

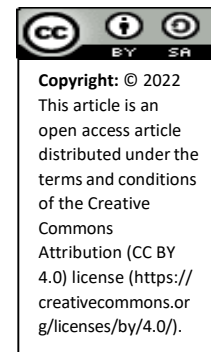
## An Appraisal of the Legal Framework for Credit Risk Management in the Nigerian Banking System

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### Abstract

*One of the major risk inherent in the Nigerian banking system is credit risk which connotes the risk arising from the probability of failure on the part of a borrower to fulfil its loan obligation. Existing literature on the subject mainly focused on the socio-economic aspect of credit risk management while little attention was paid to the legal aspect. The general objective of this study was to conduct content analysis on the legal framework for the management of credit risk in the Nigerian banking system. Based on this analysis, it was discovered that the various laws needed amendment to enhance the proper management of credit risk in the Nigerian banking system.*

**Keywords:** Credit Risk Management, Legal Framework, Banking System

## 1. Introduction

Banks are one of the most critical mechanisms for the provision of credit facilities to businesses in Nigeria. They serve as financial intermediaries, mobilizing deposits from surplus sectors of the economy and diverting them to deficit sectors in the form of loans to stimulate economic activities in the state. This financial intermediation function exposes them to credit risk which is the risk of financial loss as a result of a high rate of non-performing loans. This risk if not effectively managed can ultimately lead to bank insolvency and liquidation. There is therefore a need for a sound legal framework to limit risk exposure of banks while ensuring adequate access to credit facilities to deficit sectors in Nigeria. This Study entails a critical analysis of the existing laws relating to the Credit Risk Management (CRM) in order to identify the areas in need of amendment.

### 1.0 The Central Bank of Nigeria Act 2007 (CBN Act)

This Act establishes the Central Bank of Nigeria (CBN) whose main purpose is to ensure monetary stability and encourage the development of a sound financial system in Nigeria.<sup>1</sup> This objective is achieved mainly through the supervision and regulation of banks in Nigeria.<sup>2</sup> Based on section 30 to 32 of the Act, the CBN is empowered to carry out routine examinations of banks in Nigeria.<sup>3</sup> The CBN is the main regulator of the Nigerian banks and is delegated the duty to guarantee its stability and the safeguard of the interest of depositors and creditors so as to promote public trust in the sector and prevent economic crisis.<sup>4</sup>

Section 57(1) of the Act authorizes the CBN to license and regulate credit bureaux to obtain credit information of bank customers. Credit bureaux play a crucial role in the process of CRM the Nigerian Banking System since they generate consolidated credit information of borrowers in order to aid banks in identifying those with huge outstanding debts in excess of their repayment ability.<sup>5</sup> In other words, credit bureau serve as an information system through which banks can identify predatory debtors.

Section 57(3) of the Act provides that banks must obtain credit information of borrowers from the CBN before granting credit facilities to them where such credit facilities are up to the sum of one million naira and above or any such amount that the CBN may set from time to time. The provision provides room for the CBN to exercise its discretion by varying the amount from one million naira to any other

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<sup>1</sup> Section 1 & 2, Central Bank of Nigeria Act 2007

<sup>2</sup> Lucy Onyekwelu & Nneka Onyeka, 'Financial Risk Management: A Review of the Role of the Central Bank of Nigeria' (2014) *Research Journal of Finance and Accounting*, vol. 5, no. 5, p. 47.

<sup>3</sup> Section 30-32, BOFIA

<sup>4</sup> Philip Odiase, *Legal Framework for Risk Management in the Nigerian Banking Sector: Lessons from the Past Financial Crises* (2015) *International Company and Commercial Law Review*, Issue 6, p. 193.

<sup>5</sup> CBN, 'Credit Risk Management System'

<<https://www.cbn.gov.ng/Supervision/crms.asp>> Accessed 24th October 2022

amount it deems. This discretion is necessary considering the current surge in inflation and devaluation of the naira which may necessitate the frequent increase of the prescribed amount.

The CBN has established a Credit Risk Management System (CRMS) based on the provisions of Section 57 of the Act to serve as a central database from which potential borrowers' credit information can be aggregated.<sup>6</sup> All financial institutions in Nigeria are to provide information to the CRMS relating to all their customers with an aggregate outstanding balance of one million naira and above.<sup>7</sup> Banks are further required to update their credits every month and inquire into the credit status of any prospective borrower in order to determine their eligibility.<sup>8</sup> Credit information obtained from the system is confidential between the CBN and the institution which obtains the information.<sup>9</sup> The CRMS maybe a viable medium for credit risk mitigation since it provides banks with information on the credit history of borrowers.<sup>10</sup>

The CBN Banking Supervision Annual Report of 2019 however revealed that the reporting of credit facilities increased by 114.9% between 2018-2019 and the total number of outstanding balances increased by 35.8% within the same interval. This report shows that the rate of NPL is still on the rise and this creates doubt as to the effectiveness of the CRMS in aiding the reduction of the rate of NPLs in order to promote the liquidity and stability of the Nigerian banking system.

One of the major notable efforts of the CBN towards promoting effective CRM is the introduction of several guidelines that address the subject. These guidelines are issued based on the provisions of Section 33(1)(b) of the Act which empowers the CBN to issue guidelines to persons and institutions under its control which includes banks.<sup>11</sup> The CBN has established macro and micro prudential guidelines which introduced measures aimed at identifying bad loans through disclosure requirements and entails the classification of loans into performing and non-performing loans.<sup>12</sup> In relations to CRM, these guidelines emphasize the proper monitoring of loans and advances by banks and that borrowers' creditworthiness should be thoroughly

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<sup>6</sup> Section 57, CBN Act 2007.

<sup>7</sup> CBN, 'Credit Risk Management System' <<https://www.cbn.gov.ng/Supervision/crms.asp>> Accessed 18th May 2021.

<sup>8</sup> CBN (n.160)

<sup>9</sup> Section 57, CBN 2007.

<sup>10</sup> Adekunle Owojori, Ishola Akintoye & Felix Adidu, 'The Challenge of Risk Management in Nigerian Banks in the Post Consolidation Era' (2011) *Journal of Accounting and Taxation*, vol. 3, no. 2, p. 25.

<sup>11</sup> Section 33. CBN Act 2007.

<sup>12</sup> Godwin Uddin, Anthony Monehin & Emeka Osuji, 'Strengthening Financial System Regulation: The Nigerian Case' (2020) *International Journal of Management, Economics and Social Sciences*, vol. 9, no. 4, p. 292.

assessed before credit facilities are granted to them.<sup>13</sup> They are one of the major tools of the CBN to facilitate effective credit control among Nigerian banks.

Macro-prudential Guidelines refer to CBN's varied measures geared towards ensuring the soundness of the financial system and preventing the build-up of systematic risk which may lead to financial distress in the banking sector generally.<sup>14</sup> This category of prudential guidelines centers on the entire financial system and not on specific banks and they include disclosure regulations and accounting rules.<sup>15</sup>

Micro-prudential Guidelines on the other hand are varied measures for ensuring the efficiency of individual banks and thereby promote the entire financial system.<sup>16</sup> Their implementation help promote banks' adherence to regulations on capital adequacy, leverage ratios and liquidity which in turn guarantees solvency and customer protection.<sup>17</sup> These guidelines place restrictions on the holding of assets and related activities, limits on competitive activities, statutory capital requirements and on and off site bank examination.<sup>18</sup> The macro and micro-prudential guidelines work hand in hand and a synergy of both will help achieve the aim of effective CRM. It is therefore necessary look into some of these guidelines in details and their relationship with CRM.

## **2. Guidelines for Developing Risk Management Framework for Individual Risk Elements in Banks**

These macro- prudential guidelines were introduced to enable banks develop individual strategies for managing each risk elements as part of the overall strategy for creating effecting risk management systems in Nigerian banks.<sup>19</sup> In relations to CRM, it identifies credit risks as one of the risk exposures that threatens the stability of the Nigerian banking system and enjoins banks to establish holistic CRM Procedures and adopt a risk review structure for handling NPLs.<sup>20</sup>

Banks are required to develop strategies in determining their credit risk appetite and develop a sound and well-defined criteria for the granting of new credits and expansion of existing ones.<sup>21</sup> Banks are also required to individually create a credit administration department to handle credit documentation, disbursement and

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<sup>13</sup> William Inyang & Japhet Somtochukwu, 'Credit Control and Compliance with Central Bank of Nigeria Prudential Guidelines: Evidence from a Deposit Money Bank in Nigeria' (2020) *International Journal of Economics, Business and Management Research*, vol. 4, no. 6, p. 124.

<sup>14</sup> Odiase (n. 4) 201.

<sup>15</sup> Awele Ikobi-Anyali, 'Managing Non-Performing Loans in Nigeria: An Appraisal of the Assets Management Corporation of Nigeria (AMCON)' (2020) *Nnamdi Azikiwe University Journal of Commercial and Property Law*, vol. 7, no. 1, p. 40.

