Chapter 1

Nigeria

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I INTRODUCTION

The Nigerian banking sector plays a key role in the growth of the country and is therefore one of the most heavily regulated sectors in Nigeria. As the apex bank and primary regulator of the banking sector, the Central Bank of Nigeria (CBN) implements policies to ensure that the banking sector remains viable and drives efficiency in economic activities. As of January 2024, there were 26 commercial banks,[2] six merchant banks[3] and four non-interest banks.[4]

The following five banks are the largest in Nigeria by their market capitalisation on the Nigerian Exchange Limited (NGX):[5]

a Guaranty Trust Holding Company Plc;
b Zenith Bank Plc;
c FBN Holdings Plc;
d Stanbic IBTC Bank; and
e United Bank for Africa Plc.[6]

The CBN had a slow rollout of policies in the first half of 2023, likely due to national elections; however, the key policy focus was on the naira redesign discussed further in Section II. In the second half of 2023, banking regulation and policy were characterised broadly by an increased focus on corporate governance and compliance with applicable licensing regimes, and bolder policy towards financial technology (fintech). Notably, in July 2023, the CBN published a circular on the new Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks, and Financial Holding

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2 www.cbn.gov.ng/supervision/Inst-DM.asp (accessed on 30 May 2024).
3 www.cbn.gov.ng/supervision/Inst-MB.asp (accessed on 26 January 2024).
4 www.cbn.gov.ng/supervision/Inst-NI.asp (accessed on 26 January 2024).
Other licensed financial institutions include microfinance banks, primary mortgage banks, specialised banks and other entities licensed by the CBN.
5 The NGX is a leading multi-asset securities exchange. The NGX is a wholly-owned subsidiary of the Nigerian Exchange Group (NGX Group) Plc, which emerged from the demutualisation of the erstwhile Nigerian Stock Exchange (NSE) in 2021. The demutualisation signified a transition from a not-for-profit NSE to a profit-oriented NGX; a private limited liability company.
6 See NGX Banking indices on: https://ngxgroup.com/exchange/data/indices/ (accessed on 26 January 2024).

Companies in Nigeria, 2023 (CBN CG Guidelines).[7] The CBN CG Guidelines, among other key changes, fixes the composition of the board of directors of banks, tenures of bank executives and requires more non-executive directors (NEDs) than executive directors (EDs) on the boards of directors. The CBN CG Guidelines also promote gender diversity and inclusivity by requiring that no board of directors shall consist of only one gender and that banks take a practical approach to women's economic empowerment in line with Principle 4 of the Nigerian Sustainable Banking Principles (see Sections II and IV for more discussion on the CBN CG Guidelines).

The CBN also adopted more modern banking regulation for fintechs. Notably, the CBN reversed its position on the opening of bank accounts for virtual asset service providers (VASPs). Banks may now provide services to VASPs subject to certain restrictions. The CBN also continues to push for the adoption of the 'E-Naira', the naira-denominated digital currency issued by the CBN.[8]

Perhaps the most significant hurdle to macroeconomic growth in 2023 was the double-digit inflation, which rose to a high of 28.92 per cent in December from 21.82 per cent in January 2023 As of April 2024, inflation has risen to 33.69 per cent.[9] In its effort to stabilise the economy, the CBN consistently increased the Monetary Policy Rate (MPR) from 18.75 per cent in December 2023 to 22.75 per cent by February 2024.[10] In March 2024, the CBN further increased the MPR from 22.75 to 24.75 per cent. The MPR has increased to 26.25 per cent as of May 21, 2024. [11]

In December 2023, the CBN Governor Olayemi Cardoso announced at the 58th Annual Bankers' Dinner that the apex bank was considering the recapitalisation of banks to enhance the resilience, solvency and capacity of banks to support the Nigerian economy.[12] On 28 March 2024, this proposal came into fruition as the CBN announced an upward review of the minimum capital requirements for commercial, merchant and non-interest banks.[13] This policy measure is the first regulatory-induced recapitalisation since 2005 and will remain the highlight of the Nigerian banking sector for the next 24 months, within which the banks will be required to undertake the recapitalisation process. The highlights of the mandated recapitalisation are further discussed below.

7 The circular is titled 'Circular to all Commercial Banks, Merchant, Non-interest and Payment Service Banks; and Financial Holding Companies' and is dated 13 July 2023 with reference number FPR/DIR/PUB/CIR/001/078. The effective date of the Guidelines is 1 August 2023.
These Guidelines outline industry-specific corporate governance standards for the institutions covered thereunder, in addition to the general principles of corporate governance under the Nigerian Code of Corporate Governance, 2018 (NCCG) applicable to all companies in Nigeria.

8 The CBN announced 22 billion naira in transactions recorded by the end of the first quarter of 2023, amounting to a 68 per cent increase from the beginning of the year.
CBN Update 2023 March Edition edited Brightened cdr (p. 9) (accessed on 26 January 2024).

9 https://www.cbn.gov.ng/rates/inflrates.asp (accessed on 26 January 2024).

10 https://www.cbn.gov.ng/monetarypolicy/decisions.asp (accessed on 23 April 2024).

11 ibid.

12 See *Punch Newspaper*: https://punchng.com/bank-recapitalisation-presidency-backs-c bn-investors-rush-for-mega-banks-stocks/ (accessed on 11 April 2024).

13 CBN Banking Sector Recapitalisation Programme 2024, https://www.cbn.gov.ng/Out/2024/CCD/Recapitalization_MARCH_2024.pdf (accessed on 30 May 2024).

