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# The Legal 500 Country Comparative Guides

## Nigeria

# BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Nigeria.

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## NIGERIA BANKING & FINANCE



### 1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Nigerian banking sector is primarily regulated by the Nigerian apex bank, the Central Bank of Nigeria (CBN) which is established under the Central Bank (Establishment) Act 2007<sup>1</sup> (“**CBN Act**”). The CBN also derives its authority from the Banks and Other Financial Institutions Act 2020 (**BOFIA**) which provides for its regulatory and supervisory powers over the Nigerian banking and financial system. The CBN is vested with power of issuance and revocation of banking licences, the opening and closing of bank branches and the restructuring and reorganisation of banks, as well as the operation of foreign banks in Nigeria.

Apart from the CBN, the banking sector is also regulated by the Nigerian Deposit Insurance Corporation (NDIC) set up under the Nigeria Deposit Insurance Corporation Act 2006 (“**NDIC Act**”), to insure deposit liabilities of licensed banks and such other deposit-taking financial institutions operating in Nigeria, which are all required to undertake such insurance with the NDIC.<sup>2</sup> In its supervisory role, it has the power to examine the books and affairs of insured banks and financial institutions, and all insured institutions are required to submit returns to the NDIC.<sup>3</sup> The CBN and the NDIC are statutory saddled with significant roles in the resolution of failed banks in Nigeria

#### Footnotes

1. Cap C.4 Laws of the Federation of Nigeria 2010.
2. Section 2(1) of the Nigeria Deposit Insurance Corporation Act, 2006; section 15 of the NDIC Act, 2006
3. Section 27 of the NDIC Act; Section 30 of the NDIC Act;

### 2. Which type of activities trigger the

### requirement of a banking licence?

Under BOFIA, no entity is permitted to carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued by the CBN. BOFIA defines banking business to mean: the business of receiving deposits on current accounts, 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 (of CBN) may by order, published in the Gazette, designate as banking business.<sup>4</sup> Accordingly, any activity within the scope of the businesses described above will constitute banking business and trigger a requirement for banking licence.

#### Footnote

4. Section 131 of BOFIA

### 3. Does your regulatory regime know different licenses for different banking services?

The Nigerian banking statutory and regulatory regime contemplates multiple banking licensing regimes. In this regard, the CBN issues different licenses depending on the nature and scope of banking business to be undertaken by the relevant entity. These include:

- a. Commercial Banking Licence- The CBN may authorize the operation of a commercial bank on a regional, national or international basis. A commercial banking licence entitles the licensee to *inter alia* take deposits and maintain current and saving accounts; provide retail banking services, including mortgage products; provide finance and credit facilities; deal in foreign exchange; provide custodial services; and provide financial advisory

services incidental to commercial banking business.<sup>5</sup>

- b. Merchant Banking Licence – A merchant banking licence permits taking of deposits (not below N100,000,000.00 per tranche); providing finance and credit facilities to non-retail customers; dealing in foreign exchange; providing underwriting services; and providing debt factoring services.<sup>6</sup>
- c. Specialized Banking Licence – Specialized banks include non-interest banks, primary mortgage institutions, microfinance banks, development banks and discount houses.

#### Footnotes

5. Paragraph 3, CBN Scope, Conditions & Minimum Standards for Commercial Banks Regulations No. 1 2010

6. Paragraph 3, CBN Scope, Conditions and Minimum Standards fir Merchant Banking No.2 2010, 2015

#### 4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

Nigerian banking system is based on a core-banking model.<sup>7</sup> Under this model, the CBN restricts banking business to commercial banks, merchant banks and specialised banks, and the activities of such licensed banks are restricted to core-banking business 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, issuing letters of credit and bank guarantees, and the general provision of finance. Thus, except as expressly permitted under BOFIA 2020, a licensed bank cannot hold direct or indirect interests (whether or not as subsidiaries) in enterprises undertaking non-core banking business. 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. With respect to e-money, only the CBN is empowered under Nigerian law to issue legal tender in Nigeria; as such, the only e-money officially recognized within the Nigerian financial system is the E-Naira (digital form of the fiat currency (Naira)) which was recently launched by the CBN in October 2021.

#### Footnote

7. The CBN issued the Regulation on the Scope of Banking Activities and Ancillary Matters, No. 3, 2010 which repealed the Universal Banking Guidelines 2000.