<sup>16</sup> *ibid*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> CBN, "Guidelines for Developing Risk Management Framework for Individual Risk Elements in Banks", p. 1

<sup>20</sup> *ibid*

<sup>21</sup> *Ibid*, p. 6

monitoring, loan repayment and maintenance of credit files, collateral and security documents.<sup>22</sup> Banks are required to adopt quantitative and qualitative techniques to measure the inherent risk of their credit portfolio.<sup>23</sup>

Finally, banks are required to be proactive by setting up a system for the identification of “problem loans” ahead of time as well as to manage the already existing ones.<sup>24</sup> These guidelines provide banks with a broad view on how to create and manage their individual CRM framework. Being a macro-prudential guideline, it does not provide banks with a well-detailed guide on the process of CRM. It therefore needs to be read in conjunction with other related guidelines in creating an effective CRM framework in individual banks.

a. Guidelines on the Management of Credit Concentration Risk under the Supervisory Review Process

These guidelines were issued in 2019 to provide a framework for the management of Credit Concentration Risk (CCR).<sup>25</sup> It also provides a guide for the Supervisory Review and Assessment of banks’ exposure to CCR.<sup>26</sup> CCR emanates as a resultant effect of credit portfolio having improper distribution of exposures across different segments of the economy.<sup>27</sup> It is the risk that emanates when a bank grants credit to only a particular sector or group of sectors in the economy with little consideration to other sectors.

CCR is one of the major causes of losses of financial institutions globally and can consequently threaten the economic stability of a Country as a whole.<sup>28</sup> The management of CCR is an aspect of CRM which enables banks to spread their credit risk exposure across various sectors to promote their stability and financial intermediation role in the Nigerian economy. The need to tackle this issue justifies the introduction of these guidelines by the CBN in order to foster fair distribution of credit to deficit sectors of the economy.

These Guidelines enjoins banks to take cognizance of the sources and level of CCR in their credit portfolios and pay adequate attention to credit concentration within their governance and risk management framework. It also provides a compass on how bank supervisor can monitor banks to ensure they effectively manage CCR. The creation

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<sup>22</sup> Ibid, p. 6 &7

<sup>23</sup> ibid

<sup>24</sup> ibid

<sup>25</sup> CBN, ‘Guidelines on Management of Credit Concentration Risk Under the Supervisory Review Process’ (issued March 2019)

<sup>26</sup> ibid

<sup>27</sup> ibid

<sup>28</sup> Bazzi Mehdi, Chhaiba Hassan & Chamlal Hasna, ‘Concentration Risk: Setting Credit Limits in Loan Portfolios, Case of Morrocco’ (2016) Risk Governance & Control: Financial Markets and Institutions, vol. 6, issue 3, p. 48

of this guidelines commendable since it specifically addresses the management of CCR which is a critical aspect of CRM.

b. Guideline for the Licensing, Operation and Regulation of Credit Bureaux and Credit Bureau Related Transactions in Nigeria

This guideline replaced the Guidelines for the licensing, Operation and Regulation of Credit Bureau in Nigeria of 2008. It was made in Accordance to Section 57 of the Act which authorized the CBN to license and regulate credit bureau to obtain credit information of bank customers as mentioned earlier. This guideline makes provision for the licensing requirements, management and operational procedures of credit bureau. It further makes provisions on the dissolution, liquidation and revocation of the licenses of Credit Bureaux where necessary.

The Guidelines requires banks to enter into data exchange agreement with at least two credit bureaus and receive credit report from them before granting loans to customers.<sup>29</sup> The CBN Banking Supervision Annual Report of 2019 however revealed that the credit bureaus had not fully executed the prescribed data exchange agreement due to inadequate IT connectivity in some locations.<sup>30</sup> This problem if not duly addressed may jeopardize the effort of the CBN in ensuring that credit bureau provide accurate credit information of borrowers for the benefits of banks in Nigeria.

c. Guidance Notes on the Calculation of Capital Requirement for Credit Risk Standardized Approach

This Standardized Approach provides a detailed guide on how banks can ascertain the capital required for CRM. Chapter 4 of the Standardized Approach outlines principles for the identification of credit risk mitigation techniques that may be used by Banks for calculating their capital requirement.<sup>31</sup> Under this approach, banks are required to use ratings from external credit rating agencies to determine the capital required for credit risk.<sup>32</sup>

This Standardized Approach shares similarities with the Capital Adequacy Requirements for Banks released by the Canadian Office of the Superintendent of Financial Institutions and both guidelines were drawn from the Basel Committee on Banking Supervision's Basel II and III frameworks. This similarity reflects the CBN's effort to domesticate international standards for CRM in the banking system.

d. Guidelines for Regulation and Supervision of Credit Guarantee Companies in Nigeria

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<sup>29</sup> Olakemi Salau, 'CBN Directive: Bad Loans Exposed?' Odujinrin & Adefulu <<https://www.odujinrinadefulu.com/content/cbn-directive-bad-loans-exposed>> Accessed 24th October 2022

<sup>30</sup> CBN, 'Banking Supervision Annual Report 2019', p. 45

<sup>31</sup> CBN, 'Guidance Notes on the Calculation of Capital Requirement for Credit Risk'

<sup>32</sup> *ibid*

This is one of the most recent guidelines released by the CBN to facilitate lending to Micro, small and Medium Enterprises (MSMEs).<sup>33</sup> It established and defined Credit Guarantee Companies (CGCs) as licensed organizations with the main aim of providing guarantees to banks against the risk of default by borrowers.<sup>34</sup> These organizations are to provide third-party risk mitigation to banks through the absorption of a portion of their losses in regards to loans granted to Nigerian-based MSME's in the event of default.<sup>35</sup>

The essence of this guideline is to ensure that CGCs actually fulfill the objective of serving as an effective CRM in the Nigerian Banking system. This invention by the CBN is commendable since it reduces banks' exposure to credit risk. This guideline however narrows the orbit of CGCs to strictly guaranteeing loans granted to MSMEs in Nigeria to the exclusion of larger business entities and foreign MSMEs in Nigeria. The advent of the AMCON and NDIC however bridges this gap since the AMCON takes up NPLs and the NDIC insures deposit in order to ensure bank stability.

e. Code of Corporate Governance for Banks and Discount Houses

This code was issued to provide clear guidelines to improve corporate governance practices in Nigerian Banks.<sup>36</sup> As regards CRM, the Code mandates banks to have a general risk management framework that will provide details about its governance architecture, policies and procedure for the 2management of the risk inherent in its operations such as credit risk.<sup>37</sup> It is necessary for every board of individual banks to create its own unique CRM framework that will be tailored to best suit each bank and cater for any peculiarities. In order to monitor the full implementation of this code in the banking system, the CBN requires banks to submit a quarterly returns on their compliance with the provisions of the code.<sup>38</sup> The returns are required to be submitted to the director of the Financial Policy and Regulations Department of CBN not later than seven days to the end of each quarter.<sup>39</sup> The Code also provides whistleblowing procedures which will serve as a medium to alert the CBN and other agencies of illegal and unethical practices in the banking system such as credit-related insider abuse.<sup>40</sup>

The CBN further mandates banks to have a formal Code of Corporate Governance which will require its board of directors to establish an organizational structure and

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<sup>33</sup> CBN, 'Guidelines for Regulation and Supervision of Credit Guarantee companies in Nigeria' (Issued 23<sup>rd</sup> March 2022)

<sup>34</sup> *ibid*

<sup>35</sup> *ibid*

<sup>36</sup> CBN, 'Code of Corporate Governance for Banks and Discount Houses' (May 2014)

<sup>37</sup> *ibid*.

<sup>38</sup> CBN, 'Circular to all Banks and Discount Houses: Code of Corporate Governance for Banks and Discount Houses in Nigeria and Guidelines for Whistle Blowing in the Nigerian Banking Industry' (May 16<sup>th</sup> 2014)

<sup>39</sup> *ibid*

<sup>40</sup> CBN, 'Code of Corporate Governance for Banks and Discount Houses' (May 2014)

policies for effective credit risk management.<sup>41</sup> In 2018, the CBN in a bid to curtail the looming credit management crisis in the state, issued a press release on the 31<sup>st</sup> of January and 23<sup>rd</sup> of February of that year regulating the payment of dividend of financial institutions to their shareholders in accordance with their non-performing loans and capital adequacy ratios.<sup>42</sup> Such regulation are necessary for CRM but it however makes the banking sector less attractive to investors. It will however put banks on their toes and motivates them to put measures in place to control the rate of NPLs and improve their capital adequacy ratio so as to attract and retain investors.

The measures put in place by the CBN to ensure effective CRM is commendable but there also exist the issue of compliance on the part of bank. The most effective way to ensure compliance is through bank supervision. This Supervision is usually carried out by the Bank Supervision Department.<sup>43</sup> The Supervisory process of the department entails both on and off-site arrangements.<sup>44</sup> On-site supervision entails periodic field examinations of banks by the department to ensure compliance with CBN's directives while off-site supervision entails the analysis of the financial position of banks using prudential reports, statutory returns and other relevant information on a periodic basis.<sup>45</sup> An empirical analysis conducted on the impact of CBN's regulatory and supervisory framework on the performance of commercial banks in Nigeria revealed that the guidelines and bank supervision actually promote sound banking operations, adequate liquidity and reduction in the granting of high risk loans and other moral hazards in the banking system.<sup>46</sup>

The Bank Supervision Department of the CBN has however been criticized for its weak structure which has hindered the effectiveness of the department with respect to monitoring and enforcement of CBN's guidelines and other regulations.<sup>47</sup> One of the major factors that hinders the effective supervision of banks by the CBN relates to the fact that banks submit inaccurate, incomplete and often late reports to the CBN thereby depriving the CBN of the accurate information needed to effectively supervise the banking system.<sup>48</sup> For instance, prior to the 2009 banking crisis, many of the distressed banks were projecting high profitability and paying good dividends

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<sup>41</sup> Marshal Iwedi and Onyekachi Onuegbu, 'Credit Risk and Performance of Selected Deposit Money Banks in Nigeria: An Empirical Investigation' (2014) *European Journal of Humanities and Social Sciences*, vol. 31, no. 1, p. 169.

