AN APPRAISAL OF THE REGULATION OF SOME SCHEDULED BANKS UNDER Nigerian Law

BY

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JULY, 1999.

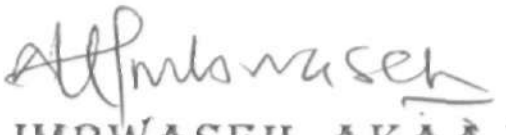
AN APPRAISAL OF THE REGULATION OF SOME SCHEDULED BANKS UNDER NIGERIAN LAW.

Thesis submitted to the postgraduate school, Ahmadu Bello University, Zaria in partial fulfilment of the requirements for the award of the Degree, Master of Laws (LL.M.).

Department of Commercial Law, Faculty of Law.

DECLARATION

I hereby declare that the realisation of this work is a record of my own research. This thesis has not been published or presented anywhere for a higher degree by anybody. All quotations and references have been acknowledged accordingly.



IMBWASEH, AKAA TYOZUA

CERTIFICATION.

This thesis entitled An Appraisal Of The Regulation Of Some Scheduled Banks Under Nigerian Law by IMBWASEH, AKAA TYOZUA meets the regulations governing the award of degree of master of laws of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is Dedicated to my late grand mother Mrs. Nyikpa Imbwaseh alias U Nyi U Nege who stood firmly for justice and fairplay all through her life.

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My profound gratitude goes to God Almighty who gave me the opportunity, strength and good health to embark on this work.

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ABSTRACT.

The rationale for the establishment of scheduled or development banks generally derives from the existence of "gaps" in the financial system and the need to plug such gaps. These gaps have been occasioned by two main factors. The first is the tradition and inadequacy of the commercial banking arrangements. Commerical banks service rather than finance industry and agriculture, traditionally finance working capital and rarely if ever, concern themselves directly with the provision of long term capital. The Central Bank traditionally controls and regulates the financial sytern. It does not indulge in commerical banking nor in the finance of long term projects. The provision of medium and long term capital is thus neglected. It is against this backdrop that scheduled banks have been established. These are creatures of government with specific objectives. Four of the scheduled Banks have been studied from the following common indexes:- historical background, structure and organization, regulation, achievments, problems and procedure for winding up. These banks are the Federal Mortgage Bank of Nigeria. The Nigeiran Agricultural And Co-operative Bank Limited, the Nigerian Industrial Development Bank Limited and the Nigeiran Bank For Commerce And Industry. This work begins with a background analysis to the problem in chapter one. The objective of the research and its scope as well as the method used in getting the materials constitute this chapter. The research is basically hinged on secondary data. Books Journals, Statutes and Decrees are consulted.

This work focuses essentially on the regulation of some scheduled banks. Before 1977, scheduled Banks were exempted from the regime of regulation applicable to Banks and other financial institutions. This was so because they were carrying out peculiar banking services ie development banking. Under the current dispensation, the scheduled Banks are regulated by the same law that regulates all banks and other Financial Institutions in Nigeria.

Finally, the work in chapter six summarizes the research work, affirms the relevance of scheduled Banks to the Nigerian economy, identifies problems and makes recommendations for their sustenance.

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4. Fomento (Sterling Area) Ltd. Vs. Seldon Fountain Pen Company Ltd. (1958) 1 All ER 23

