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# Protection of Investors and Depositors in Financial Markets: A Peep into the Relevant Laws and Practices.

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## Abstract.

*At the apex of regulation of the capital market is the Securities and Exchange Commission. The Commission is saddled amongst other remits, with the regulation of securities and investments business in Nigeria. The SEC has through registration and regulation of capital market assets and players engendered economic growth and sustainability. Also, at the supply side of deposit taking institutions in Nigeria are the depositors of funds. This set of investors have made their funds available to deposit taking institutions more particularly deposit money banks for the purposes of achieving one of the financial markets age long mandates of financial intermediation. The legitimate expectation of a depositor is the robust and professional handling of their funds. Absence or lack of fidelity in this regard might lead to catastrophic failure thereby greatly imperilling the deposited funds. It is therefore in recognition of this possibility that the national government has emplaced legal and regulatory frameworks for the protection and insurance of the deposits. The Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation and the Assets Management Corporation of Nigeria are all products of these legislative interventions. The measures deployed by these bodies in the actualization of their briefs are either ante mortem or postmortem. This work will therefore examine and review the laws creating these bodies vis a vis their regulatory oversight in the achievement of financial markets stability. Some profound suggestions will also be made going forward that will lead to the desired outcome of financial system stability.*

**Keywords:** Nigeria Deposit Insurance Corporation (NDIC), Assets Management Corporation of Nigeria (AMCON), Central Bank of Nigeria (CBN), Securities and Exchange Commission (SEC), Depositors' Protection, Insured institution.

## Introduction

The Securities and Exchange Commission (SEC) has within the confines of the applicable legislations, rules and regulations, practices, and conventions upped investors' protection to the deserved front burner. The capital market in Nigeria has a chequered history.<sup>1</sup> Formalised

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<sup>1</sup>The history of the capital market in Nigeria is often associated with the establishment of the Stock Exchange in 1960. However, long before this time, capital market activities in Nigeria had taken root with the floatation of 300 pounds development stock issued by the colonial government in 1946.



regulation and statutory recognition was birthed via the enactment of Lagos Stock Exchange Act of 1961.<sup>2</sup>

Other transformative efforts saw the Central Bank of Nigeria (CBN) creating Capital Issues Committee. This led to the establishment of Capital Issues Commission by Decree No 4, 1973. In 1988, the SEC came into being with regulatory powers over the primary and secondary markets. The rapid growth of the market and investments led to the enactment of the Investments and Securities Act of 1999 which was repealed by the current legislation, the Investments and Securities Act of 2007 (ISA).

The Nigeria Deposit Insurance Corporation (NDIC) also protects investors in the money market segment of the financial ecosystem in Nigeria. These investors are also known as depositors. Depositors' protection within the space of the extant financial laws in Nigeria invariably imports deposit insurance of sorts. The formalization of deposit insurance in Nigeria firmly took root in 1988 with the promulgation of the repealed Nigeria Deposit Insurance Corporation Decree 1988.<sup>3</sup> The overriding idea was to guarantee financial system stability and improve awareness of the deposit insurance ecosystem in Nigeria.<sup>4</sup>

The desirability of the birth of the corporation was accentuated by the geometric increase in the number of banks in Nigeria.<sup>5</sup> As at the time the corporation commenced operations, the banking industry had already been assailed by unmitigated distress and systemic crisis. The corporation in a lightening-like traction undertook some remedial measures which steadied the sinking ship from completely going under.<sup>6</sup>

The NDIC Act of 2006 was enacted after the repeal of the 1988 Act. The 2006 Act had some profound provisions that were geared towards the safeguarding of depositors' funds in insured institutions as well as the general wellbeing and stability of the financial markets.<sup>7</sup> The 2006 Act was repealed by the 2023 Act which was accented to by the President on the 27th of May 2023. This Act is no doubt a very progressive legislation that will lead to better regulation of the banking industry.

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<sup>2</sup> The Exchange was a private organisation with initial financial support from the federal government through the Nigerian Industrial Development Bank.

<sup>3</sup> The history of the Nigeria Deposit Insurance Corporation (NDIC) has its origin in the report of a committee empanelled by the Central Bank of Nigeria (CBN) to examine the operations of the banking system in Nigeria. Consequently, the NDIC was established through the promulgation of Decree No 22 of 15th June 1988. See <<https://ndic.gov.ng/about/ndic-history/>> accessed 19 June 2023.

<sup>4</sup> This lack of awareness prompted the NDIC to include public sensitization as one of the pillars of the corporation's five year strategic plans 2016-2020.

<sup>5</sup> In 1986, the total number of banks in Nigeria was about forty. The figure rose to about one hundred and twenty by 1992.

<sup>6</sup> Some of the actions taken were the imposition of holding actions on distressed banks to restrict operations and encourage self-restructuring. Others were the taking over of the management and control of about twenty-four distressed banks, acquisition and restructuring of seven distressed banks for the purposes of handing them over to new owners and the implementation of the Failed Banks Decree No 18 of 1994. See <<https://ndic.gov.ng>> accessed 24 May 2023.

