DEPOSIT INSURANCE, CONSOLIDATION AND THE BANKER'S OMBUDSMAN IN THE MODERN LAW OF BANKING IN NIGERIA: A CRITICAL PERSPECTIVE

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ABSTRACT

The Nigeria Deposit Insurance Corporation Act brought about a sweeping revolution into the banking industry in Nigeria. It marked a watershed in the law and practice of banking in Nigeria. It redefined a banker customer relationship from its primordial bi-lateral contact of uberimae fidei between the banker and the customer, to something else. It has in a unique way, driven a coach and horses through the traditional and otherwise settled privity of contract doctrine with the establishment of a bankers' Ombudsman or Commission. This paper sets out to ascertain the law's sphere of influence including what the insurance is all about, the consolidation that followed, and the challenges still subsisting. It takes a critical look at the idea of the law vis a vis its practical purposes and achievements and constraints. The paper is an essay into an emerging banking global best practice of insuring monies deposited in banks from the perspective of a developing economy. Additionally, it is essentially a dissection and analysis of the mainstream statute in the area with a tilt of censorial jurisprudence aimed at properly positioning the all-important phenomenon of deposit insurance and the challenges of consolidation and Banking Supervision. The paper will be of use to legislators, legal draftsmen, professional and occupational bankers, lawyers, academicians, and people interested in the Nigerian banking enterprise. It is aimed at surer and greater investor protection, more certainty in the rules of engagement of operators in the banking industry, and invariably an improved economy.

Keywords: Banking, Financial institutions, Insurance, Deposit Insurance

INTRODUCTION

The internationalization of the concept of Deposit Insurance in banks came in the wake of the formation of the International Association of Deposit Insurance (IADI) in Basle, Switzerland in May 2002. Nigeria was one of the foundation members. Since then, the concept has grown worldwide with the participation of nearly 69 Deposit Insurers out of the nearly 210 countries and territories in the world[1] Nigeria has recorded quite some appreciable successes since the

constitution of its own Deposit Insurance Corporation known as and called the Nigeria Deposit Insurance Corporation with the acronym of NDIC[2]. These successes are mainly in the areas of the eradication of the collection of deposits by non-bank institutions and unlicensed ventures known in the local parlance as "Wonder-Banks," improved Disciplinary and Penal provisions in the emerging Regulations, consolidation and improved capitalization of banks, a remarkable reduction in the number of participating corporate bodies in the banking business, and of course the payment of some dividends to depositors of some of the failed banks[3]. Notwithstanding these apparent successes, it is clear that challenges still exist in the continued efforts at protecting depositors' funds in banks worldwide. This work is a Nigeria perspective of new safety net device and its continued challenges. The work briefly examines the antecedents to this new era and the consolidation of banks that took place with the emergence of the new legal regime. Its actual and potential problems are analyzed with recommendations for possible improvement.

Brief Antecedents to the Banking Innovation Brought About By the Emergent Law on Deposit Insurance in Nigerian Banks

Prior to 1990, banking business in Nigeria did not involve any form of insurance of funds placed in banks. This was because the two main stream statutes[4] that regulated the industry at the time did not provide for any such insurance. The Central Bank of Nigeria Act[5] apart from governing the operations of the Central Bank[6] and empowering the institution to generally supervise and oversee the activities of the commercial banks, did not require that deposits in banks be insured in any form and to any degree or extent whatsoever. Of course, the Banking Act of 1969[7] was a relic of the Civil War that took place in the country and was principally aimed at converting the nomenclature of the Nigerian currency or legal tender from "Pounds" to a new name coined from the Country's name i.e. "Naira". The Nigerian Currency or legal tender notes still bear that name till date.

Apart from the existing laws at the time not requiring deposits placed in banks to be insured, they did not also have the provisions and mandate to impose limits in the number of corporate bodies[8] that went into the banking business. Such limitation being achievable by statutory requirements pegging minimum cash deposits to secure payments of some dividends to depositors in the event of liquidation, and the outright rejection of applications for participation in the industry on grounds of inadequate safety net requirements to prevent failures or bankruptcy. The point must also be made that the Bills of Exchange Act[9] did not and could not have provided for any such structural regulation of participating institutions in the money market[10] as the law dealt solely with operational instruments in the market, i.e. bills of exchange and negotiable instruments as the title depicts[11].

THE ABUSES

Now, banking business is statutorily defined as follows in Nigeria[12];

> "Banking business" means the business of receiving deposits on current account, savings account or other similar account, paying or collecting checks drawn by or paid in by customers, provision of finance or such other business as the Government may, by order published in the Gazette designate as banking business.

The net result of all of the above legal provisions before the enactment of the law on deposit insurance is that banking or banking business became nearly an all comer's affair. Every corporation that could manage to own a fairly sizeable safe box or strong room or vault went into the banking business. Indeed some individuals even without any corporate veils went into the business. The scenarios as painted in one of Nigeria's leading newspaper[13] at the time were bizarre and frightening.

Naturally following on the mass entrants of participants largely ill equipped and profit driven without safety net guarantees, was the equivalent mass failure of such participating ventures. This failure was *bi focal*. First, the regular operators who were not properly supervised mismanaged or out rightly embezzled to naught, the deposits placed with them, which led their operations to fail.

Secondly, new participants came into the arena with diverse, dubious and devious techniques that crystallized in their eventual nomenclature of "wonder banks."[14] No doubt this created doctrinal distortions to the hitherto settled notions of banking and or banking business.

Arising from the above *bi focal* points of view, it became imperative that the legal regime for the industry be reviewed, revised, and enhanced. The aims of such review being essentially to prevent the unsuspecting investing public from the eventual loss of their funds when these banks fail. Progressively, therefore, the mainstream laws were amended and the new law of deposit insurance came into being. It is an aspect of it that is the main focus of this work. That is to say, the aspect requiring the insurance of institutions participating in the business, and the actual and potential challenges ensuing.

The focus of the new

The Nigerian Deposit Insurance Corporation Act[15] was one of the foremost innovations introduced into the banking industry in Nigeria in the wake of the problems and doctrinal distortions mentioned above. The main focus of the law as already noted was to key into the emergent global best practices in the banking industry of deposit insurance and other safety net requirements such as more detailed supervision of participating corporations/companies.

Primarily the Act establishes a body that is more or less an ombudsman[16] for the industry. It makes mandatory the insurance of funds deposited in banks with the said ombudsman and confers extensive powers of supervision both structural and operational on it. Powers ample and plenary enough to include withdrawal of operators from the money market, winding up and liquidation of companies hitherto licensed to so participate. That is the Act or law in substance.

