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## Electronic legal issues introduced by the bank and other financial act (Bofia 2020 Act)

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### Abstract

The banks and other financial institution Act 2020 (the BOFIA Act 2020) is a landmark in the history or corporate legislation in Nigeria. The new Act has addressed some of the major challenges bedeviling the Nigerian banking sector. It has improved the regulatory oversight and updated the laws governing financial institutions and financial services by bringing it in line with international best practice. The Act has for the first time recognized and adopted electronic and virtual operations within the financial institution. Hence, the Act will have a positive impact on the Nigeria banking sector by way of relaxing the difficulties and bottlenecks encountered under the repealed Act. The paper identified some of the problems caused by the old Act which was as a result of its archaic nature. It further shows how the new Act has turned the Nigeria's banking sector to a modern one. And it finally recommends ways on how to maintain and strictly implement the provisions of the new Act.

**Keywords:** electronic legal issues, financial act, bofia 2020 Act

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### Introduction

The Nigerian Banking sector is one of the major pillars of the nation's economy. The banking sector is the depository of deposits and the supplier of money and loans for the economic development of Nigeria. It serves as the vehicle of growth and development of the nation's economy. Hence the need for a strong and robust legal and regulatory framework on banking.

The Bank and Other Financial Act (BOFIA Act 2020) is currently the primary legislation that regulates banking business in Nigeria. The new Act repeals and amends the former BOFIA ACT 1991 with a view to bringing the Nigerian banking sector in line with international best practice.

Nigeria currently, being the largest economy in Africa, has more than twenty-five banks in operation with more coming up. Prominent among them have spread their tentacles to other African countries by establishing more branches. The focal point of this paper is on the electronic legal issues introduced by BOFIA Act 2020.

### Brief overview of banking reforms in Nigeria

Banks promote economic growth primarily by mediating between surplus economic units and deficit economic units. In the process, it facilitates capital formation and lubricates the process of production for banks to perform efficiently and discharge their core functions, it is imperative that the banks are viable and healthy and that the entire industry is stable and sound<sup>[1]</sup>.

It is important to note that, the banking system plays fundamental roles in the growth and development of an economy all over the world<sup>[2]</sup>. The importance of banking reforms in Nigeria cannot be over-emphasized, as it has helped in market liberalization towards efficiency in resource allocation, savings mobilization, promotion of investment and growth in returns, it further enhances the quality of regulatory and surveillance framework towards healthy competition, effective inflation control and economic growth<sup>[3]</sup>.

Over the years there has been a wave of restructuring and consolidation of the banking sector around the globe, particularly in the developed and the emerging market economies. This has been driven mainly by globalization, structural and technological changes as well as the integration of financial markets, as financial institutions strive to become more competitive and resilient to shocks.

It is also promoted by the desire to reposition corporate operations to cope with the challenges of an increasingly globalized banking system<sup>[4]</sup>. The fundamental objectives which influence the floating of banks and other financial institutions by investors are principally the motive of profit and safe investment<sup>[5]</sup>. The need to achieve a strong and stable financial system for the Nigerian economy largely informed the programme of reforms introduced in the banking sector by the CBN<sup>[6]</sup>.

In Nigeria, the importance of an economic reform became more evident as a result of the background of economic problems, including stagnant growth, rising inflation, unemployment, food shortages and mounting external debts, which confronted the country since the early 1980's. The sharp reduction in crude oil prices resulted in deterioration in government's finances and foreign exchange earnings. As the country plunged into

economic recession, the initial policy response was the adoption of stringent austerity measures <sup>[7]</sup>. Note that, the period of the reform will be discussed under the following headings:

### **1952 Banking Reform**

Financial reforms in Nigeria dates back to 1952 when the banking ordinance was enacted. This was done to enhance the Nigerian financial sector <sup>[1]</sup>.

### **1986 to 1993 Banking Reform**

This period witnessed the deregulation of the banking industry in Nigeria. This was done in order to allow for substantial private sector participants <sup>[2]</sup>. Structure adjustment program was introduced to restructure and diversify the production base of the economy, achieve fiscal balance etc. However the major financial reforms have therefore been classified as exchange rate reforms commencing from 1986, review of banks capital adequacy standards in 1991 and the form of accounting procedure for banks <sup>[3]</sup>.

