

A BILL

FOR

AN ACT TO REPEAL THE BANKS AND OTHER FINANCIAL INSTITUTIONS ACT 2004 AND TO RE-ENACT THE BANKS AND OTHER FINANCIAL INSTITUTIONS ACT 2020 AND FOR MATTERS CONNECTED THEREWITH.

SPONSOR: SEN. UBA SANI

CO-SPONSOR: SEN. BETTY APIAFI

Provisions of the Bill

CHAPTER A — BANKS

PART I — ESTABLISHMENT OF BANKS, ETC.

Functions, Powers and Duties of the Central Bank of Nigeria.

1.—(1) The Central Bank of Nigeria (hereinafter referred to as "the Bank") shall have all the functions and powers conferred and the duties imposed on it by this Act.

(2) The Bank shall in addition to the functions and powers conferred on it by this Act, have the functions and powers conferred and the duties imposed on the Bank by the Central Bank of Nigeria Act.

(3) The Bank may authorize or instruct any officer or employee of the Bank to perform any of the functions, exercise any powers, or discharge any of its duties under this Act.

(4) The Bank may, either generally or in any particular case, appoint any person who is not an officer or employee of the Bank, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties under this Act, or the Central Bank of Nigeria Act, or to exercise, perform or discharge the functions and duties on behalf of and in the name of the Bank.

(5) For the purposes of this Act, a person shall be deemed to be receiving money as deposits-

(a) if the person accepts deposits from the general public as a feature of its business or if it issues an advertisement or solicits for such deposit;

(b) notwithstanding that it receives moneys as deposits which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof either conditionally or unconditionally of the amount of the deposits at -specified dates or for the payment of interest or dividend on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable.

(6) Notwithstanding anything contained in this section to the contrary, the receiving of moneys against any issue of shares and debentures offered to the public in accordance with any enactment in force within the Federation shall not be deemed to constitute receiving moneys as deposits for the purpose of this Act

Banking Business.

2.—(1) No person shall carry on any banking business in Nigeria except if it is a company duly incorporated in Nigeria and holds a valid banking License issued under Act

(2) Any person who transacts banking business without a valid license under this Act is guilty of an offence and liable on conviction to refund deposits to holders and imprisonment for a term not less than 10 years or to a fine not less than N20,000,000 or to both such imprisonment and fine.

Application for Grant of License.

3.—(1) Any person desiring to undertake banking business in Nigeria shall apply in writing to the Governor for the grant of a license and shall accompany the application with the following:

(a) a feasibility report of the proposed bank

(b) a draft copy of the memorandum and articles of association of the proposed bank

(c) a list of the shareholders; directors and principal officers of the proposed bank and their particulars;

(d) the prescribed application fee; and

(e) such other information, documents and report as the Bank may, from time to time; specify

(2) After the applicant has provided all such information, documents and reports as the Bank may require under subsection (1) of this section, the shareholders of the proposed bank shall deposit with the Bank a sum equal to the minimum share capital that may be applicable under section 9 of this Act.

(3) Upon the payment of the sum referred to in subsection (2) of this section, the Bank may issue a license or refuse to issue a license and the Bank is required to give reasons for the refusal within 60 days.

(4) Where the Bank grants an application for license:

(i) it shall give written notice of that fact to the applicant;

(ii) it shall indicate the scope of banking business in which the applicant can engage in and the geographical area within the applicant bank shall operate;

(iii) the applicant shall pay the license fee.

(5) An application for a license shall be forwarded to the Governor and all licenses to be issued shall be with the prior approval of the Minister.

(6) Any bank or its subsidiaries without physical presence in the country where it is incorporated and licensed and is not affiliated to any financial services group that is subject to effective consolidated supervision shall not be allowed to operate in Nigeria and no Nigerian bank or its subsidiary shall establish or continue any relationship with such bank or subsidiary.

(7) Any person who breaches the provisions of subsection 5 of this section is liable to a fine of N5,000,000 and to an additional fine of N100,000 for each day during which the breach continues

Investment and Release of Prescribed Minimum Share Capital.

4. The Bank may invest any amount deposited with it pursuant to section 3 (2) of this Act in treasury bills or such other securities until such a time as the Governor shall decide whether or not to grant a license, and where the license is not granted the Bank shall re-pay the sum deposited to the applicant, together with the investment income after de-deducting administrative expenses and tax on the income.

Power to Revoke or Vary Conditions of License.

5.-(1) The Bank may vary or revoke any condition subject to which a license was granted or may impose fresh or additional conditions to the grant of a license.

(2) Where the grant of a license is subject to conditions, the bank shall comply with those conditions to the satisfaction of the Bank within such period as the Bank may deem appropriate in the circumstances.

(3) Any bank which fails to comply with any of the conditions of its License is guilty of an offence under this section and shall be liable on conviction to a fine not less than N1, 000,000. And a fine of N100, 000 for each day during which the condition is not complied with.

(4) Where the Governor proposes to vary, revoke or impose fresh or additional conditions on a license, he shall, before exercising such power, give notice of his intention to the bank concerned and give the bank an opportunity to make representation to him thereon.

(5) Any bank which fails to comply with any fresh or additional condition imposed in relation to its license is guilty of an offence and liable on conviction to a fine not less than N500,000 and to an additional fine of N100,000 for each day during which the offence continues.

(6) Any person who, being a director, manager or officer of a bank fails to take reasonable steps to secure compliance with any of the conditions of the license of the bank is guilty of an offence and liable on conviction to imprisonment to a term not exceeding five years or a fine of N15, 000,000 or for both such imprisonment and fine.

Opening and Closing of Branches.

6. —(1) No bank or its subsidiaries may open or close any branch office, cash centre or representative office anywhere within or outside Nigeria except with the prior consent in writing from the Bank. Any bank intending to close any of its branches or subsidiaries outside Nigeria shall give notice in writing to the Governor, of its intention, at least six months before the date of the intended closure, or within such shorter period as the Governor may, in any particular case, allow.

(2) Any bank which contravenes the provisions of subsection (1) of this section is guilty of an offence and liable to a fine exceeding N2,000,000 and the closure in case of the opening of a branch office and the re-opening in the case of closure of a branch office and in addition to a fine of N100,000 for each day during which the offence continues.

Restructuring, Reorganization, Merger and Disposal, etc. of Banks.

7. —(1) Except with the prior consent of the Governor no bank shall enter into an agreement or arrangement-

(a) which results in:

- (i) a change in the control of the bank;
- (ii) the transfer of a significant shareholding in the bank;

(b) for the sale , disposal or transfer howsoever, of the whole or any part of the business of the bank;

(c) for the amalgamation or merger of the bank with any other person;

(d) for the reconstruction of the bank

(e) to employ a management agent or to transfer business to any such agent.

(2) Where any bank proposes to enter into an agreement or arrangement pursuant to subsection (1) of this section, the Bank may on the application of any of the banks to be affected, order separate meetings of the banks to be summoned in such manner as the Bank may direct.

(3) The Bank may approve an agreement or an arrangement in subsection (1) if and only if the Bank is satisfied that —

(a) such agreement or arrangement is not likely to cause a substantial restraint of competition, or tend to create a monopoly in the banking industry;
or

(b) the significant shareholders or Directors of the bank that results from the said agreement or arrangement are not disqualified under Section 45 of this Act;

(c) the agreement or arrangement is consistent with public interest; and

(d) the bank that results from the agreement or arrangement meets the minimum total capital as prescribed in Section 9 of this Act.

(4) Upon the grant of a new banking license by the Bank to a bank which results from the agreement or arrangement, all the assets and liabilities of the banks that are parties to the said agreement or arrangement shall, by virtue of the grant of the new banking license, be transferred to and become the assets and liabilities of the new bank.

(5) The provisions of this Act shall apply without prejudice to the provisions of the Investments and Securities Act in so far as they relate to a compromise, arrangement or reconstruction between two or more banks.

(6) Where any of the provisions of the Investments and Securities Act is inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

(7) Any person who breaches the provisions of subsection (1) of this section is liable to a fine of N10,000,000 and in the case of a continuing breach to an additional fine of N100,000 for each day during which the breach continues.

Operations of Foreign Banks in Nigeria.

8. —(1) Except with the Prior approval of the Bank, no foreign bank shall operate branch offices or representatives offices in Nigeria

(2) The Bank may, subject to such-conditions as it may impose, from time to time, grant to any bank registered in Nigeria or a foreign bank a license to undertake off-shore banking business from Nigeria.

(3) Subject to the provisions of subsection (1) of this section, nothing in the provisions of the Nigerian Investment Promotion Commission Act or any other law or enactment shall be construed as authorizing any person whether as a citizen of Nigeria or a non-Nigerian to carry on any banking business in Nigeria without a valid banking license issued by the Bank under this Act.

(4) Any person who contravenes the provisions of subsection (1) or (3) of this section is guilty of an offence and liable on conviction in the case of subsection (1) to a fine not less than N10,000,000 and in the case of subsection (3) to a fine not less than N5,000,000 or imprisonment for a term not less than 3 years or for both such fine and imprisonment. In the case of a continuing offence an additional fine of N500, 000 for each day during which the offence continues.