In outline, the last amendment as contained in the Federal Republic of Nigeria Official Gazette[17] is divided into twelve parts. It has 60 sections and a number of subsections. Parts I to III of the Act essentially establish the Deposit Insurance Corporation[18] and enact provisions for the composition of its board as well as corporate governance. Part IV deals with the main theme of the Act, going by its nomenclature, although that nomenclature is deceptive as it tells only half of what the Corporation is. This part i.e. IV makes provision for the "Deposit Insurance Scheme". Parts V to IX elaborate extensively on the regulatory and supervisory powers of the corporation or ombudsman. This is why the point was muted a while ago that the nomenclature of the corporation is deceptive[19]. Whereas only one part (Part IV) of the law is devoted to "deposit insurance scheme," five parts are devoted to supervision. Part X of the Act is a tool put in the hands of the ombudsman to enable it not just to bark but also to bite. This part creates a whole new code of criminal law in this specialized area aimed at penalizing transgressors of the Act or any regulations made pursuant to the Act. Part XI appears to set up accounting templates in a special way for the insured institutions while part XII the last part deals with provisions that are prohibitory in nature while others are empowering. Prohibitory such as forbidding advertisement of sorts specified in the law and empowering such as engenders synergy and cooperation amongst other regulatory bodies such as the Central Bank of Nigeria.

Re-Positioning and Consolidation of the Banks

In this regard, the law provides that all licensed banks and other financial institutions must insure their deposits with the corporation. Incidentally, there are no unlicensed banks operating in Nigeria. Even where there are, they do not operate in the open. After the clamp down on pyramid investment schemes or wonder banks in the early 90s in the country, it is doubtful if any other body corporate or individual has tried it again. Except now that outfits hitherto known as community banks are called micro finance institutions, it would have been difficult to imagine what other bodies would be required to insure their deposits if not banks. As community banks, they were not covered by the deposit insurance scheme until recently. Basically, it is mandatory for all licensed banks to insure their deposits with the corporation. Failure to do so amounts to carrying on banking business in an unsafe manner for which the bank's operating license can be withdrawn.

Granted that the powers to withdraw the operating license of a bank can be exercised on grounds of carrying on the business of banking in an unsafe manner, it is still pertinent to observe that the penalty stipulated in section 15(1) (b) of the Act is grossly inadequate. What is

meant here is that the stipulated penalty of N1, 000.00 (One Thousand Naira) less than seven US dollars per day for failing to insure deposits, is not sufficiently deterrent.

At that rate, the operator will pay only N366, 000.00 or less thanUSD2, 600 in a year of operating without insurance. During the days of the "Wonder banks", three months or 90 days was sufficient for them to rake millions of Naira or dollars into their coffers. If the penalty were to be as stipulated above, and alone, they would have remained in business till date.

It is therefore humbly submitted that the penalty of N1, 000.00 per day for failing to insure deposits by a participating institution is grossly unrealistic and should be revised upwards. Such revision should state a ratio of the deposits so accumulated as the penalty. For example 50% or more to serve as severe and effective deterrence.

It is arguable that such an unsafe practice bearing next to nothing as penalty is responsible for the sheer number of participating banks turnover in the country[20]. The enforcement of this provision led to the mergers and consolidation that significantly reduced the number of participating institutions or banks in the industry as demonstrated below.

Insured Banks/Institutions

After all efforts and at the last count, they came to 89. From that 89, they came to 25. They are now 24. The table below shows the present participating institutions in the exercise after the sweeping consolidation and falling aside of some of them.[21]

Note that it was only recently, (2012) that Oceanic Bank was consolidated with Ecobank following the withdrawal of the license of Oceanic Bank due to its failure to comply with this Deposit Insurance Requirement of its insurable deposits.

Section 20 of the Act[22] provides for the insurable deposits covered by the scheme. The most outstanding feature of this definition or description is that insider deposits and double accounts with a right of counter claim on each against the other by holders thereof are exempted from coverage. Participating banks or institutions would cease to be so under the provisions of section 22 of the Act[23] as hereinafter discussed.

Grounds for the above shrinkage (mergers/consolidations)

It is obvious from the provisions of section 22 of the Act, that is the only authority for the shrinkage tabulated above. Whenever it appears to the Corporation that an insured bank or its directors or trustees have committed a grievous violation of its obligations arising from the Act, or have continued to conduct the business of the bank in an unsound manner; or intentionally or negligently permitting any of the officers or agents of the insured bank to violate any provisions of any law or regulation to which an insured bank is subject, such as the Central Bank of Nigeria Act[24] or the BOFIA[25] or any other law, the Corporation shall serve on the board of the insured bank a warning notice. The notice shall state that where the unsound practice continues, the

name of the bank shall be removed from the register of insured banks. The corporation shall forward a copy of such warning notice to the Central Bank of Nigeria and the Minister.

THE OLD BANKS					
1.	Access Bank	31.	First City Monument Bank	61	NBM Bank
2.	Afribank Int. Ltd. (Merchant Bankers)	32.	First Interstate Bank	62.	New Africa Merchant Bank
3.	Afribank Nig. Plc.	33.	FSB Int. Bank	63.	New Nigeria Bank
4.	ACB Int. Bank	34.	Fortune Int. Bank	64.	Nigeria American bank
5.	African Express Bank	35.	Fountain Trust Bank Plc	65.	Nigeria Int. Bank
6.	African Int. Bank	36.	Gateway Bank	66.	NUB Int. Bank
7.	All States Trust Bank	37.	Global Bank	67.	Oceanic Bank
8.	Assurance Bank	38.	Guaranty Trust Bank	68.	Omega Bank
9.	Bank of the North	39.	Guardian Express Bank	69.	Pacific Bank
10.	Bond Bank	40.	Gulf bank	70.	Platinum Bank
11.	Broad Bank	41.	Habib Nigeria bank	71.	Prudent Bank
12.	Capital Bank Int.	42.	Hallmark Bank	72.	Regent Bank
13.	Center Point Bank	43.	Inland Bank Plc	73.	Reliance Bank
14.	Chartered Bank	44.	IMB Int. Bank	74.	Society Bancaire Bank
15.	Citizens Int. Bank	45.	Indo-Nigeria Bank	75.	Society General Bank
16.	City Express Bank	46.	Intercity Bank	76.	Stanbic bank
17.	Continental Trust Bank	47.	Inter-Continental Bank	77.	Standard chartered Bank
18.	Co-operative Development Bank	48.	International Trust Bank	78.	Standard Trust bank
19.	Co-operative Bank Plc	49.	Investment Banking & Trust Company (IBTC).	79.	Trade Bank Plc
20.	Devcom Bank	50.	Lead Bank	80.	Trans. Int. Bank
21.	Diamond Bank	51.	Liberty bank	81.	Triumph Int. Bank
22.	Eagle bank	52.	Lion bank	82.	Tropical Commercial Bank
23.	Ecobank Nig	53.	Magnum Trust Bank	83.	Trust Bank of Africa
24.	EIB Int.	54.	Manny bank	84.	Union Bank
25.	Equatorial Trust bank	55.	Marina Int. bank	85.	Union Merchant Bank
26.	Equity Bank	56.	MBC Int. bank	86.	United Bank for Africa
27.	FBN (Merchant Banker)	57.	Metropolitan bank	87.	Universal Trust Bank
28.	Fidelity Bank	58.	Midas bank	88.	Wema Bank
29.	First Atlantic Bank	59.	NAL Bank	89.	Zenith Bank
30.	First Bank of Nigeria	60.	National bank		

