



AN EXAMINATION OF THE REGULATORY STRUCTURE FOR ELECTRONIC BANKING IN NIGERIA

By

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Abstract

There is no gainsaying the fact that financial activities are predominantly tailored by the banking sub-sector. Indeed, banking activities are substantially electronically driven in this age. As such, the quality and structure of regulation of these activities are important in determining their efficiency. The article, thus, sets out to examine the regulatory structure of electronic banking in Nigeria. It adopts the doctrinal legal research methodology and examines the legal framework founded on the Banks and Other Financial Institutions Act (BOFIA), 2020, the Central Bank of Nigeria Act (CBNA), and other subsidiary legislation made by the Central Bank of Nigeria (CBN), under these laws. It contends that both the BOFIA and CBNA do not directly provide for e-banking regulations, rather the CBN is empowered to issue guidelines. While this is a good approach, it exposes the framework to different forms of risks as a result of its flexibility. It further reveals that Nigeria's approach to banking regulation is mainly focused on institutional regulation, making it difficult for the regulator to focus on unique electronic services offered by the banks and other service providers. The system is found to have been bedeviled by some challenges, ranging from adequacy gaps, and system exposure to risks such as fraud, hacking, and other criminal intrusions. It, thus, mainly recommends that the focus of regulation must be scaled down to cater to different e-banking products and services, rather than the banks and service providers themselves. This must be supported with strategies aiming to address intricate and overlapping risks, functions, and institutional portfolios. Caution must also be taken not to make the structure too complex to discourage competition or stifle growth as a result of the heavy compliance burden.

Keywords: E-banking, Central Bank of Nigeria, Regulation, Banks, Legal Framework, Guidelines.

1.1 Introduction

The influence of information and communication technology (ICT) changed the banking landscape from predominantly paper-based to a computerised system. With the inevitable and aggressive adoption of e-banking tools to carry out banking business, a new dimension to different kinds of risks - strategic, legal, operational, reputational, liquidity, and credit -traditionally associated with banking is heightened with regulatory challenges at both international and domestic levels.

The regulations in themselves have brought forth certain questions as to whether Nigeria was ready, or it simply found it in vogue and rushed to adopt an electronic banking system. While e-banking is now becoming more convenient and comfortable for a large consumer base, the framework behind the scenes is struggling to find a standardised system of rules and regulations about how to handle, record, and secure e-banking.¹ The Central Bank of Nigeria (CBN) has issued several regulations, policy documents, and initiatives to guide the effective implementation of e-banking.

CBN's numerous regulations on e-banking do not appear to set out comprehensive principles to regulate the banker/customer relationship and adequately address the problem of third-party intrusions and other critical issues arising therefrom.

In this article, there will be an attempt to examine the current regulatory regime of e-banking in Nigeria. It will attempt to address the question of whether the regulations made by the CBN according to the Central Bank of Nigeria Act (CBNA)² and the Banks and Other Financial Institutions Act (BOFIA)³ are effective and dynamic enough to cope with the fast pace in Information and Communication Technology (ICT) that drives e-banking given the risks, challenges, and threats, as they continuously impact on the banking system. Some key regulations issued by the CBN will be examined as well as the various efforts made by the National Assembly to provide comprehensive legislation.

1.2 Nature of Electronic Banking

Electronic banking and its concomitant payment instruments are still relatively novel. There are misconceptions about the use of certain terms peculiar to e-banking which need clarification. Electronic banking has been defined in the law lexicon as banking activities accessed by using a computer, employing modems and telephones.⁴ The Basel Committee on Banking Supervision also defined electronic banking to include the provision of retail and small-value banking products and

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¹ A look at the various country regulations related to online payments, it becomes clear that more work needs to be done. Rampton, J., "Global Payment Regulations and How They Need to Change", retrieved from:

<https://www.inc.com/john-rampton/global-payment-regulations.html> on 15/12/2023

² Originally Central Bank of Nigeria Decree No. 24 of 1991, was replaced with the Central Bank of Nigeria Act, 2007.

³ Banks and Other Financial Institutions Act (BOFIA), 2023.

⁴ Ramnath, P. A. (2013), *Advanced Law Lexicon*, (4th Ed.) Nagpur; Wadhwa and Co, p.1561

services through electronic channels as well as large-value electronic payment and other wholesale banking services delivered electronically.⁵

Electronic banking has also been defined as the delivery of information and services by banks to customers via different delivery platforms that can be used with different terminal devices such as a personal computer and a mobile phone with browser or desktop software, telephone, or digital television.⁶ Thus, e-banking has come to assume an umbrella term describing its different forms and components such as virtual banking, online banking, cyberbanking, internet banking, interactive banking, mobile banking, PC banking, and remote electronic banking.⁷

The e-banking system focuses on payment by direct credit, electronic transfer of credit card details, or some other electronic means as opposed to payment by check and cash.⁸ Accordingly, it relies on any means used to make payments using an electronic network such as the Internet. Many new payment services have come into existence in recent years, most of which are based on technological innovations such as cards, telephones, and the Internet.⁹ Thus, e-banking describes not just the infrastructure but comprises various components, rules, procedures, standards, and technology established to enable the transfer of monetary value between parties discharging mutual obligations.¹⁰ Where this is done and controlled electronically, the concept changes to an e-banking system.