Minimum Capital Requirement for Banks.

9. —(1) The Bank shall, from time to time, determine the minimum paid-up share capital requirement of each category of banks licensed under this Act.

(2) Any failure to comply with the provisions of this section of this Act within such period as may be determined by the Bank, from time to time, shall be a ground for the revocation of any license issued pursuant to the provisions of this Act or any other Act repealed by it.

Shareholder's Voting Rights to be Proportional to Shareholding.

10. Notwithstanding the provisions of the Companies and Allied Matters Act or any agreement or contract, the voting rights of every shareholder in a bank shall be proportional to individual contributions to the paid-up share capital of the bank.

Restriction of Legal Proceedings in Respect of Shares held in the Name of Another.

11. Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceedings shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vested in any person other than the registered holder:

Provided that nothing in this section shall bar a suit or other proceeding on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.

Revocation of Banking License.

12. —(1) Notwithstanding the provisions of this Act or any other law the Governor may with the approval of the Board of Directors and by notice published in the Print and Electronic media and in the Gazette revoke any license granted under this Act if a bank:

- (a) ceases to carry on in Nigeria the type of banking business for which the license was issued for any continuous period of six months or any period aggregating six months during a continuous period of twelve months;
- (b) goes into liquidation or is wound up or otherwise dissolved;
- (c) fails to fulfill or comply with any condition subject to which the license was granted;
- (d) has insufficient assets to meet its liabilities;
- (e) fails to comply with any obligation imposed upon it by or under this Act or Central Bank of Nigeria Act or any other rules, regulations, guidelines or directives made hereunder;
- (f) has its insured status terminated by the Nigeria Deposit Insurance Corporation;
- (g) is in the opinion of the Bank critically undercapitalized with a capital adequacy ratio of less than 2 per cent or such threshold as the Bank may prescribe from time to time;
- (h) fails to comply with the provisions of section 13 of this Act;
- (i) over which the Corporation has assumed control cannot be rehabilitated;
- (j) has been acquired by the Corporation; or

(2) Where the license of a bank has been revoked pursuant to this Act, and the Governor is satisfied that it is in the public interest to do so, he may, subject to the approval of the Board of Directors of the Bank and without waiting for any period prescribed for doing anything under this Act or any law to lapse, appoint the Nigeria Deposit Insurance Corporation as a liquidator of the affected bank and the Corporation shall have the power conferred by or under the Companies and Allied Matters Act and shall be deemed to have been appointed a liquidator by the Federal High Court for the purpose of the Act.

(3) Notwithstanding the provisions of this Act, the Companies and Allied Matters Act or any other law, where the Bank has revoked any license granted under this Act, the Corporation shall immediately proceed with the liquidation of the bank whose license has been revoked and the payment of sum assured deposit liabilities.

(4) Without prejudice to subsection (3) of this section and the provisions of any other law or enactment, the Bank shall upon the revocation of a license of a bank, immediately proceed to pay the private deposit liabilities of the bank less the insured deposit, before the commencement or completion of the liquidation of the bank by the Corporation:

Provided that the Corporation shall upon the liquidation of the bank reimburse the Bank from the assets realized and where the value of the assets realised by the Corporation is not sufficient to offset the payment made by the Bank to depositors, the Federal government shall reimburse the Bank with the shortfall.

(5) An action to challenge the revocation of the license of a bank on any ground whatsoever shall only be instituted in the Federal High Court and such action shall be heard and determined within a maximum period of 180 days from the date of the revocation to which the action relates.

(6) Where an appeal is filed against the decision of the court, the appeal shall be heard and disposed of by the appellate court within a maximum period of 90 days from the date the appeal is filed.

(7) No action in respect of the revocation of the license of a bank shall be maintainable unless such action is filed within a period of thirty days from the date of the revocation.

(8) No action, suit or proceedings shall be proceeded with or commenced against any bank over which the Corporation acts as liquidator or against the Corporation as liquidator of any bank except by the leave of court given on such terms as the court may impose.

(9) Where the Corporation is acting as liquidator of any bank, any attachment, sequestration, distress or execution against the estate of the bank or the Corporation after commencement of the liquidation shall be subject to the priority stipulated in section 51 of this Act.

Minimum Capital Ratio.

13. —(1) A bank shall maintain, at all times, capital funds unimpaired by losses, in such ratio to all or any assets or to all or any liabilities or to both such assets and liabilities of the bank and all its offices in and outside Nigeria as may be specified by the Bank.

(2) Notwithstanding subsection (1) of this section, the Bank may prescribe a higher or lower capital adequacy ratio with respect to any particular category of banks.

(3) The Bank may require a bank to maintain additional capital as the Bank considers appropriate in respect of specific risks.

(4) The Bank may require a bank that has —

(i) a holding company;

(ii) a subsidiary; or

(iii) a holding company and a subsidiary to calculate and maintain minimum capital adequacy ratio on a consolidated basis.

(5) Any bank which fails to observe any such specified ratios may be prohibited by the Bank from —

(a) advertising for or accepting new deposits;

(b) granting credit and making investment;

(c) paying cash dividends to shareholders; or

(d) engaging in any other activities as the Bank may specify from time to time.

(6) Notwithstanding the provisions of subsection (5) of this section, the Bank shall have power to impose such additional holding actions, prohibitions and conditions as it may deem fit for failure to comply with the specified capital adequacy ratio.

(7) In addition, the bank may be required to draw up within a specified time, a capital reconstitution plan acceptable to the Bank.

Non-compliance with capital ratio requirement

14. (1) Failure to comply with the provisions of section 13 of this Act may constitute a ground for the revocation of the license of the bank under this Act.

(2) Where the Bank proposes to revoke the license of any bank pursuant to subsection (1) of this section, the Bank shall give notice of its intention to the bank and the bank may within 30 days make representation (if any) to the Bank in respect thereof

Minimum Holding of Cash Reserves, Specified Liquid Assets, Special Deposits and Other Securities.

15. —(1) Every bank shall maintain with the Bank cash reserves, and special deposits and hold specified liquid assets or any other securities, as the case may be, not less in amount than as may, from time to time, be prescribed by the Bank by virtue of Section 45 of the Central Bank of Nigeria Act.

(2) Where both assets and liabilities are due from and to other banks, they shall be offset accordingly, and any surplus of assets or liabilities shall be included or deducted, as the case may be, in computing specified liquid assets.

(3) In the case of the long-term advances to a bank or by an overseas branch or office of a bank, the advances may, with the approval of the Bank, be excluded from the demand liabilities of the bank.

(4) Every bank shall —

(a) furnish within a reasonable time any information required by the Bank to satisfy the Bank that the bank is observing the requirements of subsection (1) of this section;

(b) not allow its holding of cash reserves, specified liquid assets, special deposits and other securities to be less than the amount which may, from time to time, be prescribed by the Bank; and

(c) not during the period of any deficiency, grant or permit increases in advances, loans or credit facilities to any person without the prior approval in writing of the Bank.

(5) Any bank which fails to comply with any of the provisions of subsection (4) of this section is liable to a fine of N1,000,000 for each month of the failure, and the Bank may also, during the period when the bank fails to comply with any of the requirements of subsection (4) as aforesaid, withdraw any privileges or facilities that are normally accorded to the bank.

(6) For the purposes of this section, specified liquid assets provided they are freely transferable and free from any lien or charge of any kind shall,

without prejudice to the provisions of section 45 of the Central Bank of Nigeria Act, consist of all or any of the following, that is —

- (a) currency notes and coins which are legal tender in Nigeria;
- (b) balances at the Bank;
- (c) net balances at any licensed bank (excluding uncleared effects) and money at call in Nigeria;
- (d) treasury bills and treasury certificates issued by the Federal Government;

- (e) *inter-bank placement, inland bills of exchange and promissory notes re-discountable at the Bank;*
- (f) *securities issued by the Federal Government with such dates of maturity as may be approved by the Bank;*
- (g) negotiable certificates of deposit approved by the Bank; and
- (h) such other negotiable instruments as may, from time to time, be approved by the Bank for the purpose of this section

PART II — DUTIES OF BANKS

Maintenance of Reserve Fund.

16. —(1) Every bank shall maintain a statutory reserve fund and shall, out of its net profits for each year (after due provision made for taxation) and before any dividend is declared, where the amount of the reserve funds is —

- (a) less than the paid-up share capital, transfer to the reserve fund a sum not less than thirty per cent of the net profits; or
- (b) equal to or in excess of the paid-up share capital, transfer to the reserve fund a sum not less than fifteen per cent of the net profit;

Provided that no transfer under this subsection shall be made until all identifiable losses have been made good.

(2) Any bank which fails to comply with the provisions of subsection (1) of this section is guilty of an offence and liable on conviction to a fine not less than N2,000,000

(3) Notwithstanding paragraphs (a) and (b) of subsection (1) of this section, the Bank may, from time to time, specify a different proportion of the net profits of each year, being either lesser or greater than the proportion specified in paragraphs (a) and (b) to be transferred to the reserve fund of a bank for the purpose of ensuring that the amount of the reserve fund of such bank is sufficient for the purpose of its business and adequate in relation to its liabilities.