5. Gyuse Farms Ltd. & Ors Vs. Nigerian Agricultural and Co-operative Bank Ltd. (1983-88) 3 NLR 226 at 228.

6. International Agricultural Industries (Nig) Ltd Vs. Chika Brothers Ltd. (1987) 8 NWLR (pt. 63) 843.

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5. Chapter 37 Laws Of The Federal Republic Of Nigeria 1990
6. Companies And Allied Matters Act Cap 59, Laws Of The Federal Republic Of Nigeria 1990.
7. Failed Banks (Recovery Of Debts) And Finanicial Malpractices (Amendment) Decree 1995.
8. Federal Mortage Bank Of Nigeria Decree No. 7, 1977
9. Federal Mortage Bank Of Nigeria Decree No. 82, 1993.
10. High Court (Amendment) Decree No. 61, 1991
11. National Housing Fund Decree No. 3, 1992.
12. Nigerian Bank For Commerce And Industry Decree No. 22, 1973.
13. Nigerian Bank For Commerce And Industry Act Cap 296 Laws Of The Federal Republic Of Nigeria 1990.
14. Nigerian Deposit Insurance Decree No. 22, 1988
15. Nigerian Deposit Insurance (Amendment) Decree No. 5, 1997.
16. Nigerian Industrial Development Bank (Guarantee Act) Cap 308 Laws Of The Federal Republic Of Nigeria 1990.
17. Securities And Exchange Commission Decree No. 29, 1988 (Now Cap 406 Laws Of The Federal Republic Of Nigeria, 1990).
18. Securities And Exchange Commission Decree No. 29, 1997.
19 The 1979 Constitution Of The Federal Republic Of Nigeria (As Amended).

ABBREVIATIONS.

1.	AC	Appeal Cases
2.	ALL ER	All England Law Reports
3.	ALL NLR	All Nigeria Law Reports
4.	BNLR	Benue State Law Report
5.	CAP	Chapter
6.	CH. D	Chancery Division
7.	EX	Exchequer
8.	GHC	Gboko High Court
9.	IBID	Ibiden; in the same place
10.	IE	That is
11.	KHC	Katsina-Ala High Court
12.	LLR	Lagos Law Reports
13.	LTD	Limited
14.	NACB	Nigerian Agricultural And Co-operative Bank Ltd.
15.	NBCI	Nigerian Bank For Commerce And Industry
16.	NIDB	Nigerian Industrial Development Bank Limited
17.	NLJ	Nigerian Law Journal
18.	NMLR	Nigerian Monthly Law Reports
19.	No	Number
20.	OP CIT	In the work cited
21.	P	Page
22.	PP	Pages
23.	SC	Supreme Court
24.	SS	Sections
25.	UILR	University Of Ife Law Reports.

in development projects in spite of their enormous resources and geographical spread throughout the country.

The merchant banks provide an array of financial services prominent amongst which are granting of short and medium-term loans, documentary import and export credits and acceptance credit. They also arrange loans through the issue of bonds and floating of debenture stocks and undertake loan syndications and equipment leasing. The operation of the merchant banks suggest that they are more inclined to import finance than the promotion of agriculture and development of industries. In the circumstances therefore, there is inadequate access to finance to establish manufacturing and industrial enterprises. This is the rationale for the establishment of scheduled or development banks.

Scheduled banks by their nature simply did not and do not emerge on their own. They are creatures of government. It was realized that it takes time and a lot of agonizing experimentation to work out incentives and regulations which would effectively induce private institutions to allocate finance to particular objectives or sectors which government may regard as deserving priority. Scheduled banks are also useful where policy-makers are seeking very specific action and quick results and where the flow of finance resources from abroad requires in most cases government guarantees, whether the loan is privately or publicly administered.

Therefore scheduled banks are needed to finance specific projects, particularly the types which private institutions cannot easily be induced to finance especially when they are largely experimental in nature or when there is a possibility of change which would drastically

alter the economics of investment opportunities such as the overthrow of an existing government. These Banks carry out peculiar banking services. They are wholly government owned and wholly government controlled. Inspite of all these, they are now regulated by the same laws that regulate any other bank in Nigeria.

1.2 OBJECTIVES OF THE RESEARCH

This work seeks to research and examine critically the various legislations establishing and regulating some scheduled or specialized banks. The place of these institutions under the current regime of deregulation akin to the laissez - faire philosophy is sought to be fully explored for a clearer understanding of the roles of these scheduled banks in the national economic setting of Nigeria.

In addition, the research further aims at ascertaining if these banks have achieved the various purposes for which they were set up and if not the obstacles militating against them shall be identified and recommendations made accordingly.

1.3 THE SCOPE OF THE RESEARCH

Historically the research will cover the evolution of scheduled banking business in Nigeria generally from the colonial period to the present day. Four selected scheduled banks only shall be extensively discussed. There are The Federal Mortgage Bank of Nigeria, Nigerian Agricultural and Co-operative Bank Limited, Nigerian Industrial

Development Bank Limited and Nigerian Bank for Commerce and Industry.

