

Promoting Financial System Stability through Regulation and Adjudication: Major Implication under the NDIC Act 2023 and BOFIA 2020*

Abstract

The financial system safety-net of any economy is firmly rooted on three edifices; prudential regulation/ supervision, deposit insurance and the Central Bank of Nigeria's overarching role as the lender of last resort. For a financial system to blossom there must be in place an effective, efficient and transparent gatekeeper, whose passion in regulating and lubricating the system is second to none. A judicial system willing, able and ready to deliver justice in moments of infractions and malfeasances that threaten the financial system must also be in place. With stoic judicial and regulatory spaces, the financial ecosystem will be on a pole position to attain positive growth trajectory. This article examines the roots and branches of the financial system vis-à-vis the unique roles of the regulators and the adjudicators. This work also suggests, that going forward, the system needs to be recalibrated to deliver profound outcomes.

1.0 Introduction

A financial system is a system which provides the enabling platform for the exchange or transfer of money between investors and borrowers. Bringing it nearer home, the system is indicative of a group of interwoven institutions, products, operators, procedures and transactions with the sole purpose bringing the provision of financial services. The criticality of this system in the allocation of resources in every modern economy is all too obvious. A thriving financial system should provide liquidity, inter-mediation, value exchange and risk transfer. The components of the financial system are financial institutions¹. On the other hand, financial markets are markets for the creation and transfer of financial assets. This market is broadly categorized into two, money market and capital market. Financial instruments are products traded as financial assets and securities. Financial services assist in the determination of the combination of financing options available. The wellness of the entire financial value chain is of utmost importance to regulators². Any headwinds along the line will usually have adverse consequences for the stability of the financial system. The regulators apart from their independent monitoring, evaluation, inspection and enforcement also act under the aegis of Financial Services Regulation Coordinating Committee where they periodically issue advisories to the members of the public on the activities that can impact negatively on the financial system stability. The FSRCC was established in 1994 to coordinate the regulatory and supervisory activities to Nigerian financial market. Going forward, this paper will examine the structure of the Nigerian Financial System, the philosophical underpinning of regulation, it will also overview depositors' protection within the extant statutes, factors precipitating failures of insured institutions will also be analyzed, then follows failure resolution mechanisms within the financial markets, the role of the judiciary in financial system stability will be appraised. This paper ends with suggestions and conclusions.

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¹ Bureau de change, commercial banks, Development finance institutions, discount houses, Merchant banks, Microfinance Banks, Primary Mortgage banks, etc.)

² The financial ecosystem regulators are the CBN, NDIC, and AMCON.)

2.0 Structure of Nigerian Financial System

The financial ecosystem in this clime is made up of banks and non-banks financial institutions. They are regulated by the FMoF, CBN, SEC, NDIC, NAICOM, FMBN, etc. There are also self-regulatory organizations like the Nigerian Exchange Limited (NGX), Commodity exchanges etc. Contextually, we will be interrogating the regulatory mandate of the CBN and the NDIC vis-à-vis financial system stability.

3.0 Philosophical Underpinning of the Regulation of the Financial System/Depositors' Protection

Regulation of the financial system helps in the maintenance of economic stability by reducing the risk of systemic failures, ensuring fair practices and promoting transparency³. Regulation therefore refers to the set of laws and rules put in place by government to exert control over the financial institutions with the sole purpose of fostering integrity in the financial system. Regulation in the financial system could be by *system regulation*, *business regulation* or *prudential regulation*. So many benefits are derivable from an elevated regulatory ecosystem. This will without doubt, foster financial stability of some sorts. It will also engender trust which is one of the live-wires of the financial system. It is therefore worthy of note that the concept of deposit insurance has its roots in system regulation. The essence of deposit insurance is to offer a form of protection, albeit limited to depositors' in the event of a bank's insolvency. It is the life jacket of sorts in the events of the failure of an insured institution⁴. Together with financial supervision and failure resolution, deposit insurance is an integral part of the safety net which must be provided in any sound financial system⁵. Diligence is undoubtedly required and demanded in the financial system. A compliance metrics that is less than total may culminate into catastrophic events thereby imperiling depositors' funds⁶. Protections of depositors' funds improve system stability and prevent a possible run on the funds of the depositors.