<sup>42</sup> Folajimi Adegbe and Seun Adebajo, 'Credit Risk Management and Financial Stability in Quoted Deposit Money Banks in Nigeria' (2020) *European Journal of Accounting, Auditing and Finance Research*, vol. 8, no. 8, p. 39.

<sup>43</sup> CBN, 'Supervisory Framework' <<https://www.cbn.gov.ng/Supervision/>> Accessed 24<sup>th</sup> October 2022

<sup>44</sup> *ibid*

<sup>45</sup> *ibid*

<sup>46</sup> See generally, Kashema Bahago, Gylych Jelilov and Bilal Celik, 'Impact of Banking Supervision on Liquidity Risk and Credit Risk: Evidence from Nigeria' (2019) *International Journal of Economics and Financial Issues*, vol. 9, issue 3.

<sup>47</sup> Iwedi (n. 41) 148.

<sup>48</sup> Odiase (n. 4) 200



to its investors.<sup>49</sup> This situation reflects the need for banks to be more closely supervised to ensure that their reports are not doctored to alter their true financial status. The poor equipment and laissez-faire attitude of CBN supervisory officials is another problem that impedes effective bank supervision.<sup>50</sup> If this problem is not effectively addressed by the Supervisory department of the CBN, the whole essence of bank supervision will be counterproductive. Proper bank supervision still remains one of the major problems of the CBN in CRM. There may be need for the National Assembly to enact a new law to create a specialized agency for bank supervision. Such an agency is necessary to remove the burden of bank supervision from the CBN and foster the effective supervision of banks to ensure to comply with the applicable laws and guidelines.

### **3. Banks and Other Financial Institutions Act 2020**

This Act repealed and replaced the Banks and Other Financial Institutions Act and is one of the major laws that regulate the Nigerian Banking System. It requires every bank to be duly incorporated as a company under CAMA and must hold a valid banking license issued under the act before it can carry on banking activities such as the granting of credit facilities to members of the public.<sup>51</sup> In relations to CRM, Section 17(1)(b) of the Act forbids a bank manager or other officer from issuing any loan to anyone except it is granted according to the bank's policies and according to the regulations on collateralization issued by the CBN which are applicable to all banks in Nigeria.<sup>52</sup> The essence of this provision is to provide uniformity in the policies and regulations for granting credit facilities in the Nigerian banking system.

Section 17 of the Act prohibit managers and other officers of banks from acquiring loans from the banks they work with. Where such loans are acquired by a manager or officer, he or she ought to disclosure such interest to the bank. A Director of a bank who acquire a loan from the latter must declare such interest before the board of Directors meeting of the bank. The Act further criminalizes failure to make such disclosure on the part of directors, managers and other officers of the bank. These provisions of the Act are necessary to prevent insider manipulation and abuse by directors and officers of a bank in order to preserve the integrity of the Banking system.

Under Section 19(1)(c) of the Act, banks are prohibited from granting unsecured credit to the public except with the prior written approval of the CBN and in accordance with its regulation on collateralization as may be issued from time to time. This provision is necessary to prevent indiscriminate unsecured lending in the banking system. Banks are further required to seek the prior written approval of the CBN before granting unsecured credit facilities of an aggregate amount in excess of one million naira (or such amount as may be prescribed by the CBN from time to

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<sup>49</sup> *ibid*

<sup>50</sup> *ibid*

<sup>51</sup> Section 2(1) BOFIA, 2020

<sup>52</sup> Section 17(1)(b)

time) to its directors, company or firm in which its directors are interested or companies in which its directors or significant shareholders jointly or severally maintain direct or indirect shareholding of not less than 5% or such percentage as may be specified by the CBN.<sup>53</sup>

Section 14(1) of the Act mandates banks have a cash reserve and special deposits with the CBN and the amount must not be less than that which is prescribed by the CBN from time to time.<sup>54</sup> The essence of this section is to ensure that banks meet the daily cash demands of their customers and reduce the exposure of these banks to liquidity risk and the reliance on the CBN as a lender of last resort.<sup>55</sup> Banks must also keep certain liquid assets or other stability securities on hand which must not fall below the amount prescribed by the CBN.<sup>56</sup> This provision is necessary to prevent a situation where banks lend out all their available cash at the expense of depositors who may want to withdraw their monies at any given point in time. In calculating the amount, specified liquid assets and liabilities due from and to other banks constitute part of it and are therefore offset accordingly either by including the surplus assets or deducting the liabilities.<sup>57</sup> Long-term advances to a bank or by foreign branches may be exempted from the bank's demand liabilities with the approval of the CBN.<sup>58</sup>

Every bank in Nigeria is required to provide CBN with any information required by it relating to the observance of the provisions of Section 14(1) within the timeframe so given by the CBN.<sup>59</sup> Defaulting banks are liable upon conviction to a fine which must not fall below five million naira and an additional fine of a hundred thousand naira for each day the contravention of the provision subsists.<sup>60</sup> During this period of default, the bank is also prohibited from providing any person with credit facilities without the written consent of the CBN.<sup>61</sup>

Section 15 also requires banks to set aside a statutory reserve fund from their net profits each year after making necessary tax provisions and before declaring dividends.<sup>62</sup> The essence of the provision is to aid the liquidity and stability of banks especially in times of crisis caused by a high profile of non-performing loans. Banks must also retain capital funds that are unaffected by losses at all times, at a ratio that takes into account the bank's assets and liabilities within and outside the

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<sup>53</sup> Section 19(3)

<sup>54</sup> Section 14(1)

<sup>55</sup> Odiase (n. 4) 194.

<sup>56</sup> Section 14(1) BOFIA 2020.

<sup>57</sup> William Inyang & Japhet Somtochukwu, 'Credit Control and Compliance with Central Bank of Nigeria Prudential Guidelines: Evidence from a Deposit Money Bank in Nigeria' (2020) *International Journal of Economics, Business and Management Research*, vol. 4, no. 6, p. 124.

<sup>58</sup> *ibid.*

<sup>59</sup> Section 14(4)(a), *ibid.*

<sup>60</sup> Section 14 (5)

<sup>61</sup> Section 14 (4)(c)

<sup>62</sup> Section 15, BOFIA 2020.

country based on the approval of the CBN.<sup>63</sup> These minimum capital requirements are necessary to ensure capital adequacy and to put banks in a good position to absorb financial shock caused by a high profile of non-performing loans.<sup>64</sup>

Every bank in the state is required to submit to the CBN as and when due, a statement detailing the bank's assets and liabilities, as well as an examination of loans, advances, and assets.<sup>65</sup> This statement serves as a supervisory tool to enable the CBN monitor the management of credit risk in Nigerian banks.<sup>66</sup> Section 56(2) exclusively bequeaths the power to make rules and regulations for the operation and control of banks in Nigeria on the Governor of the CBN.<sup>67</sup> This provision is necessary to guarantee the independence of the CBN and hasten the quick enactment of necessary regulations for the effective administration of the banking system. Concentrating such powers in the hands of the Governor alone may pose dangers relating to abuse of power since policies and regulations made by the Governor are not made subject to review by a third party. The policies and regulations made by the Governor therefore need to be monitored to ensure they actually promote the stability of the Nigerian banking system.

Section 74 of the Act establishes a Resolution Fund domiciled with the CBN to be utilized for purposes which include providing loan, advance, overdraft and other credit facilities to banks.<sup>68</sup> This provision implies that the Fund can serve as a source of funding for banks distressed by a high rate of NPLs in order to facilitate their stability. This provides an alternative to obtaining funds from the public to cater for a bank's liquidity needs in a case of crisis caused by NPLs.

Section 102 of the Act establishes a Tribunal for the Enforcement and Recovery of Eligible loans. By virtue of Section 115(1), the tribunal has jurisdiction over matters pertaining to the recovery of eligible loans by banks and other financial institutions. It also has jurisdiction over matters related to the enforcement of security or guarantee and attachment of any asset under an eligible loan granted by banks to its customers. In other words, it has jurisdiction over credit related issues in the banking sector. The institution of this tribunal seems to take away the jurisdiction of the state and federal high court in credit related matters in the banking system.

The jurisdiction conferred on the Tribunal does not however affect the jurisdiction and powers of the Federal and State High Court to continue to determine debt recovery and related consumer causes matters before them at the date of the commencement of the Act provided such matters are concluded timeously. The essence of this exception is to prevent a situation whereby loan recovery and related matters already before the Federal and State high court are withdrawn and

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<sup>63</sup> Section 13(1)

<sup>64</sup> Inyang (n. 57) 124.

<sup>65</sup> Section 24(1) BOFIA 2020.

<sup>66</sup> Inyang (n.57) 124.

<sup>67</sup> Section 56(3)

<sup>68</sup> Section 74 &78(c)

reinstated before the Tribunal. Such situation will be tantamount to commencing the matter all over again and this will delay and defeat the course of justice.

