not make provisions that are specific to the protection of consumers of financial services and anti-trust regulations which have very dire consequences for the economy as well.

### **Federal Competition and Consumer Protection Tribunal.<sup>79</sup>**

*Section 39* of the FCCPA, 2018 established the FCCPT to adjudicate over conducts prohibited under the FCCPA and to exercise such other powers and jurisdiction conferred on it by any other Act, throughout the Federation of Nigeria. The FCCPT comprises of a Chairman, who shall be a legal practitioner of at least 10years post call and with reasonable experience in the field of consumer protection, competition or general commercial law practice. The FCCPT shall be made up of 6 members with at least 10years experience in any of the following fields: competition and consumer protection; commerce and industry; public affairs; economics; finance; business administration; or management. The Chairman and all his members shall be appointed by the President of the Federal Republic of Nigeria on the recommendation of the Senate.<sup>80</sup> The tenure of members of the tribunal shall be a single term of 5 years or on the attainment of 70years of age.<sup>81</sup> The Tribunal shall also appoint a Registrar who shall be a person qualified to be a Registrar of the High Court. The Registrar shall be responsible for record keeping, head the day to day administration and control of the affairs of the Tribunal and other staff of the Tribunal.<sup>82</sup>

The Tribunal shall have the powers in relation to the FCCPA to hear appeals and review the decisions of the FCCPC; hear and review decisions of Sector/Industry Regulatory Authorities in relation to competition and consumer protection matters; other issue such as may be required under the FCCPA; to make any ruling or such other orders as may be required under the FCCPA provided that all such appeals and matters must have been first heard and determined by the FCCPC.<sup>83</sup>

All orders and rulings of the FCCPT are binding on the parties before it and shall for the purpose of execution be registered first with the Federal High Court.<sup>84</sup> Decisions of the FCCPT can be subject to judicial review by the Court of Appeal upon giving 30 days' notice to that effect to the Registrar of the FCCPT by the aggrieved party.<sup>85</sup> Any party to the proceedings before the FCCPT could either appear in person or be represented by a legal practitioner of his choice.<sup>86</sup>

### **Central Bank of Nigeria.**

*Section 1* of the CBN Act, 2007 established the CBN as a body corporate with perpetual succession and a common seal which could sue and be sued in its corporate name. The CBN was created to

<sup>79</sup> Hereinafter referred to as the "FCCPT "

<sup>80</sup> See *Section 40* of the FCCPA, 2018

<sup>81</sup> *Section 41* of the FCCPA, 2018

<sup>82</sup> *Section 45 of the FCCPA*, 2018

<sup>83</sup> *Section 47 of the FCCPA*, 2018

<sup>84</sup> *Section 54 of the FCCPA*, 2018

<sup>85</sup> *Section 55 of the FCCPA*, 2018

<sup>86</sup> *Section 56 of the FCCPA*, 2018

administer the CBN Act, 2007 and the Banks and Other Financial Institution Act, 2020 for the purpose of promoting stability and continuity in economic management and the bank in the discharge of its functions shall be an independent body.

The principal objectives of the CBN shall be to:

- a. Ensure monetary and price stability;
- b. Issue legal tender in Nigeria;
- c. Maintain external reserves to safeguard the international value of the legal tender currency;
- d. Promote sound financial systems in Nigeria; and
- e. Act as banker and provide economic and financial advice to the federal government.

The authorized share capital of the CBN shall **One Hundred Billion Naira (N100,000,000,000.00)** which shall all be subscribed by only the Federal Government.<sup>87</sup>

*Section 6* of the CBN Act, 2007 established a Board for the CBN which shall consist of the CBN Governor as Chairman; four Deputy Governor; the Permanent Secretary, Federal Ministry of Finance; five Directors; and the Accountant General of the Federation. The Board shall be responsible amongst other items listed in *Section 6(3)* of the CBN, Act, 2007 for: the consideration and the approval of the annual budget of the bank; formulation and implementation of exchange rate policy; the establishment and closing of branches and currency centers.

