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Banking Under the Banks and other Financial Institutions Act: A Survey of Compliance

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Abstract

This article is the results of an empirical study conducted through survey of 21 merchant banks and 20 commercial banks randomly selected to examine whether or not they complied with the requirements to publish their Annual Reports within four months after the end of their Financial Year. The study covered a total of 21 Newspapers and magazines in which the Annual Reports were expected to have been published. The study used 1992 as a case study. This was a period when Nigeria was ruled by the military at federal and civilians in the States. The findings of the study shows a total of 45 contravention cases consisting of delay in publication, partial disclosure of penalties paid or none disclosure of the amount paid as fine by banks. Whereas delay in publishing Annual Reports contravened Section 27 (1a) of Banks and Other Financial Institutions Act (BOFIA), failure to provide details of policy contravened and the penalties paid thereon is a contravention of Section 27 (2) and each contravention attracts a fine of N100,000.00 as stipulated in Section 27 (5) of the BOFIA. The study concludes that the sum of N4.5 million had accrued from those contraventions and that about N20 million could have been realised if all the banks that operated during the period of the study were to be reviewed.

Keywords: BOFIA, Compliance, Survey, Central Bank of Nigeria, Penalties

Introduction

Financial institutions are generally grouped under formal and informal institutions. While formal ones are regulated both in their establishment and operations, those in the informal sectors usually operate based on customs and tradition with little institutional interventions.

Banks including other financial institutions like insurance, microfinance, stock exchange and mortgage entities are regulated in Nigeria. There have also been remarkable changes over the years in terms of regulations, structure of banks and their operations. Banking supervision and intervention has also come a long way leading to recapitalization, mergers, acquisitions and rebranding. Banks had imbibed the culture of best-practice and corporate governance. They have also become more self-regulating with enhanced capital-base and ITC-driven culture always trying to conform to all regulatory and legal requirements concerning financial statement reporting.

The Problem

History of the Nigerian banking industry shows significant growth in both size and branch out-reach of commercial banks in the country. There were the boost and burst periods when banks profitability was at extra-ordinary level and at times the level of distress was shocking even to the regulatory institution. It became obvious that despite the existence of regulatory frameworks and regular efforts in banks supervision by the Central Bank of Nigeria (CBN), there were still unwholesome practices by banks. Banks continued to violate one statutory provision or another. It is observed that banks generally delay in publishing annual financial statements after the end of their Financial Year (FY). Also, ability to enforce the law by CBN depends on the political will of government of the day. Nigeria has passed through civilian, military and 'milicivilian' regimes. Whereas analyst may find it easy to state the ability to enforce policy by a civilian or military government, it may prove difficult to state with high degree of confidence how fiscal, monetary or routine regulatory role could be carried out by CBN under a military-cum-civilian system of government. This type of system was what obtained in Nigeria in 1992 and it is the period covered in the survey.

Methodology of Research

This article study the extent of compliance by banks in publishing Annual Reports and Statement of Accounts after the end of a FY as well as the statement of penalties paid for contravention of policy guidelines. The study is motivated by the provision of Sections 27 sub-sections (1a), (2) and (5) of the Bank and Other Financial Institutions Act 1991 (BOFIA) which require banks to publish in Newspapers their Annual Reports and Accounts including penalties paid within four months after the end of each FY. The study is intended to identify the extent of compliance to this simple statutory requirement under Milicivilian system and also portray the ability or otherwise of CBN to enforce the laws.

A total of forty-one banks were covered in the survey involving 21 Newspapers, business papers and a magazine that were published between 1st January and 30th September, 1992. Out of the 41 banks, 21 were merchant banks while 20 were commercial banks which were randomly selected. Among the Newspapers were eight (8) dailies and weeklies each, three (3) weekly business papers and one (1) economic magazine. The study is relevant despite a number of government programmes which distracted the regulatory body from its mainstream financial system control during the period being surveyed.