The institution of this tribunal is commendable since it creates a specialized legal mechanism to aid the speedy recovery of bank loans. The institution of the Tribunal by the Act has however been criticized in a number of respects. Section 103 of the Act has been criticized for empowering the President of the Federal Republic of Nigeria to unilaterally appoint Judges of the Tribunal without recourse to the National Judicial Council (NJC) which usually makes recommendation for the appointment of Judges to the President.<sup>69</sup> This omission may lead to the indiscriminate appointment of Judges not best suited for the Tribunal which will ultimately defeat the purpose of Justice. The provisions of Section 114(3) of the Act empowering the Judges to fix their remuneration by themselves is further erroneous as it would be more appropriate to have an independent and neutral body such as the NJC fix their remuneration. Section 117(2)(b) and Section 119 permits the Tribunal to accept gifts and donation which are consistent with its functions and objectives. While this may be a good source of funding for the tribunal, it may lead to the compromise of the neutrality and integrity of the Tribunal which may eventually lead to the maladministration of Justice.<sup>70</sup>

The Tribunal also seems to be put on an equal pedestal with the Federal and State High Court and this equality of status has been criticized to be unconstitutional since the Tribunal is not among the superior courts of record exclusively listed in the Constitution.<sup>71</sup> By putting the Tribunal on the same pedestal with the Federal and State High Court, the National Assembly exceeds its constitutional powers in Section 6(4) of the Constitution which only empowers it to create courts of subordinate Jurisdiction to the superior court. This error therefore raises doubt as to the Constitutionality of the Tribunal.

#### **4. Assets Management Corporation of Nigeria Act 2010 (as amended)**

This Act establishes the Assets Management Corporation of Nigeria (AMCON)<sup>72</sup> and has subsequently been amended in 2015 and 2019 respectively in order to widen the scope of its functions and powers. The AMCON was established as a crucial stabilizing and resuscitating mechanism intended at restoring the Nigerian financial system by quickly addressing the banks' non-performing loan portfolios.<sup>73</sup> It provides

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<sup>69</sup> Olabode Ayorinde, "The Establishment of Special Tribunal for the Enforcement and Recovery of Eligible Loans Under the Banks and Other Financial Institutions Act 2020 (BOFIA 2020): Placing the Cart Before the Horse" (2022) Law and Social Justice Review, vol. 3, no. 1, p. 72 &73

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*

<sup>72</sup> Section 1, AMCON Act, 2010 (as amended)

<sup>73</sup> AMCON, 'About AMCON'

<<https://amcon.com.ng/about-us.php>> accessed 13th May 2021.

a platform for banks to sell NPLs and supports recapitalization of impacted banks in order to re-establish a lending culture in these institutions.<sup>74</sup>

It is often regarded as the “brainchild” of the CBN to serve as a securitization vehicle for the Nigerian banking sector.<sup>75</sup> It was an urgently needed invention to facilitate the restructuring of the Nigerian financial system based on the rise of bad loans, cases of insolvency and liquidity problems of banks prevalent at that time.<sup>76</sup> It strengthens the efficacy CBN’s monetary policy and prudential guidelines in financial sector management.<sup>77</sup> The institution of AMCON became imperative following the global financial crisis witnessed in the preceding so as to ensure the stability of banks that were experiencing liquidity issues at that time due to an alarming rate of bad loans.<sup>78</sup>

In accordance with its mission, AMCON acquires non-performing risks assets of banks in order to boost the liquidity, profitability and stability of these banks.<sup>79</sup> Through a series of three purchases from December 2010 through December 2011, it acquired NPLs with a face value of N4.02 trillion for N1.76 trillion at a 56% discount and as a result, NPLs in Nigerian banks drastically reduced from 37.2% to 5.8% within the first two years of its establishment.<sup>80</sup> As at 2017, AMCON had acquired over twelve thousand NPLs from twenty two banks worth N3.7 trillion.<sup>81</sup> It is therefore evident that AMCON has successfully reduce the level of NPLs in the Nigerian banking sector.

The acquisition, administration, and sale of qualifying bank assets and equities based on the requirements of the Act and with the consent of the CBN are the duties of AMCON, according to Section 5 of the Act.<sup>82</sup> After acquiring the bank, AMCON can either recapitalize it by purchasing a significant amount of equity in the bank, equivalent to control, in order to upturn the bank's negative equity standing, or it can find new investors in the bank.<sup>83</sup> By the combined provisions of Section 5, 25 and 30

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<sup>74</sup> *ibid*

<sup>75</sup> See generally, Adeolu Abata, ‘Impact of Asset Management Corporation of Nigeria (AMCON) On the Securitization in the Nigerian Banking Sector’ (2015) *Global Journal of Contemporary Research in Accounting, Auditing and Business Ethics*, vol. 1, issue 2.

<sup>76</sup> Odiase (n. 4) 290.

<sup>77</sup> *Ibid* p. 286.

<sup>78</sup> *Ibid*, p. 290.

<sup>79</sup> Odiase (n. 4) 285

<sup>80</sup> Pascal Ungersboeck and Corey Runkel, ‘Asset Management Corporation of Nigeria (AMCON): Asset Management’ (2021) *The Journal of Financial Crisis*, vol. 3, issue 3, p. 619

<sup>81</sup> Dipo Olowookere, ‘AMCON Acquires N3.7trillion Bad Loans from Banks’ (Business Post, 26<sup>th</sup> December 2017)

< <https://businesspost.ng/banking/amcon-acquires-n3-7tr-bad-loans-banks/> Accessed 16<sup>th</sup> May 2023.

<sup>82</sup> Section 5, AMCON Act 2010 (as amended)

<sup>83</sup> Kathleen Okafor, ‘Current Perspective in the Recovery of Bank Loans in Nigeria’ (2019) *International Journal of Family Business and Management*, vol. 3, no. 3, p. 6.

of the Act; AMCON, in conjunction with the CBN can also buy the assets of a bank classified as an eligible financial institution.<sup>84</sup>

In the context of the Act, “eligible assets” relate to assets of an eligible financial institution that the CBN has designated as being qualified for acquisition by the Corporation.<sup>85</sup> Section 61 of the AMCON Act, defines an eligible institution as one which has been duly licensed by the CBN to carry on banking business in Nigeria under the BOFIA and also includes banks whose license has been nullified by the CBN, in conformity with BOFIA.<sup>86</sup>

Section 6 of the AMCON Act empowers the agency to place surveillance on debtors’ bank accounts or any other similar account in an eligible financial institution.<sup>87</sup> This provision however raises the legal issue of breach of banker-customer confidentiality which saddles a bank with the duty of non-disclosure of customers’ financial information to third parties.<sup>88</sup> This situation can however be treated as a justifiable exception to the general rule of banker-customer confidentiality since access to the financial information of debtors is necessary to trace and recover funds from them to settle their NPLs.

AMCON also has unfettered access to the electronic devices of debtors with the aim of tracking hidden funds belonging to such debtors.<sup>89</sup> This is a clear violation of Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides for the right of privacy of citizens.<sup>90</sup> This contravention in this context can however be treated as a justifiable exception in public interest since it aids the loan recovery process and AMCON’s efforts in promoting the financial stability of banks and the financial intermediation process for the socio-economic development of Nigeria.

Arguments have been put forward for the dissolution of AMCON since it tends to “baby-sit” Nigerian banks and make them pay less attention to effective credit risk management since they have assurance of bailout from the agency in relation to non-performing loan.<sup>91</sup> This situation may result in privilege abuse and affect the soundness of the CRM systems in Nigerian banks.<sup>92</sup> Its existence however remains necessary to preserve the integrity of the Nigerian banking system and ensure that loans are recovered. It has been asserted that AMCON which was instituted to

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<sup>84</sup> Section 5, 25 & 30

<sup>85</sup> Section 24

<sup>86</sup> Section 61

<sup>87</sup> Section 6

<sup>88</sup> Pelumi Adewumi and Chioma Unini, ‘AMCON New Amendment Act: The Pros and Cons’ (The Nigerian Lawyer, 8 March 2020)

<<https://thenigerialawyer.com/amcon-new-amendment-act-the-pros-and-cons-by-pelumi-adewumi-esq/>> accessed 30<sup>th</sup> July 2021.

<sup>89</sup> *ibid*

<sup>90</sup> Section 37, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>91</sup> Odiase (n.4) 291.

<sup>92</sup> *Ibid*.

address the problem of NPLs in the banking sector has underperformed due to the acquisition of more non-performing loans than desired.<sup>93</sup> This has led to the agitation for the amendment of the AMCON Act in order to widen the scope of its powers in relations to debt recovery.<sup>94</sup> The agency has further been criticized for its dependence on CBN's guidelines in its decision making including purchases, eligible asset selection and valuation.<sup>95</sup> Such reliance is however justifiable as CBN is the "parent agency" that regulates the banking system in Nigeria.

The International Monetary Fund (IMF) has acknowledged AMCON's contributions towards the rapid decrease in the level of NPLs in Nigeria but has however queried its lack of an explicit exit plan and its continued purchases of distressed assets many years after the Global Financial Crisis.<sup>96</sup> AMCON has continued to pose a financial burden to the Nigerian government which is why critics have advocated for its dissolution.<sup>97</sup> This situation draws more emphasis to the need for the CBN to ensure that banks comply with its guidelines and regulations on CRM so as to reduce the rate of NPLs. In the time being, AMCON remains a critical agent in curbing the risk of failure of the Nigerian banking system as a result of NPLs.