But the e-banking system does much more than “payment” or “transfer”. The System allows the customer to surf account information and check balances and products online without necessarily affecting any form of payment. As such, it encompasses the total payment processes, which include all the mechanisms, technological systems, institutions, procedures, rules, laws, and the entire infrastructure that come into play from the moment a payment instruction is issued by an end-user.¹¹ Thus, refers to convenient, safe, and secure methods for payment of bills and other transactions by electronic means such as card, telephone, the

⁵ Electronic Banking Group of Basel Committee on Banking Supervision, *Risk Management Principles for Electronic Banking*, July, 2003.

⁶ Daniel (1999) as quoted by Ahmad, A. M. K. and Al- Zu’bi, ‘E-banking Functionality and Outcomes of Customer Satisfaction: An Empirical Investigation,’ *International Journal of Marketing Studies*, (1999) Vol. 3, No. 1, February 2011, p.50

⁷ Shannak, R. O., ‘Key Issues in E-Banking Strengths and Weaknesses: The Case of Two Jordanian Banks,’ *European Scientific Journal*, (2013) vol.9, No.7, March 2013. p.246.

⁸ Australian Government Information Management Office (2004), Better Practice Checklist for e-Payment. Retrieved from: http://www.agimo.gov.au/publications/2000/04/better_practice_checklist_for_epayment on 16/3/2023

⁹ J.E. Abor, ‘Technological Innovation and Banking in Nigeria: An Evaluation of Customers’ Perceptions,’ *American Academy of Financial Management*, (2004) 33 (4), p.76.

¹⁰ World Bank Group (2012), Financial Infrastructure Series, Payment Systems Policy and Research, Payment Systems Worldwide. Retrieved from: <https://documents1.worldbank.org/curated/en/883951468000286016/pdf/96463-WP-Box391445B-PUBLIC-ADD-TOPIC-payment-systems-remittances-and-other-related.pdf> on 12/1/2024

¹¹ Briggs, A. and Brooks, L, ‘Electronic Payment Systems Development in a Developing Country: The Role of Institutional Arrangements’, *The Electronic Journal of Information Systems in Developing Countries Volume 49, Issue 1*, (2017), Version of Record online: 5 December 2023,

Internet, and Electronic Fund Transfer. E-banking gives consumers an alternative to paying bills and debts by cash, cheque, and money order. Its main purpose is to reduce cash and cheque transactions.

1.3 Regulatory Structure of e-Banking

From 1989, following the introduction of the first Automated Teller Machine (ATM), and the record growth in the Internet and computer usage in the late 90s, the regulations guiding the banking industry were silent on this emerging technological revolution taking place under “the nose” of the Nigerian authorities. The situation created some gaps between the levels of CBN regulatory tools and these technological advances, while also exposing banks to transactional, strategic, reputational, and foreign exchange risks. Later, this was to have a negative repercussion as Nigeria’s delay in taking these important steps to regulate e-banking provided a fertile ground for criminal elements to convert its cyberspace into the “internet fraud capital” of the world.¹²

The structure of the regulatory regime generally determines the success and efficacy of the system. It contributes to the achievement of the objectives of the regulatory framework and maintains a significant impact on the overall effectiveness of regulation and supervision. It also impacts the costs of regulation and the clarity of responsibility for particular aspects or objectives of regulation.¹³

Transactions in e-banking are based on the law of contract, agency, and the law of banker-customer relationship, customs, and usages of banking, mostly rooted in case law, culminating into, and complemented by subsidiary legislation in the form of regulations made under the two principal enactments establishing and regulating banking activities in Nigeria, the CBNA and Other Financial Institutions Act BOFIA. Yet, none of these principal enactments directly made provisions for the regulation of e-banking. The laws on e-banking in Nigeria are unlike what obtains in the United States of America, where the Electronic Fund Transfer Act (EFTA)¹⁴ was enacted in 1978 to protect individual consumers engaging in electronic fund transfers (EFTs) through automated teller machines, point-of-sale (POS) terminals, automated clearinghouse systems, telephone bill-payment plans in which periodic or recurring transfers are contemplated, and remote banking programs. Banking is in the exclusive legislative list in the Nigerian Constitution.¹⁵

1.3.1 Banks and Other Financial Institutions Act (BOFIA)

Governments have generally exercised control and supervision over banking systems through legislation empowering regulatory bodies to enforce the provisions

¹² Respected global audit and financial advisory firm, KPMG, rated Nigeria as the most fraudulent country in Africa, with the cost of fraud during the first half of 2012 estimated at N225 billion (\$1.5 billion). See KPMG (2012), International Annual Review 2012. Retrieved from: <https://home.kpmg.com/content/dam/kpmg/pdf/2013/12/kpmg-internatio> on 2 May 2018