Examples of such grievous violation of obligations under the Act include

a) Where an insured bank persistently suffers liquidity deficiency in a sustained manner.
b) Where an insured bank persistently contravenes the provisions of the Banks and other Financial Institutions Act[26], and any rules and regulations made thereunder, the monetary policy guidelines and the provisions of the Nigeria Deposit Insurance Act[27].

c) Making incomplete or incorrect statements to the Nigeria Deposit Insurance Corporation also amount to a violation of obligations on the part of an insured bank.
d) Where an insured bank is in default with the payment of its insurance with the corporation and its contract of insurance is terminated by the NDIC.
e) It continues to hold itself out as an insured bank after its insurance with the corporation has been terminated for default as above.
f) If an insured bank habitually fails to render returns to the corporation or does not submit upon request, such other information for the efficient performance of the functions of the insurance corporation it will amount to unsafe practice.
g) Making incorrect statements to the Corporation as regards customer's deposits it has insured, amounts to an unsafe practice.
h) Where it fails to write adequate provisions for bad and doubtful debts up to the amount recommended by the Corporation or pays dividends in defiance of this provision: it would have breached its obligations.

i) Failure to write off bad debts as may be recommended by the corporation, amounts to a breach of obligation[28].

THE NEW BANKS					
1.	Access Bank	10.	Guaranty Trust Bank	19.	Standard Chartered Bank
2.	Afribank	11.	Investment Banking & Trust company (Chartered Bank)	20.	United Bank for Africa
3.	Diamond Bank	12.	Intercontinental Bank	21.	Sterling Bank
4.	Ecobank	13.	Nigeria International Bank	22.	Union Bank
5.	Equatorial Trust Bank	14.	Oceanic Bank	23.	Unity Bank
6.	First City Monument Bank	15.	Platinum Bank	24.	Wema Bank
7.	Fidelity Bank	16.	Skye Bank	25.	Zenith Bank
8.	First bank Plc.	17.	Spring Bank		
9.	First Inland Bank	18.	Stanbic Bank		

Steps towards Removal

Where the insured bank fails within a reasonable time to make amends sequel to the above breach of obligation, the board of the NDIC shall:

a) Give to the bank not less than thirty days written notice of its intention to terminate the status of the bank as an insured bank[29]; and
b) Fix a time and place of hearing before a person designated by the board to conduct the hearing at which evidence may be produced[30] and upon such evidence, the board of the NDIC shall make its findings, which shall be final on the question of the removal of a bank from the list of insured banks.

Where the bank is not duly represented at the hearing by an authorized representative of the accused bank, it shall be deemed to have consented to the termination of its status as an insured bank and the corporation shall inform the Central Bank of Nigeria and the Minister of Finance of the decision[31].

The corporation shall cause a notice of such termination to be published in the national newspapers[32].

Where the participation of a bank in the Corporation's insurance scheme is terminated, the bank shall immediately cause a notice of such termination to be published in the national newspapers to the creditors to whom liabilities are owed and in furtherance thereto, bring the consequences[33]of such termination to their notice[34].

After the termination of the status of an insured bank under subsection (3) of section 22, the insured deposit of each depositor in the bank on the date of its termination, less all subsequent withdrawals from the deposits of such depositor, shall continue to be covered for another period of two years, and thereafter such depositor shall cease to be covered where the net assets are sufficient to meet the insured deposit[35].

The corporation shall not insure any sums in addition to any deposits specified in subsection (7) of above or any new deposits in the bank made after the date of determination of its status as an insured bank and shall not advertise or hold itself out as having insured deposits[36].

Where an insured bank is closed on account of its inability to meet the demands of its deposits, the corporation shall have the powers and rights to recover any debts owed to the closed bank or any assets (including properties belonging to the closed bank) but which are in possession of any other person or institution, whether depositors of the bank or not[37].

Where the insured status of a bank is terminated by reason of its inability to meet the demand of its depositors, the Minister shall appoint the Corporation as the receiver for the bank apparently pending ratification of the court[38].

Removing from List of Insured

This is a very dangerous provision. Dangerous in many senses

a) Such a notice of intention to remove from the list of insured banks if leaked or known to the public will be sufficient to ground the bank in question. This is because most depositors will go there to withdraw their deposits and the bank would collapse.
b) The notice of removal from the list of insured banks is as good as a withdrawal of a bank's license though the law requires that the "cease and desist" or warning be served three consecutive times before the notice is served on the bank. It does not state or spell out what rights if any a bank or banker has by way of a challenge of the issuance of such notice.

c) For such a serious procedural requirement, the mode of service of the notice on the insured bank ought also to be spelt out in the law to avoid the possibility of what is suggested above. For example, by delivery to either the Managing Director personally or by registered post or courier post addressed to that office. This will also ensure a safeguard on the possibility of the notice leaking out to the public through an irresponsible junior officer or employee.

The inherent dangers highlighted above stem from the fact that the notice of intention is not the same as the subsequent enactments in section 22 of the law[39] which spell out in details the steps towards such removal, the antecedents and consequences.

The question therefore is whether the provisions of section 4(h)[40] should exist side by side with the provisions of section 22[41]. Certainly section 22[42] being later in time and more comprehensive will be deemed to have over taken or to supersede section 4(h)[43]. It is therefore submitted that section 4(h)[44] is superfluous and unnecessary to the extent that it provides for the notice of intention to remove from the list of insured banks. In other respects, i.e. the provisions relating to the "cease and desist" order, the sub section makes sense particularly with the suggested amendment to make it easier and clearer to understand and comply with.

Getting Back To the List And Out Of "A Death Sentence"

This is provided for in section 23 of the Act[45]. As a matter of fact section 23(i) a, b & c and the other provisions of section 23 i.e. 23(2) and (3) appear to be medicine after death. They ought not to be part of section 23(i) or lumped together. 23(i) presupposes that the bank is seeking to resurrect. 23(2) and (3) appear to be calling on the Deposit Insurance Corporation to take steps and measures to resurrect it. What if it is unable to stand? Why would the provisions of 23(2) and (3) not come before 23 stating the grounds for removal? Why should a bank whose name has been withdrawn from the list of insured banks remain in business for the purpose of sections 23 to apply to it? Which members of the public would leave their funds or deposits voluntarily in banks that have been visited with section 22 orders and decisions to await section 23? In any event and for whatever they stand for, the provisions of section 23 are set out below: -

23(i) A bank whose status as an insured bank is terminated in accordance with section 22 of this Act, may re-apply to participate in the Corporation after the terminated bank has satisfied all the conditions required of it by the Board, particularly after the Board has given consideration to the following, that is: -

a) The financial position and its general operational practice since the termination order became effective;

b) That the grounds for which the bank's participation in the corporation was terminated have been satisfied; and

c) The future earnings prospects and general character of its management are satisfactory.

2) Pursuant to paragraph (b) of section 5 of this Act, the corporation shall at the request of an insured bank and under such conditions as may be specified by the corporation, assist the bank if it-

a) Has difficulty in meeting its obligation to its depositors and other creditors; or

b) Persistently suffers liquidity deficiency; and

c) Has accumulated losses which have nearly or completely eroded the shareholders fund.