II YEAR IN REVIEW

i Naira Redesign Policy

The CBN announced a Naira Redesign Policy with an initial effective date of 31 January 2023. Pursuant to the policy, old 200, 500 and 1,000 naira notes were to cease to be legal tender as of the effective date and were to be replaced with newly designed notes, with the aim of countering the large volume of Naira hoarding, which the CBN noted had led to the shortage of clean and fit notes and increased counterfeiting.[14] The deadline for total migration to the new notes, however, proved infeasible due to the scarcity of the new legal tender at banks, causing controversy about the timing of the policy rollout. The economic hardship triggered by the policy spurred a series of lawsuits against the Nigerian government and, after several extended deadlines, the mater was settled by the Supreme Court on 29 November 2023 that the new and old notes would remain legal tender and coexist until further notice. This remains the policy of the CBN to date.[15]

ii Foreign exchange rates

Prior to 2023, the financial markets featured a multiple foreign exchange (FX) rate regime with wide spreads, leaving significant opportunity for arbitrage. The unification of the multiple FX rate windows into the importers and exporters (I&E) window on 14 June 2023 was a welcome change following repeated recommendations by the International Monetary Fund to move towards a unified and market clearing exchange rate.[16] Recently, however, the CBN further liberalised the FX rate regime to remove maximum limits on spreads on FX transactions; therefore, authorised dealers[17] may conduct transactions on a willing-buyer-willing-seller basis.[18]

There has also been active regulation of International Money Transfer Operators (IMTOs), which have licences granted by the CBN to receive in-bound transfers to Nigerian recipients; however, IMTOs cannot conduct outbound FX transactions. According to the Reviewed Guidelines on International Money Transfer Services in Nigeria 2024 (the IMTO Guidelines) issued on 31 January 2024, fintechs and banks are disqualified from applying for IMTO licences and licensed IMTOs may settle in-bound transfers only in Naira on a willing-buyer-willing-seller basis through a bank account or cash.[19] The IMTO Guidelines reversed the 10 July 2023 circular pursuant to which the naira (converted at the I&E window)

14 Press Remarks on New Naira Bank Notes: https://www.cbn.gov.ng/Out/2022/CCD/Press%20Remarks%20on%20New%20Naira%20BanknotesOct2022%20Final.pdf (accessed on 26 January 2024).

15 CBN Press Release on Supreme Court Order: https://www.cbn.gov.ng/Out/2023/CCD/CBN%20Press%20Release%20on%20Supreme%20Court%20Order.pdf (accessed on 26 January 2024).

16 CBN Update June 2023n.cdr: https://www.cbn.gov.ng/Out/2023/CCD/CBN%20UPDATE%20JUNE%202023n%2017-7-23.pdf (accessed on 26 January 2024).

17 Authorised Dealers are banks licensed under BOFIA 2020 and such other specialised banks licensed to deal in foreign exchange.

18 The January 31 Circular involves the removal of the allowable limit of exchange rate quoted by the IMTOs accessible here: https://www.cbn.gov.ng/Out/2024/TED/Circular%20on%20allowable%20limit%20of%20exchange%20rate%20quoted%20by%20IMTOs.pdf. While the above circular is relevant, the circular sought to be referenced is the February 8 Circular on the removal of the spread on FX transactions, accessible here: https://www.cbn.gov.ng/Out/2024/FMD/FMD%20circular.pdf.

19 The guidelines note that cash is payable only if the naira equivalent of the payout is US$200 or less. CBN Revised IMTO Guidelines (31 January 2024) (accessed on 26 January 2024).

was a payout option alongside foreign currency to beneficiaries of diaspora remittances.[20] Furthermore, IMTOs cannot buy FX from the domestic market; however, authorised dealers can continue to access FX from the domestic market.

For banks specifically, the CBN recently halted long-term foreign currency exposure through its circular[21] mandating banks not to exceed 20 per cent short or zero per cent long net open position of shareholders' funds unimpaired by losses.[22] The directive is aimed at removing incentives for banks to take risky actions that may devalue the Naira on the one hand or harm shareholder funds on the other. Banks were also directed to borrow and lend in the same currency (natural hedging) to avoid FX mismatch risk.

iii New Corporate Governance Guidelines

On 13 July 2023, the CBN issued the CBN CG Guidelines, which became effective on 1 August 2023.[23] The CBN CG Guidelines stipulate that the minimum and maximum number of directors on the boards of commercial, merchant and non-interest banks shall be between seven and 15, respectively, while for payment service banks (PSBs), it shall be between seven and 13 members, respectively. The CBN CG Guidelines further provide for at least three independent non-executive directors (INEDs) for international and national commercial banks,[24] merchant banks and national non-interest banks and two INEDs for PSBs, regional commercial banks and regional non-interest banks. In the case of banks that are publicly listed, the guidelines defer to the provisions of Nigerian company law as contained in the Companies and Allied Matters Act, 2020 (CAMA 2020).

iv Fintech regulation and cryptocurrencies

The CBN had previously banned the use of the banking system for cryptocurrency transactions in 2021, however, this decision was reversed in a circular dated 22 December 2023, and it now allows banks and other financial institutions to offer permissible banking services to VASPs.[25] These institutions are still prohibited from holding or transacting cryptocurrencies for their own account. Bank accounts opened for VASPs cannot be used for cash withdrawals and third-party cheques.[26] Except for settlement of digital assets transactions, which are conducted through transfers to designated accounts, withdrawals can only be through a manager's cheque.[27] The circular was long anticipated in view of the recognition of digital asset transactions and VASPs by the Money Laundering (Prevention and Prohibition) Act 2022,[28] and the Securities and Exchange Commission's rules on Issuance, Offering

20 Naira Option Payout for Diaspora Remittances (accessed on 26 January 2024).

21 Circular on Foreign Currency Exposure of Banks.pdf: https://www.cbn.gov.ng/Out/2024/TED/Circular%20on%20Foreign%20Currency%20Exposure%20of%20Banks.pdf (accessed on 26 January 2024).

22 The net open position is the net amount of foreign currency assets and liabilities denominated in the same currency. If a bank has higher foreign currency denominated assets than liabilities, it is said to be in a long position while the inverse is said to be a short position.

23 See footnote 7.

24 Banks operating in Nigeria may be licensed to operate regionally, nationally or internationally.

25 See Sections 6-7 of the Guidelines on Operations of Bank Accounts for Virtual Asset Providers (issued 22 December 2023) (accessed on 26 January 2024).