The CBN shall be managed by the Governor of the Bank and in his absence by any of the four (4) deputy governors appointed by him to so do.<sup>88</sup> The Act provides that Governor and the Governor four Deputy Governors of the Bank shall be in the full time employ of the CBN and unless for personal or charitable purposes they shall not be engaged in any other business.<sup>89</sup>

The CBN shall amongst other functions: determine the exchange rates of the naira;<sup>90</sup> issuance notes and coins;<sup>91</sup> printing naira notes and minting of coins;<sup>92</sup> maintenance of External reserves;<sup>93</sup> redemption of the Nigerian currency;<sup>94</sup> carry out banking operations for the Federal Government of Nigeria; State Governments and Local Governments;<sup>95</sup> carry out treasury operations like purchase and sell of gold coins and bullions;<sup>96</sup> carry out credit operations like issuing of treasury bills of the Federal Government; and liquidity management<sup>97</sup> etcetera.

*Section 42* of the CBN Act, 2007 provides that the CBN in corporation with other banks to promote and maintain adequate and reasonable financial services for the public; ensure high standards of conducts and management throughout the banking system; and to further polices of national interest and to this end the CBN may grant loans to any bank having financial difficulties to ensure that the consumers can access their funds in the bank and the bank does not fail. The loans are granted on agreed interest rates between the CBN and the bank concerned. The reserve

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<sup>87</sup>. *Section 4* of the CBN Act, 2007

<sup>88</sup>. *Section 7* of the CBN Act, 2007

<sup>89</sup>. *Section 9* of the CBN, Act, 2007

<sup>90</sup>. *Section 16* Of the CBN Act, 2007

<sup>91</sup>. *Section 17* of the CBN, Act, 2007

<sup>92</sup>. *Section 18* of the CBN, Act, 2007

<sup>93</sup>. *Section 24* and *25* of the CBN Act, 2007

<sup>94</sup>. *Section 26* of the CBN, Act, 2007

<sup>95</sup>. *Section 27* of the CBN Act, 2007

<sup>96</sup>. *Section 28* of the CBN Act, 2007

<sup>97</sup>. *Section 29 & 30* of the CBN Act, 2007

requirements of the CBN<sup>98</sup> provides a sure- up for banking and protect against incessant bank failures hence the CBN requires that banks to maintain certain levels of cash reserves, specified amounts of liquid assets and to maintain a special deposit a percentage of its deposit liabilities and to this end the CBN Act makes it an offence for a bank to furnish false information.

### **Special Tribunal for the Enforcement and Recovery of Eligible Loans<sup>99</sup>**

The BOFIA also established a Special Tribunal for the Enforcement and Recovery of Eligible Loans<sup>100</sup>. It shall be made up of 11 persons appointed on full time basis by the president of Nigeria<sup>101</sup>. The president and members of the Special Tribunal shall be under the supervision of the National Judicial Council like the judges of Regular High Courts and shall be remunerated from the Consolidated Revenue Funds.<sup>102</sup> The President and Members shall hold office for the life of the Special Tribunal unless they turn 65 or are removed for any of the reasons provided by the *Section 108 of the BOFIA*.<sup>103</sup> The Tribunal shall have and exercise the jurisdictions set out in *Section 115 of the BOFIA*. The functions of this Tribunal is to provide an alternative venue or body to resolve issues relating to enforcement of loans and such credit facilities issued by the banks or other financial institution or specialized bank to ensure speedy disposal of matters in relating to loans which are usually time sensitive.

Nothing in the BOFIA however precludes Regular High Courts from handling such matters provided that such is done speedily. Legal representation is allowed in the Tribunal and the Tribunal shall have and exercise the powers to request for experts, to interpret laws and give judgment in writing.<sup>104</sup> Limitation laws weather of State or Federal does not apply to this Tribunal.<sup>105</sup> Appeals from the tribunal goes to the Court of Appeal and then to the Supreme Court.<sup>106</sup> Much as it is not immediately obvious what role the Special Tribunal plays in the protection of banking services consumers, it is easy to observe that the availability of a faster means of resolving issues relating to loans has a significant impact on how funds lent out as credit are preserved or realized.