¹³ F. N. Ngwu, and F. Akinbami, (2017), “Total Restructuring of Nigeria’s Financial Sector Regulatory Structure is Overdue.” Retrieved from: <http://www.businessdayonline.com/total-restructuring-nigerias-financial-sector-regulatory-structure-overdue/> on 6 April 2023

¹⁴ Electronic Fund Transfer Act 1978

¹⁵ Part I, Exclusive Legislative List, Item 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

of these laws. Nigeria is doing this through BOFIA.¹⁶ Although even subsequent amendments¹⁷ did not attempt to categorically legislate on e-banking, the CBN decided to adopt the “wait and see” posture. Not even with the current amendment in 2020¹⁸ was an emphatic provision made to specifically regulate e-banking. This is not unusual, as some regulators have favored adapting, using, or extending existing regulations as a short-term measure and adopting a “wait-and-see” approach toward establishing appropriate regulatory regimes.¹⁹ This arrangement has largely been working for Nigeria as it is not every minute detail of the framework that requires the National Assembly to embark on an alteration. The process of amending the law will require going through a tedious process that might take several months to accomplish.²⁰ The CBN is technically best placed to deal with this via delegated legislation.

The CBN is empowered to give effect to the provisions of the BOFIA in Section 1. There are also copious provisions empowering the CBN to make regulations for the operations of banks in Nigeria. According to section 57,

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

(2) Without prejudice to the provisions of subsection (1) of this section, the Governor may make rules and regulations for the operation and control of all institutions under the supervision of the Bank.²¹

¹⁶ Which was originally enacted as the Banks and Other Financial Institutions Decree (BOFID) by the General Ibrahim Badamasi Babangida administration in 1991. Although the computerization of the Nigerian financial sector started with the changing policy environment enunciated in the Structural Adjustment Programme (SAP), 1986, and the first ATM was installed in 1990, the Decree was silent on electronic payments.

¹⁷ Banks and Other Financial Institutions Act, 1991, as Amended in 1997, 1998, and 1999.

¹⁸ Banks and Other Financial Institutions Act, 2020.

¹⁹ J. A Tan, Regulatory Challenges of Electronic Payment Systems and Electronic Money, p.18. Retrieved from: <https://www.joylaw.com/content/06-news/31-regulatory-challenges-of-e-payment-systems-and-e-money/regulatory-challenges-of-e-payment-systems-and-e-money-081215.pdf> on 12 March 2023

²⁰ This process involves the presentation of the draft bill and the first reading, second reading, committee stage, third reading, and passage, harmonization by both chambers, and finally, assent or veto by the President. This typically takes years and sometimes beyond the four-year lifespan of an administration. See generally, Policy and Legal Advocacy Centre (2015), “Guide to the Nigerian National Assembly” Retrieved from: https://www.nilds.gov.ng/wp-content/uploads/2022/10/guide_to_nass.pdf on 1 March 2023

²¹ This approach is unlike what obtains in the United Kingdom for instance, where the primary source of framework legislation governing the regulation of banking and financial services in the UK is the Financial Services and Markets Act, 2000 (FSMA). See Financial Services and Markets Act 2000, retrieved from <https://www.legislation.gov.uk/ukpga/2000/8/contents> on 23 February 2018 This is also substantially influenced by, and to some degree implements, various European laws which set minimum requirements for the regulation of banks and banking services in the European Economic Area (EEA). See Regulators in the EU and European Economic Area (EEA), retrieved from: <https://www.fca.org.uk/firms/passporting/regulators-eu-eea> on 23 February 2018. The United States had the earliest attempts at enacting a national legislation to deal with electronic transfers and payments. The EFTA was passed by the U.S. Congress in 1978 and signed by President Jimmy Carter, to establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic funds transfer activities. See Electronic Funds Transfer Act, Retrieved from: <https://www.investopedia.com/terms/e/electronic-funds-transfer-act.asp#ixzz5BXrmRezT> on 3/3/2018. Since its enactment, legislation across jurisdictions took after the EFTA because of its

1.3.2 Central Bank of Nigeria Act (CBNA)

The CBN is the primary regulatory agency in charge of overseeing monetary and financial activities in Nigeria. The CBN Act establishes it to make regulations, issue directives, and monitor the activities of financial institutions that offer electronic banking services. It reels out guidelines and proposals to ensure the efficiency, security, and safety of electronic financial transactions. The CBN tackles new problems and promotes the expansion of a secure and vibrant electronic banking industry in concert with other regulatory bodies and appropriate stakeholders.

The Central Bank of Nigeria Act (CBNA)²² establishes and empowers the Central Bank of Nigeria. Section 2 of the Act, enumerates the principal objects of the bank including,

- (a) ensure monetary and price stability;
- (b) issue legal tender currency in Nigeria;
- (c) maintain external reserves to safeguard the international value of the legal tender currency;
- (d) promote a sound financial system in Nigeria; and
- (e) Act as a banker and provide economic and financial advice to the Federal Government.