4.0 Overview of Depositors Protection within the Extant Laws

Owing to the demands of this paper, the extant laws to be considered are the NDIC Act of 2023 and BOFIA of 2020. These two laws have ample provisions for financial system stability through deposit insurance, supervision of insured institutions, failure resolutions and liquidation. We may also peep into some provisions in the CBN Act of 2007. The most profound provision is the public policy objective section in NDIC Act. It highlights not only the letters of the statutes but its spirit. The corporation by that section is expected to provide an orderly means of compensation to the depositors in the event of failure of insured institution. In the case of a failing institution, the corporation is expected to act in concurrence with the CBN in determining the payments to be made. The corporation by the public policy provision of the Act is also expected to embark on aggressive and effective surveillance by deploying all the arrows in its quivers to ensure financial system stability⁷. In furtherance to its oversight and supervisory functions, every insured institution shall hand in to the corporation such returns and information as may be required by the corporation for the proper

³ Regulation of financial systems www.studysmarter.co.uk accessed on the 6th of May 2024

⁴ Koyinshola Ajayi "Efficacy of deposit insurance in promotion of financial system stability" published in "Challenges to deposit insurance law and practice in Nigeria" Second Edition, 2021 page 23

⁵ Herve Honnoun, 'Financial Crisis, the role of Deposit Insurance' Paper presented at the international association of Deposit Insurers, Research Conference Basel ,8 June 2011

⁶ Emeka Ngige 'Enforcing civil liabilities of directors for causing the failure of their banks' a paper presented at the 2023 Sensitization Seminar For External Solicitors Of The NDIC

⁷ Section 2 NDIC Act 2023

execution of its mandate. This power also includes the corporation mandating ‘*persons with access*’ to provide such information that will lead to the attainment of the public policy objective of the Act as well as improving the regulatory effectiveness and efficiency of the corporation⁸. The corporation may also recourse to the platform of FSRCC to obtain such information as it may deem necessary. This is without doubt one of the utilitarian values of the FSRCC⁹. The corporation is also empowered to engage such members of its staff on ad hoc or standing basis to embark on clinical examination of the books of the insured institution¹⁰. It is worthy of note that any hindrance occasioned by the actions, inaction and connivance of the insured institution or its subsidiaries or affiliates or associated companies or any director or officer of such insured institution is sanctionable through the imposition of fine or custodial sentence by the court with requisite jurisdiction¹¹. The outcome of the investigation and supervision shall be forwarded to the CBN by the corporation in appropriate cases¹². The executive management may also as the circumstances demand, appoint two or more qualified persons to conduct a special examination or investigation of the books and affairs of an insured institution under condition of secrecy where the corporation is of the informed opinion that an insured institution may be carrying on business in a manner that is perilous to the interest of the depositors and creditors or where the insured institution does not have sufficient assets to cover its liabilities to the public or is contravening the provisions of the Act¹³. These grounds do not have to be cumulative. The occurrence or likelihood of occurrence of any of them will automatically activate the regulative tentacles of the corporation. The reason for the secret constitution of the investigative team in our view, is to afford members of the team the opportunity to see things as they are and prevent the insured institution from any act of desperation that may further worsen the precarious state of the insured institution. Publicity of the investigative team can also result in a run of the depositors’ funds thereby leading to a failure of the insured institution. The report emanating from the investigative activity shall be made available at a meeting specifically convened with the board of the insured institution or it may be forwarded to the chairman and the managing director of the institution concerned¹⁴. On being served with a copy of the report, the insured institution must as a matter of urgency, convene a meeting to consider the report for the purposes of implementation. Failure of implementation will leave the corporation without any discretion but to make appropriate recommendations to the CBN.