1.4 RESEARCH METHODOLOGY

The thrust of the research will hinge on secondary data research method. Books, Journals, relevant statutes and Decrees, will be consulted. The restatement of legal rules as well as their administration and analysis will depend on this method. The various sources of information shall be according acknowledged. Originality will lie in the identification of the defects in the law and suggestions for reforms.

1.5 HISTORICAL EVOLUTION OF SCHEDULED BANKING IN NIGERIA

Before tracing the historical evolution of schedued banking in Nigeria, it is pertinent to clarify certain key terms like "Bank" and "Scheduled Banks" with a view to throwing light on certain conceptual parameters. A bank is defined as a bank licensed under the Decree[1] and the same provision defines banking business as:

> *"The business of receiving deposits current account, savings account or other similar account, paying or collecting cheques drawn by or paid in by customers, provision of financial or such other business*

[1] Section 66 Banks And Other Financial Institutions Decree No. 25 1991 as Amended by Decree No. 4 1997.

as the governor may by order publish in

the Gazette, designate as banking business"[2]

Banking business by this definition is an open ended one. There is no distinction between "bank" and "banker". In AKWULE AND ORS V. THE QUEEN[3] the Supreme court of Nigeria held that the word bank is a synonym for the word banker.

It therefore follows that a bank is a "person" who carries on banking business and which is a duly incorporated company and so licensed to practice.[4]

Scheduled banks are also known as development banks. These are banks which are established by the Government to promote Agriculture, commerce and industry and housing.

Development banking in Nigeria is as old as development planning in the country. The first scheduled bank in Nigeria was the Nigerian Local Development Board which was established in 1946.[5] Under the Ten year plan for development i.e. 1946-1955, the Nigerian Local Development Board was considered as one of the most important schemes in the plan and was designed to make loans and grants. to government and government-controlled bodies for development purpose and to aid and foster Nigerian business activities such as the promotion and development of village crafts and indutries.[6]

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[2] Ibid
[3] (1963) 1 AUNLR 193.
[4] Section 2(1) and 61, Banks And Other Financial Institutions Decree No. 25 1991 as amended by Decree No. 4, 1997
[5] Nwankwo. G.O: The Nigerian Financial System; 1987 macmillian publishers London page 96.
[6] Ibid

The second scheduled bank was the Colony Development Board which was established in 1949.[7] This board supplanted the Nigerian Local Development Board. The Colony Development Board was assigned the dual task of facilitating both government and private economic activity with greater emphasis on the latter. In particular the bank was to quicken economic development and encourage small schemes of private enterprise.

The third scheduled bank was the Federal Loans Board which succeeded the Colony Development Board. It was established on the 3rd day of may, 1956.[8]

It is instructive to highlight some of the defects of the early scheduled banks. In the first place, nearly all had responsibilities for lending to agriculture and industry. Clearly these require different and special kinds of skills which were not found in all these institutions.

Secondly, in their attempt to narrow down their responsibility and to define them more specifically, some went to the other extremes of drastically restricting their area of operations almost to the point of putting themselves out of business and out of operation. For instance in the case of the Federal Loans Board, in addition to its original restrictions on loans to trading and foreign-owned enterprises, it refused to grant loans to set up new businesses on grounds that new operators were likely to be inexperienced and therefore lack knowledge of the new venture.[9] It also denied loans to prosperous enterprises on grounds that they were capable of raising capital from normal sources since it

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[7] Ibid
[8] Ibid
[9] Ibid

was considered that its function was to meet the needs of firms that could not otherwise obtain capital from normal sources.[10] It also made no working capital loans available on the grounds that these could be got from commercial banks nor did it make loans for projects which , even though viable and profitable were considered potential competitors to government run operations. The Board thus, had all sorts of reasons not to grant loans at all.

Another defect was that these banks were characterized in the main by poor management. The Colony Development Board, for instance had only one full-time employee whose Chief duty was to supervise loan-assisted agricultural projects. It had no technical staff of its own for evaluating applications. Rather, it relied on the advice of the staff of the industrial division of the Department of Commerce and Industry who were neither directly associated with the loan boards nor qualified to judge the commercial viability of the projects.[11]

The above defects and deficiencies could not be allowed to continue for too long. However, until Nigeria gained independence in 1960, nothing much could be done. It was therefore imperative to establish scheduled banks that would meet the development financing needs of Nigeria.