3) The corporation may take one or a combination of actions or any of the following to assist a failing bank, that is-

a) Grant loans on such terms as may be agreed upon by the Corporation and the failing bank;

b) Give guarantee for a loan taken by the insured bank;

c) Accept an accommodation bill with interest, for a period not exceeding ninety days maturity, exclusive of days of grace and subject to renewals of not more than four times.

d) Subject to the approval of the Minister on the recommendation of the Central Bank of Nigeria.

i) Take over the management of the bank until its financial position has substantially improved or

ii) Arrange a merger with another bank or management of the bank within such time as the corporation may specify; or

iii) Arrange a merger with another bank or contract to have the deposit liabilities assumed by another insured bank; in which case, the receiving banks shall assume all the recorded deposit liabilities of the failing banks.

4) The receiving bank shall receive those assets of the failing bank that are acceptable and an amount equal to the difference between the assumed deposit liabilities and acceptable assets shall be advanced to the receiving bank or purchase the unacceptable assets from the failing bank.

5) The corporation shall receive unacceptable assets of the failing bank and regard such assets as collateral of the advance to the receiving bank or purchase the unacceptable assets from the failing bank.

The provisions enable the NDIC to take over the management of the failing bank in the first instance and where it is unable to survive, take over its assets. It also has the powers to make specific changes in the management structure of the bank and within a specific time too. Where necessary and possible, it can also arrange a merger of the ailing bank with another bank. The recent consolidations and mergers by banks in Nigeria that were caught by the N25 billion minimum capital requirement aptly demonstrates the role mergers can play in saving banks that would otherwise be liquidated. This was largely responsible for sustaining the number of banks up to the 24 that they are now from nearly 90. Practical examples include the U.B.A. (United Bank for Africa) merger with Standard Trust Bank, retaining the name of UBA as a mega bank. The Platinum Bank merger with Habib Bank and forming an acronym from their two names as Platinum Habib Bank, or Bank PHB. Unity Bank came out of a merger of nearly seven banks including New Nigeria Bank, Bank of the North and others. The end point is that the key to viable banking and a stable money market in the economy is regulation. That is to say, regulation by law such as this Nigeria Deposit Insurance Act.

Subsisting/Potential Problems/Challenges

Unfortunately and as will be seen presently, actual and potential challenges subsist in the industry notwithstanding the above. Some of these challenges may be extrinsic to the legal framework itself but others are not. They are quite intrinsic.

The new legal regime being novel and experimental and ever changing, it will be very pertinent to highlight dangers ahead even if it is not conceded that they are flip sides of the advancements or achievements. These dangers range from the present ownership structure, management problems, legislative shortcomings, judicial constraints, political and policy inconsistencies and the ever consuming and or swallowing effect of internationalization or globalization in an ever shrinking global village theatre where third world countries must play the second or third fiddle. It is proposed to succinctly comment on these shortcomings or challenges in the succeeding part of this work.

1. The Negative Effective of the Present Ownership Structure arising From Re-Capitalization and Consolidation Exercise

We have seen the ownership of banks move from individuals to families; families and few friends, State Governments and now the public at large. At the inception of the N25 billion minimum share capital requirements for banks, it was common knowledge that the erstwhile owners, try as they could, were not able to personally raise the capital. They were forced by circumstances of the law, to resort to the capital market to raise the differences, which were substantial. By means of mind catching and highly imaginative and tempting press campaigns through advertisements in the print and electronic media[46], they successfully cornered and

acquired huge amounts from the public. Those who could not make it that way sought umbrage under those who could and either gave up their names or their identities in lieu thereof. The others fell bringing the number at the end of the day to 24.

The net result of this highly expensive experiment is the virtual transfer of ownership of the surviving banks from individuals and arrowheads[47] to the fluid public[48]. The further result of this result is that those who would hitherto have been held squarely responsible for the activities of the companies – nay banks when the need to lift their veils of incorporation[49] arose have now successfully melted into mere directors and or shareholders. It is dangerous for an imperfect and embryonic bureaucracy and system like Nigeria's. Under so called perfect or developed systems like the United States of America and Asia, Mega corporations under the full glare of regulatory "police" and "super police" institutions[50] have been seen to fail and fail woefully, and be wiped out of the surface of the business earth[51]. Two good examples in recent times are the ENRON Corporation in the U.S, whose chief executive was found due for a 30years jail term[52]. Investments, pensions, hopes, aspirations *et al* perished with the Enron collapse. Who knows whether the death of some of the investors, employees and pensioners, directly or indirectly would not have followed between 2004 and 2006 when the trial of the officers commenced and concluded? Particularly that of Kenneth Lay the Chief Executive Officer (CEO) and founder.

Again, in respect of Daewoo Corporation of Korea, the Guardian Newspaper[53] reported that Kim Woo-Chong the founder of Daewoo Corporation worldwide, was;

a) Sentenced to 10 years in jail after running from the law or justice for 6 years for embezzling the company's funds. And that
b) The 69 years old was also to hand over the sum of 12 billion pounds and fined the same.

The Mega Corporation collapsed in 1999 with a debt of 80 billion USD[54] At its peak, it employed 320,000 people in 110 countries. The Company the Guardian reported started encountering problems after it borrowed money in the 1990s to finance expansion.

The point being made and the illustration being drawn is that size or large size by itself is not a guarantee to prevent failure. Huge and massive recapitalization if not properly managed can spell doom for a company and nay a nation's economy. One man is alleged to have stolen 12 billion pounds. One billion pounds is more than about 200 billion naira. Two hundred billion naira equals the capitalization of 8 banks at N25 billion each. It would therefore take less than a quarter of what was stolen in Daewoo to collapse all the banks in Nigeria. Needless to say that Nigerians from history may even be more heartless than Koreans when dealing with their fel1ow Nigerians. Many Nigerians exist who will not flinch at stealing 3 or 4 billion pounds even if it would mean the entire national economy collapsing, provided they have it to enjoy with members of their families in other people's countries. The final word here therefore is that: Vigilance and not size should be the watchword for the banking industry in Nigeria. This is one

of the flip side of the much touted re-capitalization and increased capitalization and consolidation. We must move on nonetheless.

2. Management Problems as a Factor in Bank Distress and Failures

It is very tempting to ask if any other problem can be responsible for bank distress and failures other than arising from management. The simple response to such enquiry would be that factors such as adverse political[55] and economic[56] climates, uncertain legislative terrain[57] and inclination to fraud[58] though capable of breeding poor management are not themselves rooted in poor management. Again cultural and attitudinal disposition of the borrowing public and customers resulting in horrible debt profiles cannot be rested squarely on the shoulders of management. Turpsy turvidious legislations and imprecise and shifting supervisory policies are equally not direct management oriented problems although they aggravate and in some cases cripple the situation. An ill equipped and corrupt judiciary charged with the interpretation (or misinterpretation) of banking laws is certainly a problem extrinsic to management.