To succeed in these functions, the Bank is constituted by a Board chaired by its Governor. The Governor is very significant in the establishment of other banks because he issues them with a banking license.²³ The bank is also saddled with the responsibility of promoting and facilitating the development of efficient and effective systems for the settlement of transactions (including the development of electronic payment systems).²⁴ In this regard, and conjunctively with the provision of Section 2 (d), Section 47 requires the CBN to,

... facilitate the clearing of cheques and credit instruments for banks carrying on business in Nigeria and for this purpose, the Bank shall at any appropriate time establish clearing houses in premises provided by the Bank in such places as the Bank may consider necessary;

Provided that a Bank may be barred from participating in clearing for such Period as the Bank may deem fit for non-compliance with directives of the Bank.

(2) Notwithstanding subsection (1) of this section and in furtherance of the provisions of section 2(d) of this Act, the Bank shall continue to promote and facilitate the development of efficient and effective systems for the settlement of transactions (including the development of electronic payment systems).

(3) The Bank shall have the power to prescribe rules and regulations for the efficient operation of all clearing and settlement systems.

comprehensive customer protection provisions. Thus, even without a direct enactment by the National Assembly in Nigeria, the legal framework and policies for electronic payments has continued to evolve with more pragmatic changes in recent times through regulations, directives, and guidelines issued by the Central Bank of Nigeria, largely influenced by the preceding legislation.

²² Central Bank of Nigeria Act, 2007 was also enacted by the General Ibrahim Badamasi Babangida Administration.

²³ Section 6 (1), Ibid.

²⁴ Section 47 (2), Ibid.

(4) In furtherance of the objective of a sound financial system and notwithstanding the provisions of the Evidence Act, any physical or electronic record of transactions that are in a format approved by the Bank shall constitute sufficient proof of such transactions.²⁵

Under the above provisions, the CBN issued several guidelines. Banks are required to seek the CBN's approval when establishing branches.²⁶ This extends to ATM Center and teller implants. Thus, as empowered by sections 6²⁷ and 33 (1) (b)²⁸ the CBN issued the guidelines on the establishment and rationalization of branches and other outlets for banks in Nigeria.²⁹ These rules provide for the documentation requirements for establishing an electronic banking office or ATM center, to be accompanied by the application and other prescribed documents.³⁰

Further, it has to be noted that e-banking regulation in Nigeria focuses exclusively on technology-based solutions and Payment Card Industry Data Security Standards (PCI-DSS),³¹ an industry private ordering not supported by any mandatory legal requirements in Nigeria. While the PCI-DSS shields credit card information and provides standards that are essential for guaranteeing safe transactions, its requirements and intricacies sometimes pose a challenge for small firms. By implementing security policies and procedures, regular assessments, and expert guidance, the challenges could be addressed.

In 2014,³² the CBN was prompted to issue guidelines to prescribe minimum standards and requirements for the issuance and usage of payment cards in Nigeria.³³ The scope of the guidelines extends to all licensed banks and other institutions that participate in the issuance and processing of debit, credit, stored value/prepaid, and virtual cards, directly or through their subsidiaries, affiliated companies, or third-party associated companies.³⁴ Its provisions deal with minimum standards, general requirements, the roles and responsibilities of card issuers, and issues relating to fraud and risk management. The CBN also issued a framework of applicable sanctions to erring banks and payment system service providers (PSSP) for infringements of extant guidelines, circulars, rules, and regulations issued by the bank on all forms of the electronic e-banking.³⁵ This document is the updated template providing detailed penalties for non-compliance with any rule contained in its subsidiary regulations guiding ATM banking in particular.

²⁵ Ibid.

²⁶ Section 6(1) BOFIA

²⁷ BOFIA

²⁸ CBN Act

²⁹ Central Bank of Nigeria, Letter to all Banks Guidelines on the Establishment and Rationalization of Branches and other Outlets for Banks in Nigeria, BSD/DIR/GEN/LAB/07/014 June 17, 2014.

³⁰ Ibid.

³¹ PCIDSS is a proprietary information security standard for organizations that handle branded credit cards from the major cards including Visa, MasterCard, American Express, retrieved from: https://www.pcisecuritystandards.org/pci_security/ on 23 November 2023

³² CBN Act.

³³ Central Bank of Nigeria, Guidelines for Card Issuance and Usage in Nigeria, May 2014.

³⁴ 1 (2) (i) Ibid.

³⁵ Central Bank of Nigeria, Sanctions on Erring Banks/e-Payment Service Providers for Infractions of Payments System Rules and Regulation. BPS/DIR/GEN/CIR/02/007, July 29, 2015.

1.4 Other Specific Regulations on e-Banking

The CBN, in exercising its regulatory functions, issues specific guidelines and regulations related to electronic banking. These guidelines cover aspects such as security standards, customer protection, risk management, and compliance requirements for financial institutions offering electronic banking services.