Banking Regulation

Whereas between 1947 and 1952 the Nigerian banking industry consisted of 25 indigenous banks, as a result of increase demand for banking services over the years, there were 66 banks in 1988 with a total of 1,500 branches as against 1,000 branches in 1984. Between 1985 and 1994 branch network of merchant banks and commercial banks respectively increased from 26 and 1,297 to 144 and 2,541. By 2004, there were a total of 89 banks operating in the country. The proliferation of banks followed liberalization of the Nigerian economy in the mid-eighties during which over 80 licenses were granted to politically connected businessmen. The industry was therefore fragmented into relatively small and weakly capitalized banks. Although most of the banks' performance was satisfactory, only 10 out of 90 banks in 2000, 13 out of 90 banks in 2002, 11 out of 87 banks in 2003 and 10 out of 87 banks in 2004 were actually considered to be sound.

Due to new banking reforms embarked by the monetary authorities, by 2006, there were 25 commercial banks, 750 community banks, 112 finance companies, 322 bureau de changes, 91 Primary Mortgage Institutions (PMIs) and 5 Microfinance banks. Following further monetary policy measures, the banking industry in 2012 consists of 24 commercial banks, 5 discount houses, 5 development finance institutions, 50 Class-A bureau de change, 598 other bureau de change, 98 Primary Mortgage Institutions (PMIs), 84 finance companies and 914 Micro-finance institutions.

Collapse of banks in Nigeria has always been attributed to weak regulatory enforcement or observed gap in regulatory instruments. For example, although banking operations begun in 1892 until 1952 there was no banking legislation in Nigeria. It was the 1952 Ordinance that set standards, required reserve funds, established bank examinations and provided for assistance to indigenous banks. Since then, monetary authorities have continued to respond to banking dynamics in the country by strengthening regulatory frameworks to ensure purposeful banking. The period preceding 1986 was characterized by such financial regulatory mechanisms like liquidity ratio; special deposit cash reserve requirement, direct regulation of interest rate, stabilization securities, direct credit control and moral suasion. Subsequently, interest rate was deregulated with a five (5) percent margin thereby encouraging competition amongst banks which enhanced funds allocation.

In terms of Annual Reports by banks, circular was issued stating that by the end of 2009, all banks must change their accounting years to the calendar year and all subsidiaries of the parent bank must follow the same accounting year. This is because different reporting years for Nigerian banks has made financial comparison difficult among banks and also limited transparency of the banks' financial results.

In 2010, CBN issued another circular detailing the type and format of financial information that must be disclosed by banks in their yearly financial statements. Apparently, CBN is aggressively pursuing accounting reforms to improve disclosure to regulators, investors, and depositors regarding the financial health of Nigerian banks. The CBN now holds Chairmen of Board and Managing Directors of any defaulting banks directly responsible and would be sanctioned including removal from office, suspension of the bank's license for foreign exchange dealership and barring from participation in Bankers' Committee for not publishing Annual Reports. Banks are also required to adopt International Financial Reporting Standards (IFRS) in 2012 in order to enhance transparency and maintain sound banking practices.

The BOFIA

The first legal instrument promulgated in Nigeria on banking industry was the Central Bank of Nigeria Act 1958. This Act was first amended in 1962. However, the Banking Act 1969 was the first legislation for the establishment and operations of commercial and merchant banks in the country. The BOFIA was enacted in 1991 along with a new CBN law to ensure close monitoring and complete control of the financial system in the country by the regulatory body. Prior to the promulgation of BOFIA, four amendments were made in 1970, 1972, 1975 and 1976 in line with the changing demand in banking services as well as the monetary policy of the government in power.

The BOFIA repealed the Banking Act 1969 and consequently also repealed the Banking Amendment Acts 1970, 1972, 1975 and 1976. The BOFIA regulates banking and other financial institutions by prohibiting the carrying on of such businesses in Nigeria without valid license owned by a company duly incorporated in Nigeria. In pursuance of prudence and accountability, BOFIA makes it mandatory for a bank not later than four (4) months after the end of its FY to:

i) Publish in a daily Newspaper printed in and circulating in Nigeria and approved by the CBN (BOFIA Section 27 (1a));

ii) Disclose in detail in such publication penalties paid as a result of contravention of any policy guidelines which are in force during the FY in question and auditors report shall reflect such contravention (BOFIA Section 27 (2)); and,

iii) Any bank which fails to comply with any of the requirements of Section 27 is in respect of each failures guilty of an offence and liable on conviction to a fine of N100,000 (BOFIA Section 27(5)).