<sup>7</sup> The Act has sixty sections and twelve parts.



Depositors' protection can also be situated within the regulatory province of the Assets Management Corporation of Nigeria (AMCON).<sup>8</sup> The corporation was set up to acquire eligible bank assets from eligible financial institutions.<sup>9</sup> The corporation was expected to achieve the following:

(a) Purchase or otherwise invest in eligible equities on such terms and conditions as the corporation may deem fit.<sup>10</sup>

(b) Hold, manage, realize, and dispose of eligible bank assets.<sup>11</sup>

(c) Pay coupons on, and redeem at maturity, bonds and debt securities issued by the corporation as consideration for the acquisition of eligible bank assets.<sup>12</sup>

(d) Perform such other functions, directly related to the management or the realization of eligible bank assets that the corporation has acquired, including managing, and disposing assets acquired with the proceeds derived by the corporation from managing or disposing of eligible bank assets acquired by it.<sup>13</sup>

The functions and activities of the AMCON in depositors' protection might seem tangential but overall, they amount to great value addition by the provision of much needed liquidity needed in the reflation of the fortunes of a tottering insured institution. This will invariably guarantee unhindered access of the depositors to their funds whenever they place a call on their banks for their funds.

This work will therefore attempt a bold exposition of the concept of investors and depositors' protection in Nigeria relatedly to financial system stability. Overview of the investors and depositors' protection within the extant laws will be examined. Also impact review and analysis of the SEC, NDIC and the AMCON in the maintenance of financial system stability will be done with reference to the overarching supervisory role of the CBN as the ultimate prescriber of regulation in the money market. A discussion of the judicial approach to this important subject will be undertaken. Suggestions on the ways to achieving a stable financial system will also be proffered.

### **Investors Protection and Deposit Insurance: A philosophical underpinning.**

The underlying philosophy of investors protection is to as much as possible guard against or in the case of eventuality mitigate systemic losses and delinquent risks which the financial markets are prone to. The mandate of the SEC is such that in protecting

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<sup>8</sup> The AMCON Act was promulgated by a legislative intervention in 2010. Notably, the Act has been amended thrice.

<sup>9</sup> Section 5a of the AMCON Act 2010.

<sup>10</sup> Section 5b of the AMCON Act.

<sup>11</sup> Section 5c of the AMCON Act.

<sup>12</sup> Section 5d of the AMCON Act.

<sup>13</sup> Section 5e of the AMCON Act.

investors, the commission is to maintain a fair, efficient, and transparent market. The commission is without doubt properly tooled to undertake all this.<sup>14</sup>

Conversely, the essence of deposit insurance is to offer a form of protection, albeit limited to depositors in the event of a bank's insolvency. It is a life jacket of sorts in the event of the failure of an insured institution.<sup>15</sup> Together with financial supervision and resolution, deposit insurance is an integral part of the safety net which must be provided in any sound financial system.<sup>16</sup> The financial safety net of any economy is firmly supported by the three pillars of prudential regulation/supervision, deposit insurance and lender of last resort function of the CBN. This prudential regulation entails cross and coordinated regulatory validations to be carried out intermittently.<sup>17</sup>

The AMCON is empowered to act in conjunction with the CBN in providing means that will improve the liquidity of the toxic assets by purchasing them using secondary market mechanisms that allow the affected institutions to stabilize their balance sheets and avoid further losses. This may entail some form of joint examination to forestall future erosion of capital through nonperforming loans.

The sensitivity and sanctity of this sector that harbours depositors' cherished deposits demand a diligence and responsibility. Lack of fidelity to the established principles/rules/policies/laws guiding their operations may culminate into catastrophic events thereby imperilling depositors' funds.<sup>18</sup> Protection of depositors' funds improves financial system stability and prevents a run on the funds held by the insured institutions on behalf of the depositors.

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<sup>14</sup>It has departments saddled with various functions such as Registration of securities and market operators, inspection and investigation of the books and activities of market operators as well as enforcement action levied on erring operators. See Sections 4b – 52 of the Investments and Securities Act 2007. See also Sections 54 & 56 of the same Act.

<sup>15</sup>Koyinsola Ajayi, 'Efficacy of Deposit Insurance in Promotion of Financial System Stability', in 'Challenges to Deposit Insurance Law and Practice in Nigeria', (2nd edition), Nigeria Deposit Insurance Corporation (2021) 53.

<sup>16</sup>Herve Honnour, 'Financial Crisis: The Role of Deposit Insurance' (Paper presented at the International Association of Deposit Insurers, Research Conference Basel, 8 June 2011).