The bulk of the rules and regulations guiding e-banking are in the form of subsidiary legislation enacted by the CBN. It is argued that adopting this approach will enhance the contribution of the financial sector to the economy. It would also lead to the achievement of the three key objectives of regulation- systemic stability (achieved through macro-prudential and micro-prudential regulation), consumer protection, and the maintenance of the integrity of the financial markets.³⁶ The more prominent guidelines are considered in some detail in the following section:

1.4.1 Electronic Banking Guidelines of 2003

Before 2003, there was no regulation on e-banking in Nigeria. The CBN only granted licenses in principle to banks wanting to introduce different forms of e-banking mediums. Due to increasing demand for the adoption of electronic instruments, the Bank was led to set up a technical committee on e-banking. This resulted in the formulation of the guidelines on e-banking based on the report submitted by the committee in 2003.³⁷ The guidelines were later modified and approved to apply standards and minimum specifications for ATM banking, dealing only with a portion of the several issues relating to ATM banking.³⁸ The Guidelines, thus, sought to address issues relating to information and communications technology standards, solutions, and international best practices in the areas of communication, hardware, software and security, monetary policy, e-banking delivery channels, legal guidelines on banking regulations, and consumer rights protection, and regulatory and supervisory issues.

The Guidelines have come under scrutiny for not doing enough to stem the tide of e-banking's increasing appeal in light of the sophistication of crimes and scams involving technology. The four main areas where e-banking may have a regulatory influence were not addressed in the document. These are, changing the traditional lines upon which existing regulatory structures are laid, handling concerns about existing public policy issues, changing the nature and scope of existing risks, and rebalancing regulatory rules and industry discretion.³⁹ It also scantily focused on banking rights and consumer protection.⁴⁰ Another drawback is that, as there was

³⁶ F. N. Ngwu, and F. Akinbami, (2017), "Total Restructuring of Nigeria's Financial Sector Regulatory Structure is Overdue." Retrieved from: <http://www.businessdayonline.com/total-restructuring-nigerias-financial-sector-regulatory-structure-overdue/> on 6 April 2023

³⁷ Central Bank of Nigeria (2003a). Report of Technical Committee on Electronic Banking. February.

³⁸ Section 1(4) (2). of Central Bank of Nigeria (2003b), Guidelines on Electronic Banking in Nigeria, August

Retrieved from: <http://www.cenbank.org/OUT/PUBLICATIONS/BSD/2003/E-BANKING.PDF> on 1 March 2018

³⁹ Onodugo. I. C., 'Overview of Electronic Banking in Nigeria,' *International Journal of Multidisciplinary Research and Development*, (2015) July, Volume 2, Issue 7, p. 338.

⁴⁰ Ajayi, A. L. (2010) Legal Framework for Handling ATM and other related frauds. *The Nigerian Banker*, April - June, p.29.

no supporting legislation, it was not possible to rely only on a digital signature for evidentiary purposes.⁴¹

In addition, the guideline emphasises that only banks with a physical presence in Nigeria are permitted to offer e-banking services, hence, it could impede and constrain the development of online payments,⁴² making no contemplation for virtual banking services. It also indicated that the services should be offered in Naira only. Where such a service is to be provided in foreign currency, it should be to only the holders of ordinary domiciliary accounts, in compliance with all other foreign exchange regulations. The Guidelines failed to adequately address the critical issues required for Internet security because there are no explicitly recommended standards for banks to examine potential threats that may be found in their networks.⁴³ They do not also provide penalties for the infraction of its provisions.⁴⁴ For a law to be effective, it is required that penalties be provided for violations.

E-banking generally relies on the existence of adequate operational infrastructure like telecommunications and power infrastructure to function effectively.⁴⁵ However, the guidelines did not address the issue of proper internet framework, despite the poor state of basic information technology infrastructure in the country. This criticism is however not within the scope of CBN's powers to address. Although successes have been recorded, the challenges remain. Consequently, the CBN had to unbundle these guidelines by making specific regulations for different types of e-banking products.

Interestingly, the United States also adopts a similar approach wherein the implementation of the Electronic Funds Transfer Act (EFTA) is done by the Federal Reserve Board (FRB) through subsidiary legislation made according to it, called "Regulation E". Regulation E provides a basic framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems such as automated teller machine transfers, telephone bill-payment services, point-of-sale (POS) terminal transfers in stores, and preauthorized transfers from or to a consumer's account (such as direct deposit and social security payments).⁴⁶ The regulation is structured to cover the scope, issues of disclosures, issuance of access devices, consumer liability and error resolution, receipts and periodic statements, and also, relation to other laws.⁴⁷ Regulation E has proven to be effective in the United States of America. Nigeria must draw a few lessons, particularly in its enforcement. However, caution must be taken to tailor them to the unique requirements and circumstances of Nigeria's financial sector, taking into

⁴¹ Section 3.0 (b) Guidelines on E-Banking in Nigeria.