26 ibid.

27 ibid.

28 Section 30 of the Money Laundering (Prevention and Prohibition) Act 2022.

and Custody of Digital Assets and VASPs[29] in Nigeria. This was a necessary step towards modernising digital assets regulation, considering that Nigeria has one of the largest markets for cryptocurrencies globally.[30]

v Bank recapitalisation programme 2024

The CBN, in line with its duty to promote a safe, sound and stable banking system,[31] has announced an upward review of the minimum capital requirements for commercial, merchant and non-interest banks.[32] Accordingly, the minimum paid-up share capital for commercial banks operating at regional, national and international levels were increased from 10 million Naira, 25 million Naira and 50 million Naira[33] to 50 million Naira, 200 million Naira and 500 million Naira, respectively.[34] For national merchant banks, there was an increase from 15 million Naira[35] to 50 million Naira, while for regional and national non-interest banks an increase from 5 million Naira and 10 million Naira[36] to 10 million Naira and 20 million Naira, respectively.

All applicable banks are required to comply with the new requirements by 31 March 2026. There are three options available to banks in complying with the circular within the deadline. First, banks may inject fresh equity capital through private placements, rights issue or offer for subscription.[37] Second, banks may consider mergers and acquisitions to ultimately form banks with regularised positions. Third, banks may upgrade or downgrade operating licences to meet the requirements. All applicable banks must, no later than 30 April 2024, submit implementation plans to the CBN stating the preferred option.

Finally, the proposed banks that have submitted applications for licences after 1 April 2024 are bound by these requirements and the capital must be paid up. Promoters of banks that have filed applications in respect of which deposits have been made or in which the CBN has granted an approval-in-principle, are required to make up the difference between the capital deposited and the new requirements no later than the deadline.

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29 SEC Rules on Issuance, Offering and Custody of Digital Assets and VASPs in Nigeria: https://sec.gov.ng/rules-on-issuance-offering-and-custody-of-digital-assets_sec-nigeria-11-may-2022/ (accessed on 26 January 2024).

30 Nigeria is listed as second on the 2023 Global Crypto Adoption Index for Sub-Saharan Africa. See The 2023 Geography of Cryptocurrency Report (chainalysis.com) (accessed on 26 January 2024).

31 Section 9 of BOFIA 2020.

32 Issued by a circular titled 'Circular to all Commercial, Merchant and Non-Interest Banks; and Promoters of Proposed Banks: Review of Minimum Capital Requirements for Commercial, Merchant, and Non-Interest Banks in Nigeria' dated 28 March 2024, with reference number FPR/DIR/PUB/CIR/002/009.

33 ibid.

34 Sections 5, 6 and 7 of the CBN Scope, Conditions & Minimum Standards for Commercial Banks Regulations No. 01, 2010.

35 Section 5 of the CBN Scope, Conditions & Minimum Standards for Merchant Banks Regulations, 2010.

36 CBN Scope, Conditions & Minimum Standards for Specialized Institutions Regulations No. 03, 2010.

37 However, banks are to note that shareholder's funds and additional tier (AT1) capital are not eligible capital for meeting the capital requirement. This in no way affects the minimum capital adequacy ratio (CAR) to be maintained by banks.

vi Prohibition of the use of foreign currency denominated collaterals for Naira loans

On 8 April 2024, the CBN announced the prohibition of the use of foreign currency denominated collaterals by bank customers for Naira loans, save in cases where the foreign currency collateral is Eurobounds issued by the federal government of Nigeria or guarantees by foreign banks, including standby letters of credit.[38] Consequently, all loans currently secured with dollar denominated collaterals other than those highlighted above are expected to be wound up by 7 July 2024.[39]

III THE REGULATORY REGIME APPLICABLE TO BANKS

BOFIA 2020 is the principal legislation setting out the regulatory framework for banking activities in Nigeria.[40] It provides for the regulatory powers of the CBN over Nigerian banks. Under Nigerian law, no entity shall undertake any banking business[41] in Nigeria unless it is duly incorporated in Nigeria and holds a banking licence issued by the CBN.

The CBN restricts banking business to commercial banks,[42] merchant banks[43] and specialised banks, and the activities of such licensed banks are restricted to core-banking business.[44] Except as expressly permitted under BOFIA 2020, a licensed bank cannot hold

38 The Use of Foreign-Currency-Denominated Collaterals for Naira Loans issued on 8 April 2024: https://www.cbn.gov.ng/Out/2024/CCD/LETTER%20TO%20ALL%20BANKS-%20THE%20USE%20OF%20FOREIGN%20CURRENCY%20DENOMINATED%20COLLATERALS.pdf (accessed on 15 April 2024).

39 ibid.

40 Other relevant enactments include the Central Bank of Nigeria (Establishment) Act 2007, the Nigeria Deposit Insurance Corporation Act 2023 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, Laws of the Federation of Nigeria, 2004.

41 Section 131 of BOFIA 2020 defines 'banking business' as 'the business of receiving deposits or current account, savings deposit account or other similar account, paying or collecting cheque drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such businesses are conducted digitally, virtually or electronically only or such other business as the Governor may, by order published in the Gazette, designate a banking business'.