Restriction on Dividend.

17. —(1) No bank shall pay dividend on its shares until —

- (a) all its preliminary expenses, organizational expenses, shares selling commission, brokerage, amount of losses incurred and other capitalised expenses not represented by tangible assets have been completely written off;

(b) adequate provisions have been made to the satisfaction of the Bank for actual and contingent losses on risk assets, liabilities, off balance sheet commitments and such unearned incomes as are derivable there from; and

(c) it has complied with any capital ratio requirement as specified by the Bank pursuant to Section 13 of this Act.

(d) it has made appropriate charge for impairment on goodwill on its accounts.

(2) Any director, manager or officer who fails to comply with the requirements of this section of this Act is guilty of an offence and liable on conviction to a fine of 5 percent of the dividend paid or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

Disclosure of Interest by Directors, Managers and Officers.

18.—(1) No manager or any other officer of a bank shall —

(a) in any manner whatsoever, whether directly or indirectly have personal interest in any advance, loan or credit facility; and if he has any such personal interest, he shall declare the nature of his interest to the bank;

(b) grant any advance, loan or credit facility to any person, unless it is authorized in accordance with the rules and regulations of bank; and where adequate security is required by such rules and regulations such security shall, prior to the grant, be obtained for the advance, loan or credit facility and shall be deposited with the bank;

(c) benefit as a result of any advance, loan or credit facility granted by the bank;

(2) Any manager or officer who contravenes or fails to comply with any of the provisions of subsection (1) of this section is guilty of an offence under this section and liable on conviction to a fine of N10,000,000 or to imprisonment for a term of 3 years; and in addition, any gains or benefits, accruing to any person convicted under this section by reason of such contravention, shall be forfeited to the Federal Government, and the gains or benefit shall vest accordingly in that Government.

(3) It shall be the duty of a director of a bank who is in any way, whether directly or indirectly, interested in the grant of an advance, loan or credit facility with the bank to declare the nature of his interest at a meeting of the board of directors of the bank.

(4) In the case of a proposed advance, loan or credit facility, the declaration required by this section shall be made at the meeting of the board of directors of the bank at which the request for the advance, loan or credit facility is first taken into consideration or if the director was not present on the date of the meeting at which the matter was discussed, he shall state his interest in the proposed advance, loan or credit facility at the next meeting of the board of directors of the bank held after he becomes so interested, and in a case where the director becomes interested in any advance, loan or credit facility after it is granted, the declaration shall be made at the first meeting of the board of directors of the bank held after he becomes so interested.

(5) For the purpose of this section of this Act, a general notice given to the board of directors of a bank by a director to the effect that he is a member of a company or firm seeking an advance, loan or credit facility from the bank shall be regarded as a declaration of his interest in the grant of the advance, loan or credit facility which may after the date of the notice, be granted to that company or firm, and shall be deemed to be a sufficient declaration of interest in relation to any such advance, loan or credit facility so granted:

Provided that any such notice shall not have effect unless it is in writing and given at a meeting of the board of directors of the bank which shall be required to do all things reasonably necessary to ensure that it is brought up and read at the next meeting of the board of directors of the bank after it is so given.

(6) The provisions of subsection (3) of this section shall not apply in any case —

(a) where the interest of the director consists only of being a person holding less than 5 per cent of the shares of the company which is seeking an advance, loan or credit facility from the bank or such percentage as the Bank may from time to time prescribe; or

(b) if the interest of the director may properly be regarded by the Bank as immaterial.

(7) For the purpose of subsection (5) of this section, a general notice given to the board of directors of a bank by a director shall be deemed to be a sufficient declaration of interest in relation to any advance, loan or credit facility, if —

(a) the notice specifies the nature and extent of his interest in the company or firm;

(b) such interest is not different in nature from or greater in extent than the nature and extent specified in the notice at the time any advance, loan or credit facility is made; and

(c) the notice is given at the meeting of the board of directors of the bank or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the board of directors of the bank after it is given.

(8) Every director of a bank who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as a director of a bank, shall declare at a meeting of the board of directors of the bank, the fact and the nature, character and extent of the interest.

(9) The declaration referred to in subsection (7) of this section shall be required to be made at the first meeting of the board of directors of the bank held —

(a) after he becomes a director of the bank; or

(c) if already a director, after he came into possession of the property.

(10) The secretary of the bank shall cause to be brought up and read any declaration made under subsection (3) or (7) of this section at the next meeting of the board of directors of the bank after it is made and shall record any declaration made under this section of this Act in the minutes of the meeting at which it was made or at the meeting at which it was brought up and read.

(11) Any director who contravenes the provisions of subsection (3) or (7) of this section is guilty of an offence and liable on conviction to a fine not less than N1,000,000 or imprisonment for a term of 3 years or to both such fine and imprisonment

Prohibition of Inter-Locking Directorship, etc.

19.—(1) Except with the approval of the Bank, no bank shall have as a director any person who is a director of —

(a) any other bank; or

(b) companies which among themselves are entitled to exercise voting rights in excess of ten per cent of the total voting rights of all the shareholders of the bank.

(2) No bank shall be managed by a person who is —

(a) at any time has been adjudged bankrupt or has suspended payment to or has compounded with his creditors or who is or has been convicted by a court for an offence involving fraud or dishonesty, or professional misconduct;

(b) the chairmen of the board of Directors of the bank; or

(c) a director of any other company not being a subsidiary of the bank; or

(d) engaged in any other business or vocation whether remunerated or not except such personal or charitable causes as may be determined by the Bank and which do not conflict with or detract from their full time duties.

(3) Every director of a bank shall sign a code of conduct in such form or manner as the Bank may, from time to time, prescribe.

(4) The chief executive of a bank shall cause all the officers of the bank to sign a code of conduct as may be approved by the board of directors.

Restriction on Certain Banking Activities.

20.—(1) A bank shall not, without the prior approval in writing of the Bank, grant —

(a) to any person any advance, loan or credit facility or give any financial guarantee or incur any other liability on behalf of any person so that the total value of the advance, loan, credit facility, financial guarantee or any other liability in respect of the person is at any time more than twenty per cent of the shareholders fund unimpaired by losses or such percentage as the Bank may from time to time determine and for the purpose of this paragraph all advances, loans or credit facilities extended to any person shall be aggregated and shall include all advances, loans or credit facilities extended to any subsidiaries or associates of a body corporate or such other related party as the board of the Bank may by regulation prescribe from time to time;

(b) any advances, loans or credit facilities against the security of its own shares; or

(c) any advance, loan or credit facility in excess of N3,000,000 or such amount as may be prescribed by the Bank, except such advance, loan or credit facility is secured.

(2) A bank shall not, without the prior approval in writing of the Bank —

(a) permit to be outstanding, unsecured advances, loans or unsecured credit facilities, of an aggregate amount in excess of N1,000,000 or such amount as may be prescribed from time to time by the Bank —

(i) to its directors, significant shareholders or any of them whether such advances, loans or credit facilities are obtained by its directors or significant shareholders jointly or severally;

(ii) to any firm, partnership or private company in which it or anyone or more of its directors or significant shareholders is interested as director, partner, manager or agent or any individual firm, partnership or private company of which any of its directors or significant shareholders is a guarantor; or

(iii) to any public company or private company in which it or anyone or more of its directors or significant shareholders jointly or severally maintains shareholding of not less than five per cent or such percentage as may be fixed from time to time by the Bank either directly or indirectly;

(b) permit to be outstanding to its officers and employees, unsecured advances, loans or unsecured credit facilities, which in the aggregate for any one officer or employee, is in excess of one year's emolument to such officer or employee; or such amount as may be fixed from time to time by the Bank.

(c) remit, either in whole or in part, the debts owed to it by any of its directors, past directors or significant shareholders.

(3) A bank shall —

(a) not lend more than twenty five per cent of its paid-up capital to any of its directors or significant shareholders provided that the aggregate of the bank's exposure to all its directors and significant shareholders shall not exceed sixty per cent of its paid up capital or such percentage as the Bank may from time to time prescribe;

(b) in extending credit to any of its directors or significant shareholders, ensure that —

(i) it does so on the same terms as those prevailing at the time, for comparable transaction by the bank with persons who are not directors or shareholders of the bank;

(ii) the grant of the credit does not involve more than the normal risk of repayment or present other unfavourable features;

(iii) it follows credit appraisal procedures that are not less stringent than those applicable to comparable transaction by the bank with persons who are not directors or shareholders of the bank, provided that nothing in this subsection shall prohibit any extension of credit made pursuant to a benefit or compensation programme that is widely available to employees of the bank;

(iv) it does not give preference to any director or shareholders.

(4) In this section, the expressions —

(a) "director", includes director's wife, husband, father, mother, brother, sister, son, daughter, their spouses and all other related parties as may from time to time be determined by the Bank;

(b) "significant shareholder" means a person holding not less than five 5 per cent of the shares in the bank or such other percentage as may from time to time be prescribed by the Bank and this shall include the shareholding of his wife, husband, father, mother, brother, sister, son, daughter, their spouses and all other related parties as may from time to time be determined by the Bank;

(c) "unsecured advances and loans" or "unsecured credit facilities," mean advances, loans or credit facilities made without security, or, in respect

of any advances, loans or credit facilities made with security, any part thereof which at any time exceeds the market value of the assets constituting the security or where the Bank is satisfied that there is no established market value, the value of the assets as determined on the basis of a valuation approved by the Bank.