### **1992 to 1995 Banking Reforms**

This period witnessed another reforms of regulation following the deep financial crises of the time. There was restructuring of distressed banks, liquidation of banks, and reentry of foreign fully owned banks <sup>[4]</sup>.

### **1996 to 2004 Banking Reform**

Universal banking was introduced during this period. Under the period there was no restriction for performing commercial or merchant banking Activities by bank. Some major reform of this period include the adoption of universal banking policy in 2001, total deregulation of interest rate, re introduction of Dutch Auction System (DAS) upward review of the minimum paid up capital to 2 billion in 1997 and many more <sup>[4]</sup>.

### **The 2004 to 2009 Banking Reform**

The Central Bank of Nigeria under the leadership of Psof Charles Soludo introduced the 2004 banking reform which was geared towards strengthening the financial system and in particular the banking section. Some of the reforms introduced are the increase in the minimum paid up capital from 2 billion to 25 billion, consolidation of banking institutions through mergers and acquisition, phased withdrawal of public sector funds, automating the process for the rendition of returns by banks and other financial institutions through the enhanced financial analyses and surveillance system, adoption of a risk focus and rule based regulatory framework and many more <sup>[5]</sup>.

### **2009 to 2014 Banking Reform**

This period experienced numerous reforms ranging from merger of some weak banks to the removal of N100 charge on the use of Automated Teller Machines (ATM), the introduction of cashless policy which limits the level of withdrawal by individual to N500,000 and corporate body to N3 Million. The approval of N200 billion commercial agric credit scheme to local farmers to enable them improve their production capacity. The biometric data authentication was also introduced. Bank verification number (BVN) for biometric identification of customers in the financial industry was launched by the CBN. The BVN was designed to reduce fraud, money laundering in order to revolutionalise the payment system in the country <sup>[6]</sup>. Asset Management Corporation of Nigeria (AMCON) was also established to soak the toxic assets of deposit money bank (DMBS) <sup>[7]</sup>.

### **2014 to Date Banking Reform**

This period witnessed the introduction of a many credible foreign exchange regime. The CBN has established specific windows to channel forex supply to key market segments. This strategy has boosted dollar liquidity locally and renewed foreign capital flows into the economy again [8]. The decision to streamline the operation of BDCs was taken during this period. this was done because of the need to check influences in the system and eliminate alleged sharp practices in the foreign exchange market that have led to the depletion of the depletion of the nation external reserves <sup>[9]</sup>.

Furthermore, the CBN tightened money supply in order to contain inflation while improving yields in local bonds, which attracted the attention of foreign investors, also manufacturers were encouraged to consider local options in sourcing their raw materials, by restricting access to foreign exchange on 41 items. Financial inclusion was part of the reform during this period. As a result agent banking guidelines and the shared agent network facility both of which are intended to deepen penetration of agent networks in underserved locations across the country. The launching of the policy on payment service banks in October 2018 is an additional step aimed at leveraging on the distribution networks of nonbank entities such as fast moving consumer good companies, fintech, and mobile network operators in providing financial services to underserved communities <sup>[10]</sup>.

It is important to note that, the central bank governor Godwin Emefiele unveils 5 years policy thrust in 2019. Few among the reforms are the increasing of private sector lending by banks, banks get guide to real sector investment, CBN liberalises money wallet service approval, CISS to enhance banking data management DMBs. Woo loan seekers, trends in value of POS transactions, 95% financial inclusion rate by 2024, new standard for non interest banking in Nigeria, ECOWAS to adopt Eco as currency and issuing of licenses to new bank <sup>[11]</sup>.

### **The Bofia Act 2020**

The Banks and Other Financial Institution Act 2020 (The BOFIA ACT 2020) was signed into law by President Muhammadu Buhari on 13th November, 2020 and repeals the extent BOFIA Act 1991 as amended in 1997, 1998, 1999 and 2002. The new Act introduces and amends major provisions that govern the Activities of banks, specialized banks and other financial institutions, reflecting the evolution of the Nigerian financial sector in the last three decade. The Act among other things, seeks to strengthen regulatory oversight and increase investor confidence in the financial sector <sup>[1]</sup>.