Thus, the Nigerian Industrial Development Bank was established in 1964, while the Nigerian Bank For Commerce and Industry and the Nigerian Agricultural and Co-operative Bank were established in 1973 respectively. Finally, the Federal Mortgage Bank of Nigeria was established in 1977.

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[10] Ibid
[11] Ibid

1.6 MECHANICS FOR THE REGULATION OF BANKS IN NIGERIA

Regulation connotes supervision. Supervision is obviously the existence of a set of rules or defined parameters within which banks and financial institutions are supposed to operate. The supervisory role therefore is to ensure that the institutions concerned operate within those rules through a system of regular monitoring. Deviations from the set rules and standards must of course lead to sanctions.[12]

Regulation also connotes government intervention. All over the World, the question of government intervention and in particular, regulation of economic activity, has attracted considerable attention for some years, especially from those who think government should keep out of business as much as possible. According to them, Governments should concentrate on the management of the bureaucracy which is the essence of their existence.

Banks are regulated internally and externally. Externally, the principal laws that regulate the operations of banking in Nigeria are the Central Bank of Nigeria Decree[13] and the Banks and other Financial Institutions Decree.[14] The Central Bank of Nigeria derives its power to regulate, monitor and supervise the banking industry from these two decrees.

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[12] Sansil J.O. Supervision of Banking Industry in Nigeria - An Operator's View point. Being a paper presented at a Seminar organised by Central Bank of Nigeria, in Lagos between 12th and 16th September, 1994. page 2.
[13] Central Bank of Nigeria Decree No. 24, 1991 as amended by Decree No. 3, 1977
[14] Decree No. 25 1991 as amended by Decree No.4, 1997

Internally, banks have their own internal system of supervision. This is carried out by their respective inspection Divisions. Generally, the inspectors are dreaded and feared and are often regarded as criminal investigators by most of the banking staff.

1.6.1 CENTRAL BANK OF NIGERIA

The Central Bank of Nigeria was established in 1959. The Bank in its statutory and supervisory relationship with other banks is enjoined to ensure high standard of conduct and management throughout the banking system and to further such policies that are in the National interest. In this regard, the Central bank of Nigeria may from time to time issue directives requiring banks to maintain a certain sum of cash reserve or hold a minimum amount of specified liquid assets or maintain a special deposit.[15] In fact, the Central Bank of Nigeria has power to require each bank in the country from time to time to prepare and deliver to it a true and correct statement showing the position of the deposit liabilities of such bank.[16]

Any bank which fails to comply with the requirements is guilty of an offence and liable to a fine.[17]

The Governor of the Central Bank of Nigeria has power to order a special examination of books and affairs of a bank where he is satisfied that such a bank is undercapitalized or is carrying on its

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[15] Section 15 and 16, Bank And Other Financial Institutions Decree No. 25, 1991
[16] Section 39 (3) (b) Central Banks of Nigeria Decree No 24, 1991.
[17] Section 15 (5) (a) and (c), Banks And Other Financial Institutions Decree No. 24, 1991

business in a manner detrimental to the interest of its depositors and creditors.[18]

Banking Supervision is done in three broadways. First, banks are supervised through returns submitted regularly to the Central Bank of Nigeria and in this respect the two departments involved are Banking Supervision Department and Banking Examination Department respectively. The monthly and quarterly returns sent to these two departments of the Central Bank of Nigeria constitute a veritable source of information and data base to monitor the activities of banks. If these are carefully and effectively analyzed regularly, they should be able to trigger off early warning regarding those banks on the road to distress.

Secondly, banks are supervised through bank examination or inspection performance on-site. These audits, carried out by the Bank Examination Department of the Central Bank of Nigeria enable the Central Bank of Nigeria to examine the books of a bank in greater details and perform more detailed investigations in areas of suspicion. In performing this role, the Central Bank of Nigeria examiners have wide powers to request for whatever information deemed necessary to the investigation. The on-site bank examination also enables the central bank of Nigeria to assess the veracity of the returns that are submitted by the bank.