42 A holder of a commercial banking licence has the authority to, inter alia: take deposits; maintain current and savings accounts; provide finance and credit facilities, retail banking, treasury management, and custodial and financial advisory (incidental to commercial banking services) services; and deal in foreign exchange

43 A merchant banking licence permits, inter alia: the taking of deposits (not below 100 million naira per tranche); providing finance and credit facilities; dealing in foreign exchange; acting as an issuing house or otherwise arranging issuance of securities; and providing custodial, underwriting and treasury management services

44 Such as receiving deposits on current accounts, savings accounts or other similar accounts, paying or collecting cheques drawn by or paid in by customers, the provision of financial consultancy and advisory services relating to corporate and investment matters, making or managing investments, advancing loans (however, BOFIA 2020 prohibits banks, specialised banks and other financial institutions from granting any unsecured advance, loan or credit facility without the CBN's written approval, except where the advance conforms with the CBN's collateralisation regulation), issuing letters of credit and bank guarantees, and the general provision of finance.
Core-banking business is pursuant to the current banking model in Nigeria. See the CBN 'Regulation on the Scope of Banking Activities and Ancillary Matters, No. 3, 2010'. In October 2010, the CBN changed

direct or indirect interests in enterprises undertaking non-core banking business such as capital markets activities, pension administration and insurance. Promoters of banks that wish to undertake such non-core banking financial services typically adopt a non-operating financial holding company structure, and non-core banking businesses are undertaken by other subsidiaries of the holding company.

On 3 August 2021, the CBN issued a circular[45] on the Guidelines for Licensing and Regulation of Payments Service Holding Companies[46] in Nigeria (the PSHC Guidelines). Although a non-operating entity,[47] a payments service holding company (PSHC) is required to obtain a licence from the CBN,[48] and this licence will be returned where the PSHC, for a period exceeding six consecutive months, either loses its controlling interest in any of the two payment services subsidiaries[49] or where the PSHC (with only two subsidiaries) loses its controlling interest in any of the subsidiaries.[50] The activities of a PSHC are restricted to holding equities in the subsidiaries,[51] but the PSHC may provide shared services in connection with risk management, human resources internal control, compliance, internal control, information and communication technology, legal and facilities (such as office accommodation), all of which must be at arm's length.[52]

i Foreign Financial Institutions

Foreign financial institutions can provide offshore credit facilities to entities in Nigeria on a 'reach in' basis without the need to obtain a banking licence from the CBN. However, where a foreign bank wishes to establish physical presence and provide credit facilities in Nigeria, the bank will be required to incorporate a company in Nigeria and obtain a banking licence.[53] BOFIA 2020 also empowers the CBN to grant a licence to foreign banks to undertake domestic or offshore banking business within a designated free trade or special economic zone in Nigeria.[54] Foreign banks may also apply to the CBN for a licence to open and operate a representative office (typically licensed to only meet with potential clients, and to conduct

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the Nigerian banking model from a universal banking model, (under the Universal Banking Guideline 2000), which hitherto allowed licensed banks to engage in non-core banking financial activities, to a core-banking model.

45 The circular is titled 'Circular to all Deposit Money Banks, Payment Service Providers and Other Financial Institutions on the Issuance of the Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria', and dated 3 August 2021 with reference number PSM/DIR/CON/CWO/20/095.

46 This includes companies providing Mobile Money Operations, Switching and Processing, Payment Solution Services and any other activity as may be approved by the CBN. Paragraphs 1.0 and 2.1 of PSHC Guidelines.

47 Paragraph 2.2 of the PSHC Guidelines.

48 Paragraph 3.0 of the PSHC Guidelines.

49 Paragraph 4.1 (d) of the PSHC Guidelines.

50 Paragraph 4.1 (e) of the PSHC Guidelines.

51 Paragraph 5.1 of the PSHC Guidelines.

52 Paragraphs 5.2 and 5.3 of the PSHC Guidelines.

53 Currently, four of the licensed commercial banks in Nigeria are owned or operated by foreign or international bank groups: Citibank Nigeria Limited, Ecobank Nigeria Limited, Stanbic IBTC Bank Plc and Standard Chartered Bank Limited. The South African group FirstRand Bank Limited also owns one of the merchant banks in Nigeria, Rand Merchant Bank Nigeria Limited.

54 Section 8(2) of BOFIA 2020.

research activities) in Nigeria subject to the approval-in-principle and a final approval as stipulated in the CBN Guidelines for the Regulation of Representative Offices of Foreign Banks in Nigeria 2023.[55]

Conversely, any Nigerian bank wishing to open an offshore subsidiary must, inter alia, have been in sound financial condition (in terms of liquidity and capital adequacy) for at least the previous 12 months, and must have operated profitably for the previous two years, as reflected in the audited financial statements of the applying bank.[56]

Notably, the CBN has enhanced customer due diligence measures for financial institutions, through the issuance of the CBN Customer Due Diligence Regulations 2023 (the CDD Regulation),[57] which complements the CBN (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions) Regulations, 2022 (the CBN AML/CFT Regulations). The CDD Regulation prohibits financial institutions from keeping anonymous accounts, numbered accounts or accounts in fictitious names, while financial institutions are mandated to carry out enhanced customer due diligence measures.[58]

Other than the CBN, the following statutory bodies also exercise regulatory oversight on Nigerian banks:

a the Nigeria Deposit Insurance Corporation (NDIC);[59]

b the Corporate Affairs Commission (CAC);[60]

c the Financial Reporting Council of Nigeria (FRCN);[61]

d the Securities and Exchange Commission (SEC);[62] and

e the NGX, which regulates companies (including banks) that are listed on the NGX.

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55 Paragraphs 4.1 and 4.2 of the CBN Guidelines for the Regulation of Representative Offices of Foreign Banks in Nigeria 2023. Available at: https://www.cbn.gov.ng/Out/2023/FPRD/CIRCULAR%20ON%20GUIDELINES%20FOR%20REPRESENTATIVE%20OFFICES-combined.pdf (accessed on 26 January 2024).

56 The circular is titled 'Circular to all Banks on Offshore Expansion' and dated 7 October 2008, with reference number REF: BSD/DIR/CIR/GEN/02/014.

57 Issued by a circular titled 'Circular to all Banks and Other Financial Institutions: Central Bank of Nigeria Customer Due Diligence Regulations 2023' and dated 20 June 2023, with reference number FPR/DIR/PUB/CIR/007/076.