<sup>17</sup> The executive management of the corporation may at any time appoint two or more qualified persons to conduct a special examination or investigation of the books and affairs of an insured institution under conditions of secrecy where the executive management is of the opinion that an insured institution maybe carrying on business in a manner detrimental to the interest of its depositors and creditors, have insufficient assets to cover its liabilities to the public or be contravening the provisions of the Act, section 40 of NDIC Act 2023. A similar power of examination is also endowed on the Governor of CBN where he is of the opinion that it is in the public interest to do so or where the insured bank, other financial institutions or specialized bank has been carrying on business in a manner that is detrimental to the interest of the depositors or creditors etc. There is a similar provision in the AMCON Act.

<sup>18</sup> Emeka Ngige, 'Enforcing Civil Liabilities of Directors for Causing the Failure of their Banks' (A paper delivered at the 2023 sensitization seminar for external solicitors of the NDIC held in Abuja, Kano, Lagos and Port-Harcourt respectively, May 2023).



### **Overview of Investors and Depositors' Protection within the Extant Laws.**

The ISA of 2007 and its progenitor represents a marked departure from the past.<sup>19</sup> The 2007 Act on Investor's protection was precisely crafted to meet the dynamic and demands of emerging / frontier market. It does this by protecting investors, maintenance of fair, orderly and efficient markets. The SEC has deployed various regulatory tool, to ensure that it meets the watermark going by the spirit and letters of its extant statute and rules.<sup>20</sup>

### ***The Rules and Regulatory Framework***

Though the remit of this work is the protection of depositors' funds through the prism of the NDIC and the AMCON as regulatory institutions as well as their Acts, mention and possibly, a fleeting discussion on other legislations to wit, Banks and other Financial Institutions Act 2020 will be made.<sup>21</sup>

Presently, deposit insurance scheme of depositors in the financial markets has its framework anchored on the NDIC Act, Banks, and other Financial Institutions (BOFIA) Act 2020, AMCON Act 2010 (as amended) and the CAMA 2020.

The NDIC is recorded by history for its pioneering work in the deposit insurance in Nigeria.<sup>22</sup> Deposit insurance was established to promote financial system stability in the economy. The defining essence is to insulate depositors from risk of insolvency which is inherent in banking operations. Since the hallmark of regulation is registration, investors desirous of procuring a banking licence must first attain registration with the CBN.<sup>23</sup>

Deposit Insurance complements the overarching role of the CBN in financial system stability. The forte of this role is to ensure the wellness of the system and prevent the incidences of failing or failed financial institutions with its corrosive contagion and run on the banks. It is in this wise that the passage of the NDIC Act 2023 is of great moment.

### ***Nigeria Deposit Insurance Corporation Act 2023***

The Act has refreshingly innovative provisions geared towards system stability. The functions of the Corporation as provided for in the Act are as follows:

- (a) Guaranteeing deposit liabilities of insured institutions licenced or authorized to accept deposits from the public in accordance with the Act.

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<sup>19</sup> The 1988 Securities and Exchange Commission Act did not contain elaborate and all-inclusive provision for the protection of investors.

<sup>20</sup> The Securities and Exchange Commission Consolidated Rules of 2013 was put together as a subsidiary legislation to complete the implementation of the ISA 2007. The rules and regulations were made pursuant to section 313 of the ISA 2007.

<sup>21</sup> The BOFIA 2020 was asserted to by the President on the 12<sup>th</sup> November, 2020. The Act endowed the CBN with the power of supervision and regulation of Banking and business of other financial institution in Nigeria and for related matters.

<sup>22</sup> Ibid.

<sup>23</sup> Section 2 of the BOFIA 2020 provides that no person shall carry on any banking business in Nigeria except it is a registered company in Nigeria and holds a valid banking licence issued by the CBN.



- (b) Supervision with the concurrence of the CBN, insured institutions to mitigate the risk of failure.
- (c) Resolution of failing insured institution with the concurrence of the CBN.
- (d) Promptly ensuring the efficient and orderly liquidation of failed insured institution.<sup>24</sup>

Additionally, the corporation shall have power to insure deposit liabilities and guarantee payment to depositors of insured institutions within the scope of the Act.<sup>25</sup>

It is also endowed with the power to give assistance to insured institutions in the interest of depositors in event of imminent or actual financial or technical difficulties. This is to avoid an irreparable damage to public confidence in the banking system. It should be noted that the financial markets thrive progressively on confidence. The corporation assists the CBN in the formulation and implementation of banking policies to ensure sound banking practices and fair competition amongst banks in the country.<sup>26</sup>

Notably, the corporation has by the new Act been mandated to ensure the elevation of the public objectives in the discharge of its mandate.<sup>27</sup> These objectives if prioritized, will lead to the desirable outcomes.