The Survey

The survey identified the date for the FY end of each of the 41 banks through the 21 media prints covered in the survey. Banks were then grouped according to their FY. With the end of FY of each bank, publication of Annual Reports was checked across the 21 media prints to confirm compliance or otherwise to the four (4) months stipulated deadline. Report on contravention of policy guidelines were also noted along with any penalties paid by each bank.

Findings

Findings of the survey are highly revealing. Out of the 41 banks, 15 or 36.6 percent published their Annual Report in the Newspapers after four months. Also, 26 cases of undisclosed amount paid as penalties were discovered. Four (4) banks were silent on the issue of contravention while six (6) other banks did not contravene any policy guideline.

Financial Year

The survey shows that the FY end of the 41 banks during the period of the survey spread into seven (7) different periods. Out of the 41 banks, 25 have their FY end on 31st December, 10 banks have their own on 31st March, two (2) banks on 30th September and one bank each having their FY ending in October, February, April and May.

Date of Published Accounts

Analyses of date of publication of Annual Statement of Accounts by banks reveals that out of the 41 banks covered in the survey, 36.7 percent representing 15 banks violated the provision of Section 27 (1a) of BOFIA. This means that 26 banks representing 63.3 percent published their Annual Reports within four months after the end of their FY. It is observed that all the 15 banks that violated had their FY ending on 31st December, 2012. Based on the provision of Section 27 (5) of BOFIA, each bank was to be fined N 100,000 giving a total of N1.5 million penalties payable to the CBN.

Report of Other Contraventions

Review of reports given by banks regarding contraventions and penalties paid shows those 31 banks representing 75.6 percent contravened the provisions of both the Banking Act 1969 and BOFIA 1991. Six (6) other banks or 14.6 percent did not contravene any section of the law while the remaining 4 banks or 9.8 percent did not give explicit statement whether they contravene any section of the law or not. However, failure to make a categorical statement may be deemed as contravention to the provision of section 27(2) of BOFIA in itself. Accordingly, each of the four (4) banks should have been fined N 100,000.00 base on the provision of Section 27(5) of BOFIA giving a total of N 400,000.00.

It is further observed that only five (5) or 16.2 percent out of the 31 banks that contravened one section of the law or the other actually reported the amount paid as penalties. The remaining 26 banks or 83.8 percent simply stated “paid appropriate penalties thereon”. This statement leaves the public in darkness about how much was paid by each of these banks as penalties. It could be deduced that the act in itself is another form of contravention of the provision of Section 27(2) of BOFIA which requires banks to “disclose in details penalties paid as a result of contravention”. In other words, 26 banks were liable to a fine of N 100,000.00 each giving a total of N2.6 million.

Apparently, in addition to fines that was collected from the 31 banks which contravened policy guidelines, the CBN was entitled to a total sum of N4.5 million being fines from 15 banks for late publication of their Annual reports, four (4) banks for inexplicitness in their reports and 26 banks for lack of detailed disclosures as stipulated in Section 27(2) of BOFIA.

Conclusions

This study has been able to examine the extent of banks compliance to the provision of Section 27(1a) and 27(2) of BOFIA 1991 which requires banks to publish detailed Annual Report indicating any contravention of policy guidelines and penalties paid thereon. The study identifies contraventions by late publication and inexplicit disclosures by banks. A total of N4.5 million has accrued as amount payable for the contraventions.

Whilst it is not clear if CBN had undertaken studies of this nature and have collected the applicable fines, it also implies that so much revenue may be generated by CBN from this source alone. In view of the number of banks operating in the country during the period under review and the prevalence of contravention discovered from the sample surveyed, as much as N20 million could be realized by the monetary authorities.

The finding of this study also shows the laxity on the part of regulatory authorities in terms of enforcing public disclosure by banks. While it may be argued that one year period after the introduction of BOFIA was too short to expect full compliance, it should be noted that BOFIA itself is a unified version of the Banking Act 1969 as amended with various CBN guidelines which the banks had been subjected to over the years.

In spite of the political-cum-administrative structure operating at the time which might not have allowed for strict compliance to the new law then, it is inexcusable for the banks to contravene the provision of Section 27(1a) and 27(2) of BOFIA since it consisted of the pieces of CBN guidelines over the years as well as the repealed Banking Act 1969. It is believed that neither a full-pledge military or civilian administration could have made banks to comply with banking rules and regulations better than a mixed system of military and civilian which Nigeria had at the time.