58 Regulation 5(3) of the CDDR and Regulation 6 of the CDDR.

59 Established pursuant to the new Nigeria Deposit Insurance Corporation Act 2023 (NDIC Act 2023) is responsible for insuring all deposit liabilities of licensed commercial banks and providing assistance to insured institutions in the interest of depositors in cases of financial difficulty. In the event of revocation of the licence of any DMB, customers are statutorily permitted to claim, from the insured funds, a maximum of 500,000 naira. The NDIC Act 2023 repealed the NDIC Act No. 16, 2006.

60 Established pursuant to CAMA 2020, it is responsible for the incorporation of all corporate entities in Nigeria, including banks and other financial institutions.

61 Established under the Financial Reporting Council of Nigeria Act of 2011 (as amended by the FRCN Amendment Act, 2023) and supervised by the Federal Ministry of Industry, Trade and Investment, it is responsible for developing and enforcing compliance with accounting, auditing, corporate governance and financial reporting standards by public interest entities, including banks and other financial institutions.

62 Established under the Investment and Securities Act 2007 (ISA), it regulates capital market activities and public companies in Nigeria (while a licensed bank will not in the ordinary course of its banking activities fall within the regulatory purview of the SEC, where such a bank is a public company or its affiliate undertakes capital market activities, the bank or the relevant affiliate will fall within the SEC's purview).

IV PRUDENTIAL REGULATION

i Relationship with the prudential regulator

While some countries have separated their financial regulators along the lines of licensing, prudential regulation and consumer protection, in Nigeria, all roles are primarily performed by the CBN. The 2011 CBN Supervisory Intervention Framework for the Nigerian Banking Sector complements the CBN's 2010 Prudential Guidelines for Deposit Money Banks (DMB) in Nigeria. The framework and guidelines reflect the fact that the CBN has adopted a risk-based supervisory approach.[63] The CBN's website sets out all the prudential guidance notes currently in force according to the licence type held by each financial institution.[64] DMBs are now required to comply with Basel III Guidelines/Reporting Templates released by the CBN.[65]

Adequacy assessment[66]

The CBN mandates all banks licensed to carry out banking business in Nigeria to submit monthly compliance reports with Basel III Guidelines not later than five working days after the end of the preceding month.[67] Failure to comply with this obligation puts a bank at risk of having its banking licence revoked.[68] Furthermore, the CBN's Framework for the Regulation and Supervision of Domestic Systemically Important Banks 2014 (the D-SIB Framework) mandates that banks classified as D-SIBs maintain a minimum capital ratio of 15 per cent (CAR)[69] and set aside an additional surcharge of 1 per cent of their respective minimum required CAR.[70] All other DMBs that are not D-SIBs must maintain a minimum of 10 per cent of the total risk-weighted assets as capital funds on an ongoing basis. With respect to a holding company group, its minimum capital adequacy ratio shall not be less than the capital ratio requirement of any banking subsidiary within the group. In this regard, the reference subsidiary shall be that with the highest minimum capital requirement. The CBN may require higher levels of minimum capital after taking into consideration the results of the Supervisory Review Process of Internal Capital Adequacy Assessment Process (SRP/ICAAP).

Any DMB designated as a systemically important bank that fails to comply with the D-SIB Framework or any other CBN-specified standards and requirements applicable to

63 The risk-based supervisory approach is a continuous process of updating risk assessments through on-site and off-site examinations of financial institutions to create an early warning system so the CBN can anticipate and deal with emerging issues. This approach results in the CBN producing a composite risk rating for financial institutions ranging from 1(low risk) to 4(high risk).

64 CBN Prudential Guidelines (www.cbn.gov.ng) (accessed on 15 February 2024).

65 Circular on Basel III Implementation by DMBS in Nigeria.pdf (cbn.gov.ng): https://www.cbn.gov.ng/Out/2021/BSD/Circular%20on%20Basel%20III%20Implementation%20by%20DMBS%20in%20Nigeria.pdf (accessed on 26 January 2024).

66 Revised Guidelines on Supervisory Review Process of ICAAP.pdf: https://www.cbn.gov.ng/Out/2021/BSD/7.%20REVISED%20GUIDELINES%20ON%20SUPERVISORY%20REVIEW%20PROCESS%20OF%20ICAAP.pdf (accessed on 15 February 2024).

67 ibid.

68 Section 12 of the Central Bank of Nigeria Act.

69 See Section 3.2, Paragraph 27-Table 1 and Section 6.4, Paragraph 96 – Table 2 of the CBN Guidelines on Regulatory Capital issued in September 2021

70 Section 6 of the CBN's Framework for the Regulation and Supervision of Domestic Systemically Important Banks 2014.

systemically important banks will be liable for a fine of not less than 5 million naira, and an additional penalty of 200,000 naira for each day that the failure persists.[71] The CBN in exercising its regulatory oversight function under BOFIA 2020 may also dissolve the board and management of banks for non-compliance with regulatory requirements.[72] Where the financial position of a DMB becomes precarious, the NDIC may, after consulting with the CBN, take over management of the bank to salvage the bank's operations by the creation of a bridge bank.[73] Further details are set out below.

ii Management of banks

In accordance with the CBN CG Guidelines, the management of banks, as supervised by the board of directors must develop a sound system of risk management and internal control policies that must clearly define the roles and responsibilities of the board and its risk management committee, and the roles and responsibilities of management and the internal audit function.

The Nigerian bank holding company (HoldCo) subsidiary structure is based on the principle of corporate personality such that the subsidiary banks are different and distinct from their HoldCos. Accordingly, pursuant to the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria, 2014 (the HoldCo Guidelines), no financial HoldCo shall arrogate for itself any of the powers or functions of the board of directors or internal management responsibilities and obligations of any of its subsidiaries or associates of any such subsidiaries. The CBN CG Guidelines also prohibit the transmutation of board roles between FHCs and their subsidiaries.