The above notwithstanding the question remains very pertinent that it is difficult if not unrealistic to seek to explain away bank failure/distress in contemporary times without reference to management[59]. This problem can arise as a result of any or many of several aspects. The point remains that howsoever arising, the belief is strong that prudent, ardent, efficient proficient, articulate, purposeful and professional management can have and surely has the effect of bringing into play, what in the law of tort is regarded as the last opportunity rule in the tracing of the cause of an accident. That is, who had the last opportunity to avoid the debacle or disaster or failure? Can it be the politician, the legislator or 1awgiver, the supervisory authorities, the interpreting authorities, the customer or lending public or the manager. It seems that it must be the manager.

Management problems can arise from any of the causes already observed[60]. Apparently, these would include

(i) Poor training of management personnel.
(ii) Inherent ineptitude of even those trained.
(iii) Non professionalism of management personnel.
(iv) Endemic corruption or ill motivation.[61]

The end result of the application of any of the above defects to management is the making or taking of wrong or fatal decisions or in some cases inexplicable decisions. When management decisions are patently wrong or otherwise inexplicable or fatal, the institution on behalf of whom or which such decisions are taken is usually the one that bears the brunt. The brunt of such decisions to banks, dovetails in all cases to loss of capital or customers which amounts to the same thing either in the short run or in the long run. Sometimes this can result in sudden distress or death or failure of the bank in question.

Empirical observation will show that in Nigeria today, no less than 80% of the employees of most of the banks had no previous training in banking and the running of financial institutions before they got employed as such employees. They were mostly recruited into the services after their secondary school education particularly where they had credits or distinctions in mathematics or other arithmetical courses at the ordinary level. Thereafter, they are put through or shown routine jobs or transactions by persons like themselves but employed earlier in time. In due course they are with luck elevated into supervisory positions and thence into management positions to make professional decisions for the continued existence of the banks or perhaps their demise.

It is true that prior to the establishment of a professional training institution/body for bankers in Nigeria, the London based Institute of Bankers assisted in the professional training of Nigeria bankers and thereafter the Nigeria Institute of Bankers[62] followed. Both institutes render largely in service training for bankers with the award of the Associateships or Fellowships after the taking and passing of the requisite qualifying examinations.

Apart from such in-service training, most Nigerian Universities nowadays offer courses leading to the award of bachelor degrees in banking. The curriculum of such courses drawn up by the National Universities Commission and not the Bankers Institute however leaves much to be desired. What is significant is that bachelor's degrees are awarded by such Universities without any form of internships or practical training. Granted that the possession of such degrees does not make professionals of their holders, a more practical approach ought to have been adopted in the training or courses leading to the award of such degrees.

The most significant point that must be made in this regard is that there is yet no law that forbids the employment of non-professionals into the management cadre of banks and banking institutions. It is even submitted with the greatest respect that were such a law to exist, it was bound to be observed more in the breach than otherwise.

This has to be so because it would amount to a half way course as there has to be a law first that non-professionals should not own banks before there can be one that they should not manage same. To the extent therefore that the ownership structure of banks is *laissez* faire under the law, subject to the other statutory conditions particularly capitalization, the employment of personnel into banks cannot be regulated by reference to academic or paper qualification. In more practical language, nothing stops an illiterate billionaire from owning a bank or banks in Nigeria and *ipso facto* from employing his illiterate or semi-literate or non-professional son or spouse or sibling as the managing director or chief executive officer (CEO).

In the legal profession for example 1egislation now exist to eliminate the non-professional practice of law in almost all-important aspects. Even then it has to be under serious check/supervision and control. Right from the training threshold, the law now insists that only professionals and not mere theorists and ideologues train members of the legal profession. With the relevant degree, it is now compulsory for any entrants into the Nigerian Universities to lecture law courses leading to the award of bachelor or so degrees in law to have themselves

been called to the Nigerian Bar. That is to say capable of and licensed to practice the law in a professional capacity before being employed to teach it. That way the emphasis will be "do as I say and do or can do" and not "do as I say but have never done or cannot do". Again at the Law School i.e. the school run by the Council of Legal education for the practical training of qualified persons for call to the Nigerian Bar, professionals are engaged. It is common knowledge that nobody can be appointed to act as a legal practitioner unless he is called to the Bar. Where non-lawyers preside over inferior courts or tribunals, their decisions, before execution, are liable to review by way of appeals to higher or superior courts presided over by lawyers, the above ensures that the professional sting pervades salient aspects of the practice of law.

It is arguable that this analogy is too remote to be brought into banking practice. That cannot be. This is because banking has been elevated from a vocation or mere employment to a profession by practice. Recent indication about reference of certain applications for loans to the Central Bank of Nigeria for vetting or clearance having regard to quantum and profiles of app1icants may indeed be aimed at professionalizing or controlling the grant of loans and advances. This is more so when management decisions on loans determine to a large extent, the survival of banks.

The present legal regime for the training of professionals in banking and for the acquisition of banking etiquette and morals cannot be found in the standard legislations on the area. That is to say the Central Bank Act[63] the Banks and Other Financial 1nsititution Act[64] and the NDIC Act[65]. There is nowhere in these codes where prior training is made a pre-requisite for the employment to personnel or management personnel in the banks. Again, and to draw analogy from the legal and medical professions, a member of the Bar can be debarred and prevented from practicing the profession if he was found wanting in matters of serious professional discipline. Similarly, the medical license to practice given to a medical doctor can be revoked for similar reasons. In banking, experience has shown that managers who contributed to the adversities in their banks to the knowledge of their colleagues have been able to successfully re-locate from such distressed banks to viable ones. In some cases they even set up banks of their own and appear to flourish.

The law establishing the Nigerian Institute of Bankers[66], show that the institute in the main, carries on the non-institutionalized grade assessment of persons practicing banking. This assessment takes the form of written examinations without any viva voce appraisal of the candidate. There also appear to be no provision in the law for the practical and confidential reports on candidates for the purpose of determining their on the job suitabi1ity. Practical and confidential reports on candidates writing the Institute of Bankers examinations by superior officers in their hierarchy can complement the written examinations before successful candidates are admitted as associates or fellows of the institute (of bankers). The advantage of professionalizing a discipline such as banking at managerial level is that *inter alia* the professional body would assist the other regulatory or statutory bodies such as the Central Bank

and the NDIC which more elaborately discussed in this work, in the maintenance of standards and best practices in the industry.