#### 5. Is there a “sandbox” or “license light” for specific activities?

In 2021, the CBN issued a framework for the operation of a regulatory sandbox for the Nigerian payments system. The sandbox is targeted at innovation that can improve the design and delivery of payment services. The sandbox process is open to existing financial institutions with FinTech initiatives, other financial sector companies as well as technology and telecommunication companies. To be eligible for the sandbox, the product, service or solution must be innovative with clear potential to improve accessibility, security and quality in the provision of financial services etc.

#### 6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Dealing in cryptocurrencies is restricted in Nigeria. The CBN, by its circular of January 12, 2017<sup>8</sup>, prohibited Nigerian banks and other financial institutions from using, holding, trading and/or transacting in cryptocurrencies. Further to the 2017 circular, in 2021, the CBN issued a Letter<sup>9</sup> prohibiting Nigerian banks and other financial institutions from dealing in or facilitating payment for cryptocurrency exchanges as well as instructing them to identify and close accounts used in transacting or operating cryptocurrencies.

#### Footnotes

8. With reference No. FPR/DIR/GEN/CIR/06/010

9. Dated February 5, 2021, with Ref. No.BSD/DIR/PUB/LAB/014/001

#### 7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

No. Crypto assets do not qualify as deposits in Nigeria. Banks and other financial institutions are not permitted to use, hold or transact in cryptocurrencies. Therefore, crypto assets are not covered by deposit insurance provided by the NDIC.

## 8. What is the general application process for bank licenses and what is the average timing?

The application process and timing for obtaining bank licences will depend on the type of bank licence being sought. That said, the application process will typically start with an application to the CBN for an Approval-in-Principle ("AIP") to set up the bank/financial institution. This AIP application will be supported by documents such as: feasibility report of the proposed bank; draft constitutional documents for the bank; details of proposed shareholders, directors and principal officers of the bank; and such other information as the CBN may require; and the deposit of the required minimum paid-up share capital of the bank. Upon receiving AIP from the CBN, the incorporation of the proposed bank as a company with the Nigerian companies' registry may commence. Upon completion of the incorporation process, the promoters of the proposed bank will submit an application for the grant of a final banking licence to the CBN. Under BOFIA<sup>10</sup>, the CBN reserves the right to issue a licence with or without conditions or to refuse to issue a licence, without giving any reason for such refusal. Upon the grant of a final licence but before the commencement of banking operations, the bank is required to forward a letter to the CBN stating its capability and readiness to commence operations. The BOFIA does not contain any provisions on the timeline for the grant of the licence. However, depending on the type of banking licence and whether the CBN has little or no queries in respect of the documentation or information provided in support of the application, the application process may be concluded within a period of six (6) to twenty-Four (24) months.

### Footnote

10. Insert section

## 9. Is mere cross-border activity permissible? If yes, what are the requirements?

Cross-border activities may take place where Nigerian banks offer offshore banking services or when foreign banks undertake banking business in Nigeria.

Under BOFIA, any Nigerian bank desirous of carrying out offshore banking business must obtain the prior approval of the CBN and comply with the CBN's guidelines in that regard. Pursuant to the CBN Circular to all Banks on Offshore Expansion<sup>11</sup> any Nigerian bank wishing to open an offshore subsidiary must, inter alia, have been in sound financial condition (in terms of liquidity, capital

adequacy, etc.) 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. The Nigerian bank is also required, as part of the application process, to give details of how the operation of the offshore subsidiary would be monitored from Nigeria. Furthermore, foreign financial institutions are able to 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 in Nigeria and provide credit facilities in Nigeria, the bank will be required to incorporate a limited liability company in Nigeria and obtain a banking licence. Also, BOFIA 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.<sup>12</sup> Foreign banks may also apply to the CBN for a licence to open and operate a representative office (typically licensed to only interact and meet with potential clients, and to conduct research activities) in Nigeria.

### Footnotes

11. The CBN Circular to all Banks on Offshore Expansion dated October 7, 2008

12. Section 8(2) of BOFIA

## 10. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Under Nigerian law<sup>13</sup>, any entity seeking to carry on banking business in Nigeria must be duly incorporated as a company in Nigeria. Accordingly, a bank may be operated as a private limited liability company or as a public limited liability company.