It is important to note that the repeal of BOFIA was driven by the need to strengthen the regulating and resolution architecture for Banks and Other Financial Institutions in Nigeria, close the regulatory gaps in BOFIA especially in the light of advances in technology driven delivery channels, and ensure that the primary statute regulating banking and other related matters in Nigeria is modern and align with international best practice <sup>[2]</sup>. The new Act, which is an answer to the clarion call of both the public and private sectors of the economy and international development institutions, therefore presents a laudable opportunity to strengthen financial system stability in Nigeria and enhance banking supervision and regulation in accordance with international best practice while taking into account Nigeria's local circumstance <sup>[3]</sup>.

Furthermore, the objectives of the new Act includes to update laws governing financial institutions and financial services and bring it in line with modern trends in the banking sector, enhance efficiency in the process of obtaining / granting banking licenses, accurately delineate the regulatory functions of the Central Bank of Nigeria in the financial services industry, update and incorporate the laws for enhancing, licensing and regulation of micro finance banks, and also to regulate the Activities of financial technology companies (fintech) <sup>[4]</sup>.

### **Electronic Innovations Introduced by the Bofia Act 2020**

The BOFIA Act 2020 is a historic and significant achievement that will enhance the soundness and resilience of the Nigeria financial system <sup>[5]</sup>. It is pertinent to note that the new Act, in dealing with the current realities deleted completely some provisions in the old Act. For example sec 33(3) dealing with power of the CBN governor to appoint one or more officers of the bank as examiner has been deleted. Also section 45 amongst others has been deleted from the new Act <sup>[6]</sup>.

It is important to note that, for the purpose of this paper emphasis would be laid on electronic innovations introduced by the new Act.

Below are some of the shining innovations introduced by the new Act.

Regulation of fintech companies/specialized banking. The Act requires those who intend to carry or are already carrying on specialized banking or business of other financial institution to acquire a license to do so from the central bank regardless of whether such business are conducted digitally, virtually or electronically <sup>[7]</sup>. Only this effectively codifies the licensing and regulation regime for financial technology service providers (fintech) and will serve to sanitize their operations, support their innovation initiatives and drive investments in that space <sup>[8]</sup>.

This effectively enlarges the scope of the CBNs regulatory power to include certain types of fintech companies. Some notable provisions that apply to fintech companies under the Act include special examination of the books or affairs of bank where it is in the public interest to do so, where there has been contravention of the Act <sup>[9]</sup>. Note that, the increasing importance of fintech to the economy of Nigeria cannot be over emphasise. In a report published by enhancing financial innovation and access in 2018, there were at least 280 fintech companies in Nigeria at the time and there was expectation of market growth in subsequent years as well as an increase in the transaction value in the fintech landscape. Furthermore, the acquisition of paystack (a Nigerian fintech company) by stripe, an American fintech giant for a figure in the region of two hundred million dollars \$200,000,000, reflects the massive opportunity and importance of this sector to the Nigerian economy.

Therefore the CBN must encourage collaboration with these fintech companies and ensure that through its policing and regulations, fintech companies are provided a stable and enabling environment to operate and grow <sup>[10]</sup>.

### **Regulation on Cyber Security**

The CBN is vested with the power to issue regulations to banks, specialized bank or other financial institutions to address cyber security issues in the delivery of financial or banking service. Considering the emergence and development of electronic banking and the simultaneous rise in cyber-crime <sup>[11]</sup>.

Note that, the risk based cyber security framework and guidelines for deposit money banks and payment service providers which came into effect on January 2019 was a very laudable move to tackle cyber security. Under the guidelines, some of the silent provisions are the appointment of a chief information security officer to oversee the end to end cyber security programe, regular cyber security self-assessments and an annual assessment to be submitted to the CBN by March 31st every year. Therefore Sec 68 of the Act arrives as a sequel to the above guidelines <sup>[12]</sup>.