Restrictions on bonus payments

The CBN CG Guidelines require every bank to have a remuneration policy established by its board of directors, which shall be disclosed in the bank's annual report. These should include:

a board approval of the remuneration of MDs or CEOs, DMDs and EDs, while the fees and allowances for NEDs shall be fixed by the board and approved by shareholders at a general meeting;

b NEDs' remuneration is limited to director's fees and sitting allowances for the board but NEDs shall not receive benefits, salaries or any other allowances other than those mentioned above; and

c share options shall not be exercisable until one year after the expiration of the tenure of the director.

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71 Section 70 of BOFIA 2020.

72 For example, the CBN in January 2024 dissolved the board and management of Union Bank, Polaris Bank and Keystone Bank for non-compliance with regulatory requirements and for the involvement in activities that pose a threat to their financial stability. See https://www.cbn.gov.ng/Out/2024/CCD/CBN%20Dissolves%20the%20Board%20&%20Management%20of%20Union%20Bank,%20Keystone%20Bank%20and%20Polaris%20Bank.pdf (accessed on 15 February 2024).

73 For example, following the failure of the defunct Skye Bank, the NDIC, in consultation with the CBN, incorporated Polaris Bank as a bridge bank, withdrew Skye Bank's operating licence and transferred its assets and liabilities to Polaris Bank.

iii Regulatory capital and liquidity

The prudential standards relating to regulatory capital and liquidity for Nigerian banks are modelled on Basel III Guidelines and can be found on the CBN's website in the following guidelines (along with their reporting templates and guidance notes):

a Guidelines on Regulatory Capital for Group Capital Adequacy and Solo Capital Adequacy (Revised Regulatory Capital Guidelines);[74]

b Guidelines on Leverage Ratio;[75]

c Guidelines on Liquidity Monitoring Tools;[76]

d Guidelines on Large Exposures;[77]

e Guidelines on Liquidity Risk Management and Internal Liquidity Adequacy Assessment Process;[78] and

f Revised Guidelines on the SRP/ICAAP.[79]

Local regime divergence from Basel III

The CBN has identified areas of national discretion or deviation from Basel III, some of which include:[80]

a permitting banks in Nigeria to employ short-term subordinated debt as a third tier of capital;

b lowering risk weight to claims on and claims guaranteed by sovereigns or central banks in domestic currency if funded in that currency;

c giving preferential treatment of claims to banking institutions with maturity of three months or less; and

d imposing criteria for non-internationally active banks using standardised approach.

Consolidated supervision

The CBN mandates banks to report on capital adequacy on both a stand-alone basis and consolidated basis every month and quarter. Capital adequacy on a stand-alone basis takes into consideration a bank's global operations, including its foreign subsidiaries and overseas

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74 Revised Regulatory Capital Guidelines: https://www.cbn.gov.ng/Out/2021/BSD/1.%20GUIDELINES%20ON%20REGULATORY%20CAPITAL.pdf (accessed on 15 February 2024).

75 Guidelines on Leverage Ratio: https://www.cbn.gov.ng/Out/2021/BSD/2.%20GUIDELINES%20ON%20LEVERAGE%20RATIO%20(LeR).pdf (accessed on 15 February 2024).

76 Guidelines on Liquidity Monitoring Tools: https://www.cbn.gov.ng/Out/2021/BSD/4.%20GUIDELINES%20ON%20LIQUIDITY%20MONITORING%20TOOLS%20(LMT).pdf (accessed on 15 February 2024).

77 Guidelines on Large Exposures: https://www.cbn.gov.ng/Out/2021/BSD/5.%20GUIDELINES%20ON%20LARGE%20EXPOSURES%20(LEX).pdf (accessed on 15 February 2024).

78 Guidelines on Liquidity Risk Management and Internal Liquidity Adequacy Assessment Process (www.cbn.gov.ng): https://www.cbn.gov.ng/Out/2021/BSD/6.%20GUIDELINES%20ON%20LIQUIDITY%20RISK%20MANAGEMENT%20AND%20ILAAP.pdf (accessed on 15 February 2024).

79 Revised Guidelines on the SRP/ICAAP: https://www.cbn.gov.ng/Out/2021/BSD/7.%20REVISED%20GUIDELINES%20ON%20SUPERVISORY%20REVIEW%20PROCESS%20OF%20ICAAP.pdf (accessed on 15 February 2024).

80 CBN Update on Regulatory Capital Measurement and Management Framework for the Implementation of Based II/III for the Nigerian Banking System (www.cbn.gov.ng) (accessed on 14 February 2024).

branch operations, on a stand-alone basis, and investments in the capital instruments of subsidiaries, which are consolidated in the consolidated financial statements of the banking group, are deducted from the corresponding capital instruments issued.

Liquidity

The CBN sets out the minimum liquidity ratio benchmarks for the banking sector in its Monetary, Credit, Foreign Trade and Exchange Policy Guidelines for fiscal years 2022/2023 (the MCFT Policy Guidelines).[81] Under the current guidelines, the CBN requires that banks maintain minimum liquidity ratios as follows:

a DMBs: 30 per cent;
b merchant banks: 20 per cent; and
c non-interest banks: 10 per cent.

Minimum capital requirements

The CBN requires banks to hold total regulatory capital amounting to Tier 1 Capital[82] and Tier 2 Capital[83] net of regulatory adjustments. The required regulatory capital is measured in relation to risk-weighted assets of the bank. The CBN has released specific guidance notes on the calculation of capital requirements for credit, market and operational risks.[84]

iv Recovery and resolution

The NDIC is responsible for the resolution of failed banks in Nigeria. BOFIA 2020 also mandates the CBN to step in when a bank is in crisis, and to turn over management and control of the bank to the NDIC. Some of the mechanisms adopted for the resolution of failed banks are as follows:

a open bank assistance (OBA), where NDIC offers a loan to the failing bank, guaranteeing a loan that the bank has taken on or accepting an accommodation bill;
b depositors' pay-out during liquidation, where the NDIC pays insured deposits up to the insurable limit to the depositors of the failed banks uninsured depositors and creditors only get paid from the proceeds of liquidation;[85]
c purchase and assumption transactions in which a healthy bank purchases some or all the assets of a failed bank and assumes some or all its liabilities; and

81 https://www.cbn.gov.ng/Out/2022/MPD/Credit%20Guidelines%202022%20-2023%2020.05.2022.pdf.