As a result of AMCON's loan acquisition and bank recapitalization activities, it accumulated a negative equity position of N3.6 trillion as at the end of 2014.<sup>98</sup> In order to offset its losses, the agency has instituted the Banking Sector Resolution Cost Fund as a sinking fund to provide a large amount of its revenue although it remains unclear if the money generated from this fund is capable of successfully offsetting its losses.<sup>99</sup> AMCON therefore needs to come up with new strategies to generate additional fund to offset its losses and enable it carry on its functions effectively in the long run.

AMCON needs to be professionally managed and should maintain a skilled resource base free from political interference in order to ensure its continued effectiveness.<sup>100</sup> Its further needs to maintain sound and robust information and management systems and transparency in operations and processes.<sup>101</sup> Adequate funding is crucial to enable it carry out its functions effectively as mentioned earlier.

## **5. Nigeria Deposit Insurance Corporation Act 2006**

This Act revoked and substituted the Nigeria Deposit Insurance Corporation Act of 1988. It establishes the Nigeria Deposit Insurance Corporation (NDIC) which is

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<sup>93</sup> Ikobi-Anyali (n.15) 40.

<sup>94</sup> *ibid*

<sup>95</sup> Pascal Ungersboeck and Corey Runkel, 'Asset Management Corporation of Nigeria (AMCON): Asset Management' (2021) *The Journal of Financial Crisis*, vol. 3, issue 3, p. 619

<sup>96</sup> *Ibid*, p. 620.

<sup>97</sup> *Ibid*.

<sup>98</sup> *ibid*.

<sup>99</sup> *ibid*, p. 618.

<sup>100</sup> Odiase (n.4)194.

<sup>101</sup> *ibid*.

responsible for insuring all deposit liabilities of licensed banks in Nigeria; providing assistance for the benefit of depositors and promote public trust in the banking sector; providing assurance of imbursement to depositors in the event of the inability to make payments by insured financial institution up to a maximum insured sum; assisting monetary authorities such as the CBN in the creation and execution of policies so as to facilitate healthy routines and equitable competition in the industry and pursuing any other measure essential for fulfilling the functions of the NDIC provided that such measures do not contravene the objectives of the corporation.<sup>102</sup>

The main goal of the Corporation is therefore to secure deposits, ensure stability and to restore public trust in the Nigerian banking system through the monitoring of insured financial institutions; provide financial and technical aid to qualified institutions; timely imbursement of guaranteed amount and the organized resolution of failed banks in Nigeria.<sup>103</sup>

The NDIC renders financial assistance to distressed banks with liquidity problems and accumulated losses which may be caused by a high profile of non-performing loans which impairs their ability to meet their obligations to depositors and creditors.<sup>104</sup> This financial assistance from the Corporation helps these banks absorb the dire effect of these toxic loans and promotes their liquidity. In terms of funding,

Section 10 of the NDIC Act specifies four sources of funds for the NDIC which include assessed premium paid by insured institutions, returns on the investments of the Corporation, borrowed funds from any source with the approval of the board and funds from any other source approved by the Corporation.<sup>105</sup> In order to prevent deposits from being tampered with, Section 17(3) of the Act provides that the premiums payable by banks to the NDIC shall not be charged against bank deposits and no deductions whatsoever shall be made in that regards.<sup>106</sup> This provision is necessary to prevent banks from transferring the cost of payment of NDIC premiums to depositors. It further prevents a case where deductions are made on deposits without the owners' consent.

In relations to CRM, NDIC renders assistance to banks in financial crisis as a result of a high rate of NPLs. Section 37 of the Act mandates the NDIC to assist any insured bank going financial difficulty and unable to meet its obligations to its depositors, creditors and shareholders.<sup>107</sup> The Corporation can render this assistance by granting loans to such banks, guaranteeing loans taken by them or by accepting an accommodation bill with interest for a period not exceeding 90 days maturity

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<sup>102</sup> Section 1 & 2, Nigeria Deposit Insurance Corporation Act, 2006.

<sup>103</sup> Igbaekemen Osa, 'The Role of the Regulatory and Supervising Authorities in Preventing Bank Failure and Ensuring Banking Stability in the Organization of Banking Sector in Nigeria' (2020) *International Journal of Interdisciplinary Research Methods*, vol. 7, no. 2, p. 26.

<sup>104</sup> Section 37, NDIC Act, 2006.

<sup>105</sup> Section 10

<sup>106</sup> Section 17(3)

<sup>107</sup> Section 37



excluding days of grace and subject to renewals of not more than seven times.<sup>108</sup> This provision brings light to the fact that the NDIC is not just a deposit insurer but also provides a safe haven for banks encountering financial difficulties as a result of NPLs. In other words, the NDIC not only insures bank deposits but also facilitates the stability of the banks themselves.

Section 39 of The NDIC Act authorizes the Corporation, in collaboration with the CBN, to establish a bridge bank to take over any failed bank's deposit and liabilities.<sup>109</sup> The bridge bank is incorporated and granted a license by the CBN to operate like a regular bank.<sup>110</sup> The essence of this provision is to protect the deposits of customers in the case of a bank's failure and to ultimately sustain public trust in the banking Sector. The effectiveness of the NDIC in the last ten years has led to the improvement in terms of the Capital Adequacy Ratio of commercial banks as well as their asset quality.<sup>111</sup> For instance, the total NPLs of commercial banks in the state which was N360 billion as at 2011 dropped to N286 billion in 2012.<sup>112</sup>

Apart from being a depositors' fund insurer the NDIC complements the activities of the CBN in relation to on-site and off-site supervision of banks.<sup>113</sup> In 2008, the Corporation embarked on an on-site examination and special investigation of banks in the state based on the petitions and complaints of stakeholders in the sector.<sup>114</sup> Reports of the examination and special investigation revealed that many banks in Nigeria were plagued by the problems of inadequate monitoring by the board of directors and management; incorrect financial reporting; non-performing insider related credit; declining asset quality; poor percentage of loan recovery; failure to comply with banking laws, rules and regulations and general liquidity problems.<sup>115</sup>

This investigation was undertaken to protect depositors and to safeguard the Nigerian banking system's safety and soundness.<sup>116</sup> The report of this investigation reflects that corporate governance continues to be a critical problem in the Nigerian banking system. Banks therefore need to be closely monitored by regulators to ensure

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<sup>108</sup> Section 37

<sup>109</sup> Section 39

<sup>110</sup> *ibid*

<sup>111</sup> Bashir Hassan, 'Umaru Ibrahim and the Challenges of a Second Chance at NDIC' (NDIC, 5 January 2016)

<<https://ndic.gov.ng/umaru-ibrahim-and-the-challenges-of-a-second-chance-at-ndic/>> accessed 30<sup>th</sup> July 2021.

<sup>112</sup> *ibid*.

<sup>113</sup> Nwaolisa Ehekoba, 'A Review of the Central Bank's Role as Prudential Regulator in Nigeria: An Analysis of a Separate Supervisory Agency' (2017) *Scientific Research Journal*, vol. V, issue XVII, p. 42.

<sup>114</sup> Adeolu Abata, 'Impact of Asset Management Corporation of Nigeria (AMCON) On the Securitization in the Nigerian Banking Sector' (2015) *Global Journal of Contemporary Research in Accounting, Auditing and Business Ethics*, vol. 1, issue 2, p.285.

<sup>115</sup> *ibid*

<sup>116</sup> *ibid*.

that they implement sound corporate governance strategies in their banking activities.

The deposit insurance limit (DIL) of the NDIC is another issue that calls for concern. Section 20(1) of the Act provides for a maximum DIL of two hundred thousand naira for commercial banks and one hundred thousand naira for other financial institutions.<sup>117</sup> Section 20(2) however gives the NDIC the discretion to vary this DIL and it subsequently exercised this power in 2010 by increasing its DIL to five hundred thousand in the case of commercial banks and two hundred thousand in the case of microfinance banks. This limit is still ridiculously low in comparison with the limits of other jurisdictions such as Canada where its Deposit Insurance Corporation insures bank deposits of up to one hundred million dollars.

The implication of this low DIL implies that huge depositors are not adequately covered by the deposit insurance scheme of the NDIC. This low DIL may defeat the entire purpose of the scheme in the first place which was to allay the fears of depositors and guarantee bank deposits. It will discourage huge depositor from depositing an amount exceeding the DIL and this in turn will affect banks liquidity.

The current Managing Director of the NDIC, Mr. Bello Hassan recently disclosed during a workshop that 99.4% of bank accounts contain less than the five hundred thousand naira maximum insured limit.<sup>118</sup> The implication is that the NDIC can guarantee the deposits of most accounts in the banking system. This situation of low bank deposits may be as a result of two factors. It may be the resultant effect of the poor status on many Nigerians which leaves them with little money to deposit in the bank. It can also be as a result of the low insured deposit limit which may trigger huge depositors to pull out the uninsured portion of their funds from the banking system. Increase in the depositor insurance limit may encourage depositors to increase their deposits and will in turn increase the liquidity and stability of banks as were as their ability to grant more credit facilities to deficit sectors.