3. Legislative Shortcomings/Deficiencies

This has been the focus. They take the form of loopholes, inadequate and non-existent provisions, and incomprehensible ones. An example here is the terminal aspect of the law, which determines what happens in the event of bank failure. It is proposed to borrow from the words of the NDIC[67] to ramify these problems as still being there. Said the Corporation under inadequate legal provisions:

> *10.2. "A deposit insurer, while acting as a liquidator of closed bank, should be vested with special powers. The special powers are to expedite the liquidation process in order to maintain confidence and stability of the banking system as well as ensure cost effectiveness of the liquidation process. Furthermore, the special powers will help to facilitate higher levels of asset realization, which could minimize losses to depositors.*
>
> *Consequently, in many jurisdictions including the Federal Deposit Insurance Corporation (FDIC) of USA, the Deposit insurer is granted special powers.*
>
> *Liquidations undertaken by FDIC, for instance, are not subject to court supervision. There is also limitation on court action against FDIC, which is intended either to restrain or affect its powers or functions as liquidator. In addition, no attachment or garnishee order can be enforced against FDIC without its consent. Furthermore, FDIC does not require any court order to be appointed as liquidator by a Chartering Authority. Generally, bank liquidation is not expected to be subjected to the general insolvency proceedings instead, bank-specific insolvency laws are enacted*
>
> *Contrary to best practices, NDIC has to apply to the Federal High Court (FHC) to be appointed as a liquidator, NDIC is also subject to the general Companies Winding up Rules, which among others, require notice to be issued and advertised before appointment. The legal process is thus protracted. This inhibits thus the payment of insured deposits as illustrated by the case of Savannah Bank of Nigeria PLC*[68]

4. Judicial Constraints

This is mainly as regards jurisdictional and threshold problems. A judge of the Court of Appeal as she then was[69], had this to say about the role of the judiciary in the banking industry.

It is the judicial powers vested in it by the constitution that makes the judiciary an active participant in the banking industry. Before the enactment of the Failed Banks Decree, banking cases that came to the courts were mostly in the areas of employer employee/relationships, dishonored cheques, breach of contract, customer/bank relationship as in Jammal Steel Structures v. ACB Ltd (1973) ANLR 208 and Bronik Motors v. Wema Bank (I983) 6 SC 158.

It is very doubtful if any court worth its name will "intentionally" as perceived by Mr. Tilije, provide cover for bad debtors. It is a high time people understood that judges are not law makers or law enforcement agents. They are to interpret the laws. Even Lord Denin warned in his book. The Family Story, London. "My root belief is that the proper role of a judge is to do justice between the parties before him. If there is any rule of law, which impairs the doing of justice, then it is the province of the judge to do as he legitimately can do to avoid that rule or even to change it so as to do justice in the instant case before, him.

From this statement, it is obvious that the constraints of the judiciary in playing its constitutional role in the development, administration and realization of the objectives of banking laws are both extrinsic and intrinsic. They are related to each other and indeed interwoven. The most regrettable of the extrinsic constraints is that of perception and public confidence. The general notion of the public is that the judiciary is a sanctuary for fraudsters who defraud banks and bank debtors who do not want to pay their bad debts. It is only the judiciary, through good and clear examples by way of sound and just judgments that can correct this perception. It has to be corrected because it is very necessary for the survival of the industry and its goals. A correct view of the role of the judiciary as an impartial arbiter will serve as both an encouragement to investors and a chilling reminder to the industry's fraudsters and decimators that a painful nemesis awaits them as the sentinel of their successful activities in short changing and killing the system.

The intrinsic constraints as mentioned by His Lordship include

(i) Inadequate training and continuing education for the judiciary in such emergent and fast developing areas of the law as banking.
(ii) Obsolete methodology in the administration of the machinery of justice.
(iii) Unwarranted jurisdictional constraints.

Such jurisdictional constraints as restrict adjudication on such regulatory banking matters to the Federal High Courts only. This is notwithstanding that they have no special training to qualify them for same and more so are few and far between in the country.

There is no point in taking all the enhanced and extraordinary measures being taken to regulate the banking industry only to leave a gaping hole in it from the judicial hold. Any such

holes can sink the entire ship. Since the Failed Banks Tribunal is disbanded, special divisions of the Federal High Courts or State High Courts should be created if possible with contributory funds from stakeholders like the Central Bank and the NDIC to expertly and expeditiously deal with banking matters.

5. Internationalization, Regionalization, Globalization and the disadvantaged Position of Nigerian banks in this Regard

The brief point being made with this sub-head is that having gone through Nigeria's legal regime for banking and other financial institutions, there is no letter to be found in the laws that contemplates Nigerian banks operating outside Nigeria with such laws for now. Again, there are no letters in the laws or dominant laws such as BOFIA and the rest, which contemplate foreign banks participating in the industry in Nigeria. Yet they operate the country's foreign reserves which run into billions of dollars for now. One is not unmindful of the fact that certain indications from the sector administratively insinuate that heavy capitalization beyond the present twenty five billion could earn Nigerian banks this privilege. The question that still remains is under which section of BOFIA[70] or the NDIC ACT[71] or the Failed Banks Act[72] etc. will this be done? We must bring Nigerian Laws in line with globalization before the albatross called globalization consumes them in the name of international arbitration of global players and the principle of choice of laws.

It will only take one curious arbitration clause in a contract between a Nigerian bank and a foreign one to remove the application of all the country's much commended laws and render them inapplicable to banking transactions involving foreign banks. This can cost the country's poor depositors great loss and pains. Such a clause can make the laws of a sub State like Texas to be the applicable laws and exclude any regulatory powers of the CBN and NDIC. It is as bad as that.

Admiralty matters were nearly spared this booby trap called globalization when the enabling laws governing admiralty jurisdiction specifically states that notwithstanding the provisions of any other law to the contrary, only the Federal High Court has jurisdiction in admiralty matters[73]. Yet in the case of *Baker Hughes Process Systems Ltd. (A division of Baker Hughes Inc. of Delaware* USA) v. ABNL Ltd, the contention that the foreign company was not incorporated in Nigeria or granted exception under CAMA to do business in Nigeria was dismissed by the American and Canadian Arbitrators as uncivilized law and therefore not of universal application in the face of the arbitration clause by the parties to exclude Nigerian laws from their oil drilling production barge business. Though the Nigerian Arbitrator[74] gave a dissenting opinion, it was a minority opinion, which was at best mere literature.

A sensitive area of the national economy and existence such as banking should watch against this bug called globalization. It is beyond our systems and so our systems should be

legally insulated from it. It is anti-nationalism and neo colonialism. It is worse than bad governance if anything can be worse than bad governance.

Safety provisions such as in the Admiralty Jurisdiction Act[75] should be built into our banking laws so that they cannot be swept away or discounted by non-existent entities such as Baker Hughes Process System alleged to be incorporated in Bermuda but which Mr. Strachan who signed the contract in question on its behalf could not remember exists in his oral testimony. The majority opinion of the arbitrators should serve as a warning in Nigeria to our lawmakers.

One or two sour ventures of the nature of the above arbitration case by any of the banks operating in Nigeria will drive a coach and horse through the otherwise beautiful laws adumbrated in this work. Vigilance again is therefore the watchword. Clear and express provisions should he made enabling the Central Bank of Nigeria and or the Nigerian Deposit Insurance Corporation to be a party and or signatory to any joint venture contracts that any insured bank dares to enter with any foreign bank or firm.

PART V
SPECIFIC RECOMMENDATIONS FOR CHANGES IN THE LAW AND EXPECTED IMPROVEMENTS

The recommendations specifically made for changes in the new legal regime and the improvements expected therefrom are laced with the analysis and reviews of the relevant portions of the law above for convenience and ease of reference and tagging. A summary of same notwithstanding can be beneficially recapitulating and reflective as itemized hereunder.