⁴² Section 4.2, Ibid

⁴³ Ezeoha, A. E., 'Regulating Internet Banking In Nigeria: Problems and Challenges – Part 1', *Journal of Internet Banking and Commerce*, (2005) December, vol. 10, no.3, retrieved from: <http://www.arraydev.com/commerce/JIBC/2006-02/abel.asp> on 3 February 2024

⁴⁴ Advocaat Law Practice (2016), "Legislating Stricter Standards for Electronic Banking in Nigeria", a Publication of Dispute Resolution Group at Advocaat Law Practice, p.2. Retrieved from: <http://www.advocaatlaw.com/assets/resources/878c09002cca8177e9b2d037f09389de.pdf> on 2 May 2023

⁴⁵ Ezeoha, A. E., Op. Cit.

⁴⁶ Federal Reserve Board, 'Regulation E', retrieved from: <https://www.federalreserve.gov/bankinforeg/regecg.htm> on 16 March 2023

⁴⁷ Ibid

consideration local context, technical infrastructure, and regulatory capability. More importantly, Nigeria should encourage openness and user access to transaction information so that people are better able to keep an eye on and manage their e-banking affairs.

1.4.2 Standards and Guidelines on Automated Teller Machine (ATM) Operations in Nigeria

The Central Bank of Nigeria opted to create particular guidelines on ATM operations due to the increasing popularity, ease, and sophistication of using ATMs, as well as the evident shortcomings of the 2003 Guidelines on e-banking in Nigeria. The Bank issued guidelines, rules, and standards for the maintenance of adequate and reasonable financial services for the public, to ensure good conduct and management of the financial system, and set the standards and guidelines for the operations of ATM services in Nigeria.⁴⁸

Its primary purpose was to ensure the efficiency of ATM services and convenience as well as the protection of customers. Every institution (banks, non-banks, or acquirers) that deploys ATMs or any issuer that issues cards or tokens to be used at ATMs shall comply with the standards and guidelines for each of the ATM facilities within its dominion and control. The guidelines not only deal with standards on ATM technology and specification but also cover issues such as ATM deployment, operations maintenance, security, dispute resolution, and liability shift; it will also regulate, monitor, and penalise for non-compliance.⁴⁹

The Guidelines on ATMs mandate banks to settle cardholder disputes within 72 hours. Deployers must monitor ATMs for faults and cash outages; ensuring that ATMs are stocked with cash in fit notes. Banks must now also not allow their machines without cash. Thus, ATM downtime caused by a technical issue cannot exceed 72 hours per incident. Help desk contact details must be displayed at ATMs; during ATM hours, deployers provide a staffed phone line that customers can use to report outages. All ATMs must have security cameras and keep logs for all transactions, and acquirers must report the volume and value of transactions to the CBN monthly.⁵⁰

1.4.3 Regulatory Framework for Mobile Payments Services

In Nigeria, the term “mobile payment system” refers to the collection of parts needed to provide mobile payments to both the banking and non-banking sectors. The core infrastructure in providing a national mobile payment system comprises transaction, clearing, and settlement arrangements. These infrastructures consist of service providers, network facilities, information and computer technologies, operating procedures, and rules. The providers of these services and solutions shall be required to operate within the defined regulatory framework specified in the mobile regulatory framework.⁵¹ As these participants have different interests, they

⁴⁸ See preamble of the Central Bank of Nigeria, Standards and Guidelines on Automated Teller Machine (ATM) Operations in Nigeria, April 2010. Conferred on the Bank by Section 28 (1) (b) of the Central Bank of Nigeria Act, LFN, 2007.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹ Central Bank of Nigeria (CBN), Regulatory Framework for Mobile Payments Services in Nigeria (RFMPS),

may face conflicts with each other that require legal solutions, especially regulating the liabilities of participants in case of unauthorised financial transactions is important.⁵²

Perhaps the most extensive of the e-banking regulations, the Nigerian mobile payments regulatory framework was enacted in 2009 to conform to international best practices and standards and create a policy path towards achieving availability, acceptance, and usage of mobile payments services in Nigeria. The framework guides the activities of participants in the provision of mobile payment services. These participants include service providers, infrastructure providers, solution providers, scheme operators, and consumers. All scheme operators are required to be registered with the CBN and shall be issued a unique scheme code by the national switch for managing interoperability within the national mobile payment system.⁵³ The framework was designed to drive mobile banking on three models: the Bank-Focused Model, where a bank delivers banking services to customers using the mobile phone as a delivery channel. This model can only be deployed by a licensed deposit-taking financial institution. Licensed deposit-taking financial institutions, under this model, shall include, deposit money banks, microfinance banks, and discount houses. The second model is the Bank-Led Model. Under this, a bank, or a consortium of banks, partnering with other organisations, jointly seek to deliver banking services by leveraging the mobile banking system. This model is applicable only in a scenario where there exists collaboration between a licensed deposit-money bank(s) and an organisation duly verified by the partner banks. The third is the Non-Bank-Led Model, which allows a corporate body that has been duly approved by CBN to deliver mobile payment services to consumers. This model applies to any organisation other than a licensed deposit money bank and telecommunication company.⁵⁴