Meanwhile, the COVID 19 Pandemic has caused many organizations to adopt various forms of technology without prior planning and testing. As a result of that there is a position improved in the usage of technology among financial service operators in Nigeria and this comes with heightened risks which need to be monitored and managed to prevent significant issues arising from cyber thefts <sup>[13]</sup>.

**Display of Information**

The New Act required banks to display information at their offices and on their website <sup>[14]</sup>. Therefore, every bank must display the following information (a) its obligation to report transactions above the limits stipulated in the money laundering/combating financing of terrorism guidelines/republishes and suspicious transactions to the Nigeria financial intelligence units. (b) foreign exchange rates (c) certified true copy of its certificate of incorporation (d) abridged version of its last approval audited accounts and (e) such other information as the sence may require from time to time <sup>[1]</sup>.

**Banking Business**

The New Act provides that a person is deemed to be receiving money as deposits and thus, conducting banking business if the person accepts deposits from the general public as a feature of its business or if the person solicits for deposits orally, electronically or through any form of advertisement or otherwise by any other means <sup>[2]</sup>.

**Revocation of Banking Licence**

The New Act empowered the governor with the approval of the board and by notice to published in the federal government gazette or print and electronic media, revoke any license granted under the Act if the bank ceases to carry on in Nigeria the type of banking business for which the license was issued for any continuous period of six months or any period aggregating six months during a continuous period of 12 months <sup>[3]</sup>.

**Restriction on the use of Certain Names**

The BOFIA Act restricts the registration of a business or company name with the word “Fintech” or related derivation, the ability to regulate fintechs may be welcome from a consumer safety perspective <sup>[4]</sup>.

**General Restriction on Advertisement**

Section 44(5) defines advertisement to include electronic mail, internet or other electronic media. Also sec 131 of the BOFIA Act 2020 has embraced information and communication Technology in line with international best practice.

Restriction of Nigeria Banks from establishing relationship with certain foreign entities.

Section 3(5) of the Act restrict/prohibits Nigerian banks from establishing any relationship with a foreign bank or other entity which does not have a physical presence in its country of incorporation or which is not licenced in its country of incorporation and which is not affiliated to any financial services group that is subject to effective consolidated supervision.

It is clear that the above section is silently referring to entities run on mobile or online platform by preventing Nigerian banks from forming a relationship with certain entities that may not be subject to the same regulatory oversight that Nigerian are subject to or at least the equivalent in their host countries. Therefore, Nigerian banks shall not established any relationship with entities that are run on a strictly mobile or online platform.

**Effect of the Innovations Introduced by the Act**

The archive and outdated nature of the old BOFIA Act, served as a facilitation of the laxity in corporate governance and corruption as the operators exploited its weakness to perpetrate various reckless insider abuses and other unethical conducts that only fueled the high incidence of non-performing loans on the banking system. Therefore, it is behaved that the new Act is capable of improving the country’s business environment and bring it to the globally acceptable standard <sup>[5]</sup>. Below are some of the effect of the innovations introduced by the new Act.

The new Act updates the laws that will enable the banking and financial services sector respond to developments and significant evolution in the financial sector over the last two decades.

Also the Act would strengthen the regulating and supervisory framework for the financial industry by providing additional tools for managing failing institutions and systemic distress to preserve financial stability amongst other <sup>[6]</sup>.

The BOFIA Act 2020 has for the first time acknowledged the presence of information technology and the growing deployment of new technology in the provision of banking services. Hence the Act under Sec 2(5), 68, 57, 44, 43, 12 and 131 regulate the Activities of fintech companies, cyber security, display of information and advertisement on website and ensure adequate for regulatory violations and abuses in the financial systems <sup>[7]</sup>.

**Conclusion**

The obsolete and archieve nature of the old BOFIA Act has done so much damage to the Nigerian banking sector. People exploited the lacuna in the old Act to commit different types of fraud. However, with the coming into effect of the New Act the Nigeria’s financial sector is expected to be better and improved. Therefore, the Act will have a positive impact on the Nigerian business environment. It therefore, suggested that there must be a political will to implement the provisions of the new Act so asnn to enhance efficiency and boost the economy.

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