(i) The insured amount or expected dividends from the insurance or so called insurance scheme has been found wanting and inadequate. This is in the sense that whereas the notion of "insurance" imports or connotes "indemnity", an insurance situation whereby the dividend payable upon the anticipated event is for less than indemnifying, amounts to a non-starter or at best a platonic situation as already emphasized. It as a result of this that this work recommends that this aspect be amended so that either the whole or a substantial percentage of the whole of the insured amount is recoverable.

(ii) The paper commends the consolidation that emerged from the scheme and the resultant larger capitalization or capital base of the emergent banks. It however notes and cautions that experience worldwide has shown that size *per se* cannot guarantee survival as corporations far larger and more capitalized have been seen to go down. Hence the recommendation that more detailed, purposeful and robust supervision and discipline is a better panacea to bank failures and distress.

(iii) The paper observes the possibility of a heavily discounted notion of professionalism in the personnel makeup of the industry and consequently recommends changes in this direction and a push towards greater professionalism.

(iv) A Legislative lacunae such as the inability of the Ombudsman to proceed straight to liquidation of ailing, failing and failed banks is identified as an extrinsic factor to the extant law. It is nonetheless proffered that provisions to this effect be written into it to enhance the ombudsman's realization of its mission

(v) A further extrinsic problem of judicial and international alternate dispute resolution is equally penciled down in the work. In this regard, the putting into place of necessary adjectival laws is indicated as imperatives.

PART VI
EXPECTED RESULTS

It is hoped and believed that the recommendations towards improvements in the legal regime in question will bring forth the basic and fundamental objectives of the law. These fundamental and desirable objectives are virtually universal. Though they appear self-evident yet they are never found to be self-executing[76].

(i) Greater and surer investor protection
(ii) Certainty of rules of engagement of operators and
(iii) An improved economy.

SUMMARY AND CONCLUSIONS

Matters of security of monies deposited in banks and the stability of the banks themselves are very germane to the banking industry and business generally, in the world and in Nigeria. Prior to the enactment of the law establishing the deposit insurance scheme, the Central Bank of Nigeria tried to supervise the industry. However, no clear provisions or any existed in its statute spelling out such detailed steps and requirements for the management of ailing or failing banks. The net result was that such "corpses" of banks remained open for a very long period after becoming "corpses" and members of the public went ahead and deposited their monies with them and never got them back. This paper has thus critically appraised one of the most crucial aspects of modern day banking regulation in Nigeria and the emerging global emphasis on safety nets in banking business. That is to say the powers and functions of the Deposit Insurance Corporation with regard to the insurance of bank deposits, the institutions or banks that are required to do so and the consequences of so doing or failing to do. It is brought out that criminal sanctions attend any failure in this regard though the amount of penalty is criticized.

The necessary stringed supervision and control that follow the listing of a bank as an insured institution are examined, including removal or change of management, and the mergers and consolidation that followed as the need arise. The final question of bank liquidation and refunds/payments of deposits and dividends is mentioned. Throughout, certain aspects of the law manifesting inelegance and imprecision are highlighted and suggestions for amendments or possible amendments are made intrinsic and extrinsic challenges both actual and potential are discussed. In the end, it is appreciated that the enhanced regulations brought about by the new laws can go a long way in stabilizing the banking sector and instilling confidence in the investing members of the public whether from within or outside Nigeria.

ENDNOTES

[1] See http: // www.iadi.org (20th July 2013)

[2] The Nigerian Deposit Insurance Corporation (http://www.ndic. Org.ng) 20/7/13.

[3] Giwa, Ayuba O. The emergent International/global phenomena of Deposit Insurance and Banking Regulation-A critical Appraisal of its modest successes in Nigeria, being part of a research thesis for the award of Doctor of philosophy Degree in law of the Edo State University, Ekpoma, Nigeria, 2010.

[4] The Central Bank of Nigeria Act, now Cap C4 Laws of the Federation of Nigeria 2004 and the Banking Act 1969. These were the mainstream statutes that regulated the Industry before the Enactment of others like the Failed Banks Act which was Decree no 18 of 1994. The Banks and other Financial Institutions Act 1991 and subsequently the Nigeria Deposit Insurance Corporation Act now Cap. N102 Laws of the Federation of Nigeria 2004. We say the mainstream statutes because others like the Bills of Exchange Act 1882, a colonial legislation applicable to the country, and Finance (control and Management Act) Cap. 144 LFN 1990 equally governed the banking business but as said, none of them required any statutory guarantees, Limited or comprehensive of any deposits placed in Banks in Nigeria.

[5] Cap C 4 supra

[6] The equivalent of the Federal Reserve Bank in the United States of America

[7] Supra footnote 4

[8] There is no question that banks are corporations or incorporated companies or entities whose articles of association contain clauses enabling them to carry out the business of Banking i.e. receiving deposits from members of the public. Thus they were and are still subject to the operations of the companies and Allied Matters Act Cap. C 10 laws of the Federation of Nigeria 2004 which again merely deals with incorporation of business to confer juristic personality on them and enable them exist independently of those natural persons or individuals that subscribed to their memoranda and articles of association see the *locus classicus* of Salomon v. Salomon (1897) AC 22

[9] Bills of Exchange Act 1882 which forms part of Nigerian law, though a colonial relic, by virtue of it being enacted in the United Kingdom, the Country's Colonial master, and being enacted before 1st January 1900 when laws made in England ceased to be automatically applicable to Nigeria. Those before 1900 were regarded as statutes of General Application to virtually all the countries of the Commonwealth until legislative bodies were individually set up in those Countries.

[10] The money market as distinguished from the capital market, both of which combine to form the financial system.

[11] These are essentially the tools with which banking business is carried out and not the corporation or institutions (structures) that carryout the banking business

[12] Banking business in Nigeria as defined by section 66 of the Banks and other Financial Institutions Act no 25 of 1991 nor Cap B2 Laws of the Federation of Nigeria 2004 as amended.

[13] The Nigerian Observer, Wednesday, January 27th 1993 page 11

[14] They were essentially pyramid investments schemes that collected deposits from members of the public with promises of jumbo interests running into hundreds of percentages of the amounts deposited just to attract more deposits. In the end the required pay outs became overwhelming and crashed the ventures which could not meet the promised percentages that where indeed commercially impossible such as promising a thousand percent of deposits within 30 days or less. It must be noted that these are different for example from the Trivestopedia definition of "Investment Pyramid" which is a portfolio strategy that allocates assets according to the relative safety and soundness of investments (see www. Investopedia.com/ terms/investment pyramid consulted 10/8/2013) in the latter cases, the bottom pyramid comprises of low risk investments whilst the top is the opposite. Here we are talking about cash collected and not invested at all.

[15]It is now Cap N102, Laws of the Federation of Nigeria 2004, in 2006, it was amended but it remains Cap N102 laws of the Federation of Nigeria 2004.

[16] An ombudsman is usually appointed by the government or by parliament but with a significant degree of independence, who is charged with representing the interest of the public by investigating and addressing complaints of maladministration violation or rights: .." etc. (Wikipedia – en.wikipedia.org/wiki/ombudsman last consulted 1/8/2013

[17] Official Gazette no 73, Lagos, 29th December 2006 (Nigerian Deposit Insurance Corporation web site http://www.ndic.org.ng; last consulted 20/7/2013)

[18] http://www.ndic.org.ng supra.