Banks would therefore continue to violate the provision of Section 27(1a) and (2). Notwithstanding the additional CBN measures of holding Board Chairmen and Managing Directors personally responsible, it does not seem that CBN will be able to enforce payment of penalties as required by Section 27(5) of BOFIA because such penalties do not constitute part of the major revenue sources for the apex bank.

References

Bank and Other Financial Institutions Act 1991

Chibuzo, O. A., Tella, S., and Akingunola, R. (2011), Relationship between Regulation and Performance of Nigerian Commercial Banks, *European Journal of Economics, Finance and Administrative*

- Sciences* ISSN 1450-2275 Issue 33 [online] Available:
http://www.eurojournals.com/EJEFAS_33_14.pdf last accessed on 28th August, 2012.
- Cowry Asset Management Limited. (2009), Nigerian Banking Report [online] Available:
<http://www.cowryasset.com/uploads/reports/NIGERIAN%20BANKING%20REPORT.pdf> last
accessed on 2nd September, 2012.
- Alford, D. (2011), Nigerian Banking Reform: Recent Actions and Future Prospects [online] Available:
<http://proshareng.com/articles/2268> last accessed on 28th August, 2012.
- Egwurube, O. A. (2012), The Reforms of the Banking Sector and Issue of Economic Development in
Nigeria: A Lesson for the Sub-Sahara Countries, *International Journal of Business and
Management Tomorrow* Vol. 2 No. 3 [online] Available: <http://www.ijbmt.com/issue/149.pdf>
last accessed on 2nd September, 2012.
- Ezeoha, A. E. (2011) "Banking Consolidation, Credit Crisis and Asset Quality in a Fragile Banking
System: Some Evidence from Nigerian Data", *Journal of Financial Regulation and Compliance*,
Vol. 19 Iss: 1, pp.33 – 44 [online] Available:
<http://www.emeraldinsight.com/journals.htm?articleid=1907023> last accessed on 28th August,
2012.
- Ofanson, E. J., Aigbokhaevbolo, O. M., and Enabulu, G. O. (2010), The Financial System in Nigeria: An
Overview of Banking Sector Reforms, *AAU JMS* Vol. 1, No. 1, [online] Available:
<http://aaujms.org/The%20Financial%20System%20in%20Nigeria.pdf> last accessed on 2nd
September, 2012.
- Ogujiuba, K., and Obiechina, M. E. (2011), Financial Sector Reforms in Nigeria: Issues and Challenges,
Journal of Business and Management Vol. 6, No. 6; [online] Available:
<http://ccsenet.org/journal/index.php/ijbm/article/download/10844/7690> last accessed on 3rd
September, 2012.
- Olokoyo, F. O. (2011), Determinants of Commercial Banks' Lending Behaviour in Nigeria, *Journal of
Financial Research* Vol. 2, No. 2; [online] Available:
[http://eprints.covenantuniversity.edu.ng/527/1/Determinants_of_Commercial_Banks'_Lendi
ng_Behaviour_in_Nigeria.pdf](http://eprints.covenantuniversity.edu.ng/527/1/Determinants_of_Commercial_Banks'_Lendi ng_Behaviour_in_Nigeria.pdf) last accessed on 2nd September, 2012.
- Egwuatu, P. (2009), Nigeria: Shareholders Hail UBA's Compliance of BOFIA, CBN Rules [online]
Available: <http://allafrica.com/stories/200901200533.html> last accessed on 27th August, 2012.
- Samuel, O. (2009). Legal and Regulatory Requirements of Banking And Other Financial Institution Act
on Financial Statement Reporting (BOFIA) [online] Available:
[http://olusojisamuel.wordpress.com/2009/08/26/legal-and-regulatory-requirements-of-
banking-and-other-financial-institution-act-on-financial-statement-reporting-bofia/](http://olusojisamuel.wordpress.com/2009/08/26/legal-and-regulatory-requirements-of-banking-and-other-financial-institution-act-on-financial-statement-reporting-bofia/) last
accessed on 27th August, 2012.
- Somoye, R. O. C. (2008), The Performances of Commercial Banks in Post-Consolidation Period in
Nigeria: An Empirical Review, *European Journal of Economics, Finance and Administrative
Sciences* ISSN 1450-2275 Issue 14 [online] Available: <http://www.eurojournals.com> last
accessed on 2nd September, 2012.
- Trifter. (2012), The Evolution of Banks and Banking in Nigeria [online] Available:
<http://trifter.com/africa/nigeria/the-evolution-of-banks-and-banking-in-nigeria/> last accessed
on 2nd September, 2012.