Effective supervision is also carried out by the requirement that banks must seek the approval and permission of the Central Bank of Nigeria to do certain things.[19] The Central bank of Nigeria with previous data

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[18] Section 32 (1) Ibid
[19] Section 3 (1) Ibid

bank is able to compare the facts used in supporting a request to previously supplied data.

It is worth mentioning that the Central bank of Nigeria's regulatory role significantly begins with the procedure and documentation relating to the application for a banking licence. After putting in the application, the promoters of the bank are required to deposit the minimum paid up capital of the bank.[20] It is apt to note that in departure from the past, the decision whether or not to grant a licence is now that of the Governor of the Central Bank with prior approval of the minister of Finance.[21]

Before 1997, the Banks and other Financial Institutions Decree[22] exempted developments Banks from the application of its provisions. However by the provisions of the Banks and other Finances Institutions (Amendment) Decree[23] the developments banks are subject to the same regulatory regime like any other bank or financial institutions.

It is regrettable that despite the enormous powers granted the Central Bank of Nigeria, incidence of Bank failure is still on the increase. The first major error committed by the Central Bank of Nigeria was the granting of licences to too many applicants to open banks without strict adherence to its guidelines following the Federal Government's policy of de-regulation. The Central Bank of Nigeria should have been more cautious in handing out licences. If the Central Bank of Nigeria had ascertained through its own research efforts how many banks were needed in the country and how many of the existing

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20 Section 3 (2) and 9 Ibid
1 Section 3 (5) Banks And Other Financial Institutions (Amendment) Decree No. 4
2 Section 51 (1) BanksAnd Other Financial Institutions Dcree No. 25, 1991
3 Section 25 Banks And Other Financial Institutions (Amendment) Decree No. 4.

banks were living up to its expectations, it should have phased out the process of bringing them into existence in large numbers allowing a reasonable time to study the progress of each batch before the next batch could come on board. Such an arrangement would have given the Central Bank of Nigeria enough time to investigate thoroughly each applicant for a banking licence.

It is desirable that in future, the investigation of all applicants for an operating licence to own a bank or any financial institution should include their secondary school and university days, a thorough combing of places where they had worked, all clubs and societies they belong, the church or mosque they attend and all their major business relationships. In other words anybody applying for an operating licence should be ready to open himself for a thorough investigation.

1.6.1 NIGERIAN DEPOSIT INSURANCE CORPORATION

The Nigerian Deposit Insurance Corporation was set up in 1988.[24] In 1986 the Nigerian economy was liberalized following the introduction of the structural Adjustment Programme. The liberalization resulted in an increase in the number of licensed banks in Nigeria to a very large extent. The increase in the number of banks apparently had put a strain on the available skilled workforce and engendered unethical, unsafe and unsound practices amongst banks. These factors made bank failure imminent. To reduce the negative effects of a bank failure, a

[24] Nigerian Deposit Insurance Decree No. 22, 1988 now Chapter 301, Laws of the Federation 1990.

Deposit insurance scheme was introduced to administer the insurance scheme.

Thus the Nigerian Deposit Insurance Corporation was created to stabilize the nation's banking industry by means of the deposit insurance scheme and thereby build public confidence in the banking industry.[25]

Despite the above stated laudable objectives, the entire provisions have left more questions than answers. Sections 5(1)(c) and 26 of the Decree[26] pegged the maximum amount payable to a depositor in case of an insured bank failure at ₦50,000.00. In other words, a depositor in an insured bank in case of a failure by the bank shall be entitled to just ₦50,000.00 even if he has ₦2m in his account. Sections 5(1)(c) and 26 of the Decree[27] are not only outrageous but a veritable engine of fraud by "clever" banks like Alpha Merchant Bank, Capital Merchant Bank and Financial Merchant Bank. The Nigerian Deposit Insurance Decree[28] is also silent on how much from the stolen deposits of the bank the criminally minded directors repay to the failing the bank.

Currently however, the veil of incorporation of a failing bank can be pierced and erring directors and management can be prosecuted and ordered to refund all funds embezzled by them to the failed bank.[29]

This method of regulation does not strictly apply to the scheduled banks except only in respect of the Federal Mortgage bank of Nigeria which runs a Savings Account.[30]

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[25] Danjuma N. The Bankers' Liability (1993) Heinemann Educational Books (Nigeria) Plc page 2.
[26] Op. cit.
[27] Op. cit
[28] Op. cit
[29] Failed Banks (Recovery of Debts) And Financial Malpractices (Amendment) Decree 1995. Section 3 (3) (b).