5.0 Overview of Depositors’ Protection through the BOFIA

The CBN is the custodian of the powers and functions under this Act¹⁵. This power includes the mandate to register persons intending to carry on banking business in Nigeria. The said business must have been registered as a company and a valid banking license issued under the Act¹⁶. The CBN is able to regulate companies in the banking business because of a prior registration of the company. As the hallowed saying goes, registration is the hallmark of regulation. Application for banking license is directed to the governor of the CBN¹⁷. The shareholders of the proposed bank in addition to meeting other requirement deposit with the

⁸ Section 36 NDIC Act 2023

⁹ Section 37 NDIC 2023

¹⁰ Section 38 NDIC 2023

¹¹ Section 37 Sub 2 a and b NDIC Act

¹² Section 38 Sub 6 NDIC Act

¹³ Section 40 NDIC Act

¹⁴ Section 41 NDIC Act

¹⁵ Section 1 of the BOFIA

¹⁶ Section 2 of BOFIA

¹⁷ Section 3 of the BOFIA 2023

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CBN a sum equal to the minimum paid-up share capital of the bank. It is also within the place of the CBN to determine the minimum paid-up capital requirement of each category of banks licensed under the Act. It is therefore in the full application of this section, that the CBN in 2004 raised a minimum paid-up share capital of banks to Twenty Five Billion Naira. The CBN was constrained recently, to raise the paid-up share capital threshold for deposit money banks with international authorization to Five Hundred Billion Naira. Those with national authorization were raised to Two Hundred Billion Naira. Regional banks and Merchant banks will now be required to raise theirs to Fifty Billion Naira respectively. This directive will indeed reshape the Nigerian financial landscape. It will also provide our banks with big platforms to handle big tickets' transactions, thereby enhancing their liquidity and ensuring the financial system is stable.¹⁸ The CBN also require banks to maintain at all times, capital funds unimpaired by losses in such ratio to all or any asset or to all or any liability¹⁹. The ratios to be maintained could also be for specific risks. If any officer or manager of the bank is interested in any loan, advance or credit facility, he owes a duty to disclose this fact to the bank. This duty is fiduciary in nature.²⁰ The Act provides for penal sanctions in the event of the breach of this duty²¹. Instructively, unsecured loans and unsecured advances by a bank to its directors, significant shareholders, firms, partnerships, private or public companies to which the directors or significant shareholders are interested and exceeding a threshold of One Million Naira must have a prior and express approval by the CBN before disbursement. Such unsecured loans or unsecured advances shall be reported as insider related facilities in the books of the banks until they are fully liquidated.²² A bank shall also not lend more than five percent of its paid-up capital to any of its directors or significant shareholders provided that the aggregate of the bank's exposure to all its directors and significant shareholders do not exceed ten percent of its paid-up share capital. The CBN is without doubt on *terra firma* as far as regulation of banks in Nigeria is concerned²³. Riding on this, the CBN has been able to dish out various monetary policies aimed chiefly at financial system stability and price stability. It is also worthy of note, that the monetary policy committee of the CBN recently hiked the monetary policy rate by about six hundred basis point. The committee has also reduced the loan deposit ratio of banks to fifty percent. All these are meant to steady the financial system, ward off possible distress and moderate the rate of inflation.

6.0 Distress Resolution of Insured Institution under the NDIC ACT and BOFIA

Distressful conditions leading up to failing and outright failure of insured institutions are usually triggered by a plethora of factors which could either be endogenous or exogenous²⁴. These factors range from under capitalization, management blunders, fraudulent tendencies of promoters and directors of insured institution and weak credit administration. The corporation shall at the request of an insured institution or the CBN under such conditions as may be specified by the corporation and upon notice to the CBN render assistance to the insured institution if the corporation determines that the insured institution has difficulties honoring its obligation to its depositors and creditors, or where there is a persistent liquidity crisis or losses accumulation which have nearly or completely eroded shareholders funds or such other

¹⁸ CBN's Circular released on the 29th of March 2024

¹⁹ Section 13 BOFIA

²⁰ *Okeowo vs Milgore* 1979 11sc 133 see also Section 305 (1) CAMA 2020

²¹ Section 17 Sub 2 BOFIA

²² Section 19 Sub 3 of BOFIA

²³ see Section 29 of BOFIA

²⁴ George RC Ibekwe 'Legal aspects of banks' failure in Nigeria LLB Long Essay, Faculty of Law, University of Nigeria Enugu Campus 1994

assistive measures that may likely quell the tide of failure. The corporation upon determination of the above, may take any of the following options to re-calibrate the insured institution by injecting liquidity. The actions are as follows;

- ◆ Provision of a revolvable accommodation bill with interest for a period of not more than ninety days maturation cycle.
- ◆ Purchase or invite eligible investors to purchase the equity and or such assets and or assume any such liabilities of the insured institutions.
- ◆ It can also issue debt securities or such assets and or assume such liabilities of the insured institutions²⁵