Under this framework, financial institutions are responsible for seeking and obtaining necessary approvals from the regulatory authorities, the deployment and delivery of mobile payment solutions, and ensuring that the mobile payment solution meets all specified mobile payments as stated in the framework. The banks are also responsible for putting in place adequate measures to mitigate all the risks that could arise from the deployment and use of its mobile payment solution and facilitating international remittances to both scheme and non-scheme recipients.⁵⁵ Conversely, the framework also spells out the responsibilities of the customer to include the protection of credentials (PIN/Password), prompt reporting of fraud cases/attempts, errors, and complaints, proper confirmation of transaction details and recipients' mobile phone numbers at all times before authorising the

retrieved from: <http://www.cbn.gov.ng/out/circulars/bod/2009/regulatory%20framework%20%20for%20mobile%20payments%20services%20in%20nigeria.pdf> on 12/12/2023

⁵²T. Faleye 'CBN Reviews Mobile Money, Payment Services', <http://brandcom.ng/2016/11/cbn-reviews-mobile-money-payment-services/> on 3 April 2023. South Korea also enacted 'Information Technology Network Act' which provides details on direct mobile billing service. See also Article 1, Electronic Financial Transaction Act of South Korea.

⁵³ CBN, RFMPS, Op. Cit., p.15

⁵⁴ Ibid., p.5

⁵⁵ Ibid., p.7

transaction. The customer is also charged with compliance with all security rules as provided by the scheme operator.⁵⁶

The framework also for the first time provides for the Office of the Ombudsman, which comprises a representative each from the Nigeria Communication Commission (NCC), Consumer Protection Council (CPC), scheme operators, financial institutions, an eminent professional or a respectable Nigeria, a member of the National Payments System Committee and the Central Bank of Nigeria⁵⁷ The Ombudsman is to receive, investigate and resolve complaints involving all participants to sustain confidence in the mobile payments schemes. This must be done by creating an environment that encourages expeditious resolution of complaints. It also has a responsibility of monitoring prompt compensation and following up on determined cases.⁵⁸

The major concerns of the mobile payments system are control over the electronic money supply, keeping money safe, registration procedures such as the ‘know-your-customer’, associated with reliability and integrity of the transport mechanism, mobile money moving across borders and the flow of capital, as well as risks regarding the identification of parties.⁵⁹ The apparent weakness in this framework is that there is no clear guide on how the CBN is to coordinate with other regulatory bodies, being that telecommunications and internet infrastructures provide the backbone upon which electronic mobile payments thrive.⁶⁰ Because of the lack of common technology standards and protocols, it is a big challenge for banks to offer Mobile Banking solutions to such different types of mobile phones leading to interoperability issues.⁶¹ Customer illiteracy in terms of textual, technical, and financial illiteracy increases the complexity of Mobile Banking and is a critical issue.⁶² But the guidelines do not deal with this issue considering that Nigeria has an appreciable number of illiterates.

1.4.4 Central Bank of Nigeria Guidelines on Operations of Electronic Payment Channels in Nigeria

The Central Bank of Nigeria Guidelines on Operations of Electronic Payment Channels in Nigeria took effect in April, 2016.⁶³ This was an attempt to harmonise the various regulations on ATM and Point of Sale (POS). Hence, the Guidelines

⁵⁶ Ibid., p.38

⁵⁷ Ibid., p.39

⁵⁸ Ibid, pp 38-40

⁵⁹ C. Batista, F. Simone, and P C Vicente, (2012), ‘International Experiences of Mobile Banking Regulation’ *International Growth Centre, Policy brief* 36012. Retrieved from: <https://www.theigc.org/wp-content/uploads/2015/03/Batista-Et-Al-2012-Policy-Brief.pdf> on 12 February 2024

⁶⁰ R. H. Weber, (2010) Regulatory Framework for Mobile Financial Services. Retrieved from www.mgovworld.org on 8 March 2023. See also Bamoriya, P. ‘Issues in Mobile Banking in India with Reference to Regulations’, *The Journal of Accounting and Management*,(2016) Vol. 6, No 1. p.2.

⁶¹ Bangens, L., and Soderberg, B. (2008), “Mobile Banking –Financial Services for the Unbanked?”. Retrieved from: http://www.spidercenter.org/files/m-banking_study.pdf on 12/2/2023

⁶² Peevers, G., Douglas, G., and Jack, M. A. ‘A Usability Comparison of Three Alternative Message Formats for an SMS Banking Service’, *International Journal of Human-Computer Studies*, (2008) 66(2), p123.