#### ***Deposit Insurance Scheme by the NDIC.***

All licenced banks and other financial institutions in Nigeria licenced to engage in the business of receiving deposits shall insure their deposit liabilities with the corporation.<sup>28</sup> Every insurance contract attracts premium. Consequently, deposits held by licenced banks and other deposit taking institutions attract premium that is proportionate to the deposit and the status of the insured institution.<sup>29</sup>

Premium payment within the domain of insurance is the consideration paid by the insured for the insurer's contractual obligations to indemnify him against risks specified in the policy. So, in the case of insured financial industry, premium is usually paid by the insured financial deposit taking institution to the corporation for indemnification in the

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<sup>24</sup> Section 3 of the NDIC Act 2023.

<sup>25</sup> Section 21 of the NDIC Act.

<sup>26</sup> Section 4 of the NDIC Act.

<sup>27</sup> The objectives entail the protection of depositors by providing an orderly means of compensation in the event of failure or inability of the insured institution to make payments to depositors. Also, the corporation is expected to contribute to financial system stability through effective surveillance mechanisms in its role as a key participant in the financial system safety nets arrangement.

<sup>28</sup> Section 21 of NDIC Act, contravention of this provision by a deposit money bank will attract a fine of Fifty Million naira (₦50,000,000) and a further fine of five million naira (₦5,000,000) awaits the offender for each day the offence persists. For other insured deposit taking financial institutions, a fine of ₦5m and a further fine of Two Hundred Thousand Naira (₦200,000.00) for each day the offence persists.

<sup>29</sup> The following categories of deposits do not attract premium. They are insider deposits, counterclaims from a person who maintains both deposit and loan accounts, interbank placements and such other deposits as maybe specified by the Board of the Corporation.

event of a failure. The premium paid is in the nature of a hedge against a possible failure. So, in that wise, all insured institutions are required to have fidelity insurance coverage up to such level as maybe prescribed by the corporation.<sup>30</sup>

***AMCON Act 2010 (as amended).***

As has been highlighted above, the Assets Management Corporation of Nigeria is a child of necessity created to be the stabilizing and revitalizing tool in the resolution of non-performing loan assets of banks. It does this by the annexation of the underlying collateral, fill the remaining capital deficiency and receive equity and / or preferred shares in the affected bank as it considers appropriate.<sup>31</sup> One of the defining attributes of the AMCON is the sunset clause of ten years.<sup>32</sup> This is in consonance with international best practices. The Act has been amended thrice to bring it in tandem with contemporary developments.<sup>33</sup> The corporation has no doubt brought some stability in the banking sector thereby reducing the risk of failure of insured institution with its grave consequences for the economy.

The latest amendment of 2021 sought to extend the tenor of the resolution cost fund, grant access to the special Tribunal established by the BOFIA 2020 and to also confer on the corporation, the powers to possess and manage, foreclose or sell, transfer, assign or otherwise deal with the assets or property used as security for eligible bank assets.

The Act endows the corporation with the following functions and powers, and they are as follows:

- (a) To acquire eligible bank assets from eligible financial institutions.
- (b) To purchase or otherwise invest in eligible equities on such terms and conditions as the corporation, with the approval of the board of the CBN may deem fit.
- (c) To hold, manage, realize, and dispose of eligible bank assets.
- (d) To pay coupons on and redeem at maturity bonds and debt securities issued by the corporation as the consideration for the acquisition of the eligible bank assets in accordance with the Act.
- (e) The corporation is also empowered to take such other steps including securitization or refinancing of portfolios of eligible bank assets.<sup>34</sup>

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<sup>30</sup> Section 44 of the NDIC Act 2023.

<sup>31</sup> <<https://ypfsresourcelibrary.blob.core.window.net>>accessed 6 June 2023.

<sup>32</sup> UcheUwaleke, 'IMF and the AMCON Sunset Debate' *Business Day Newspaper*(Abuja 24 April 2019). See also Section 47 of the AMCON (amended Act) 2019.

<sup>33</sup> The Act was amended in 2015, 2019 and 2021 respectively.

<sup>34</sup> Section 5 of the AMCON Act 2010 as amended.



The discharge of its duties has not been without hiccups, but on a scale, the corporation has done fairly well.<sup>35</sup>

### **Impact Review and Analysis of SEC, NDIC and AMCON in Financial System Stability.**

The Financial system finds expression through five basic components.<sup>36</sup> The Financial market, provide a platform for the creation and transfer of financial assets. The SEC regulates the capital market. This market like the money market is an offshoot of the financial markets. SEC's role in financial system stability is all too obvious. It maintains its regulatory relevance by ensuring that the products, players, platform, processes, practices, pricing templates and prefects in the capital markets are in good standing before the law. Registration being the hallmark of regulation all the product, players and platform must have current and subsisting registration with the SEC before they can open for sale, subscription or to be available for any capital market activities

In furtherance to entrenching financial system stability, the SEC is also to act in public interest having regards to the protection of investors and the maintenance of fair and orderly markets and to this end, establish a nationwide trust scheme to compensate investors whose losses are not covered under the investor protection funds.<sup>37</sup>

Despite the ubiquity of the term "financial stability" there remain a surprising lack of clarity about what financial system regulation is out to achieve. To some it connotes stasis and ossification of the financial market in a dogmatic like fashion.<sup>38</sup>

Nothing points so eloquently to the expected impact of the NDIC to financial system stability than the lucid provisions of the new Act. The novel public policy objectives will no doubt boost regulation, enhance public confidence and the attendant market stability.<sup>39</sup>

Instructively the above objectives will only find expression when an insured institution has been struck by a debilitating distress.