### Footnote

13. Section 2(1) of BOFIA

## 11. What are the organizational requirements for banks, including with respect to corporate governance?

The organizational and or corporate governance requirements for banks in Nigeria are set out in the 2014 CBN Code of Corporate Governance for Banks and Discount Houses ("**Code**")<sup>14</sup>. Compliance with the Code is mandatory for all banks in Nigeria, and they are required to render returns on the status of compliance to the CBN at the end of every quarter. The Code provides

that the size of the board of directors of any bank shall be a minimum of five members and a maximum of 20 members; and the board of a bank is required to be composed of more non-executive directors than executive directors. To ensure the continuous injection of fresh ideas, the Code stipulates that non-executive directors of banks shall serve for a maximum of three terms of four years each, while the tenure of the MD or CEO shall be subject to a maximum period of 10 years, which may be broken down into periods not exceeding five years at a time.

The Code emphasises the importance of risk governance as part of a bank's general corporate governance framework, and promotes the value of the board and several board committees with effective control functions. Specifically, the Code:

- a. regulates equity holding in banks by investors;
- b. discourages a government majority stake in banks by limiting the maximum holding of any government to 10 per cent;
- c. encourages a whistle-blowing framework and the protection of stakeholders' rights; and
- d. strengthens disclosure requirements and transparency in banks' annual reports.

In addition to compliance with the Code (which is banking sector-specific), the Financial Reporting Council of Nigeria (FRCN) extended the requirement of compliance with, and the application of, the Nigerian Code of Corporate Governance 2018 (NCCG) to Nigerian banks with effect from 1 January 2020. Similar to the Code, the NCCG contains broad principles and international best practices on corporate governance applicable to each level of management (i.e., the board, the MD and CEO, independent directors, the chairperson, the company secretary and external auditors). The FRCN requires the relevant entities (including banks) to report compliance with the NCCG in their annual reports for each financial year.

The CAMA 2020 also provides certain corporate governance principles that are generally applicable to public companies including banks. In this regard, pursuant to the provisions of CAMA<sup>15</sup>, where a bank is incorporated as a public company, it must have at least three independent directors appointed to its board.

#### Footnotes

15. Section 275

## **12. Do any restrictions on remuneration**

### **policies apply?**

Under the CBN Code, every bank must have a remuneration policy established by its board which shall be disclosed to the shareholders in the annual report.

Pursuant to the CBN Code, certain restrictions on remuneration also apply. These include:

- a. Executive Directors are not permitted to receive sitting allowances and Directors' fees
- b. Non-Executive Directors' fees are limited to Directors' fees, sitting allowances for meetings and reimbursable expenses. They shall not receive benefits or salaries, whether in cash or in kind.
- c. Where stock options are adopted as part of executive remuneration, they shall not be priced at a discount except with the approval of relevant regulatory agencies
- d. The remuneration of executive directors shall be determined by a committee of non-executive directors

## **13. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?**

Yes, the Central Bank of Nigeria issued revised Guidelines on Regulatory Capital in September 2021 (the Guidelines) in order to meet the standards of Basel III. While the Guidelines substantially comply with the Basel III Framework, there are some deviations. For example, the Guidelines do not provide for the derecognition of all unrealized gains and losses that have resulted from changes in the fair value of liabilities due to changes in the bank's own credit risk in the calculation of Common Equity Tier 1, as in Paragraph 30.15 of the Basel III Framework.

## **14. Are there any requirements with respect to the leverage ratio?**

Yes, there are leverage ratio requirements that apply to all licensed commercial, merchant and non-interest banks in Nigeria. Where the bank is part of a group, the calculation of the leverage ratio is done at the banking and holding company group levels.

Pursuant to the CBN Guidelines on Leverage Ratio, issued in September 2021, banks are required to maintain a minimum leverage ratio of 4% per cent at all

times. However, Domestic Systemically-Important Banks (D-SIBs) must maintain an additional leverage ratio buffer of 1% above the minimum at all times and this should be in the form of Tier 1 Capital.

### **15. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?**

The CBN Monetary, Credit, Foreign Trade and Exchange Policy Guidelines (Policy Guidelines") provide the minimum liquidity ratios banks are required to maintain and same is updated on a biennial basis. The most recently published Policy Guidelines (i.e. January 2020 to December 2021) provide that commercial banks, merchant banks and non-interest banks shall maintain a minimum liquidity ratio of 30 per cent, 20 per cent and 10 per cent, respectively. These ratios are still being applied by the banks, pending the issuance of new Policy Guidelines in 2022. The ratios have also been affirmed in the decisions of the Monetary Policy Committee at its bi-monthly meeting held in January 2022.