Section 21(2) of the Act however extends a safety net for huge depositors by providing that the uninsured portion of their deposits be paid to them in the event of bank failure from the money realized from the liquidation of the failed bank's assets. While this may give huge depositors a soft landing and provide security for their uninsured funds, the risk of insufficiency of the money realized from the liquidation of the bank's assets to cover their insured funds still exist. Such probable situation further emphasizes the need for the NDIC to increase its DIL.

Section 16 of the Act makes an exception to deposits to be insured by the NDIC and they include insider deposits of bank staffs including that of directors and counterclaims from a person who maintains both a deposit and a loan account for

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<sup>117</sup> Section 20

<sup>118</sup> Babajide Komolafe, 'Nigeria Deposit Insurance Corporation Protecting Bank Deposits' (Vanguard Newspaper)

<https://www.vanguardngr.com/2021/10/just-in-99-4-of-bank-accounts-contain-less-than-n500000-ndic/> Accessed 24<sup>th</sup> October 2022

which the deposit serves as collateral for the loan.<sup>119</sup> This exception is necessary to prevent insider trading and deposit manipulation in the banking system.<sup>120</sup> Section 16(c) further gives the board of the NDIC the discretion to make further exceptions to deposits to insured by the Corporation were necessary. While such provision for discretion may be necessary in the interest of the deposit insurance scheme and the banking system as a whole, the exercise of this discretion may be unpredictable and affect the confidence of depositors sought to be boosted.<sup>121</sup> Such discretion must therefore be exercised reasonably and only where absolutely necessary to prevent abuse of power by the Board of the NDIC.

## **6. Companies and Allied Matters Act 2020**

This Act repealed and replaced the Company and Allied Matters Act of 2004. It is the main legal instrument for the regulating of corporate accounting and auditing of the financial records of banks in Nigeria.<sup>122</sup> Section 374 requires banks as corporate institutions to keep an accounting records which will provide informations about the assets and liabilities of the bank and will accurately reflect its financial position.<sup>123</sup> These records of assets and liabilities will include information relating to the credit facilities granted by the bank which will in turn give insight as to the level of losses arising from NPLs. It provides regulators with the needed information to access the financial situation and level of stability of a bank in to take necessary actions.

Based on the combined provisions of Section 384 and Part II of the Third Schedule of the Act, Banks financial statements are to disclose any loan or credit facility granted to officers of the bank.<sup>124</sup> The Act broadly specifies the procedure for the protection and proper disposition of assets and liabilities of an insolvent company.<sup>125</sup> In the case of banks, the principal objective of the Act is to safeguard depositors' interests and boost public trust in the Nigerian banking sector.

CAMA 2020 outlines certain corporate Governance principles that applies to companies including banks. For instances it requires banks being public companies to have at least three independent directors on their board of directors.<sup>126</sup> This provision is necessary to ensure the impartiality of the board in directing the affairs of the bank since independent directors have little or no personal interest in the company. In other words, the presence of independent directors on the board of a bank helps to prevent conflict of interest in the decision-making process of the board

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<sup>119</sup> Section 16

<sup>120</sup> Matthew Nwocha, 'Examination of the Law Relating to Protection of Bank Deposits, Liquidation and Winding-Up of Banks in Nigeria' (2017) *Juridical Tribune*, vol. 7, special issue, p. 111

<sup>121</sup> *ibid*

<sup>122</sup> Adeyemi Adekunle & Asaolu Taiwo, 'An Empirical Investigation of the Financial Reporting Practices and Banks' Stability in Nigeria' (2013) *Kuwait Chapter of Arabian Journal of Business and Management Review*, vol. 2, no. 5, 158.

<sup>123</sup> Section 374, CAMA 2020.

<sup>124</sup> Section 384 & Part II of the Third Schedule, CAMA 2020.

<sup>125</sup> Section 571 – 595.

<sup>126</sup> Section 275, CAMA 2020.

of directors. This will enable the board make sound and unbiased operational decisions and put strategies in place for effective CRM in the bank. Directors and Secretaries as agents of banks also owe a fiduciary relationship with the company and have a duty not to make secret profit and to allow their personal interest interfere with that of the company.<sup>127</sup> Such provision when complied with will help prevent credit-related insider abuse in the banking sector.

## **7. Secured Transactions in Moveable Assets Act 2017**

This Act put in place to provide a legal framework for creating, perfecting and realizing security interest in moveable assets.<sup>128</sup> It was born out of a desire to boost financial inclusion and access to inexpensive debt financing by MSMEs.<sup>129</sup> It is a groundbreaking and revolutionary law in the area of secured transactions and access to credit in Nigeria. The objectives of this law are highlighted in Section 1 of the Act and they include the improvement of financial inclusion in Nigeria; the stimulation of responsible lending to MSMEs; the promotion of access to credit with moveable assets as well as the perfection and realization of security interest in moveable property and to institute a collateral registry and define its functions.<sup>130</sup>

Section 6(c) requires an insurance cover on the collateral by the borrower in order to safeguard the bank from financial loss and promote CRM in the event of the destruction, damage or loss of the collateral.<sup>131</sup> This requirement for an insurance cover may be necessary to protect banks in the case of loss or destruction of the asset sort to be used as collateral, it may however constitute a financial burden to MSME borrowers who hardly have a good financial standing to afford an insurance cover. This requirement may subsequently defeat the objective of the act which is to promote financial inclusion and boost access to credit facilities by MSME.

The Act needs to be amended to regulate premium charges by insurance companies for insurance cover on moveable properties proposed to be used as collateral for bank loans. This will aid affordability by MSMEs seeking to secure loans with moveable assets since high premium charges may prevent them from being able to acquire the necessary insurance cover for the assets and subsequently hinder their use as collateral thereby defeating the main essence of the Act.

Section 10 establishes a National Collateral Registry which shall be headed by a registrar appointed by the CBN.<sup>132</sup> The main purpose of the registry is to provide a database for the receipt, registration and storage of information relating to security interest in moveable assets; to provide access to this information to those who seek it

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<sup>127</sup> Section 306 & 334 CAMA 2020

<sup>128</sup> Betha Igbinosun, 'Security Interests in Personal Property and the Nigerian Secured Transactions in Moveable Assets Act 2017: An Appraisal' (2020) *Journal of African Law*, vol. 64, issue 3, p.357.

<sup>129</sup> *ibid*

<sup>130</sup> Section 1, STMA Act 2017.

<sup>131</sup> Section 6(c)

<sup>132</sup> Section 10

and to perform such under functions that may be delegated to it under the Act.<sup>133</sup> The creation of the Registry serve as a medium through which banks can verify whether there are existing encumbrances on a moveable asset proposed by a borrower as security for a loan.<sup>134</sup>

## 8. Credit Reporting Act 2017

This Act was established following the creation of credit bureaux, to provide a law to govern credit reporting in Nigeria and the codification of internationally accepted best practices in the administration of credit reporting.<sup>135</sup> It further provides a framework for the exchange of credit information between a credit bureau and banks as well as other financial institutions that provide credit facilities.<sup>136</sup> Before the enactment of this Act, the activities of Credit Bureau was regulated by the CBN's "Guidelines for the Licensing, Operations and Regulation of Credit Bureau Related Transactions in Nigeria 2013".<sup>137</sup> The Act therefore came into being to provide a holistic legal framework for credit reporting and the licensing and regulation of credit bureau in Nigeria.<sup>138</sup>

The objectives of the Act are to boost credit access and promote risk management in credit transactions; to aid access to precise, equitable and dependable information and to ensure information privacy; to highlight the standards and criteria to guide the setting up, administration and monitoring of the credit bureau; to facilitate an equitable and competitive credit reporting system and to promote responsible borrowing, prevention of over-indebtedness and fulfillment of financial obligations by consumers and discouraging the indiscriminate issue of loans by banks and contractual default of borrowers and to ultimately aid credit information sharing.<sup>139</sup> The Act discourages the indiscriminate granting of credit by banks by providing a guide for the assessment of the credit worthiness of the borrowers before loans are extended. It also aims at ensuring that banks are provided with reliable credit

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<sup>133</sup> Section 11

<sup>134</sup> Tejumade Adetona, 'Enabling Access to Credit in Nigeria: The Secured Transactions in Moveable Assets Act 2017'

<<https://www.aelix.com/wp-content/uploads/2017/12/ENABLING-ACCESS-TO-CREDIT-IN-NIGERIA-THE-SECURED-TRANSACTIONS-IN-MOVABLE-ASSETS-ACT-2017.pdf>> accessed 23rd April 2021

<sup>135</sup> Felicia Monye, Ndubuisi Nwafor & Benjamin Mukoro, 'Appraisal of the Nigerian Credit Reporting Act 2017' (2020) *Journal of African Law*, vol. 64, issue 2, p. 229.

<sup>136</sup> George Etomi & Partners 'Analysis of the Credit Reporting Act 2017' (2017) Lexology <<https://www.lexology.com/library/detail.aspx?g=660045cc-83d6-4472-b4f3-1179dfea112e>> accessed 23rd May 2021.

<sup>137</sup> Oladele Oladunjoye & Bisola Ogueliofor, 'A Critical Evaluation of the Credit Reporting Act- Practical Issues Arising' (2018) Mondaq <<https://www.mondaq.com/nigeria/consumer-credit/757320/a-critical-evaluation-of-the-credit-reporting-act-2017-practical-issues-arising>> accessed 23rd May 2021.

<sup>138</sup> Explanatory Memorandum, Credit Reporting Act.