These distressful conditions leading up to failing or outright failure are triggered by a plethora of factors, which could either be endogenous or exogenous.<sup>40</sup> These factors

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<sup>35</sup> Recently, the corporation lamented its inability to recover debts of over ₦4 trillion from delinquent and wealthy debtors. This is no doubt reflective of our dysfunctional Institutions. See 'Lawmakers fault CBN, NDIC, others over AMCON's ₦5 trillion debt recovery' in <<https://www.ripplesnigeria.com/lawmakers-fault-cbn-ndic-others-over-amcons-n5-trillion-debt-recovery/>> accessed 19 June 2023.

<sup>36</sup> Financial institutions, financial markets, financial instruments, financial services and money.

<sup>37</sup> The Nigerian Exchange Ltd maintains investors protection fund in line with part XIV of the ISA 2007. The purpose of the investors protection fund is to compensate investors with genuine claims to pecuniary loss against trading license holder firms resulting from insolvency, bankruptcy, negligence or defalcation.

<sup>38</sup> The SEC as financial stability Regulates by Hilary J. Allen. Journal of Corporation Law (June 26, 2017) 431 Corp L. 715 (2018 page 4)

<sup>39</sup> Section 3c i& ii of the NDIC Act.

<sup>40</sup> George R C Ibekwe, *Legal Aspects of Bank Failures in Nigeria* (LL. B Long Essay Faculty of Law University of Nigeria, Nsukka 1992).



range from undercapitalization, managerial blunders, fraudulent tendencies of promoters and directors of the banks, weak credit administration, etc.

The incidences of bank failures within our financial ecosystem abound since the formalization of banking business in Nigeria.<sup>41</sup> As at present, over forty-five deposit money banks have failed in Nigeria.<sup>42</sup>

Recently, the CBN revoked the operating licences of one hundred and seventy-nine micro finance banks, four primary mortgage banks and three finance companies.<sup>43</sup> The reasons offered by the CBN for the revocation were proven cases of harmful trade practices and deviation from the purpose for which the licences were issued.<sup>44</sup>

### ***Failure Resolution of Capital Market Operators by the SEC and Insured Institutions by NDIC.***

The SEC is empowered to order routine and special inspection and investigation of capital market operators.<sup>45</sup> The SEC shall order a special examination or investigation of the books and affairs of a capital market operator where it is satisfied that it is in the public interest to do so, or where the capital market operator has been carrying on its business in a manner detrimental to the interest of its clients, beneficiaries and creditors or where the operator has insufficient asset to cover its liabilities to the client, beneficiaries and creditors.<sup>46</sup> Where after a clinical examination, the commission is satisfied that the market operator is in grave danger as regards its obligation to its creditors, clients, beneficiaries or the market operator informs the commission that it is unable to meet its obligation or suspend its obligation or its insolvent, the commission may by order in writing deploy some remedial measures.<sup>47</sup> If after taking remedial steps and the operator still remains in dire straits, the commission may assume full or partial control of the market operator. The commission is permitted to remain in direct or indirect control until such a time that the commission is satisfied that adequate measures have been put in place for the repayment of investors or that it is no longer necessary to be in control.<sup>48</sup> But where before the assumption of control, the commission discovers that the paid-up capital of the operator is lost or unrepresented by available assets, the commission may through an order revoke the license / registration and apply to the

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<sup>41</sup> Prior to 1952, banks in Nigeria were not under any regulations. Even with the initial regulations of banks, there were incidences of bank failures in Nigeria up to 1960. See also, Ikenna Okoli, 'Liquidation and Receivership of Failed Banks in Nigeria' The New Era' (A paper delivered at the sensitization seminar for external solicitors of the NDIC, at slide 28).

<sup>42</sup> <<https://www.research.net>> accessed 7 June 2023.

<sup>43</sup> Federal Republic of Nigeria, Official Gazette No 94, vol. 110, 23rd of May 2023.

<sup>44</sup> Section 12 of BOFIA2020.

<sup>45</sup> See Section 45 of the ISA 2007

<sup>46</sup> See Section 47 of the ISA 2007.

<sup>47</sup> See Section 48 (2) of the ISA 2007

<sup>48</sup> See Section 49 & 50 of the ISA 2007.



Federal High Court for an order of purchase for a nominal fees of the assets of the capital market operators.