In September 2021, the CBN issued Guidelines on Liquidity Coverage Ratio (the Liquidity Guidelines) to implement the Basel III liquidity requirements. The Liquidity Guidelines include the requirements regarding Liquidity Coverage Ratio (LCR), but do not cover Net Stable Funding Ratio (NSFR).

The implementation of the CBN guidelines relating to Basel III (the Basel III guidelines) however includes a parallel run phase for a period of six to nine months effective from November 2021 wherein the Basel III guidelines will operate concurrently with the existing Basel II guidelines. Thus, the Basel III guidelines will only become fully effective upon a successful conclusion of the parallel run phase.

### **16. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?**

Yes, banks and other financial institutions in Nigeria are required to publish their financial statements.

Within three months after the end of its financial year, every bank must forward to the CBN for approval to publish, its financial statement which is prepared in accordance with the relevant accounting standards as may be prescribed by the Financial Reporting Council of Nigeria. In the case of a non-interest bank, an independent report of the advisory committee of experts

on the compliance status of the bank's activities with non-interest banking principles must also be furnished.

Not later than seven days after obtaining the approval of the CBN for publication, every bank or other financial institution must publish the financial statements in at least two national daily newspapers printed and circulating in Nigeria, and the financial statements must be exhibited in a conspicuous position in each of the bank's offices, branches and website. Also, copies of the bank's published Statement of Financial Position and Statement of Profit and Loss and Other Comprehensive Income must be forwarded to the CBN.

Furthermore, every bank must submit to the CBN a statement showing its assets and liabilities, and analysis of advances and other assets within five days after the last day of each month.

### **17. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?**

Pursuant to Paragraph 8 of the CBN Guidelines for Licensing and Regulation of Financial holding Companies in Nigeria 2014, a financial holding company is supervised by the CBN and the holding company's subsidiaries are supervised by the relevant financial sector supervisor. Under these guidelines, (i) a financial holding company must have at least two subsidiaries, (ii) the focus of the conglomerate shall be in the financial services sector; and (iii) the financial holding companies are permitted to have only two hierarchies (parent and intermediate financial holding companies). The consolidated supervision approach for Nigerian banks is the solo-plus approach. Complemented by a quantitative and qualitative assessment of the banking group to assess the potential impact of other members of the group on the operations of the supervised bank. Pursuant to Section 64 of the BOFIA 2020, the CBN has the power to appoint an examiner to carry out an examination on the bank or the associated, holding or subsidiary company of a bank in order to satisfy itself that the operations of such associated company are not detrimental to the operations of the bank. Upon receipt of a report of the examination, the CBN may require changes to the legal or management structure of a group or banking group where it finds that the structure in its current form constitutes an impediment. The CBN may also require a group or banking group to retain a single auditor to provide an overall review of the group or banking group, including the preparation of consolidated financial statements.

### 18. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Under section 7(1) of the BOFIA 2020, a bank cannot enter into any agreement or arrangement which results in a change in the control of the bank, or the transfer of a significant shareholding in the bank except with the prior written consent of the Governor of the CBN. Where such consent is not obtained, the transaction is void and any transfer of interest is ineffectual except the transaction is subsequently ratified in writing by the CBN.

Also, clause 3.2 of the CBN Code provides that any equity holding of 5% and above by any investor shall be subject to the prior approval of CBN. In the case of shares, representing an equity holding of 5%, which are listed securities and are acquired through the capital market, the bank must obtain a no-objection letter from the CBN immediately after the acquisition. Also, government's direct and indirect equity holding in any bank is limited to 10%.

### 19. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

There are no exclusive conditions imposed for eligible owners of banks. As discussed in question 8, an applicant for a banking licence must first obtain an approval-in-principle from the CBN. The grant of this approval-in-principle determines the eligibility to apply for the final licence. However, as discussed in question 18 above, any equity holding of 5% and above by an investor is subject to the approval of the CBN.

### 20. Are there specific restrictions on foreign shareholdings in banks?

No, there are no specific restrictions on foreign shareholdings in banks.