<sup>139</sup> Section 1, Credit Reporting Act 2017.

information of borrowers in order to promote responsible lending and reduce the risk of credit-related fraud in the banking system.<sup>140</sup>

The Act provides that no person is permitted to conduct the business of a credit bureau unless licensed by the CBN and in order to obtain a license, such a person must incorporate the business as a company limited by shares in accordance to the provisions of CAMA and must meet the minimum capital requirements as well as any other condition prescribed by the CBN.<sup>141</sup> This provision is necessary to prevent the reckless offspring and operation of credit bureaux in Nigeria which may eventually facilitate fraudulent activities in the banking system. The Act generally regulates the activities of credit bureaux and facilitates access to credit informations about borrowers by banks and therefore facilitates CRM in the banking system. Section 4 of the Act mandates credit bureaux to collaborate with the CRMS put in place by CBN and employ it as a source of credit information while carrying out their functions.<sup>142</sup>

The Act though a good invention is riddled with drafting errors which may cause difficulty in understanding some of its provisions and may eventually lead to misinterpretation where such errors are not detected by the reader. In Section 2(2) of the Act for instance contains a typographical error where “the Central of Nigeria” is used instead of “the Central Bank of Nigeria”.<sup>143</sup> Another error can be seen in Section 4(1) where “The Credit Reporting Management System” was used instead of “The Credit Risk Management System (CRMS)” and this error is repeated severally in Section 27.<sup>144</sup> Section 13(5) requires to forward a rectified credit report after correction to a “credit information provider” and the data subject.<sup>145</sup> Section 29 states that “Permissible purposes” include purposes stated in section 9 of the Act when in fact the permissible purposes are actually stated in Section 7. It is also baffling that a critical term such as “Data Subject” which was used about 32 times in the Act was not defined in Section 27 which is the Interpretation Section of the Act.<sup>146</sup> These errors reflect poor proof-reading on the part of the drafters and it is ridiculous that this Act passed through all the legislative stages without this error being detected and corrected.

Generally, the enactment of this Act is a step in the right direction in promoting sound credit reporting and information sharing in the banking system as well as a substantial effort on the part of the government to aid the resolution of difficulties

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<sup>140</sup> Kubi Udofia, ‘A Critical Analysis of Credit Information Sharing Under Nigeria’s Credit Reporting Act 2017’ (2017) *Financier Worldwide*  
<<https://www.financierworldwide.com/a-critical-analysis-of-credit-information-sharing-under-nigerias-credit-reporting-act-2017#.Y1ZPanbMLIU>> Accessed 17<sup>th</sup> October 2022

<sup>141</sup> Section 2

<sup>142</sup> Section 4

<sup>143</sup> Udofia (n.291)

<sup>144</sup> *ibid*

<sup>145</sup> *ibid*

<sup>146</sup> *ibid*

associated with accessing credit facilities and doing business especially among SMEs.<sup>147</sup> In order to promote the efficiency and effectiveness of the Act, there is need for the government to look into issues relating to data collection, record keeping, lack of needed technology, bureaucracy within government agencies.<sup>148</sup> There is also need to create an enabling environment for consistent interaction among credit information providers in order to foster the objectives of the Act.<sup>149</sup>

## **9. Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 2004**

This Act repealed and replaced the Failed Banks (Recovery of Debts) and Financial Malpractices Decree 18 of 1994. The Act was created to establish a legal framework for the collection of debts owed to bankrupt banks and the prosecution of financial malpractices in Nigerian banks and other financial institutions.<sup>150</sup> Its principal goal is to assist failing banks in resolving their problems by speeding up the recovery of NPLs that are still owed at the time the bank is liquidated or declared insolvent. The Act also aims to clean up the banking industry by prosecuting and convicting directors and other executives who are found guilty of banking malpractices and other bank-related offenses.<sup>151</sup> The essence of the law is mainly to protect depositors and facilitate the recovery of their monies in the event of bank failure. It also seeks to prosecute directors and other officers who fail to ensure effective CRM of these failed bank.<sup>152</sup>

Section 1 of the Act authorizes the Federal High Court to recover debts owed to failing banks that were granted in the ordinary course of business and remain unpaid at the time the bank is closed or declared bankrupt by the CBN, in compliance with the requirements of the Act.<sup>153</sup> The court is further endowed with exclusive jurisdiction to hear all matter relating to the retrieval of debts owed to failed banks.<sup>154</sup> Section 1(3) further empowers the Federal High Court to lift veil of a corporate body indebted to a failed bank in order to trace those directors and officer jointly and severally for the debts owed to a failed bank in order to aid the recovery of these debts.<sup>155</sup> This is one of the unique inventions of the Act aimed at sanitizing the banking system and

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<sup>147</sup> Aderonke Adedipe and Matthew-Daniel Oyebade, 'Review of the Credit Information Reporting Act (2017)' (Simmons-Simmons, 8 September 2017)

<<https://www.simmons-simmons.com/en/publications/ck0awr5jd73rg0b94rlk8w7iq/08092017-review-of-the-credit-information-reporting-act-2017-4fr1ca>> accessed 31<sup>st</sup> July 2021.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Preamble, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Cap F2, LFN 2004.

<sup>151</sup> *ibid*

<sup>152</sup> Gabriel Onagoruwa, 'Early Intervention Regime Under the Bank Resolution Framework in Nigeria: Resolving the Diverging Interests' (2013) Afe Babalola University Journal of Sustainable Development Law and Policy, vol. 1, issue 1, p. 120.

<sup>153</sup> Section 1, Failed Banks Act, Cap F2, LFN 2004.

<sup>154</sup> Section 5

<sup>155</sup> Section 1(3)

riding it of corrupt bank officials who engage in insider abuse and other malpractices thereby leading to the collapse of banks. This provision has successfully led to the prosecution and conviction of corrupt bank executives and other officials.

A typical example is the high profile case of *Federal Republic of Nigeria v. Cecilia Ibru*,<sup>156</sup> where Mrs. Cecilia Ibru, the former managing director of the defunct Oceanic Bank Plc was arraigned for a 25 count criminal information bothering on financial crimes including credit related insider abuse.<sup>157</sup> She was eventually convicted on the 9<sup>th</sup> of October 2010 under Section 15(1)(b) of the Failed Banks Act to a jail term of six months imprisonment accompanied with an order to forfeit assets worth about one hundred and ninety-one billion.<sup>158</sup> Such convictions serve as an example to other bank executives to discourage them from engaging in credit related insider abuse and other malpractices and further propel them to ensure the proper and transparent administration of the banking system.

The repealed Failed Banks (Recovery of Debts) and Financial Malpractices Decree 18 of 1994 established the Failed Banks Tribunal to handle matters relating to the recovery of debts owed to failed banks and banking-related offences at that time. It was however abolished under Section 2 of the Tribunal (Consequential Repeal, etc) Act No. 62 of 1999 due to the return of democratic rule that same year and its jurisdiction was transferred to the Federal High Court.<sup>159</sup> In the five year period of its existence, the Tribunal successfully disposed of 45 criminal cases and 672 civil/ debt recovery cases.<sup>160</sup>

The defunct Tribunal shares similarities with the current Tribunal for the Enforcement and Recovery of Eligible loans established under section 102 of BOFIA. This Tribunal established by BOFIA does not however cover matters relating to recovery of debt owed to failed banks. Based on the achievements of the defunct Failed Banks Tribunal during its short span of existence, it has shown potentials to facilitate the speedy recovery of loans owed to failed banks. The Act therefore needs to be amended to revive and re-establish the Failed Banks Tribunal to speed up the legal process of recovery of loans owed to failed banks and trial of their fraudulent bank officials.

## **10. The Money Laundering (Prevention and Prohibition) Act 2022**

This Act repealed and replaced the former Money Laundering (Prohibition) Act 2011. The main purpose of this Act was to provide a comprehensive legal framework to deal with the problem of money laundering in Nigeria and to establish the Special Control Unit against Money Laundering (SCUML) under the Economic and Financial Crime

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<sup>156</sup> (Unreported) Charge No. FHC/L/296/2009

<sup>157</sup> *ibid*

<sup>158</sup> *ibid*

<sup>159</sup> NDIC, 'Legal Matters/ Regulations'

<<https://ndic.gov.ng/resources/legal-matters-regulations/>> Accessed 24<sup>th</sup> of October 2022

<sup>160</sup> *ibid*



Commission (EFCC) to give effect to the provisions of the Act.<sup>161</sup> Money laundering can be defined as the criminal process of sieving illegally obtained financial assets through a series of transactions in order to make such assets appear to be from a legitimate source so that it can be freely used for legal purposes.<sup>162</sup> The main aim of this dubious process is to ensure that the illegal source of the asset is not discovered. Section 2 of the Act prohibit cash payments exceeding five million naira or its equivalent in the case of individuals and ten million naira or its equivalent in the case of body corporates.<sup>163</sup> Transactions exceeding the threshold must be done through a financial institution.<sup>164</sup> Banks are to report any single transaction or lodgment in excess of the above threshold. Section 2 further criminalizes any attempt to split cash transactions in order to navigate compliance with the provisions of the section.<sup>165</sup> This provision is in line with the CBN's cashless Policy which was aimed at reducing the physical cash circulating in the State and encourage electronic-based transactions as an alternative.<sup>166</sup> This provision provides ease in identifying the source of laundered money as well as tracking its movement.