The corporation may go further to render technical assistance. This has to be with the concurrence or at the request of the CBN. These assistance could be by assumption of control of a failing insured institution and take over its management. It can also be by the appointment of new management teams as was seen in the case of Union Bank PLC, Polaris Bank etc. It can replace the principal officers of the insured institution with its own officials. It can impose holding actions, direct the insured institution and its directors to carry out specialized actions or refrain from doing certain actions. It can also take further actions that can restore the health and solvency of the insured institution as well as preserve and conserve its assets and properties²⁶. Other technical assistance with the concurrence of the CBN could be by inducing corporate restructuring of sorts like mergers, takeovers, acquisition of a failing of failed insured institution. It can also induce purchase of and reviving of assets and assumption of liabilities. It is instructive to note that the induced corporate restructuring can either be for a failing or failed insured institution²⁷. The corporation with the concurrence of the CBN may form a bridge bank to assume such deposits or liabilities and also purchase such assets of a failing insured institution as the corporation will determine. The bridge bank formed shall not be subject to the requirement of having issued or paid -up capital²⁸ The corporation over time has utilized the formation of bridge banks as tools of regulation and financial system stability²⁹.

In the press release by the CBN heralding the establishment of bridge banks in 2011, the CBN acknowledge the pivotal role of NDIC in deposit insurance in Nigeria. The CBN also seized the moment to acclaim its principal role as the promoter of sound financial system in Nigeria. One of the most recent examples of the formation of bridge bank is in the US jurisdiction where Silicon Valley Bridge Bank was incorporated to assume the assets and liabilities of Silicon Valley Bank which failed in March 2023 owing to the simultaneous and massive run by depositors on their deposits due to the founded fears of the solvency level of the bank. The CBN intervention power in a failing bank is triggered on the occurrence of any of the following circumstances;

- ✧ Where the bank informs the CBN that it is unable to meet its obligation under the Banks and Other Financial Institutions Act.
- ✧ Where it is about to suspend payment to any extent.
- ✧ Where it is insolvent.
- ✧ Where after a special examination the CBN is satisfied that the bank is in a grave situation.

²⁵ Section 49 NDIC Act

²⁶ Section 50 NDIC Act

²⁷ Section 51 NDIC Act

²⁸ Section 54 NDIC Act

²⁹ The CBN through NDIC established bridge banks and transferred the assets and liabilities to the bridge banks

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If any of these happens, the CBN may by order in writing prohibit the bank from the extension of further credit facility for such period as the CBN may determine. The CBN also has powers to do anything it considers expedient to bring the insured institution back to the shores of solvency³⁰. It is worthy of note that this resolution powers of the CBN was effectively deployed in 2008 to rescue some money deposit banks whose solvency levels were way below the regulatory watermarks. The CBN injected about Six Hundred and Twenty Billion Naira into the Eight ailing Banks. The injection came in the nature of bailouts. This singular action helped in steadying the ship of the financial system from assured wreckage³¹. Recently, the CBN revoked the banking license of Heritage Bank PLC in the exercise of its statutory powers³². The CBN stated that the board and management of the bank were unable to improve the financial performance of the bank, a situation that constituted a threat to the financial system stability. This action by the CBN to our mind was a confidence booster for the banking ecosystem and it also guaranteed that the soundness of the financial system is not impaired in any way.

7.0 The Place of AMCON in Distress Resolution

The Assets Management Corporation of Nigerian is a child of necessity birthed to be the stabilizing and revitalizing tool in the resolution of nonperforming loan assets of banks. Its constitutive Act empowers it to annex the underlying collateral, fill the remaining capital deficiency and receive equity and or preferred shares in the affected bank as it considers appropriate. The AMCON has been actively involved in the distress resolution of failing insured institutions. It acquired the assets and liabilities of AfriBank in 2011. The bridge bank that was formed after the revocation of the license of AfriBank was sold to Skye Bank in 2014. Though it has a sunset clause of ten years, the Asset Management Corporation has curiously remained in existence till this day. It should be noted that assets resolutions companies are not perpetual entities with infinite lives. This was also acknowledged by the pioneer managing director of the corporation, Mustapha Chike Obi³³. Available data shows that AMCON has over five thousand cases in court with and against some of its over twelve thousand obligors. The corporation has over 5.4 trillion Naira in eligible assets still outstanding from its obligors³⁴.