(5) All the directors of a bank shall be liable jointly and severally to indemnify the bank against any loss arising from any advances, loans or credit facilities granted in contravention of this section.

(6) A bank shall not, without the prior approval in writing of the Bank —

(a) engage, whether on its own account or on a commission basis, in wholesale or retail trade, including the import or export trade, except in so far as may exceptionally be necessary in the course of the banking operations and services of that bank or in the course of the satisfaction of debts due to it; so however that nothing in this paragraph shall be construed as precluding a bank from undertaking equipment leasing business or debt factoring provided that the foregoing provisions of this paragraph shall not apply to a bank in the circumstances permitted under Section 19 of this Act;

(b) without prejudice to the provisions of Section 19 of this Act, acquire or hold any part of the share capital of any financial or commercial or other undertaking, except —

(i) any shareholding approved by the Bank in any company set up for the purpose of promoting the development of the money market or capital market in Nigeria or of improving the financial machinery for financing economic development;

(ii) any shareholding approved by the Bank pursuant to subparagraph (i) of this paragraph, the aggregate value of which does not at any time exceed twenty five per cent of the shareholders funds unimpaired by losses or such other limit as the Bank may prescribe from time to time;

(iii) all shareholding acquired by a bank while managing an equity issue:

Provided that the aggregate value of such acquisition does not at any time exceed the sum of the paid-up share capital of that bank or ten per cent of the total assets, excluding off balance sheet items whichever is higher and that this paragraph shall not apply to any nominee company of a bank which deals in stock and shares for or on behalf of the bank's customers or clients or majority interest acquired by a bank in a company while managing an equity issue.

(c) acquire, hold either wholly or in part the share capital of any financial or commercial or other undertakings in any foreign country:

Provided that the aggregate shareholding of a bank in foreign subsidiaries shall not exceed ten per cent of its shareholders funds unimpaired by losses or such other percentage as the Bank may prescribe from time to time.

(d) purchase, sell, dispose, acquire or lease any real estate for whatever purpose;

(7) Notwithstanding the foregoing provisions of this section, a bank may secure debt on any real or other property, and in default of repayment, may acquire such property and exercise any power of sale, as may be provided for in any instrument or, by law prescribed, immediately upon such default or soon thereafter as may be deemed proper.

(8) Any director, manager or officer who fails to comply with the requirements of this section is guilty of an offence and liable on conviction to a fine not less than N5,000,000 or to imprisonment for a term of 3 years and shall in addition be required to repay the loan or forfeit his known assets in lieu of the unpaid loan;

Acquisition of Shares in Small and Medium Scale Industries, etc.

21.—(1) Subject to the approval of the Bank, a bank may acquire or hold part of the share capital of any agricultural, industrial or venture capital company subject to the following conditions, that is —

(a) the venture capital company is set up for the purpose of promoting the development of indigenous technology or a new venture in Nigeria;

(b) the shareholding by the bank is in small or medium-scale industries and agricultural enterprises as defined by the Bank;

(c) the shareholding by the bank in any medium scale industry, agricultural enterprise or venture capital company or any other business approved by the Bank shall not be more than ten per cent of the bank's shareholders fund unimpaired by losses and shall not exceed forty percent of the paid up share capital of the company or such other percentage as the Bank may prescribe from time to time.

(d) without prejudice to the provisions of section 18 (6) (b) (ii), (c) and paragraph (c) of this subsection the aggregate value of the equity participation of the bank in all enterprises both domestic and foreign shall not at anytime exceed 40 per cent of its shareholders fund unimpaired by losses or such other percentage as the Bank may prescribe from time to time.

(2) Subject to the prior written approval of the Bank, a bank may hold shares acquired in the course of the satisfaction of any debt owed to it, provided the shares acquired are not those of the bank's subsidiary, holding company, associate or such other related party as the Bank may by regulation prescribe from time to time.

(3) Without prejudice to the provisions of subsection (1) of this section, a bank may hold or acquire share capital of any other business, subject to the approval of the Bank.

(4) Any bank which fails to comply with the provisions of this section is guilty of an offence and liable on conviction to a fine not less than N500,000 for each day during which the offence occurs.

Restriction on operations of merchant banks.

22. (1) A merchant bank shall not—

(a) accept any deposit withdrawable by cheque;

(b) accept any deposit below an amount which shall be prescribed, from time to time, by the Bank;

(c) hold for more than six months any equity interest acquired in a company while managing an equity issue, except as stipulated in section 21 of this Act.

(2) Any merchant bank which acts in contravention of or fails to comply with any of the provisions of this section is guilty of an offence and liable to a fine not exceeding N100,000 for each day during which the offence continues.

Display of Interest Rates.

23. —(1) Every bank shall display at its offices its lending and deposit interest rates and shall render to the Bank information on such rates as may be specified, from time to time, by the Bank:

Provided that the provisions of this subsection shall not apply to non-interest or profit and loss sharing banks but such banks shall indicate conspicuously in all their offices that they charge no interest.

(2) Any bank in breach of any of the provisions of this section is guilty of an offence and liable to a fine not less than N10,000 for every day during which the offence occurs for each of its offices that the contravention occurs.

PART III — BOOKS AND RECORDS OF ACCOUNT

Proper Books and Records of Account.

24.—(1) Every bank shall cause to be kept proper books of account with respect to all the transaction of the bank.

(2) For the purpose of subsection (1) of this section, proper books of account shall be deemed to be kept with respect to all transactions, if such

books as are necessary to explain such transactions and give a true and fair view of the state of affairs of a bank are kept by the bank and are in compliance with the accounting standard as may be prescribed for banks.

(3) The books of account shall be kept at the principal administrative office of a bank and at the branches of each bank in the English language.

(4) Where the books of account, kept by a bank with respect to all its transaction, are prepared and kept in such a manner that, in the opinion of the Bank, have not been properly prepared and kept, or where a bank renders returns in accordance with the provisions of Section 23 of this Act, which in the opinion of the Bank are inaccurate, the Bank may appoint a firm of qualified accountants to prepare proper books of account or render accurate returns, as the case may be, for the bank and the cost of preparing the accounts and rendering the returns shall be borne by the bank.

(5) If any person being a director, manager or officer of a bank —

(a) fails to take all reasonable steps to secure compliance with any of the provisions of this section;

(b) has by his willful act been the cause of any default thereof by the bank, he is guilty of an offence and liable on conviction, in respect of paragraph (a) of this subsection, to a fine of N5,000,000 and in respect of paragraph (b) of this section, to a fine of N10,000,000.

Returns by Banks.

25.—(1) Every bank shall submit to the Bank not later than 10 days after the last day of each month or such other interval as the Bank may specify, a statement showing —

(a) the assets and liabilities of the bank; and

(b) an analysis of advances and other assets, at its head office and branches in and outside Nigeria in such form as the Bank may specify, from time to time.

(2) Every bank shall submit such other information, documents, statistics or returns as the Bank may deem necessary for the proper understanding of the statements supplied under subsection (1) of this section.

(3) Where a bank is affiliated to any other person, the Bank may require such bank to prepare and furnish any return required to be made under this Act or the Central Bank of Nigeria Act on a consolidated basis.

(4) The word "affiliated" as used in this section includes a subsidiary or holding company or such other relationship as may be determined from time to time by the Bank.

(5) Any bank which fails to comply with any of the requirements of this section is, in respect of each such failure, liable to a fine of N2,000,000 for each day during which the failure occurs

Publication of consolidated statements

(1) The statements and information submitted by each bank under section 25 of this Act shall be regarded as confidential; Provided that the Bank shall furnish any such statement or information to any agency of Government as required by law.

(2) Notwithstanding anything in this section, the Bank may prepare and publish consolidated statements aggregating the statements furnished under section 25 of this Act for each category of banks.

Publication of Financial Statements.

27.—(1) A bank shall not later than three months after the end of its financial year, forward to the Bank for approval to publish, its financial statement which shall be prepared in accordance with the relevant accounting standards.

(2) Every bank shall thereafter but not later than 14 days after approval by the Bank —

(a) cause to be published in not less than 2 national daily newspaper printed and circulating in Nigeria;

(b) exhibit in a conspicuous position in each of its offices and branches; and

(c) forward to the Bank, copies of the bank's balance sheet and profit and loss account duly signed and containing the full and correct names of the directors of the bank.

(3) Every published account of a bank, under subsection (2) of this section, shall disclose in detail penalties paid as a result of contravention of the provisions of this Act and provisions of any policy guidelines in force during the financial year in question and the auditor's report shall reflect such contravention.

(4) The balance sheet and profit and loss account of a bank shall bear on their face the report of an approved auditor and shall contain statements on such matters as may be specified by the Bank, from time to time.

(5) For the purpose of subsection (4) of this section, an "approved auditor" shall be an auditor approved for the purpose of Section 28 of this Act.