82 Tier 1 capital is made up of common equity capital and additional tier 1 capital net of regulatory adjustments applicable. Under the Revised Regulatory Capital Guidelines, Tier 1 capital alone suggests a going concern.

83 Tier 2 capital comprises gone-concern capital. The CBN has determined certain instruments may be included in Tier 2 capital; these instruments are contained in the Revised Regulatory Capital Guidelines.

84 CBN Guidance Notes on the Calculation of Capital Requirements for Credit Risk (https://www.cbn.gov.ng/Out/2015/BSD/2.Revised%20Guidance%20Notes%20on%20Credit%20Risk.pdf), Market Risk (https://www.cbn.gov.ng/Out/2015/BSD/3.Revised%20Guidance%20Notes%20on%20Market%20Risk.pdf) and Operational Risk (https://www.cbn.gov.ng/Out/2015/BSD/4.Revised%20Guidance%20Notes%20on%20Operational%20Risk.pdf) (accessed on 15 February 2024).

85 Pursuant to its regulatory oversight under the new NDIC Act, 2023, the NDIC in May 2023 commenced the liquidation of 179 microfinance banks (MFBs) and four primary mortgage banks (PMBs) whose licences were revoked by the CBN in May 2023. The NDIC also commenced the verification of claims and payment of insured deposit to each depositor of the respective failed banks. The maximum insured deposits for MFBs and PMBS are 200,000 naira and 500,000 naira, respectively.

d bridge bank, which is a temporary bank established and operated by the NDIC to acquire the assets and assume the liabilities of a failed bank until a final resolution can be accomplished.

One of the key innovations introduced by BOFIA 2020 is the establishment of the Banking Sector Resolution Fund, which is to be funded with specified contributions from the CBN, the NDIC, and all banks and other financial institutions in Nigeria. The fund will be utilised exclusively to provide financial assistance to failing banks and bridge banks, and to generally support any banking resolution process.[86]

Bail-in powers

The CBN is empowered[87] to rescue a failing bank to cancel or modify the form of an eligible instrument, or determine that such eligible instrument has effect as if such right of modification had been exercised. The CBN may take action where it is of the opinion that the eligible instrument ought to be bailed-in to facilitate the rescue of the bank or the bank's available assets do not, or are unlikely to, support the bank's payment of its liabilities as they become due and payable. Before taking such action, the CBN may appoint one or more persons to conduct an independent assessment, to determine the extent to which the exercise of the CBN's bail-in powers is necessary. Following the delivery of the assessment report, the CBN governor issues a bail-in certificate that must specify the name of the bank to which it applies and the details of any eligible instrument to be cancelled, modified, changed or converted (as applicable).

V CONDUCT OF BUSINESS

Other than BOFIA 2020, banks must also comply with the following:

a CAMA 2020;
b the NDIC Act, 2023;
c the Foreign Exchange (Monitoring and Miscellaneous) Act;
d the Financial Reporting Council of Nigeria Act;
e the CBN AML/CFT/CPF Regulations;
f the CBN CDD Regulations;
g the CBN CG Guidelines;
h the Code of Conduct in the Nigerian Banking Industry; and
i supervision circulars and guidelines released from time to time by the CBN.[88]

The CBN CG Guidelines mandate banks to establish a code of business conduct and ethics to be reviewed at least once every three years. The required code is expected to disclose information and practices necessary for upholding confidence in the bank's integrity.

86 In the event that a failed bank controlled by NDIC cannot be rehabilitated, the NDIC may recommend revocation of the failed bank's licence and subsequent winding-up by a court order. The NDIC may then act as liquidator of the failed bank and realise the assets of the failed bank.

87 Under Sections 37–39 of BOFIA 2020.

88 https://www.cbn.gov.ng/documents/circulars.asp.

VI FUNDING

Nigerian banks primarily raise funds to carry out their activities from customer deposits. In addition, Nigerian banks access funding from the capital market through the issuance of bonds[89] and other financial instruments,[90] and they access loans from development finance institutions, foreign institutional (impact) lenders and international banks, the proceeds of which are typically on lent to customers and used to fund other activities. They also source their funds from trading in securities (particularly treasury bills and other government-backed securities) and from interest on moneys lent to customers.

The CBN is also empowered under the CBN Act to lend money to Nigerian banks facing liquidity issues on terms and interest rates that it deems fit. The MCFT Guidelines, inter alia, outlines specific liquidity provisions and ratios to be observed by financial institutions, subject to any subsequent variations as communicated from time to time by the CBN via circulars and communiques. The liquidity provisions are to ensure that banks maintain adequate and sufficient liquidity to meet the financial obligations of their operations.

VII CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

For regulations on the change of control regime of banks, see Sections II and IV. CAMA 2020 also provides certain disclosure and notification requirements generally applicable to private and public companies. For instance, every person with significant control over, or who is a substantial shareholder in, a Nigerian company (including a bank) is required to make disclosure of that control or shareholding to the company. Pursuant to CAMA 2020, the CAC issued the Persons with Significant Control (PSC) Regulations, 2022 (the PSC Regulations). Accordingly, a company is required to file a notice of particulars of PSCs at the CAC, disclosing the PSCs of a company before it can file its annual returns at the CAC.[91]

The ownership and control of the holding company are also regulated by the CBN CG Guidelines, which provide that CBN prior written approval shall be obtained and no director, shareholder or agent of the FHC shall enter into any agreement resulting in a change in the control of the FHC, the transfer of shareholding of 5 per cent and above in the FHC, or an increase in shareholding to 5 per cent or more in the FHC. Provided that CBN's prior approval and no objection shall be sought and obtained, before any acquisition of shares of an FHC by an investor (including through the capital market), that would result in equity holding of 5 per cent and above. Furthermore, subsidiaries of an FHC are prohibited from acquiring shares in its FHC or other subsidiaries, or both, within the group. The CBN CG Guidelines also provide that all services between an FHC and its subsidiaries shall be

89 In February 2023, the FCMB Group Plc completed the issuance of a 20,686 million naira series 1 bonds under its 300 billion naira Debt Issuance Programme). https://www.cnbcafrica.com/2023/fcmb-group-plc-announces-the-issuance-of-n20686000000/ (accessed on 14 February 2024).