In the unpleasant situation of failure resolution, the corporation at the prompting of the CBN or the insured institution can deploy some assistive mechanisms. These mechanisms come into the mix when the corporation determines that the insured institution has difficulties meeting its obligations to its depositors and creditors. It can also be deployed where the insured institution has persistent liquidity deficiency or where the insured institution has accumulated losses which have nearly or completely eroded the shareholders or where such assistance is needed to stem the tide of imminent failure of the insured institution, in any of these cases, the corporation is bound to render the assistance. The corporation can take one or a combination of any of the actions to shore up the liquidity level by providing the needed funds for the revitalization of the insured institution. It can also purchase or invite eligible investors to purchase the equity and or such assets and assume any such liabilities of the insured institution. It can also issue bonds certificates, debentures or other debts instruments and other securities to purchase or assume such assets, equity, or liabilities of the insured institution. The interests chargeable by the corporation for any of these measures must align with the monetary policy rate of the CBN.<sup>49</sup>

Instructively, the corporation shares this power of resolution of failing bank with the CBN. We suggest that this seeming overlap of functions be managed professionally to obviate the unhealthy incidences of interagency rival or strive which unfortunately has become the lot of regulators in Nigeria.<sup>50</sup>

What is needed in such cases is circumspection and continuous interaction at the level of the Financial Services Regulation Coordinating Committee (FSRCC) in order that the two agencies will keep up the tempo without dropping the ball. In all fairness the two agencies have been working collaboratively in ensuring that the desired mileage of system stability is continuously placed on the front burner.

Examples abound where the CBN rose to the occasion to resolve distress.<sup>51</sup> This resolution power of the CBN was effectively deployed in 2008 in the timely rescue of some deposit money banks whose fortunes were dwindling.<sup>52</sup>

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<sup>49</sup> Section 49 of NDIC Act.

<sup>50</sup> The BOFIA 2020 gives the CBN the power to prohibit an insured institution from further extension of credit facility as maybe set out in the instrument or order emanating from the CBN. It can also amongst others, require the bank to take any steps or any action or to do or not to do anything in relation to the bank or its business or its directors and officer.

<sup>51</sup> Kama U, 'Banking Sector Crisis and Resolution Options in Nigeria' *CBN Bullion* (2010) (34) (1) 7.

<sup>52</sup> The CBN injected about ₦620b into the eight banks. It came in the nature of bailouts. This singular action helped in steadying the ship of system stability from imminent wreckage. See Sanusi L. Sanusi, 'Global Financial Meltdown and the Reforms in the Nigerian Banking Sector' *CBN Journal of Applied Statistics* (2) (1 93) <<https://www.cbn.gov.ng/out/2012/publications/reports/std/global%20financial%20meltdown%20and%20the%20reforms%20in%20the%20nigerian%20banking%20sector.pdf>> accessed 19 June 2023.



The CBN in conjunction with the NDIC also intervened to save a deposit money bank in 2018. A bridge bank was established to assume the vanishing assets and liabilities of the bank.<sup>53</sup> The strategy used then was for the AMCON to capitalize the bridge bank and commence the process of sale in order to buy off AMCON stakes.<sup>54</sup>

### *The Functions of AMCON in Distress Resolution*

AMCON has been actively involved in distress resolution of failing insured institutions.<sup>55</sup> It acquired the assets and liability of Afribank in 2011. The Bridge bank that was formed after the revocation of the licence was sold to Skye Bank in 2014.<sup>56</sup>

Also, the CBN in conjunction with the NDIC handed over the carcass of Syke Bank to a bridge bank known as Polaris Bank which took over after an injection of fresh capital to the tune of N786b by the CBN. This is to ensure the safety of depositors' funds pending the conclusion of the sale process of the bridge bank by the AMCON.

So, the AMCON is actively involved in the running of bridge banks. The incorporation of a bridge bank and the issuance of banking licence to purchase such assets of a failing issued institution shall be done by the NDIC and the CBN.<sup>57</sup>

### *Failure of an Insured Institution*

An insured institution is deemed to have failed with revocation of its operating licence.<sup>58</sup> Where the insured institution is a bank, the corporation shall act as a liquidator of such insured institution and where the insured institution is other financial institution, the CBN may by notice published in the Federal Government Gazette, appoint the corporation as a liquidator of such failed insured institution. It should be noted that the remit of the corporation as a liquidator is triggered at revocation of the operating licence of an insured institution. The corporation is deemed to have been appointed by the Federal High Court as a provisional liquidator.<sup>59</sup> This provisional appointment as a liquidator trumps any other powers as may be conferred by the Companies and Allied Matters Act 2020. Notably, the provision of chapter 21 of the CAMA 2020 and the

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<sup>53</sup> The CBN took over Skye bank over its inability to meet its banking obligations in order to protect the bank and its customers.

<sup>54</sup> This measure taken by the CBN, NDIC, and AMCON was confidence building to assure the depositors of the safety of their deposits in insured institutions.

<sup>55</sup> In furtherance to this, the AMCON acquired the assets and liabilities of Afribank in 2011. The bank's operational license was revoked in 2011 by the CBN owing to insolvency leading to the formation of a bridge bank which took over Afribank under the AMCON.