(6) Any bank which fails to comply with any of the requirements of this section is, in respect of each such failure liable to a fine of N100,000 for each day during which the failure occurs.

Contents and Form of Accounts.

28.—(1) Every balance sheet and every profit and loss account of a bank shall give a true and fair view of the state of affairs of the bank as at the end of the reporting period.

(2) Every balance sheet and every profit and loss account of a bank forwarded to the Bank in accordance with the provisions of Section 26 of this Act shall comply with the requirements of any circular which has been issued by the Bank thereon.

(3) Any person being a director of any bank who fails to take all reasonable steps to secure compliance with any of the provisions of this section in respect of any accounts is guilty of an offence and liable on conviction to a fine not less than ₦1,000,000 and in addition the Governor may suspend or remove any such director from office.

Appointment, Power and Report of Approved Auditor.

29.—(1) Every bank shall appoint a firm of Auditors approved by the Bank, in this section referred to as, "the approved auditor," whose duties shall be to make to the shareholders a report upon the annual balance sheet and profit and loss account of the bank and every such report shall contain statements as to the matters and such other information as may be prescribed, from time to time, by the Bank:

Provided that the Bank shall have power to direct in appropriate cases the appointment of more than one firm of Auditors for any bank which shall act jointly in auditing the bank's balance sheet and profit and loss accounts and all expenses and fees of the Auditors shall be borne by such bank.

.— (2) Every bank must —

(a) On an annual basis, appoint an auditor and obtain the approval of the Bank to such appointment; and

(b) Where, for any reason, the auditor ceases to act for the bank, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Bank to such appointment.

(3) An auditor shall not be approved by the Bank as an auditor for the bank unless the auditor is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Bank.

(4) For the purpose of this section, the approved auditor shall be —

(a) an auditor who is —

(i) a member of one of the professional bodies recognised in Nigeria;

- (ii) approved by the Bank;
- (iii) resident in Nigeria; and
- (iv) carrying on in Nigeria professional practice as accountant and auditor, or
- (b) a firm comprising persons to whom paragraph (a) applies.

(5) Any person —

- (a) having any interest in a bank otherwise than as a depositor; or
- (b) who is a director, significant shareholder, officer or agent of a bank; or
- (c) which is a firm in which a director or significant shareholder of a bank has any interest as partner or director; or
- (d) who is indebted to a bank,

shall not be eligible for appointment as the approved auditor for that bank and a person appointed as such auditor who subsequently —

- (i) acquires such interest; or
- (ii) becomes a director, significant shareholder, officer or agent of that bank; or
- (iii) becomes indebted to a partner in a firm in which a director or significant shareholder of a bank is interested as partner or director shall cease to be such auditor.

(6) A person shall not be eligible for appointment as an external auditor of a bank or retain his appointment as such auditor unless that person declares to the Bank the interest that he may have in the bank or maintain with any of its directors or significant shareholders.

(7) An approved auditor shall be appointed for a period not more than 5 years and shall not be eligible for reappointment until after a period of 10 years has elapsed after each appointment. Provided that the Bank shall have the power to determine the appointment of an approved auditor.

(8) If any bank —

(a) fails to appoint an approved auditor under subsection (1) of this section; or

(b) at any time, fails to fill a vacancy for such person, the Bank shall appoint a suitable person for that purpose and shall fix the remuneration to be paid by the bank to such auditor.

(9) Every auditor of a bank shall have a right of access at all times to the books, accounts, vouchers and all records of the bank, and shall be entitled to require from directors, managers and officers of the bank such information and explanation as he thinks necessary for the performance of his duties under this Act.

(10) The report of the approved auditor shall be read together with the report of the board of directors at the annual general meeting of the shareholders of the bank and two copies of each report together with the auditor's analysis of bad and doubtful advances in a form specified, from time to time, by the Bank shall be sent to the Bank.

(11) The Bank may appoint an auditor —

(a) If the bank fails to appoint an auditor; or

(b) If it considers it desirable that another auditor should act with the auditor appointed under subsection (1)

(12) If an auditor appointed under this section, in the course of his duties as an auditor of a bank, is satisfied that —

(a) there has been a contravention of this Act or that an offence under any other law has been committed by the bank or any other person; or

(b) losses have been incurred by the bank which substantially reduce its capital funds; or

(c) any irregularity which jeopardises the interest of depositors or creditors of the bank, or any other irregularity has occurred; or

(d) he is unable to confirm that the claims of depositors or creditors are covered by the assets of the bank; he shall immediately report the matter to the Bank.

(13) The approved auditor shall forward to the Bank two copies of the domestic reports on the bank's activities not later than 3 months after the end of the bank's financial year.

(14) Any approved auditor under this section who acts in contravention of or fails deliberately or negligently to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine not less than N5,000,000 and where the approved auditor is a firm, the individual partner or partners shall, in addition be liable on conviction to imprisonment for a term not exceeding 5 years and to the fine required to be paid by the firm under this subsection.

(15) The appointment of an approved auditor shall not be determined without prior approval of the Bank.

Relationship with Specialised banks and finance houses.

30. (1) As from the commencement of this Act, the Governor shall have power to examine, from time to time, the accounts and other books of the Nigeria Industrial Development Bank, the Nigeria Agricultural and Cooperative Bank, the Nigeria Bank for Commerce and Industry, the Urban Development Bank, all Mortgage Institutions, Community Banks and such other Specialised banks.

(2) The Bank shall also have power to examine the accounts of bureau de change, discount houses and such other financial institutions and in that regard have power to issue reports, from time to time, regarding the accounts of such financial institutions.

(3) the periodic reports and findings of the Bank in relation to the said specialized banks and other financial institutions shall be forwarded to the President through the Minister.

(4) For the purpose of implementation of this section, the specialised banks and other financial institutions shall be treated in the same manner as other banks with respect to the requirements of section 24 of this Act.

Appointment and power of Directors of Banking Supervision and other examiners.

31. (1) There shall be an officer of the Bank who shall be appointed by the Governor to be known as the Director of Banking Supervision or by such other title as the Governor may specify.

(2) The Director of Banking Supervision shall have power to carry out supervisory duties in respect of banks, other financial institutions and

specialised banks and for that purpose shall-

- (a) under conditions of confidentiality, examine periodically the books and affairs of each bank;
- (b) have a right of access at all times to the books, accounts and vouchers of banks;
- (c) have power to require from directors, managers and officers of banks such information and explanation as he deems necessary for the performance of his duties under this section.

(3) The Governor shall appoint to assist the Director of Banking Supervision such other officers of the Bank as the Governor may, from time to time, decide.

(4) The officers may be designated examiners or have such other titles as the Governor may specify.

(5) For the purpose of this section, references to examiners are references to the Director of Banking Supervision and any officer of the Bank appointed pursuant to subsection (3) of this section.

(6) In examining the affairs of any bank under this Act, it shall be the duty of an examiner at all times to avoid unreasonable hindrance to the daily business of the bank.

(7) Every bank shall produce to the examiner at such times as the examiners may specify all books, accounts documents and information which they may require.

(8) If any book, document or information is not produced in accordance with the requirement of an examiner under this section or what is produced or furnished to an examiner is false in any material particular, the bank is guilty of an offence and liable on conviction to a fine of N100,000 and in addition, to a fine of N10,000 for each day during which the offence continues.

Routine Examination and Report Thereon.

32.—(1) The Governor shall, in the case of routine examination, forward a copy of the report arising from the examination together with the recommendations of the Bank, to the bank concerned with instruction that it be placed before the meeting of the board of directors of the bank specially convened for the purpose of considering the report and the recommendations thereon.

(2) The bank shall within 14 days convey to the Governor the board of directors' reactions to the report and its proposals for implementing the recommendations of the Bank.

(3) Any bank which fails to comply with the provisions of this section is guilty of an offence and liable to a fine not less than N500,000 for each day during which the non-compliance occurs and if the non-compliance continues for more than 30 days, the Bank may in addition to the fine

withdraw any privilege or facility granted to that bank by the Bank.

Special Examination.

33.—(1) The Governor shall have power to order a special examination or investigation of the books and affairs of a bank, Other Financial Institutions and Specialized Banks where he is satisfied that —

- (a) it is in the public interest so to do; or
- (b) the bank has been carrying on its business in a manner detrimental to the interest of its depositors and creditors; or
- (c) the bank has insufficient assets to cover its liabilities to the public; or
- (d) the bank has been contravening the provisions of this Act; or
- (e) an application is made therefore by —
 - (i) a director or shareholder of the bank: or
 - (ii) a depositor or creditor of the bank:

Provided that in the case of paragraph (e) of this subsection, the Governor may not order a special examination or investigation of the books and affairs of a bank if he is satisfied that it is not necessary to do so.

(2) For the purpose of subsection (1) of this section, the Governor shall have power to appoint one or more qualified persons other than the officers of the Bank to conduct special examination or investigation, under conditions of confidentiality, of the books and affairs of the bank.

(3) The Governor shall have power to order that all expenses of or incidental to an examination or investigation be paid by the bank examined or investigated.

Measures for Resolving Distress.