⁶³ Central Bank of Nigeria, Guidelines on Operations of Electronic Payment Channels in Nigeria, April, 2016

superseded the previous Standards and Guidelines on ATM Operations in Nigeria and Guidelines on POS Card Acceptance Services, issued by the CBN.⁶⁴ The first section deals with ATM Operations, essentially incorporating the previous guidelines of 2010. It sets out the guidelines, and standards on ATM technology and specification, operations, maintenance, security, dispute resolution, regulatory monitoring, and penalties.

The second section sets out general guidelines on point of sale (POS) card acceptance services. It sets out the objectives to provide minimum standards and requirements for the operation of POS card acceptance services.⁶⁵ It also spells out Minimum standards on POS and point-of-sale cards, Acceptance Services Stakeholders, including, merchant acquirers, terminal services providers (PTSP), terminal owners, payments terminal service aggregators, merchants, cardholders, card schemes, switching companies, and payment. It equally sets out the responsibilities of these stakeholders, settlement mechanism, charges, transition to achieve interoperability, exclusivity agreements, minimum pos terminal specifications, and compliance.

Section four deals with the Guidelines on web acceptance services. It provided for the scope of its application to include all forms of transfer of monetary value on the website of a merchant or a payment aggregator in fulfillment of consideration for the purchase of goods and services on the web (internet).⁶⁶ The objectives are spelled out to include the provision of minimum standards and requirements for the processing of transactions via the web (internet) channel. To promote the safety and effectiveness of web acceptance services and thereby enhance user confidence in the service. It also sets out to identify the roles and responsibilities of stakeholders and encourage the development of effective, low-risk, low-cost, and convenient payment and financial services to customers and businesses through the Internet.⁶⁷ It made provisions for minimum standards for web acquiring and aggregates the stakeholders' roles and responsibilities, settlement mechanism, fees, consumer protection/dispute resolution enforcement of compliance.

1.5 Conclusion

There is no doubt that the financial sector is the fulcrum of Nigeria's economy. For an economy to reach its full potential, the legal structures must be robust enough for e-banking to thrive. The e-banking system is fundamentally not different from conventional banking because it is merely extended with the aid of different instruments. Because electronic tools are merely mediums for receiving instructions from customers and for delivering banking services. As such, laws governing conventional banking are imposed on the e-banking system.

Since the late 1980s, there has been an upsurge in computer usage in the banking system, however, no regulation was made until 2003 when e-banking regulations were released. Both BOFIA and CBNA did not make any particular provisions for e-banking. This situation created gaps between the CBN regulatory instruments and this frantic advancement in the use of ICT tools in e-banking. This exposed banking

⁶⁴ Preamble, Ibid

⁶⁵ Section 2.0, Ibid

⁶⁶ Section 4.1, Ibid

⁶⁷ Section 4.2, Ibid

to different forms of risks. It was eventually realized that to have an efficient e-banking system rests on a sound and appropriate legal framework. This includes ensuring the safety, stability, and soundness of services, protecting consumers, and promoting technological innovations. Drawing inspiration from other jurisdictions, and general international principles, our regulatory guidelines have continually been developed to set standards, ensure the safety, and smooth functioning of various tools employed in the EPS, and to also address issues of consumer protection and dispute resolution.

No doubt, ensuring the stability and soundness of the financial system is the duty of the government. It attempts to limit risks and challenges through rules to preserve a stable and sound payment environment, and regulations are necessary to protect the system. Achieving the right regulations requires deliberate efforts from industry participants. As a result, Nigeria uses a combination of functional and institutional regulation, often known as sector-specific regulation. Understandably, there are also certain aspects of private ordering, as the private sector spearheaded the ICT revolution before CBN's difficulties in keeping up with regulatory requirements. The regulatory structure of e-payments in Nigeria is designed in such a way that the CBN keeps issuing regulations to guide the payment system. It is clear; also, as has been consistent around the world, e-payment products have been grappling ahead of the regulatory framework.

It is thus, also clear that the regulatory structure of e-banking is still evolving and has some adequacy gaps that must be continuously addressed to attain an all-inclusive framework. The system has exposure to fraud, hacking, and other forms of criminal threats. Criminals have always found a way around to access, retrieve, and put to adverse use the information of customers. There is a need to ensure that our framework continues to evolve and keeps pace with technological developments.

To make the Nigerian financial system more efficient, regulations should also focus on electronic products rather than just financial institutions. This change in approach will also reduce regulatory duplication because bank and non-bank financial institutions may both regulate their products through the same institutional structure. Therefore, reorienting the focus from macro-regulatory measures concerning institutions to micro-regulation of these products might assist in addressing some of the more complex problems resulting from cross-sectoral linkages in the financial system. This shift in emphasis should be complemented by a coordinated strategy to regulation to address the current intricacies and overlapping instances of risks, functions, and institutional portfolios.

It is also imperative that in designing a robust and appropriate regulatory structure for e-banking, care must be taken that the laws must not be too complex to discourage competition and stifle growth as a result of heavy compliance costs. The law needs to be consistent and proportionate to guide innovations and balance the interests of the investors and users of e-banking services.