### **Nigerian Deposit Insurance Corporation<sup>107</sup>**

The NDIC Act<sup>108</sup> established the Nigerian Deposit Insurance Corporation as a body corporate with perpetual succession and the power to own property and to dispose of same. The NDIC shall have its head office in the Federal Capital Territory of Nigeria.<sup>109</sup> The NDIC shall perform the following functions:<sup>110</sup>

- a. Insuring all deposits of licensed banks and other deposit taking institutions in the act referred to as insured institutions operating in Nigeria to engender confidence in the Nigerian banking systems;
- b. Giving assistance to insured institutions in the interest of depositors in case of eventual or imminent or actual financial difficulties particularly where there are

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<sup>98</sup>. *Section 45 of the CBN Act, 2007*

<sup>99</sup>. Herein after called "*The SPECIAL TRIBUNAL*"

<sup>100</sup> *Section 102 of the BOFIA*

<sup>101</sup>. *Section 103 of the BOFIA*

<sup>102</sup>. *Section 110 of the BOFIA*

<sup>103</sup>. *Sections 104 -106 of the BOFIA.*

<sup>104</sup>. *Section 124-126 of the BOFIA*

<sup>105</sup>. *Sections 122(5) of the BOFIA*

<sup>106</sup>. *Sections 127 and 128 of the BOFIA.*

<sup>107</sup>. The "Corporation"

<sup>108</sup>. *Section 1 of the NDIC Act*

<sup>109</sup>. *Section 4 of the NDIC Act*

<sup>110</sup>. *Section 2 of the NDIC Act*

- threats of suspension of payments to avoid damage to public confidence in the banking systems;
- c. Guaranteeing payments to depositors, in case of imminent or actual suspension of payments by the insured institution up to the maximum amount as provided for by *section 20* of the Act.
  - d. Assisting monetary authorities in the formulation and implementation of banking policies so as to ensure sound banking practices and fair competition among insured institutions in the country; and
  - e. Pursuing any other measure necessary to achieve the functions of the Corporation provided such measures and actions are not repugnant to the object of the Corporation.

The corporation shall be governed by a BOARD,<sup>111</sup> which shall consist of the Chairman, the Managing Director and two Executive Directors, a representative of: CBN, Federal Ministry of Finance, 6 other members from each of the geo-political zones in Nigeria all appointed on part time basis. The Chairman shall not hold any significant interest in any insured institution and shall be appointed by the president upon confirmation by the Senate. *Section 6* provides for situations that disqualifies the chairman and members of the Board from holding offices. The Corporation shall have and exercise the powers listed in *Section 7* of the NDIC Act.

In addition to the functions of the board already listed the board shall also have the powers to appoint Special Examiners<sup>112</sup> to examine periodically under the condition of secrecy, the books and affairs of insured institutions; the management information systems of insured institutions; obtain information on from officers, auditors and directors on the performance of the management of insured institutions; and have access to information on returns and accounts and performance of insured institutions with CBN.

To ensure that insured institutions, in this case commercial banks stay in business and protect the deposit of general public, grant loans, give guarantees for loans taken and accept an accommodation bill.<sup>113</sup> The corporation in consultation with CBN may take over the management of a failing institution or may direct specific changes, arrange merger with or acquisition by another insured institution of the failing insured institution so that that other insured institution an acquire manage and discharge the liabilities of the failing institution.<sup>114</sup>

The corporation may also in consultation with the CBN get the CBN to license one or more bridge banks to take over and assume such deposit liability of the failing bank. The said bridge bank shall purchase the assets of the failed insured institution and any perform such other functions as the corporation may deem fit to assign to it.<sup>115</sup> The bridge bank must it's self be insured with the Corporation. The bridge bank status will terminate on the happening of any of the events listed in *Section 39(6)* of the NDIC Act. These are some of the provisions put in the law to protect the interest of consumers of banking products in the commercial bank. The corporation also acts a liquidator of a failed insured institution when their licenses have been revoked by the CBN.<sup>116</sup>

The law also excluded the operation of the statutes of limitation on any debt owed to the failing institution.<sup>117</sup> This provision is very key as it ensures that debts owed the failed insured commercial

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<sup>111</sup>. *Section 5* of the NDIC, Act

<sup>112</sup>. *Section 28 -31* of the NDIC Act.