34.—(1) Where the Corporation has assumed control over a bank as provided under this Act, the Corporation may take any one or more of the following actions —

- (a) require the bank to submit a recapitalisation plan acceptable to the Corporation within a stipulated period;
- (b) prohibit the bank from extending any further credit and incurring any additional capital expenditure without the approval of the Corporation;
- (c) notwithstanding the provisions of Section 7 of this Act require the bank to take such steps or to do or not to do any act or thing whatsoever in relation to the business of the bank or its directors or officers, which the Corporation may consider necessary within such time as the Corporation may stipulate;

(d) with the approval of the Bank remove, for reasons to be recorded in writing and with effect from any date as may be specified, any director, manager, officer or employee of the bank;

(e) appoint with the approval of the Bank any person or persons as a director or directors of the bank and cause their remuneration to be provided by the bank;

(f) notwithstanding the provisions of the Companies and Allied Matters Act 1990 and subject to the approval of the Bank require the bank to restructure its share capital; and

(g) subject to Section 32 (3) and section 33 of this Act and with the approval of the Bank invite new investors to invest in the bank.

(2) The Corporation shall have power, in consultation with the Bank to arrange for:

(a) a merger of the failing bank with any one or more banks;

(b) the acquisition of the failing bank by one or more banks;

(c) the assumption of the deposit liabilities of the failing bank by one or more banks;

(d) the acquisition of the impaired assets of the failing bank by the Corporation, one or more banks, an asset management company or any other authorized entity;

(e) the organization of a bridge bank to assume some or all of the deposits and purchase some or all of the assets of the failing bank;

(f) any other measure deemed necessary in the opinion of the Corporation for addressing the distressed condition of the failing bank.

Managing Failing Bank.

35.—(1) Where the Corporation has assumed control of the business of a bank pursuant to Section 34 of this Act, the Corporation shall —

(a) take charge of the assets, records and property of the bank for the benefit of depositors of the bank until its restructure or subsequent liquidation.

(b) remain in control of and continue to carry on the business of the bank in the name and on behalf of the bank until such a time as in the opinion of the Bank, it is no longer necessary for the Corporation to remain in control of the business of the bank.

(2) The cost and expenses of the Corporation shall be a first charge on the assets of the bank.

Control of failing bank.

36. If after taking such of the steps stipulated in section 35 of this Act, such other measures as in the opinion of the Bank may be appropriate circumstance, the state of affairs of the bank concerned does not improve, the Bank may turn over the control and management of such bank to the Nigeria Deposit Insurance Corporation (hereinafter in this Act referred to as the Corporation) on such terms and conditions as the Bank may stipulate from time to time.

Liquidator to Furnish Returns.

37. The Corporation shall, while acting as the liquidator of a licensed bank, forward to the Bank copies of any returns which it is required to make, from time to time, by the Bank.

Crisis Management Committee.

38.—(1) The Governor shall have power to constitute a Crisis Management Committee whenever:

- (a) banks that are critically distressed control 30 per cent or such percentage of the total assets of all licensed banks as the Bank may from time to time prescribe;
- (b) 15 per cent or such percentage of the deposit liabilities of all licensed banks as the Bank may from time to time prescribe is threatened; or
- (c) 35 per cent or such percentage of the total loans and advances of all licensed banks as the Bank may from time to time prescribe become non-performing; or
- (d) such other conditions as the Governor may from time to time prescribe arise.

(2) The membership of the Committee shall consist of the following:

- (a) the Governor of the Bank who shall be Chairman;
- (b) a representative of the Minister of Finance not below the rank of a Director;
- (c) the Managing Director, Nigeria Deposit Insurance Corporation;
- (d) the Director General, Securities and Exchange Commission;
- (e) the Commissioner for Insurance, National Insurance Commission ; and
- (f) the Chairman, Economic and Financial Crimes Commission.

(3) The functions of the Committee shall be to:

- (a) manage systemic distress by coordinating the actions of regulatory and supervisory agencies of any sub-sector of the financial services Industry;
- (b) establish a single channel of communication and prepare official statement to forestall misinformation;
- (c) restore confidence in the banking industry; and
- (d) take any other action that may be necessary for the attainment of its objective.

(4) The Committee shall keep the President informed in writing from time to time of all actions it intends to take or has taken under subsection (3) of this section.

(5) The Federal Government together with the Bank shall take measures to deal with systemic crisis.

Power of the Bank to revoke licence or apply to Court

39. In the event that the bank over which the Corporation has assumed control cannot be rehabilitated, the Corporation may recommend to the Bank other resolution measures which may include the revocation of the bank's license

Application to the Federal High Court for winding up

40. Where the license of a bank has been revoked pursuant to section 39 of this Act, the Corporation shall apply to the Federal High Court for a winding up order of the affairs of the bank.

Legal proceedings, etc.

41. (1) Notwithstanding anything to the contrary contained in any law or enactment, no suit shall be instituted against a bank whose control has been assumed by the Corporation.

(2) If any such proceeding is instituted in any court or tribunal against the bank, it shall abate, cease or be discontinued without further assurance other than this Act

Corporation to forward returns

42. The Corporation shall, while acting as the liquidator of a licensed bank, forward to the Bank copies of any returns which it is required to make, from time to time, by the Bank.

PART V — GENERAL AND SUPPLEMENTAL

Restriction on the Use of Certain Names.

43.—(1) Except with the written consent of the Governor —

(a) no bank shall, as from the commencement of this Act be registered or incorporated with a tribal or ethnic name or any name which includes the words "Central" "Federal," Federation, "National", "Nigeria", "Reserve", "State", "Christian", "Islamic", "Muslim", "Quranic", or "Biblical" ;

(b) no person other than a bank licensed under this Act shall use or continue to use the word "bank" or any of its derivatives, either in English or in any other language in the description or title under which the person is carrying on business in Nigeria;

(2) Every bank shall use as part of its description or title the word "bank" or anyone or more of its derivatives, either in English or in some other language.

(3) Subsection (1) of this section shall not apply to any registered association of banks, bankers or bank employees formed for the protection of their mutual interest or in furtherance or promotion of education and training of personnel for financial institutions in Nigeria.

(4) Any person who acts in contravention of this section is guilty of an offence and liable on conviction to a fine not less than x100,000 for each day during which the act occurs

General restriction on advertisement for deposit

44. (1) No person other than a bank or any other person authorised to take deposits shall issue any advertisement inviting the public to deposit money with it.

(2) Any person who issues an advertisement in contravention of the provisions of subsection (1) of this section is guilty of an offence and liable on

conviction to a fine of N500,000 or to imprisonment for a term of 10 years or both such fine and imprisonment.

(3) Where any bank proposes to issue any advertisement, the bank shall deliver to the Bank the text of the proposed advertisement together with the bank's latest published accounts, and shall thereafter comply with such directives and conditions as the Bank may prescribe and such text shall be regarded as confidential information.

(4) Any bank which fails to comply with the provisions of subsection (3) of this section is guilty of an offence and liable to a fine of N50,000 and the bank shall in addition pay a fine of N1,000 for every day during which an advertisement issued in contravention of subsection (3) of this section continues.

(5) In this Act, "advertisement" includes any form of advertising whether in publication or by the display of notice or by means of circular or other documents or by any exhibition of photographs or cinematograph or by way of sound broadcasting or television or loudspeakers or other public address systems and references to the issuing of an advertisement shall be construed accordingly; and for the purposes of this Act, an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes to be so displayed or exhibited.

(6) An advertisement which contains information calculated to lead directly or indirectly to the deposit of money by the public shall be treated as an advertisement inviting the public to deposit money.

(7) An advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person and for the purpose of any proceedings under this Act, an advertisement inviting the public to deposit money with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the person.

Power of the President to proscribe trade union

45. (1) If the President is satisfied that any trade union the members of which are employed in a bank, has been engaged in acts calculated to disrupt the economy of Nigeria, he may by order, published in the Gazette, proscribe that union (hereafter in this section referred to as "a proscribed union") which shall, as from the date of the order, cease to exist.

(2) A proscribed union shall, not later than 14 days from the date of the order under subsection (1) of this section, surrender its certificate of registration to the Registrar who shall take such steps in relation to the distribution of the assets of the union as he deems necessary or in accordance with the registered rules of the union.

(3) No person who immediately before the date of an order under this section was an officer of a proscribed union shall at any time after that date be an officer of any trade union any of the members of which are employed by a bank.

(4) If the certificate of registration of a proscribed union is not delivered to the Registrar as required under subsection (2) of this section, every

person who immediately before the proscription of the union was an officer thereof is guilty of an offence and liable on conviction to a fine of N500,000 or to imprisonment for 2 years or to both such fine and imprisonment.

(5) Any person who contravenes subsection (3) of this section is guilty of an offence and liable on conviction to imprisonment for a term of 5 years without an option of a fine.

(6) In this section

“officer” in relation to a union, means any person holding official position in that trade union and, accordingly, includes in particular, any president, secretary or treasurer thereof and every member of the committee of management however described;

“Registrar” means the Registrar of Trade Unions appointed under section 45 of the Trade Unions Act.

Closure of bank during a strike or Pandemic

(1) No bank shall incur any liability to any of its customers by reason only of failure on the part of the bank to open for business during a strike.