8.0 Failure of an Insured Institution

An insured institution is deemed to have failed with the revocation of its license³⁵. Where the license of an insured institution has been revoked, the NDIC shall apply to the Federal High Court for a winding up order of the affairs of the bank³⁶. Where the insured institution is a bank, the corporation shall act as a liquidator of such insured institution. Where the insured institution is other financial institution, the CBN may by notice published in the Federal Government Gazette, appoint the corporation as a liquidator of such failed insured institution. It should be noted that the remit of the corporation as a liquidator is triggered upon the revocation of the operating licence of an insured institution. The corporation is deemed to

³⁰ Section 34 of BOFIA

³¹ Kama U, 'Banking Sector Crisis and Resolution Options in Nigeria' '*CBN Bullion* 2010, 34,1,7' see also Sanusi L Sanusi 'Global Financial Meltdown and The Reform in Nigerian Banking Sector' *CBN journal of applied statistics* 2,193

³² See Section 12 of the BOFIA 2020

³³ Business day policy intervention series, 6th May 2024

³⁴ Ahmed Kura MD AMCON in an exclusive chat with a delegation from leadership media group 17th September 2021

³⁵ Section 54 NDIC Act

³⁶ Section 35 of BOFIA

have been appointed by the Federal High Court as a provisional liquidator.³⁷ This provisional appointment as a liquidator trumps any other powers as may be conferred by the Companies and Allied Matters Act 2020. Notably, the provision of chapter 21 of the CAMA 2020 and the Companies Winding Up Rules dealing with priority of settlement shall not apply to the winding up of insured institutions.³⁸ The NDIC Act also empowers the Chief Judge of the Federal High Court to issue and cause to be issued “Winding Up Rules” for the accelerated winding up of failed insured institution.³⁹ Upon the gazetting of the status of an insured institution as a failed insured institution, the corporation shall apply to the Federal High Court for a winding up order.⁴⁰ The corporation acting as a liquidator of a failed insured institution shall have power to realize the assets of failed insured institution and enforce the individual liability of the shareholders and directors.⁴¹ The portfolio of a depositor in an insured institution upon liquidation will be further enlarged by the recovery / realization of assets of the failed institution by virtue of the payment of liquidation dividends.

9.0 Appraising the Role of the Judiciary in Depositors’ Protection

“Oh God, at whose hands the weak shall take no wrong nor the mighty escape just judgement, pour thy grace in thine servant our judges and magistrates that by their true and faithful execution of justice and equity to all men equally, Thou may be glorified, the commonwealth daily promoted and increased and we all live in peace and quietness, in Godliness and virtue. (Prayers used to be said for judicial officers in the fifteenth century cited with approval by Chief Emeka Ngige SAN, Selected papers Civil Litigation. A journal of the Civil Litigation committee of the NBA 2009 Page 98)

An essential precursor to a very effective contribution of the judiciary to entrenching a culture of stability in Nigeria’s financial sector is for the judiciary to be abreast of events within the financial polity, have a robust knowledge of financial issues and also ensure that it maintains a good relationship and collaborate with the relevant industry regulators. The judiciary should be able to discern those to whom protection of the law is targeted. Is it to the creditors of the bank, the investors or depositors?⁴² We make bold to add the investors in the capital market as well, because the wellness of the financial system is not gauged neither is it determinable only by money market barometer. The proper philosophical attitude of the courts in cases bordering on breaches of the laws governing the playing arena and the players in the financial ecosystem should be that of tempered activism. Unsworth F.J had this to say in *NBC vs. Federal Minister of Finance*. “The powers under section 14 of the bank ordinance are administrative powers which are properly vested in the minister and it is for the minister and not the court, to exercise those powers. In these circumstances, the functions of the courts only begin if and when it is alleged that the administrative powers has not been exercised in accordance to the ordinance”⁴³. Koyinsola Ajayi posited that the courts must exercise added caution in stepping into the murky waters of financial system stability and hasten slowly in looking beyond immediate rights and interest of the litigating parties directly before the courts

³⁷ See 55 (2) of NDIC Act.