90 This may include raising capital from banks exiting shareholders or through public offers for banks that are public companies. For example, Fidelity Bank in January 2024 applied for approval and listing of the Rights Issue of 3.2 billion ordinary shares of 50 kobo each at 10 naira per share on the NGX. https://punchng.com/fidelity-bank-to-raise-n32bn-via-rights-issue/ (accessed on 14 February 2024).

91 A PSC, according to the PSC Regulations, is a natural person who holds or controls at least 5 per cent of a company's shares, directly or indirectly.

guided by Service Level Agreements (SLAs) or shared services arrangements, or both, in line with the CBN Guidelines for Shared Services Arrangements for Banks and Other Financial Institutions issued by the CBN on 26 May 2021.

ii Transfers of banking business

Although BOFIA 2020 provides that the business combination provisions of the Federal Competition and Consumer Protection Act (FCCPA) (contained in Sections 92(1), (2) and (3), 94 and 98) shall apply to business combinations involving banks or other financial institutions, Section 65(3) provides that references to the FCCPC under the aforementioned sections shall be construed as reference to the CBN. BOFIA 2020 also provides that the FCCPA shall not apply to any function, act, financial product or financial services issued or undertaken and any transaction by a bank or other financial institution licensed by the CBN. Further to the foregoing, in 2022 the Nigerian banking sector witnessed for the first time, a CBN-led approval process for banking mergers and acquisitions in connection with a majority acquisition in Union bank of Nigeria Plc (UBN) involving Titan Trust Bank Limited (TTB) and other shareholders of UBN and the subsequent mergers between UBN and TTB, resulting in the surviving entity, Union Bank of Nigeria Limited.[92] The Nigerian banking sector is likely to see more CBN approval processes for mergers and acquisitions in compliance with the new CBN circular on banks recapitalisation.

That said, considering the SEC's position as the primary regulator of public companies in Nigeria, business combinations (such as mergers and takeovers), involving banks that are public companies, will also fall within the regulatory purview of the SEC in addition to that of the CBN.[93] Sections 131 to 151 of the Investments and Securities Act and Amendment to the Rules on Mergers, Take-Overs, And Acquisitions (Review For Fairness Of Mergers, Take-Overs And Acquisitions) was issued in August 2021. These sections regulate takeovers that govern any proposed takeover bid for a Nigerian bank that is a public company.

Additionally, where a bank is publicly quoted on the NGX, the Rulebook of the Exchange, 2015 states that the NGX's consent to the merger must also be obtained.

VIII OUTLOOK AND CONCLUSIONS

In October 2023, the guard at the apex bank changed from Mr Godwin Emefiele to Mr Olayemi Cardoso, who was appointed by the new administration of President Bola Ahmed Tinubu. The policy direction of the CBN seems to be reformative with a focus on evidence-based monetary policy, limited CBN fiscal intervention, increased regulatory oversight of fintechs and IMTOs, and liberalising the FX markets through a willing buyer willing seller market.[94] Already, the CBN has released major directives to banks and other

92 https://www.unionbankng.com/about/history/#:~:text=After%20receiving%20all%20regulatory%20approval,Group%2C%20a%20Nigerian%20conglomerate (accessed on 14 February 2024).

93 The UBN majority acquisition and the subsequent merger between UBN and TTB were also subject to the regulatory approval of SEC, given the status of UBN as a public company at the time of the acquisition. UBN has now converted to a private limited liability company post the merger and acquisition, which was undertaken by way of a scheme as provided under CAMA 2020: https://www.cbn.gov.ng/Out/2023/CCD/CBN%20UPDATE%20OCTOBER%20%202023%20new.pdf.

94 CBN Update October 2023 new.cdr (accessed on 14 February 2024) and CBN Update November 2023: https://www.arise.tv/cardoso-2-4bn-of-7bn-fx-claims-not-valid-2-3bn-settled-2-2bn-outstanding/ (accessed

financial institutions in each of these areas as described in Sections I–VI. The CBN also conducted a forensic audit of foreign currency claims against the CBN and has disclaimed some claims as invalid in an effort to shore up foreign currency within the economy and to restore confidence in the banking system and financial markets.[95]

We also expect to continue to see a push for the cashless economy, stabilisation of the inflation rate and the naira, and ultimately less volatility in the financial markets driven by FX rates determined by a market price discovery. Though the CBN Governor has reassured Nigerians that the CBN will continue to adopt fiscal interventions as they are critical for economic growth and alleviation of poverty, he noted that such interventions must be tested for effectiveness. Thus, it is likely that we may see a more conservative approach to fiscal policy and a more active monetary policy in 2024. Just in the second quarter of 2024, the CBN has made several policy interventions to improve the value of Naira. Some of these interventions include fixing the rates that licensed bureaux de change (BDCs) can trade in FX and selling FX to these BDCs to aid FX liquidity in the economy. The CBN, in conjunction with relevant law enforcement agencies, has also made rigorous efforts to clamp down on platforms known for FX speculations against the Naira.[96]

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on 14 February 2024).

95 See ARISE News interview with CBN Governor Cardoso available at Youtube/Arise News (accessed on 14 February 2024).

96 Particular, the CBN released a circular dated 23 April 2024 with reference No. BSD/DIR/PUB/LAB/017/008, titled 'Letter To All Deposit Money Bank, Non-Bank Financial Institutions and Other Financial Institutions', declaring certain crypto currency platforms illegal and prohibiting banks from facilitating any payments for any crypto currency exchanges, amongst others.