<sup>56</sup> See <<https://www.icirnigeria.org/>> accessed 6 June 2023.

<sup>57</sup> See section 54 NDIC Act.

<sup>58</sup> See section 55 NDIC Act.

<sup>59</sup> See 55 (2) of NDIC Act. . In the recent revocation of the banking licence of Heritage Bank, NDIC was appointed the liquidator with promise to pay out insured deposits to depositors of the defunct Bank who have N5m or less in their accounts. See <https://punchng.com/heritage-bank-ndic-goes-after-n700bn-loan-defaulters-lists-2-3m-depositors/> accessed 8 June 2024



Companies Winding Up Rules dealing with priority of settlement shall not apply to the winding up of insured institutions.<sup>60</sup>

The NDIC Act also empowers the Chief Judge of the Federal High Court to issue and cause to be issued “Winding Up Rules” for the accelerated winding up of failed insured institution.<sup>61</sup> Upon gazettement of the status of an insured institution as a failed insured institution, the corporation shall apply to the Federal High Court for a winding up order.<sup>62</sup>

The corporation acting as a liquidator of a failed insured institution shall have power to realize the assets of failed insured institution and enforce the individual liability of the shareholders and director.<sup>63</sup>

The claims of the depositors of the failed insured institution are usually prioritized by the corporation. A maximum amount of N500,000 and N200,000 shall be paid respectively to depositors of deposit money banks and micro finance banks.<sup>64</sup>

The portfolio of a depositor in an insured institution upon liquidation, will be further enlarged by the recovering / realization of assets of the failed institution by virtue of the payment of liquidation dividends.

### **Appraising The Role of The Judiciary in Depositors’ Protection**

The judiciary being the third arm of government is expected to rise boldly, courageously, impartially with a keen sense of justice in the adjudication of cases bothering on the protection of depositors’ funds. Without doubt, the question of conflict between the public policy interest in protecting property rights, promotion of commercial endeavours on the other hand and policy interests in protecting the financial system and depositor’s fund, must certainly arise.<sup>65</sup>

The legal landscape is not bereft of requisite legislations, but a concomitant positive judicialism is required having in mind the commercial nature of such cases and the need to do substantial as opposed to pyritic justice.<sup>66</sup> The Failed Banks Tribunal whose jurisdiction was transferred to the Federal High Court<sup>67</sup> did exceedingly well in the 1990s. Accountability for criminal liability was brought to the directors of failed insured

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<sup>60</sup> Section 602(1) CAMA 2020 deals with the settlement of contributories and rectification of the register of members. The NDIC Act has effectively recorded the settlement schedule in the events of a failure of an insured institution.

<sup>61</sup> See section 56(2) NDIC Act.

<sup>62</sup> See section 56 (3) NDIC Act.

<sup>63</sup> See Section 57 NDIC Act.

<sup>64</sup> Section 25 sub (1)a & b of the NDIC Act

<sup>65</sup> Koyinsola (n 12).

<sup>66</sup> The laws are as follows BOFIA 2020, CAMA 2020, Failed Bank Acts 1994 and NDIC Act 2023.

<sup>67</sup> Tribunals (Certain Consequential Amendments etc) Decree No. 26, 1999.



institutions. Many of the erring directors forfeited assets to the government while some fled abroad to evade justice.<sup>68</sup>

The Judiciary should be standing by to complement and not to supplant the efforts of the NDIC, AMCON and the CBN in ensuring financial system stability. The judiciary can enhance the effectiveness of deposit insurance and financial system stability by following the principle of judicial difference in matters relating to depositor protection putting into context the philosophy / background of the legislation which is depositors' protection.<sup>69</sup>

In the case of *NDIC vs Chief Afe Babalola*,<sup>70</sup> a claim for the recovery of professional fees of a legal practitioner was granted priority ahead of liquidation claim of depositors. Koyinshola Ajayi<sup>71</sup> opined that the case suggested a disruption of orderly resolution of liquidation claims / payment. We cannot agree less.<sup>72</sup>

### Recommendations and Conclusion

Securities regulation is intended to ensure that the markets remain robust to shocks and can continue to facilitate the flow of capital and broader economic growth. It is also a type of financial system stability.

Hillary J Allen argued that the SEC has not demonstrated much affinity or aptitude for prudential regulation in the past. Instead, the SEC's main contribution to financial stability regulation should reflect its expertise as a regulator of the markets.<sup>73</sup> The SEC should give equal focus on capital formation and financial stability. The SEC should also ensure that its expertise is focused and deployed towards orderliness in equities market and in general of the financial market to ensure stability.

Going further, technology could be used to improve monitoring, reporting and compliance. There is also a great capacity for machine learning and other sophisticated analytical tools to identify and tame systematic risks in real time.