³⁸ Section 602(1) CAMA 2020 deals with settlement of contributories and rectification of register of members NDIC Act has effectively recorded the settlement schedule in the event of failure of an insured institution.

³⁹ See section 56(2) NDIC Act

⁴⁰ See section 56 (3) NDIC Act

⁴¹ See Section 57 NDIC Act

⁴² See O. Ajayi: ‘Legal framework for financial system stability, paragraph 97-99’, paper delivered at NDIC Seminar for Court of appeal Justices on the challenges to deposit insurance law and practice in Nigeria held at the court of appeal auditorium on the 15th of June 2013.

⁴³ FSC 197/1961, 27th October 1961

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and look more towards the direction of the wellbeing of the economy.⁴⁴ From the perspective of investment, the efficiency of domestic courts cannot be over emphasized. Investors' confidence in local adjudication will be bolstered if they are certain that in the event of any investment / commercial disputes, the court will seize the moment to even the legislative and regulatory mountains and resolve disputes in an expeditious and transparent manner. Courts are encouraged to show abiding difference to the regulatory bodies in the financial markets and ensure that substantial justice remains the guiding beacon. The authors are acutely aware that most financial markets regulators organize retreats for judicial officers aimed towards properly tooling them for the peculiar nuances of such litigations. Regulators can also serve as *amicus curiae* during judicial proceedings in financial market disputes, this will undoubtedly reduce the risk of misapplication of relevant laws or facts or complex financial transactions in our courts⁴⁵. The judiciary being the third arm of government is expected to rise boldly, courageously, impartially with a keen sense of justice in the adjudication of cases bordering on the protection of depositors' funds. Without doubt, the question of conflict between the public policy interest in protecting property rights, promotion of commercial endeavors on the other hand and policy interests in protecting the financial system and depositor's fund, must certainly arise.⁴⁶ The legal landscape is not bereft of requisite legislation, but a concomitant positive attitude is required having in mind the commercial nature of such cases and the need to do substantial as opposed to pyrrhic justice.⁴⁷ *The Failed Banks Tribunal* whose jurisdiction was transferred to the Federal High Court⁴⁸ did exceedingly well in the 1990s. Accountability for criminal liability was brought to directors of failed insured institutions. Many of the erring directors forfeited assets to the government while some fled abroad in order to evade justice.⁴⁹

The Judiciary should be standing by to complement and not to supplant the efforts of the efforts of the NDIC, AMCON and the CBN in ensuring financial system stability. The judiciary can enhance the effectiveness of deposit insurance and financial system stability by following the principle of judicial deference in matters relating to depositors' insurance putting into context the philosophy/background of the legislation which is depositors' protection.⁵⁰ In the case of *NDIC vs Chief Afe Babalola*,⁵¹ a claim for the recovery of professional fees of a legal practitioner was granted priority ahead of liquidation claim of depositors. Koyinsola Ajayi⁵² opined that the case suggested a disruption of orderly resolution of liquidation claims/payment. We cannot agree more.⁵³ Also worthy of mention is the commendable decision of the Supreme Court of Nigeria in *AG of Kaduna State & ors Vs AG of Federation & ors* (2023) LPELR 59936(SC). This is a case that was brought challenging the constitutional validity of President Buhari's directives and approval to CBN to embark on demonetisation or Naira redesign policy. This policy by the CBN made pursuant to Section 20(3) of the CBN Act 2007 had very profound effect on the financial system stability in that it nearly led to an unmitigated run on the deposits held in different banks by the depositors. The

⁴⁴ Koyinsola Ajayi, 'The role of the judiciary in financial system stability', *Challenges to deposit insurance law and practice in Nigeria* 2016 Vol 1, page 12.

⁴⁵ Epiphany Ezinge SAN, 'The role of Judges in financial market stability'; *Challenges to deposit insurance law and practice in Nigeria* Second Edition Page 134

⁴⁶ Koyinsola (n 12).

⁴⁷ The laws are as follows BOFIA 2020, CAMA 2020, Failed Bank Acts 1994 and NDIC Act 2023

⁴⁸ Tribunals (Certain Consequential Amendments etc) Decree No. 26, 1999

⁴⁹ Ibid. It's jurisdiction to try civil and criminal cases were transferred to Federal High Court.

⁵⁰ Ibid.