1.6.3 THE CORPORATE AFFAIRS COMMISSION

The Corporate Affairs Commission was created by the companies and Allied Matters Act,[31] as a legislative response to the inadequacies of the old companies Registeries.[32] The commission is charged with the duty of registering and incorporating companies and supervising the management of companies. It also has the general function of administering the companies and Allied matters Act.[33] By law, all banks in Nigeria are first and foremost corporate bodies.[34] Consequently they fall within the jurisdiction of the Corporate Affairs Commission. The Commission can enforce compliance with the provisions of the companies and Allied Matters Act[35] on any bank in so far as the provisions of the Act are not inconsistent with the provisions of the Banks and other Financial Institutions Decree.[36]

1.6.4 THE SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission was established under the Securities and Exchange Commission Act[37] to regulate amalgamation, mergers and take-overs in Nigeria. The commission is

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[30] Banks And Other Financial Institutions (Amendment) Decree No. 4, 1997, Section 25 read with Nigerian Deposit Insurance Act. CAP 62, 1990 Laws of the Federation of Nigeria Sections 5 (1) (c) and 26.

[31] Decree No. 1 1990 (as amended) by Decree No. 32, 1991.

[32] E. O. Akanki ed: Essays on Nigerian Company Law (1992) University of Lagos Press. Lagos pp. 2 -3.

[33] Companies And Allied Matters Act Op cit Section 7 (1) read with section 541

[34] Ibid

[35] Ibid

[36] Ibid section 656

[37] Securities And Exchange Commission Decree No. 29, 1988 (Now Cap 406 Laws of

also empowered to fix the prices of securities to be offered to the public.[38] Banks are within the regulatory ambit of the commission to the extent that banks like any other company may desire to restructure, reorganize, merge or amalgamate.[39]

According to the Companies and Allied Matters Act[40] a public banking company can only issue its shares by public offer. Invariably this requires the pricing of the shares by the commission. To this extent, the commission can control the banks.

1.6.6. COMMON LAW AND PRINCIPLES OF EQUITY

In the absence of any Federal Law to the contrary, the common law of England and the doctrines of equity shall in so far as they relate to any matter within the legislative competence of the Federal legislature be in force in Nigeria.[41] Since banking is a matter within the sole legislative competence of the Federal Legislature, the applicability of relevant rules of common law and equity as part of Nigerian Banking law becomes unassailable.

1.7.6. BASIS FOR REGULATION

Governments usually take regulatory action when they believe that competition within an industry is either impossible or contrary to

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the Federation. 1990 Section 1.

[38] Ibid section 8

[39] Companies And Allied Matters Act Op cit section 541.

[40] Ibid section 573

[41] 1979 Constitution of Nigeria (as amended) Section 4(2) and item 6 part 1 schedule 2 Exclusive legislative list read with Section 1 interpretation Act Cap 106 Laws of the

public interest or will lead to serious inefficiency in the use of resources or in the delivery of goods and services of the particular industry, the aim being to ensure stability in the system.

With respect to banking, there are various reasons why the system is regulated. The protection of depositors is the most basic rationale underlying banking regulation. The necessity for such regulation arose as the public began making financial transactions through banks and people began to hold a greater proportion of their money in banks. Invariably regulation would protect them from fraud, sharp practices and carelessness and to maintain the reputation of the banking industry by ensuring that depositors money is safe.[42]

Banking regulation ensures monetary stability by seeking to control the amount of credit in the economy and the sectors to which it is directed and also to reduce the amount in circulation thereby checking inflation. The "liquidity mop-up" by the Central Bank through the issue of stabilization securities to banks is such regulation directed at reducing the amount of money in circulation. Thus, banking regulation may be put in place to help or facilitate the execution of the monetary policy of government.

Regulation is also intended to create a conducive environment for efficient and healthy competition. Competition necessarily results in efficiency and innovations for the benefit of customers. This means that regulatory framework is expected to ensure that the entry of other banks is checked with a view to ensuring their viability.