(2) If as a result of a strike, a bank fails to open for business, the bank shall, within 24 hours of the beginning of the closure, obtain the approval of the Bank for any continued closure of the bank.

Prohibition of the Receipt of Commissions, etc. by Staff of Banks.

47.—(1) Any director, manager, officer or employee of a bank or any other person receiving remuneration from the bank, who solicits, receives, consents or agrees to receive any gift, commission, employment, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relations, from any person —

(a) for procuring or endeavouring to procure for any person any advances, loans or credit facility from the bank; or

(b) for the purpose of the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by that bank;

(c) for permitting any person to overdraw any account with that bank without proper authority or compliance with rules and guidelines for that purpose;

is guilty of an offence and liable on conviction to a fine of ₦2,000,000 or imprisonment for a term of 3 years or to both such fine and imprisonment and in addition any such gift or other commission shall be forfeited to the Federal Government.

Disqualification and Exclusion of Certain Individuals from Management of Banks.

48.—(1) Every bank shall, before appointing any director, chief executive or any management staff of such grade as may be specified from time to time by the Bank seek and obtain the Bank's written approval for the proposed appointment.

(2) No bank, other financial institution and specialised bank shall employ or continue the employment of any person as a director, secretary or an officer who —

(a) is of unsound mind or as a result of ill health is incapable of carrying out his duties; or

(b) is dismissed from the service of the Federal, State or Local Government or any of the agencies of such government; or

(c) is declared bankrupt or suspends payments or compounds with his creditors including his bankers; or

(d) is convicted of any offence involving dishonesty or fraud; or

(e) is guilty of serious misconduct in relation to his duties; or

(f) in the case of a person possessed of professional qualification, is disqualified or suspended (otherwise than of his own request) from practising his profession by the order of any competent authority made in respect of him personally.

(3) No person who has been a director of or directly concerned in the management of a bank which has been wound up by the Federal High Court shall, without the express authority of the Governor, act or continue to act as a director of, or be directly concerned in the management of any other bank.

(4) The Bank shall have power to remove from office any person to whom any of the provisions of subsection (2) of this section applies:

Provided that in the case of paragraphs (b) to (f), the Bank may also ban any such person from serving on the Board of, or from managing, or from being employed by any institution under its supervision.

(5) Any bank which acts in breach of this section is to a fine of N5,000,000.

(6) Every institution regulated under this Act shall be required to submit to the Banker's Committee, not later than two weeks after the date of termination or dismissal of any staff, the name, designation, reasons for termination or dismissal and any other information that may be required by the Banker's Committee.

(7) It shall not be a defence for any director, manager or officer of a bank to claim that he is not aware of the provisions of subsection (4) of this section, except he can prove that he had obtained prior clearance of such a person from the secretary of the Banker's Committee who maintains a register of terminated, dismissed or convicted staff of banks on the ground of fraud or dishonesty

PART VI — MISCELLANEOUS MATTERS

Offences by Companies etc and by Servants Agents.

49.—(1) Where any offence against any provision of this Act has been committed by a body corporate or firm, any person who was a director, manager, secretary or other similar officer of the body corporate or firm purporting to Act in such capacity shall, in addition to the body corporate or firm, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Offences by Directors and Officers of Banks.

50. Any person, being a director, manager or officer of a bank, who fails to —

(a) take all reasonable steps to secure compliance by the bank with the requirements of this Act; or

(b) take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act, is guilty of an offence and liable on conviction to a fine not less than N2,000,000 or imprisonment for a term of not less than 3 years or to both such fine and imprisonment and in addition the Governor may suspend or remove from office or blacklist any such officer, manager or director;

Penalties for Offences not Otherwise Provided for.

51. Any bank which contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder for which an offence or penalty is not expressly provided is guilty of an offence and liable on conviction to a fine not less than N1,000,000.

Sharing of revenues from penalties

52. All revenues collected as a result of penalties imposed by the Act or any other penalties for which the Bank is responsible for collection shall be shared in the ration of 20 per cent to the Bank, 10 per cent to the Nigeria Deposit Insurance Corporation and 70 per cent to the Consolidated Revenue Fund.

Protection against Adverse Claims.

53. Neither the Federal Government nor the Bank nor any officer of that Government or Bank, shall be subject to any Action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank or such officer, by this Act.

(2) Where any of the provisions of the Companies and Allied Matters Act are inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

Jurisdiction of the Federal High Court.

54. Notwithstanding the provisions of this Act or of any law, the Federal High Court shall have jurisdiction to try any offence under this Act and to impose the full penalty prescribed therefore.

Application of Companies and Allied Matters Act, etc.

55.—(1) The provisions of this Act shall apply without prejudice to the provisions of the Companies and Allied Matters Act, the Nigeria Deposit Insurance Corporation Act, Federal Mortgage Bank of Nigeria Act, Primary Mortgage Institutions Act, Nigerian Agricultural Cooperative and Rural Development Bank Act, and Urban Development Bank Act, in so far as they relate to banks, other financial institutions and specialised banks and to winding-up of such institutions.

(2) Where any of the provisions of the Acts mentioned in subsection (1) of this section is inconsistent with any of the provisions of this Act, the provisions of this Act shall prevail.

Priority of Deposit Liabilities.

56. Where a bank is unable to meet its obligations or suspends payment or where its management and control has been taken over by the Bank or Corporation or where its licence has been revoked pursuant to the provisions of this Act, 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.

Power to make regulations.

57. (1) The Governor may make regulations, published in the Gazette, to give full effect to the objects and objectives of this Act.

(2) Without prejudice to the provisions of subsection (1) of this section, the Governor may make rules and regulations for the operation and control of all institutions under the supervision of the Bank.

CHAPTER B — SPECIALISED BANKS AND OTHER FINANCIAL INSTITUTIONS

PART VII — ESTABLISHMENTS OF SPECIALISED BANKS AND OTHER FINANCIAL INSTITUTIONS

Prohibition of Unlicensed Financial Institutions.

58.—(1) Without prejudice to the provisions of Chapter A of this Act, no person shall carry on specialized banking or business of other financial institution in Nigeria other than insurance, pension fund management, collective investment schemes and capital market business as defined respectively in the Insurance Act, the Pension Reform Act and the Investment and Securities Act except it is a company duly incorporated in Nigeria and holds a valid license granted under the provisions of this Act.

(2) In this section, "business of other financial institutions" include: business of a discount house, bureau de change, finance company or money brokerage and whose principal objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases order financing, export finance, and such other business as the Bank may from time to time, designate.

Application for license.

59. Any person wishing to carry on other financial business other than insurance and stock broking in Nigeria shall apply in writing to the Bank for the grant of a license and shall accompany the application with the following

- (a) a draft copy of the memorandum and articles of association of the proposed financial business;
- (b) such other information, documents and reports as the Bank may, from time to time, specify; and
- (c) the prescribed application fee.

(2) After the application has provided all such information, documents and reports as the Bank may require under subsection (1) of this section, the Bank may grant the licence with or without conditions or refuse to grant the licence.

- (3) Where an application for a licence is granted, the Bank shall give written notice of that fact to the application and the licence fee shall be paid.
- (4) The bank may vary or revoke any conditions subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.
- (5) Where the Bank proposes to vary, revoke or impose fresh or additional conditions, the Bank shall before exercising such power, give notice of its intention to the person or institution concerned and give such a person or institution an opportunity to make representation to the Bank thereon.
- (6) Any person who transacts a business without a valid licence under section 58 of this Act or subsection (2) of this section whether in the case of an individual or in the case of a body corporate is guilty of an offence and liable
- (a) in the case of a body corporate, to a fine of N1,000,000; and
 - (b) in any other case, to a fine not exceeding N1,000,000 or imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

Failure to Comply with Conditions of License, etc.

60.—(1) Any person who fails to comply with any of the conditions of a license granted pursuant to section 52 is guilty of an offence and liable on conviction to a fine not less than N100,000 for each day during which the condition is not complied with.

(2) Every person carrying on any financial business referred to in Section 51 of this Act shall —

(a) comply with the Monetary Policy Guidelines and other directives as the Bank may, from time to time, issue;

(b) furnish within the stipulated time any statistical and other returns as the Bank may, from time to time, require.

(3) Any person who fails to comply with the provisions of subsection (2) of this section is liable to a fine of N1, 000,000 for each day during which such failure occurs.

(4) Failure to comply with the guidelines or other directives of the Bank or refusal to supply returns in the prescribed form may be a ground for the revocation of a license granted under this Act.

Application of Chapter A.

61. Without prejudice to the foregoing provisions of this part of the Act, the provisions of Chapter A of this Act including all its offences, penalties

and the powers of the Bank shall apply with such necessary modifications to specialized banks and other financial institutions and without prejudice to the power conferred on the Corporation to supervise deposit taking licensed financial institutions including Micro Finance Institutions and Primary Mortgage Institutions, no other person or authority shall as from the coming into force of this section exercise any regulatory or supervisory authority over specialized banks and other financial institutions.

Management and Control of Failing Specialized Banks and Other Financial Institutions.