It is also suggested that the Chief Judge of the Federal High Court immediately put together the "Winding Up Rules" for the expedited and accelerated winding up of failed insured institutions as envisaged by the Act.<sup>74</sup> This will undoubtedly enthrone a regime of certainty in winding up proceedings of insured institutions. Since the first limb of section 56 of NDIC Act expressly excluded the application of Winding Up Rules under chapter

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<sup>68</sup>Ibid. It's jurisdiction to try civil and criminal cases were transferred to Federal High Court.

<sup>69</sup>Ibid.

<sup>70</sup>[2013] 3 CLRN1.

<sup>71</sup>Koyinsola(n 12).

<sup>72</sup> Ibid.

<sup>73</sup> The SEC as Financial Stability Regulates by Hilary J. Allen. Journal of corporation law (June 26, 2017) 431 Corp L. 715 (2018 page 13)

<sup>74</sup>See Section 56 (2) of the NDIC Act.



21 of the CAMA2020. Action for monetary damages against erring directors must as a matter of law be brought outside the petition for winding up.<sup>75</sup>

There's also the need for the judiciary to deliver judgment that will enhance regulation and ensure financial system stability. It is in this wise that the Supreme Court of Nigeria deserves commendation for finally laying to rest the issue of the jurisdiction of the Investments and Securities Tribunal that was hitherto dogged by jurisdictional uncertainty in view of the provision of section 291 Constitution of the Federal Republic of Nigeria (as amended) vis a viz the Federal High Court. The decision successfully enthroned the jurisdiction of Investments and Securities Tribunal over capital market disputes.<sup>76</sup> All these kinds of pro-policy decisions are encouraged in our commercial jurisprudence landscape because they send the right signals to the investing public. The Federal High Court is humbly advised to tow this established precedent when liquidation petitions are brought before it.

The jurisdiction of the Loans Tribunal<sup>77</sup> should be tinkered with so that it can have both civil and criminal jurisdiction not only in loan recovery but also liquidation of insured institution. This will no doubt decongest the dockets of the Federal High Court.

Though the NDIC has done fairly well in sensitization and enlightenment, it is suggested that they increase rapidity and tempo of such interventions which have been found to be very useful not only to the investing public and practitioners but also to judicial officers.

Also, the insured sum payable by the NDIC in the event of the collapse of an insured institution appears abysmally poor. In the light of the fact that little is recoverable and paid as liquidation dividends. The Federal Deposit Insurance Corporation of the United States pays an upper limit sum of \$250,000 to insured depositors. In Nigeria, depending on the status of the insured institution, the depositors get sums within the band of ₦200,000 to ₦500,000. This placed side by side on comparative terms with the US jurisdiction will reveal a grave disparity. An upward adjustment is suggested so that in the event of a failure, the insured deposits of the depositors could be met reasonably. It is worthy of note that the NDIC has risen to the occasion by increasing the upper threshold payable to insure depositors in the event of failure of their insured institutions.<sup>78</sup> Perhaps,

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<sup>75</sup>See *Chinweduv NDIC (2018) LPELR 5009CA*.

<sup>76</sup> See the case of *Mufutau Ajayi v SEC (2023) 6 NWLR (pt 1881) 533*.

<sup>77</sup>Special Tribunal for the Enforcement and Recovery of Eligible Loans.

<sup>78</sup> The Nigeria Deposit Insurance Corporation (NDIC) has announced the upward review of maximum deposit insurance coverage for various categories of deposit-taking financial institutions licensed by the Central Bank of Nigeria (CBN) with immediate effect. The maximum deposit insurance coverage for depositors of Deposit Money Banks (DMBs) has increased from ₦500,000 to ₦5,000,000; Microfinance Banks (MFBs) from ₦200,000 to ₦2,000,000; Primary Mortgage Banks (PMBs) from ₦500,000 to ₦2,000,000; Payment Service Banks (PSBs) from ₦500,000 to ₦2,000,000 and subscribers of Mobile Money Operators (MMOs) from ₦500,000 to ₦5,000,000 per subscriber, aligned with DMBs' coverage level. See <https://punchng.com/heritage-bank-ndic-goes-after-n700bn-loan-defaulters-lists-2-3m-depositors/> accessed on 08 June 2024. The MD/CEO of NDIC, Mr. Bello Hassan, made the announcement at a press



a few lessons in cross and coordinated governance validations could be drawn from the failure of Silicon Valley Bank and Signature Bank in America to serve as a wakeup call in our domestic regulation.<sup>79</sup>

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conference in Abuja today. He said the Interim Management Committee (IMC) of the Corporation approved the revised maximum deposit insurance coverage during its 18th meeting held on April 24th and 25th, 2024. He said the decision is in line with the Corporation's commitment to enhancing depositors' protection, bolster public confidence, financial inclusion, and stability of the financial system.

<sup>79</sup>The collapse of Silicon Valley Bank a major Lender to Tech startups, which is the largest bank failure in US history triggered a global market sell-off in fears of a banking crisis and collapsing market knock on effect.