<sup>113</sup>. *Section 37* of the NDIC Act.

<sup>114</sup>. *Section 38* of the NDIC Act.

<sup>115</sup>. *Section 39* of the NDIC Act.

<sup>116</sup>. *Section 40* of the NDIC Act..

<sup>117</sup>. *Section 44* of the NDIC Act.

bank can be realized no matter the year so that its liabilities can be realized. Another important provision here is the power of the corporation to compound offences under *Section 46* of the NDIC Act. This section allows the Corporation to accept less than the amount of fine in line with its mission of realizing as much as possible the debt and finances owed or accruable to the failed institution. The Corporation also has the powers to employ and engage the services of legal practitioners to prosecute or defend matters in court on behalf of the Corporation.<sup>118</sup> The NDIC Act also gives the Corporation the powers to borrow such funds from the CBN as it may require to discharge its functions under this Act.<sup>119</sup> The law also immunizes the corporation from going into liquidation except by operation of law.<sup>120</sup> These provisions ensure that the Corporation is able at all times to discharge its functions to the insured institution and by extension ensure that consumer confidence in the banking sector of Nigeria are protected.

### **The Asset Management Corporation of Nigeria.<sup>121</sup>**

*Section 1* of the AMCON Act, established the AMCON BOARD and empowered it to carry out the function of AMCON under the AMCON Act. The Board members and chairman are appointed by the President of the Federal Republic of Nigeria based on the confirmation by the Senate. The chairman of the Board is usually a nominee of the Federal Ministry of Finance, the Managing Director and 3 executive directors to be nominated by the CBN and 5 non-executive directors, 2 of whom are nominees of the CBN, the other 2 by the ministry of finance and the last non-executive director should be a nominee of the NDIC. The Board administers the provisions of the AMCON Act under the supervision of the CBN who provide regulatory guidelines for the Board.

### **Recommendations.**

The research recommends a review and possible amendment of some of the existing body of laws. Such suggested amendments should include: a provision for class actions to remedy consumer breaches that may appear too innocuous to be pursued by one person, and an establishment of a special court for dealing specifically with breaches of consumer rights and all other banker-consumer issues. The benchmark set by the NDIC Act for recovery by consumers of their deposit in the event of a bank going under is too low and should be reviewed upwards. Finally it is recommended that there is need for a specific legislation to regulate the protection of consumers in the banking sector in Nigeria.

### **Conclusion.**

This article seeks to appraise the available protective mechanism under the law for Banking Services Consumers who deserve to be protected much the same way as consumers of goods. The legal regulations considered herein did not make specific provisions with regards to consumer rights violation. *Sections 142 – 144* of the FCCPA, provides that suppliers of services must do so with reasonable skill and care. The law also states that services must be rendered within reasonable time where there are no time lines attached to the contract. These provisions are not specifically aimed at addressing consumer rights violations in the Nigerian banking sector. Also, some of the institutions examined did not make provisions that are specific to the protection of consumers of financial services which has very dire consequences for Nigerian economy as well. Thus, an effective legal and institutional mechanisms in the areas of consumer protection in the Nigerian banking sector will ensure speedy disposition of cases arising from banker customer relationship which are often time sensitive in nature.

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<sup>118</sup>. *Section 47* of the NDIC Act..

<sup>119</sup>. *Section 52* of the NDIC Act.

<sup>120</sup>. *Section 57* of the NDIC Act.

<sup>121</sup> Herein after called AMCON