⁵¹ [2013] 3 CLRN1.

⁵² Koyinsola(n 12).

⁵³ Ibid.

saving grace then was the illiquidity of all the DMBs. Nigerians were made to buy cash from P.O.S operators and private individuals at huge premiums. The Supreme Court rose to the occasion and delivered a very sound policy decision which was able to stem the raging storm by the restoration of sanity in the financial system. The Court held that the implementation of the directive had the effect of depriving all persons including the plaintiffs access to a substantial part of their funds in banks, thereby forcefully and illegally depriving them of their rights of ownership and use of the said funds for state functions. The Court granted virtually all the reliefs sought by the plaintiffs in nullifying the directives. We commend this decision to all stakeholders in the administration of justice as well as the banking regulators. This decision jurisprudentially pandered west worlds towards of judicial realism. This is not surprising because of the status of the supreme court as a policy court. This decision brought some calm in the tumultuous financial firmament

10.0 Recommendations / Conclusion

It is suggested that the Chief Judge of the Federal High Court immediately put together the “Winding Up Rules” for the expedited and accelerated winding up of failed insured institutions as envisaged by the Act.⁵⁴ This will undoubtedly enthrone a regime of certainty in winding up proceedings of insured institutions. Since the first limb of section 56 of NDIC Act expressly excluded the application of Winding Up Rules under chapter 21 of the CAMA 2020. Action for monetary damages against erring directors must as a matter of law be brought outside the petition for winding up.⁵⁵ There’s also the need for the judiciary to deliver judgment that will enhance regulation and ensure financial system stability. It is in this wise that the Supreme Court of Nigeria deserves commendation for finally laying to rest the issue of the jurisdiction of the Investments and Securities Tribunal that was hitherto dogged by jurisdictional uncertainty in view of the provision of section 251 Constitution of the Federal Republic of Nigeria (as amended) vis a viz the Federal High Court. The decision successfully enthroned the jurisdiction of Investments and Securities Tribunal over capital market disputes.⁵⁶ All these kinds of pro-policy decisions are encouraged in our commercial jurisprudence landscape because they send the right signals to the investing public. The Federal High Court is humbly advised to tow this established precedent when liquidation petitions are brought before it. The jurisdiction of the Loans Tribunal⁵⁷ should be tinkered with so that it can have both civil and criminal jurisdiction not only in loan recovery but also liquidation of insured institution. This will no doubt, decongest the dockets of the Federal High Court. Though the NDIC has done fairly well in sensitization and enlightenment, it is suggested that they increase rapidity and tempo of such interventions which have been found to be very useful not only to the investing public and practitioners but also to judicial officers. Also, the insured sum payable by the NDIC in the event of the collapse of an insured institution appears abysmally poor before the recent revision. In the light of the fact that little is recoverable and paid as liquidation dividends. The Federal Deposit Insurance Corporation of the United States pays an upper limit sum of \$250,000 to insured depositors. In Nigeria presently, depending on the status of the insured institution, the depositors get sums within the band of ₦2,000,000 to ₦5,000,000. This placed side by side on comparative terms with the US jurisdiction will reveal a grave disparity. An upward adjustment is suggested so that in the event of a failure, the insured deposits of the depositors could be met reasonably. Perhaps, a few lessons in cross and coordinated governance validations could be drawn from the failure

⁵⁴ See Section 56 (2) of the NDIC Act.

⁵⁵ See *Chinwedu v NDIC* (2018) LPELR 5009CA

⁵⁶ See the case of *Mufutau Ajayi v SEC* (2023) 6 NWLR (pt 1881) 533

⁵⁷ Special Tribunal for the Enforcement and Recovery of Eligible Loans

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of Silicon Valley Bank and Signature Bank in America to serve as a wake-up call in our domestic regulation.⁵⁸ The Federal Government may also consider the winding down of the activities of the AMCON. This will free up a statutory fees collected by the AMCON from the banks. The freed funds can be added to the statutory fees collected by the NDIC thereby making more funds available in the NDIC's pool, for the settlement of insured depositors in case of any eventualities

⁵⁸ The collapse of Silicon Valley Bank a major Lender to Tech startups, which is the largest bank failure in US history triggered a global market sell-off in fears of a banking crisis and collapsing market knock on effect.