In relation to CRM, the issue of money laundering raises certain concerns one of which is the use of laundered money as credit facilities by banks in the process of their financial intermediation activities. Such use may defeat the aim of the Act which is to prevent the use of illegal funds for legitimate purposes. The Act therefore imposes certain duties on banks in order to prevent them from being used as a means to foster the process of money laundering. Banks have a duty to report international transaction involving a sum above ten thousand dollars to the Special Control Unit of the EFCC for investigation.<sup>167</sup>

Section 4 requires banks to put in place a framework for customer identification and this framework extends to customers such as individual, body corporate and casino and so on. Banks are required to trace and monitor the source of funds of Politically Exposed Persons (PEPs)<sup>168</sup> and report suspicious transactions of its customers.<sup>169</sup> These provisions help prevent the flow of laundered funds in the banking system and their eventual use as credit facilities to the public.

There however exist the question as to the extent of supervision of banks to ensure compliance with the provisions of the Act. The CBN plays the key role in this aspect being the main supervisory institution for banks in Nigeria. In 2011, the CBN's Anti Money Laundering/ Combatting the Financing of Terrorism Risk Based Supervision

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<sup>161</sup> Section 1(1), Money Laundering (Prevention and Prohibition) Act 2022

<sup>162</sup> Naim Al-Qadi, Aiman Al-Haj, Mousa Matar & Mashbour Hathloul, 'The Positive and Negative Role of Banks in Money Laundering Operations' (2012) Canadian Social Science, vol. 8, No. 5, p. 14.

<sup>163</sup> Section 2, Money Laundering (Prevention and Prohibition) Act 2022

<sup>164</sup> *ibid*

<sup>165</sup> *Ibid*

<sup>167</sup> Section 3

<sup>168</sup> Section 4(8) &(9)

<sup>169</sup> Section 7

Framework (AML/CFT RBS Framework) was released to provide a guide for the supervision of banks in relations to the identification and control of risk associated with money laundering and terrorist financing.<sup>170</sup>

In relations to CRM, the supervisory framework makes provision for examination procedures of lending activities to serves as a guide for bank examiners.<sup>171</sup> The essence of this provision in the framework was to provide a template for accessing a bank's existing system for CRM and its ability to implement effective due diligence, monitoring and reporting systems.<sup>172</sup> It entails the process of reviewing the bank's policies, procedures and processes relating to lending activities and their associated risk.<sup>173</sup> Examiners are to conduct transaction testing to ensure that customers' actual activities actually correlate with their stated businesses and purpose of loan.<sup>174</sup>

The SCUML of the EFCC has no supervisory power over banks since it is limited to the supervision of Designated Non-Financial Institution.<sup>175</sup> This limitation may serve as a clog in ensuring effective bank supervision in relations to money laundering and lending matters. The involvement of the SCUML in bank supervision will help compliment the efforts of the CBN in ensuring that laundered funds are tracked down and not allowed to flow as credit facilities to the public.

Another issue worthy of mention is the possibility of the use of laundered money to repay bank loans. Section 2 and 7 of the Act seems to have taken care of this problem since Section 2 provides a cash payment limit threshold and Section 7 authorizes banks to report suspicious transactions. Compliance with these provisions will substantially reduce the risk of laundered money flowing into the banking system.

## **11. Economic and Financial Crime Commission (Establishment) Act 2004**

The Act establishes the Economic and Financial Crime Commission (EFCC) which is the designated Financial Intelligence Unit in Nigeria vested with the responsibility for the enforcement of the provisions of the Act and combatting Economic and Financial Crimes in Nigeria.<sup>176</sup> It is also the key government agency for fighting corruption.<sup>177</sup> It is the "financial watchdog" of the Nigerian financial and business

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<sup>170</sup> CBN's Anti Money Laundering/ Combatting the Financing of Terrorism Risk Based Supervision Framework, p. B9.

<sup>171</sup> Ibid, p. B71

<sup>172</sup> ibid

<sup>173</sup> CBN (n. 321)

<sup>174</sup> ibid

<sup>175</sup> Economic and Financial Crimes Commission. 'Special Control Unit Against Money Laundering (SCUML)'

<<https://www.efcc.gov.ng/scuml>> Accessed 24th October 2022

<sup>176</sup> Section 1(2) & Section 6, Economic and Financial Crimes Commission (Establishment) Act 2004.

<sup>177</sup> Economic and Financial Crimes Commission, 'The Establishment Act'

<<https://www.efcc.gov.ng/about-efcc/the-establishment-act>> Accessed 24th October 2022

environment.<sup>178</sup> The Commission is empowered to enforce the provisions of the Money laundering Act, the failed banks (Recovery of Debts) and Financial Malpractices Act and the Banks and other financial institutions Act and other related laws.<sup>179</sup> The Act criminalizes default on the part of bank officers to comply with the provisions of the Act.<sup>180</sup>

On the issue of the effectiveness of the EFCC as an institution, has been criticized for its involvement in corrupt practices and vague structure which leaves room for little or no accountability.<sup>181</sup> Interests on sums recovered in the course of carrying out its functions are unaccounted for which raises suspicion as to the integrity and transparency of the Commission.<sup>182</sup>

In relations to CRM, the EFCC is empowered to investigate and try offences relating to bank and security fraud. It does not however have the express legal power to engage in debt recovery on behalf of banks. In the case of *EFCC v. Diamond Bank & Ors*,<sup>183</sup> the Supreme Court held that the function of the EFCC outlined in Section 6(b) of the EFCC Act does not extend to disputes emanating from simple contracts and civil transactions. It further held that the EFCC is not a debt recovery agency and should therefore not engage in such activities.

The absence of such powers in the enabling Act prevents the EFCC from lawfully collaborating with banks and regulatory bodies to recover loans. The EFCC if empowered can play a key role in investigating and prosecuting predatory and fraudulent debtors with the aim of recovering loans owed to bank. The EFCC however has jurisdiction to investigate and prosecute matters related to insider abuse and other fraud-tainted matters in the acquisition and repayment of loans by virtue the provisions of Section 6 of the Act. A typical example of EFCC's involvement in the prosecution of credit-related criminal matters is seen in the case of *Federal Republic of Nigeria v. Cecilia Ibru*,<sup>184</sup> mentioned earlier.

## 12. Recommendations

### a. The NDIC Deposit Insurance Limit Should be Increased

The NDIC only insure deposit up to five hundred thousand naira in commercial banks and two hundred thousand naira in microfinance banks. This deposit insurance limit

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<sup>178</sup> Ezeani Salome, 'An Evaluation of Effectiveness of Economic and Financial Crime Commission (EFCC) in Checkmating Public Sector Accountants Operation in Nigeria' (2012) *Arabian Journal of Bussiness and Management Review (Nigerian Chapter)*, vol. 1, no. 1, p. 24

<sup>179</sup> Section 7(2)

<sup>180</sup> Section 14(1)

<sup>181</sup> Joseph Edeh, Paul Nwokwu & Kenneth Ugbala, 'Economic and Financial Crimes Commission's (EFCC) Performance in Combatting Corruption in Nigeria: Buhari's Administration in Perspective (2015-2020)' (2022) *International Journal of Development and Management Review*, vol. 17, no. 1, p. 137

<sup>182</sup> *ibid*

<sup>183</sup> (2018) LPELR-44217(SC)

<sup>184</sup> (Unreported) Charge No. FHC/L/296/2009

is very ridiculous when compared to that of other jurisdictions such as Canada, US and UK. There has been evident deterioration of the value of the naira which is the Nigerian currency and this necessitate an increase in the deposit insurance limit of the NDIC. This increase will encourage huger bank deposits which will in turn promote bank liquidity and stability.

b. Amendment of the EFCC Act

EFCC is currently unable to legally assist banks in recovering NPLs because Section 6 of the EFCC Act which outlines the functions of the agency does not contain any provision to that effect. The Legislature therefore needs to amend the Act to specifically empower the EFCC to engage in debt recovery activities. Such provision will enable it collaborate with AMCON to facilitate the speedy recovery of NPLs.

c. Amendment of the Credit Reporting Act

The CRA is riddled with typographical errors which will likely lead to confusion and eventual misinterpretation. The Legislature therefore need to amend the Act in order to correct all the errors in the various affected sections in order to promote better understanding of the legislation and prevent misinterpretation.

d. Revival of the Failed Banks Tribunal

Based on the past achievements of the defunct Failed Banks Tribunal which was established under the Failed Banks (Recovery of Debts) and Financial Malpractices Decree 18 of 1994 as mentioned earlier, the current Failed Banks Act should be amended by the legislature to re-establish and revive the failed Banks Tribunal to speed up the legal process of recovery of loans owed to failed banks and trial of their fraudulent bank officials. The jurisdiction and composition of this Tribunal should be clearly stated to prevent ambiguity and misinterpretation.

### **13. Conclusion**

The legal framework for CRM in the Nigerian banking sector is evidently broad since it cuts across a variety of laws. These laws have instituted various agencies for different specific purposes which are interconnected to promote effective CRM and the stability of the banking system in Nigeria. It highlights the progressive effort of the Nigerian government to promote CRM and consequently the stability of the Nigerian banking system. Based on the legal issues highlighted in this study, the laws can be amended in order to promote their effectiveness and savage the integrity of the banking system in Nigeria. The institutions put in place for these laws also need to be administered by qualified and experienced personals with renowned integrity and good track record in ensure their effectiveness.