### 21. Is there a special regime for domestic and/or globally systemically important banks?

The Central Bank of Nigeria and the Nigeria Deposit Insurance Corporation developed a framework for the Regulation and Supervision of Domestic Systemically Important Banks in Nigeria, in September 2014 (the "**D-SIB Framework**"). The D-SIB Framework, which was effective from 2015, adopts similar indicators used by

the Basel Committee on Banking Supervision in determining globally systemically important banks in the identification and supervision of Domestically Systemically Important Banks (D-SIBs) in Nigeria.

Pursuant to this paragraph 6 of the D-SIB Framework, banks designated D-SIBs are required to maintain a minimum capital adequacy ratio of 15 percent; and set aside additional capital surcharge of 1 percent of their respective minimum required capital adequacy ratio. The aim of the additional loss absorbency requirement is to ensure that the D-SIBs have a higher share of their balance sheet funded by instruments that re-enforce the resilience of the institution as a going concern. Other requirements include: (a) development of a specific recovery plan which must be submitted to the CBN and NDIC by January 1, every year; and (b) quarterly disclosures of their financial condition and risk management activities to the regulators as prescribed by the CBN.

### 22. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

The extent of sanctions for a breach of banking regulations would typically depend on the nature of the violation; and such sanctions may range from an outright licence revocation to suspension of the licence held by offending bank/financial institution. Other sanctions include imposition of fines, forfeiture to the CBN of any pecuniary benefit obtained as a result of the violation or breach, and such other sanctions as the CBN may deem appropriate.

### 23. What is the resolution regime for banks?

The NDIC is the main body responsible for the resolution of failed banks in Nigeria. BOFIA also mandates the CBN to step in when a bank is in crisis, to turn over management and control of such bank to the NDIC. The NDIC is empowered to provide financial and technical assistance to failing or distressed banks in the interest of depositors. These can be provided in the form of loans, guarantees for loans taken by a failing bank or the acceptance of accommodation bills. The powers of the NDIC include directing specific changes in the management of the failing bank; arranging a merger with or an acquisition by another insured institution or contracting to have the deposit liabilities assumed by another insured institution.

Pursuant to the Contingency Planning Framework for

Banking Systemic Crises introduced by the NDIC in collaboration with the CBN, some mechanisms adopted by the NDIC for the resolution of failed banks include:

- a. open bank assistance – in this case, the failing bank continues to operate as a going concern, while the NDIC offers it a loan, guarantees a loan the bank has taken or accepts an accommodation bill.
- b. purchase and assumption transactions – this involves a healthy bank purchasing some or all of the assets of a failed bank and assuming some or all of its liabilities.
- c. bridge banks – this 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. The bridge bank may either be issued a new licence upon revocation of the licence of the failed bank by the CBN, or it may operate under the licence of the failed bank.

The BOFIA also establishes the Banking Sector Resolution Fund intended to exclusively provide financial assistance to failing banks and bridge banks. The Fund is domiciled with the CBN and is funded with contributions and levies from the CBN, NDIC, banks and other financial institutions.

In accordance with BOFIA, in the event that a failed bank over which NDIC has assumed control cannot be rehabilitated, the NDIC may recommend other resolution measures to the CBN, which may include revocation of the failed bank's licence. Where the licence of a failed bank has been revoked, the NDIC may apply to the relevant court for a winding-up order in respect of the failed bank. Upon the court's order for the winding up of the failed bank, the NDIC shall give notice by advertising in national newspapers or other news media for all depositors with the failed bank to forward their claims to the NDIC. The NDIC, acting as liquidator of the failed bank, shall have power to realise the assets of the failed bank.

#### **24. How are client's assets and cash deposits protected?**

The NDIC Act makes it mandatory for all deposits of a licensed bank to be insured with the NDIC. The bank shall pay a premium not exceeding fifteen-sixteenth of one per cent per annum of the total deposit liabilities standing in its books as at December 31 of the preceding year. The premium payable is not chargeable to depositors in any form.

Where a bank is unable to meet its obligations, or its licence has been revoked, the assets of the bank shall be available to meet all the deposit liabilities of the bank and such deposit liabilities shall have priority over all other liabilities of the bank.

#### **25. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?**

Yes. Under the BOFIA 2020, the CBN may determine that any eligible instrument issued by a bank is cancelled, modified, converted or changed in form or has effect as if a right of modification, conversion or change of its or their form had been exercised.