62.—(1) Where the Bank is satisfied that a specialized bank or other financial institution is in a grave situation, the Governor may by order in writing exercise any one or more of the powers specified in Section 32 of this Act and if after taking such of the steps stipulated in Section 32 of this Act or such other measures as in the opinion of the Bank may be appropriate in the circumstance, the state of affairs of the specialized bank or other financial institution concerned does not improve, the Bank may turn over the control and management of such specialized bank or other financial institution to the Corporation or an appointed person on such terms and conditions as the Bank may stipulate, from time to time.

(2) If after taking such steps as specified in subsection (1) of this section as in the opinion of the Governor may be appropriate in the circumstance, the state of affairs of the specialized bank or other financial institution concerned does not improve the Bank shall have power to revoke the license of such specialized bank or other financial institution.

(3) Any specialized bank or other financial institution whose license is revoked pursuant to subsection (2) of this section shall be wound up by the Corporation or a person appointed by the Bank.

(4) The cost and expenses of the Bank or the remuneration of the person so appointed pursuant to subsection (1) of this section shall be payable from the fund and property of the specialized bank or other financial institution concerned.

Application of Act to other financial institution.

63. The provisions of section 35 of this Act shall apply with such necessary modifications to other financial institutions.

CHAPTER C — MISCELLANEOUS AND SUPPLEMENTARY

Failure to Comply with Rules, etc.

64. —(1) Notwithstanding provisions of this Act or any other law, the Governor may impose any one or more of the following sanctions on any bank, specialized bank or other financial institution for failure to comply with any of the provisions of this Act, the Central Bank of Nigeria Act or any other law or any rules, regulations guidelines or directives made thereunder —

(a) suspension of the authorized foreign exchange dealership license for any period of time as the Bank may prescribe;

(b) prohibition from participation in any medium for transaction in foreign exchange;

- (c) suspension from participation in bank clearing systems;
- (d) forfeiture to the Bank of any pecuniary benefit obtained as a result of the violation or breach;
- (e) suspension of any license issued or given to any bank, specialized bank or other financial institution;
- (f) imposition of a penalty not exceeding N5,000,000
- (g) any other sanctions the Bank may deem appropriate.

Power to Compound Offences.

65.—(1) Notwithstanding the provisions of any law, the Governor may compound any offence punishable under this Act, the Central Bank of Nigeria Act, the Foreign Exchange (Monitoring and Miscellaneous) Provisions Act or any other law relating to banking by accepting such sums of money as she/he thinks fit, not exceeding the amount of maximum fine to which that person would have been liable if he or it had been convicted of the offence.

(2) Any moneys paid to the Governor pursuant to subsection (1) of this section, shall be paid into the Bank's penalty account which shall be established for that purpose.

(3) No prosecution in respect of any offence under this Act shall be instituted without the consent in writing of the Attorney-General of the Federation.

Interpretation.

66. In this Act, unless the context otherwise requires —

"associate" means a company in which another company owns not less than twenty per cent of the shares;

"bank" means a bank licensed under this Act;

"Bank" means the Central Bank of Nigeria;

"Bankers' Committee" means a committee comprising the Bank, the chief executives of all banks and such other members as the Committee may from time to time admit;

"banking business" means the business of receiving deposits on current account, savings deposit account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investment on behalf of any person or such other banks as the Bank may by order publish in the Gazette, designate as banking business or such other business as the Governor may, by order published in the Gazette, designate as banking business;

"chief executive" means a person, by whatever name called, who either individually or jointly with one or more other person, is responsible, subject to the authority of the board of directors, for the conduct of the business and administration of the bank; specialised bank or other financial institution;

"deposit" means money lodged with any person whether or not for the purpose of any interest or dividend and whether or not such money is repayable upon demand upon a given period of notice or upon a fixed date;

"Deputy Governor" means a Deputy Governor of the Central Bank of Nigeria;

"director" includes any person by whatever name he may be referred to carrying out or empowered to carry out substantially the same functions of a director in relation to the affairs of a company incorporated under the Companies and Allied Matters Act

"factoring" means the business of acquiring debts due to any person;

"Federation" means the Federal Republic of Nigeria;

"Governor" means the Governor or any of the Deputy Governors appointed to act on behalf of the Governor of the Central Bank of Nigeria;

"leasing" means the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business whatsoever and where the lessor is the owner of the property regardless of whether the letting is with or without an option to purchase the property;

"licence" means a licence issued under this Act;

"non-interest bank" otherwise known as profit and loss sharing bank, means a bank which transacts banking business, engages in trading, investment and commercial activities as well as the provision of financial products and services in accordance with the principles and rules of Islamic commercial jurisprudence.

"other financial institution" means any individual, body, association or group of persons; whether corporate or unincorporated, which carries on the business of a discount house, bureau de change, finance company or money brokerage and whose principal objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases order financing, and such other business as the Bank may from time to time, designate;

"President" means the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria;

"relation of person" includes father, mother, child, brother, sister, uncle, aunt and cousins where applicable, and their spouses;

"resident examiner" means an examiner deployed by the Bank to work in a bank's premises on real time and continuous basis.

"shareholders funds" means the aggregate of paid-up share capital, statutory and all other reserves;

"specialized banks" include, Bank of Industry, Nigerian Agricultural Cooperative and Rural Development Bank, Nigerian Export Import Bank, the Urban Development Bank, Federal Mortgage Bank of Nigeria, Primary Mortgage Institutions, Micro-Finance Banks, Non interest Bank and such other banks as may be designated from time to time by the Bank.

"State" means any of the States of the Federation.

67. MicroFinance Banks

68. Restriction on operations of Agents of banks.

“Agent” means an entity contracted by an institution and approved by the Bank to provide the services of the bank on behalf of the bank, in such manner as may be

No person shall in Nigeria

(a) transact any banking business or financial business or the business of a mortgage finance company unless it is an institution or a duly approved agency conducting

(1) An Agent shall not—

(a) accept any deposit withdrawable by cheque;

(b) accept any deposit above an amount which shall be prescribed, from time to time, by the Bank;

(2) Any agent which acts in contravention of or fails to comply with any of the provisions of this section is guilty of an offence and liable to a fine not exceeding N25,000 for each day during which the offence continues.

69. Restriction on operations of Financial Technology Business

Financial technology (hereinafter referred to as “Fintech”) is used to describe new technology that automates the delivery and use of financial services.

2. Fintech Business

(1) No person shall carry on any FinTech business in Nigeria except if it is a company duly incorporated in Nigeria and holds a valid license issued under Act

(2) Any person who transacts FinTech business without a valid license under this Act is guilty of an offence and liable to a fine not exceeding N50,000 for each day during which the offence continues

3. Application for Grant of License for Fintech Businesses

(1) Any person desiring to undertake FinTech business in Nigeria shall apply in writing to the Governor for the grant of a license and shall accompany the application with the following.

- (a) a feasibility report of the proposed business
- (b) a draft copy of the memorandum and articles of association of the proposed bank
- (c) a list of the shareholders; directors and principal officers of the proposed business and their particulars;
- (d) the prescribed application fee; and
- (e) such other information, documents and report as the Bank may, from time to time; specify

(2) After the applicant has provided all such information, documents and reports as the Bank may require under subsection (1) of this section, the shareholders of the proposed bank shall deposit with the Bank a sum equal to the minimum share capital that may be applicable under section 9 of this Act.

(3) Upon the payment of the sum referred to in subsection (2) of this section, the Bank may issue a license or refuse to issue a license and the Bank is required to give reasons for the refusal within 60 days.

(4) Where the Bank grants an application for license:

- (i) it shall give written notice of that fact to the applicant;
- (ii) it shall indicate the scope of business in which the applicant can engage in;
- (iii) the applicant shall pay the license fee.

Interpretation

70. (1) This Act may be cited as the Bank and Other Financial Institutions Act

Power to impose and review Fines.

72. Notwithstanding the provisions of this Act or of any law the Governor may —

- (i) impose any monetary fine for the contravention of any of the provisions of this Act;
- (ii) by notice published in the Print and Electronic media and in the Gazette, reduce or increase the monetary penalty payable for the contravention of any of the provisions of this Act.

Power to Grant Exemptions.

73. The Governor may exempt any other financial institution, non-interest bank or specialised bank from any of the provisions of this Act by notice published in the print and electronic media and in the gazette.

Power to Charge Fees.

74. Notwithstanding the provisions of this Act, or the Central Bank of Nigeria Act, the Bank may charge such fees as the Board may consider appropriate for any of its services.

Power to Charge Fees.

75. Notwithstanding the provisions of this Act, or the Central Bank of Nigeria Act, the Bank may charge such fees as the Board may consider appropriate for any of its services.

Repeal.

76. The Banks and Other Financial Institutions Act 1991 (as Amended) is hereby repealed.

Citation.

77. This Act may be cited as the Banks and Other Financial Institutions Bill, 2020.

EXPLANATORY NOTE

*(This note does not form part of the above Act
but is intended to Explain its purport)*

This Act, among other things, regulates banking and business of other financial institutions by prohibiting the carrying on of such businesses in Nigeria except under licence and by a company incorporated in Nigeria. Adequate provisions have been made regarding the proper supervision of such institutions by the Central Bank of Nigeria.