[19] It is indeed a banking or Bankers Ombudsman or Commission.

[20] Cap N102 LFN 2004, in its last amendment in 2006, this amount is now N500, 000.00 (about 3, 125USD which is still not enough.

[21] The Guardian Newspaper, Wed. January 4, 2006 p. 23

[22] CAP N102 Supra s. 22(1)

[23] Ibid

[24] CAP C 4 LFN 2004 for example deals extensively in Ss 26 to 29 and 36 to 42 with the Powers of the Central Bank and its relationship with other Bankers.

[25] CAP B3 LFN 2004.

[26] CAB B3 LFN 2004 which is a mainstream legislation on banking practice

[27] CAP N 102 supra.

[28] Such bad and doubtful debts or credits will certainly mislead the public as to the actual worth of a bank.

[29] S. 22 (3) (a) of CAP N102 Op.cit.

[30] S. 22(3)(b) ibid

[31] S. 22 (4)

[32] S. 22 (5)

[33] The absence of safety in their deposits and the imminent withdrawal of the banks license.

[34] S. 22(6) CAP N102 op.cit

[35] S. 22(7) ibid.

[36] S. 22(8) ibid.

[37] S. (9) ibid

[38] S. 22(10) ibid but by the 2006 amendment of the Act however, the approval or ratification of the court is no longer necessary

[39] The NDIC Act CAP N102 LFN 2004

[40] ibid.

[41] ibid.

[42] ibid

[43] ibid

[44] ibid

[45] CAP N 102 supra

[46] Newspapers, as well as radio and television.

[47] These arrowhead were often the ones involved in serious insider dealings.

[48] Thus diluting the responsibility hitherto on the *alter* egos of the various banks who though still controlled the affairs of the banks, nonetheless had their responsibilities for failures heavily discounted.

[49] Reminds one of the locus classicues of Wallesteiner v. Moir (1974) 1WLR 1991 and its counterpart Wallesteiner v. Moir no. 2 (1975) QB 373

[50] Like the FDIC op.cit at foot note 2.

[51] With such failures, millions of invested funds in, the companies are lost and may even result in stock market collapse.

[52] Kenneth Lay was convicted of corporate fraud in the Enron scandal but died of a heart attack a few days before he was sentenced as reported by the cable News Network (CNN).*For a detailed treatise on the Enron imbroglio see the 274 page book on "Enron *and world Finance –A case study in Ethics*" Dembinski, Paul H et al Palgrave McMillan www.strongwindpress.com.

[53] Guardian Newspaper, Nigeria, Wednesday May 31, 2006.

[54] United States Dollars

[55] Where governments change capriciously and without any fixed duration such as happen in *coup de tat* prone countries, there would certainly result inconsistencies in government policies with each group of coupists presenting different policies.

[56] Adverse economic climates would arise where the poverty level is so high that the citizens or the majority of them virtually live from hand to mouth leaving nothing to be invested.

[57] An uncertain legislative terrain where laws relating to banking or any other business are amended too frequently, particularly through administrative regulations empowered by such laws would render the rules of engagement in such businesses highly uncertain, shifting, and at the whims and caprices of regulators.

[58] No doubt corruption brings to naught, all progressive efforts in financial stability as it usually involve very few depriving very many of what they are legitimately entitled to.

[59] Indeed the new thinking in corporation law is that there is a shift from the management of companies to their actual governance. Manage connotes patching and fixing of faults whereas governance entails total control and direction of affairs. That is, being on the driver's seat and governing companies just as Municipal Councils, Local Government Areas and States are governed. For this shift paradigm see Pound J. *"The promise of the governed corporation"*. Harvard Business Review-Corporate governance. Harvard Business School Press Boston Massachusetts 2000, pp. 79 -104.

[60] Ibid footnote 55– 58

[61] Improper motivation is the surest indices of corruption and embezzlement of other people's funds. Devious and dubious persons abound who are easily motivated by either greed, nepotism, concupiscence, avarice, cupidity, covetousness and all other forms of negative tendencies. Often times, they roller-coast and wave-ride into highly sensitive positions of responsibilities and execute their nefarious inner most objectives before they are detected. In Nigeria, for example, names of hitherto great bankers such as Cecilia Ibru of Oceanic Bank, Erastus Akingbola of Intercontinental Bank and many other who were arrested, tried and convicted publicly of embezzlement of billions of customers/investors monies, now live bile in the mouth. The web is agog with Cecilia Ibru including-www.greenlight.com.ng/business with a caption "steal Billions of Dollars & Then Become an Evangelist. For the of assets forfeited by her see *www.procurementmonitor.org* for Akingbola, see-"Rogue Banker Erastus Akingbola – "saharareporters.com all webs sites here last consulted 12/7/2013.

[62] Chartered Institute of Bankers of Nigeria-www.cibng.org established vide the Chartered Institute of Bankers Act now Act no. 55 of 2007 commencing 11th April 2007. Even the late enactment of the law regulating one of the oldest professions in Nigeria nay the world is telling taling. Banking started in Nigeria more than a century ago about 1897.

[63] CAP. C LFN 2004.

[64] Bofia. Ibid. At footnote 26

[65] Nigerian Deposit Insurance Corporation Act. CAP N LFN 2004.

[66] Chartered Institute of Bankers Act. Op cit at footnote 46

[67] The Guardian Newspaper (Nigeria) Sept. 20, 2005

[68] Savannah Bank of Nigeria Plc. was closed by the Central Bank of Nigeria and for more than 5 years, the liquidation process has not ended and no depositor is yet paid, eventually their appeal to the Supreme Court succeeded yet the depositors are still gasping for breath while the bank itself remains in limbo (see www.businessdayonline.com) see Savannah Bank Plc v. Central Bank of Nigeria & 2 ors (2009) 6 NWLR (pt 1137) p. 237

[69] Justice Mary Odili-paper presented at the 2004 seminar on Banking & Allied Matters for judges organized by the Chartered Institute of Bankers (CIBN) on the need for continued legal education for judges. The paper itself titled "How judiciary can impact positively on the Nigerian Banking Industry" was published at page 78 of the Guardian Newspaper of 18/1/05. She is now a justice on the Supreme Court of Nigeria Bench.

[70] Banks and other Financial Institutions Act Ibid

[71] Nigeria Deposit Insurance Act Ibid

[72] CAP F 2 LEN 2004

[73] Admiralty jurisdiction Act CAP A LFN 2004.

[74] Who incidentally became an Att. General and Minister of Justice in Nigeria (Chief Bayo Ojo SAN). The arbitration case itself is unreported. It is case no AAA50T1980051001 award dated 26th July 2004.

[75] Op cit. footnote 73

[76] They have to be pursued and pursued deliberately too. That is to borrow the language of the current American President, Barrack Obama during his inaugural speech on his second term in office when he was referring to the country's declaration of fundamental human rights believed by that declaration to be truths that are "self-evident". http://www.whitehouse.gov/the../inaugural-address-president-barrack-obama (last opened 3/3/13)