Eligible instruments are defined to include:

- a. Equity instruments or other instruments that confer or represent a legal or beneficial ownership of a bank, except an ordinary share
- b. Unsecured liability or other unsecured debt instrument that is subordinated to unsecured creditors' claims of the bank, specialized bank or other financial institution that are not so subordinated
- c. Instruments that provide for a right for the instrument to be written down, cancelled, modified, changed in form or converted into shares or another instrument of ownership when a specified event occurs.

This bail-in may be done where the CBN determines that the eligible instruments issued by a bank ought to be bailed-in to facilitate the rescue of the bank, or that the available assets of the bank are unlikely to support the payment of its liabilities as they become due and payable. Before making its determination, the CBN appoints one or more persons to perform an independent assessment and furnish the CBN with a report of the assessment. Upon production of the result, the Governor of the CBN issues a bail-in certificate which will state the name of the bank it applies to and the details of any eligible instrument to be cancelled, modified, changed or converted (as applicable). The provisions in the bail-in certificate shall have effect notwithstanding any restrictions set out in the provisions of any written contract or any law in force prior to the date the bail-in certificate comes into effect. Also, any claims or judgment debt enforcement in respect of an eligible instrument existing or being pursued as at the date of the bail-in certificate shall be automatically suspended and unenforceable against the failing bank for the duration period specified in the bail-in certificate or any period as may be determined by the Governor of

the CBN.

## 26. Is there a requirement for banks to hold gone concern capital ("TLAC")?

The CBN Guidelines on Regulatory Capital<sup>16</sup> classifies Tier 2 capital as gone-concern capital, to be used only when Tier 1 capital has been eroded and a bank is in liquidation.

With respect to Total loss-absorbing capacity (TLAC), TLAC is a standard applicable to global systemically important banks (G-SIBs). There are no G-SIBs in Nigeria. However, the CBN Framework for the Regulation and Supervision of Domestic Systemically Important Banks (D-SIBs) in Nigeria, require D-SIBs in Nigeria to set aside Higher Loss Absorbency or additional capital surcharge of 1.0% to their respective minimum required capital adequacy ratio.

### Footnote

16. paragraph 19

## 27. In your view, what are the recent trends in bank regulation in your jurisdiction?

### Open Banking

The CBN issued a Regulatory Framework for Open Banking in Nigeria in February 2021, in line with its object of promoting financial system stability. The Framework seeks to facilitate accessibility of data and establishes principles for data sharing across the banking and payments ecosystem. It also provides risk management guidance for operators in the financial services space for leveraging data and Application Programming Interface (API) in the provision of financial services.

### E-naira

In October 2021, the CBN launched its digital currency, the eNaira which is the digital form of the Fiat currency (Naira). The eNaira was introduced pursuant to the CBN's power under Section 19 of the CBN Act to issue the Nigerian currency in different forms and designs. It is a legal tender and it forms part of the currency-in-

circulation. In launching the digital currency, the CBN issued Regulatory Guidelines applicable to all financial institutions and users of the eNaira. The Regulatory Guidelines require all financial institutions to maintain a treasury eNaira wallet for holding and managing eNaira on the Digital Currency Management System.

### Payment Service

In November 2021, the CBN granted Approvals-in-Principle to two Nigerian leading telecommunication companies (TelCos), MTN Nigeria Communications Plc and Airtel Africa Plc to operate as Payment Service Banks in Nigeria. With a payment service licence, the telecommunication companies will be able to accept deposits, carry out payments and remittances, issue debit and pre-paid cards, operate electronic wallets, among other activities. While the TelCos are still required to obtain a final licence before operating, the operation of these TelCos as payment service banks will increase financial inclusion in the country and provide access to financial services to low-income and/or rural communities.

## 28. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

One major threat bedeviling the Nigerian financial services industry is the high rate of delinquency in loan portfolios of Nigerian banks. This is largely due to the state of the Nigerian economy which has worsened as a result of the impact of the COVID-19 pandemic, weakening oil prices, continued instability in the foreign exchange market and rising inflation rate; and in some instances, due to mismanagement of business resources by borrowers. Debt recovery and enforcement processes are also constrained due to uncertainties in the legal environment and tedious court processes. Indeed, non-performing loans threaten the financial performance of banks, as it reduces both the bank's profit and its intermediation capacity. Considering that the banking industry is a key driver of the economy, any shock to the industry would certainly affect the financial system and the economy as a whole. The CBN and other relevant regulators and government departments thus continue to make policies to improve the Nigerian business environment generally; and hopefully, these policy moves will positively impact the financial services industry and the Nigerian economy.

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