Appendix I. Summary of survey findings

Year Ended	No. of Banks	Published Report	Contraventions	Penalties Paid
31 st December	25	Within 4 months – 10 After 4 months – 15	Twenty (20) banks contravened Sections 12(3b & 3c) of the Banking Act 1969 and Section 60(1) of BOFIA 1991. Four (4) banks did not contravened any policy guideline. One (1) bank made no reference to contravention in its published Annual Report.	Twelve (12) banks stated they “paid” penalties. Four (4) banks were silent on payment of penalties. One (1) bank paid N138,580.00 One (1) bank paid N211,000.00 One (1) bank paid N25,372.00 One (1) bank paid N2,000.00
31 st October	1	Within 4 months	No specific reference to the issue of contravention in the published Annual Report.	No statement.
30 th September	2	Within 4 months	One of the banks contravened Sections 12(5a & 5b) of the banking Act 1969. The second bank did not make statement about contravention.	Penalty “paid”
31 st May	1	Within 4 months	The bank did not made specific reference to the issue of contravention in its published Annual Report.	No statement.
30 th April	1	Within 4 months	No contravention.	Nil
31 st March	10	Within 4 months	Nine (9) banks contravened Sections 12(3b & 3c) of the	Eight (8) out of the nine banks

			Banking Act 1969 and Section 60(1) of BOFIA. One (1) of the nine banks also contravened Section 15(4b) of BOFIA. One (1) bank did not contravene any policy.	stated that they "paid" penalties. One (1) bank paid N 25,000.00 as penalty.
29 th February	1	Within 4 months	The bank contravened Section 58(1) of BOFIA.	The bank reported it "paid" the penalty.

Appendix II. List of banks covered in the Survey

1. International Merchant Bank (Nigeria) Limited
2. FBN (Merchant Bankers) Limited
3. Prime Merchant Bank Limited
4. Commerce Bank (Credit Lyonnais Nigeria) Limited
5. Royal Merchant Bank Limited
6. Merchant Bank of Africa Limited
7. Merchant Bank of Commerce Limited
8. First City Merchant Bank Limited
9. Icon Limited (Merchant Bankers)
10. Afribank
11. Crown Merchant Bank Limited
12. Intercity Bank Limited
13. Citizen International Bank Limited
14. Universal Trust Bank of Nigeria Limited
15. Owena Bank Nigeria Limited
16. MIDAS Merchant Bank Limited
17. Eko International Bank of Nigeria Plc
18. Broad Bank of Nigeria Limited
19. Commerce Bank Plc
20. New Africa Merchant Bank
21. Rims Merchant Limited
22. Habib Nigeria Bank Limited
23. Allied Bank of Nigeria Plc
24. Alpha Merchant Bank Plc
25. Industrial Bank Limited (Merchant Bankers)
26. Group Merchant Bank Limited
27. Union Bank of Nigeria Limited
28. Comet Merchant Bank Limited
29. Guaranty Trust
30. NAL Merchant Bank Plc

31. Centre Point Merchant Bank Limited
32. Liberty Merchant Bank Limited
33. First Inter-State Merchant Bank
34. Savannah Bank of Nigeria
35. Pacific Merchant Bank Limited
36. Amicable Bank of Nigeria Limited
37. Gulf Bank of Nigeria Limited
38. United Bank for Africa Limited
39. Bank of the North Limited
40. Triumph Merchant Bank Limited
41. NIGBEL Merchant Bank (Nigeria) Limited

Appendix III. List of print media used for the survey

National Concord
New Nigerian Newspaper
New Nigerian on Sunday
Financial Guardian
Business Concord
Business Times
Daily Times
Sunday Concord
Sunday Democrat
Sunday Guardian
Sunday Times
Sunday Triumph
Sunday Vanguard
The Democrat
The Guardian
The Nigerian Economist
The Reporter
The Triumph
The Vanguard
Today Newspaper