Federation 1990.

[42] Danjuma N. Op. cit page 74.

In addition, the magnitude of funds involved in the banking industry and the tremendous impact that misuse or fraud could have on the public's confidence in the system and on the economy as a whole have made the regulation of banks imperative.

Currently, the Nigerian banking industry is going through the distress regime. This has shaken the public confidence in the country's banking system.

Stability in banking system of a country is sine qua non to the stability of the overall economy of such a country. As a reflection of this, failure of an institution in another industry, painful as it might be does not protend as much consequences to other sectors of the economy as a bank failure. When a bank fails, its depositors are put in jeopardy. Other banks become threatened and the integrity of the payment mechanism for the entire economy is brought under question. Thus, banking supervision whose primary objectives is to forestall and prevent bank failures is crucial to the survival of the financial and economic systems.

The next issue is why should scheduled banks exist in a deregulated economy like Nigeria? In its broad application, deregulation is understood to refer to those fiscal and monetary policy measures which seek to remove regulatory controls on the economic actors in order to enhance their competitiveness in the market. The concept of deregulation therefore is to be understood as a recent economic agenda which has come full-circle from the period of laissez-faire economics through the age of expanded role of the state sector back to this new quest for the dismantlement of regulations.

It is against this background that Nigerian commercial legislations exhibit a struggle between the legal privilege model and the freedom of contract model.[43]

Whereas the legal privilege model emphasizes responsibility through restriction and the fulfillment of conditions, the contract model emphasizes the utility of the right to incorporate and the freedom of choice of incorporation under a liberal economy state concerned with facilitating rather than restricting business. Indeed early business corporations were often regarded as arms of the state control.[44]

The Regulation of scheduled banks is premised primarily on the legal privilege model of incorporation. Detractors of this model opine that it encourages economic dirigism.[45] This school of thought supports privatization and commercialization.

1.7. ORGANIZATIONAL LAYOUT

Chapter one of this research is an introductory one. It deals with the origin of the problem, objectives and scope of this research. The research methodology is also highlighted. The organizational layout of this work is also projected in this chapter. Finally, the chapter examines the historical evolution of scheduled banking in Nigeria pin-pointing the mechanics for the regulation of banking in Nigeria. The relevance of regulation is stressed. Chapter two discusses Federal Mortgage Bank of

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[43] Farrah Furey and Hannigan: Farrar's Company Law (1988) Butterworths, London Edinburgh, 2nd edition page 79 - 81.
[44] Op. cit
[45] Op. cit.

Nigeria. Its structure, regulation, achievements, problems and the procedure for winding them up are also examined.

Chapter three examines the Nigerian Agricultural And Co-operative Bank Limited. Its structure, organization, regulation, achievements, problems and its procedure for winding up are also discussed.

Chapter four deals with the Nigerian Industrial Development Bank Limited, its structure and organization, its regulation, achievements, problems and the procedure for winding up are examined.

Chapter five discuses the Nigerian Bank For Commerce And Industry. The Bank's structure and organization, regulation, achievements, problems and procedure for winding up are examined.

Chapter six deals with the summary of the work, recommendations and conclusion.

1.8. CONCLUSION

The significance of banking business has already been stressed in paragraph 1.6.3 to a developing economy like Nigeria. Any good government worth its salt cannot fold its hands and watch businessmen run such a sensitive business without checks and balances.

Development Banks are better handled and supervised by the government. While encouraging government intervention in banking

business, it is equally desirable that certain aspects be left for determination by the management of such banks. In other words, management should not be clogged with bureaucratic procedures in carrying out its functions. That is to say, while the Government should continue to monitor the development banks with a view to ensuring that they meet their objectives, it is desirable that certain measure of independence be given to them as regards the day to day running of the banks.

CHAPTER TWO

2.0. FEDERAL MORTGAGE BANK OF NIGERIA

2.1. INTRODUCTION

Shelter is man's next most important basic need after food and clothing. The provision of shelter has thus become a major concern for man since creation and has reflected his culture and standard of living through the ages. Indeed the importance of shelter was stressed by the federal Government of Nigeria in the third National development plan which states interlia:

> *"Shelter represents one of the most basic needs and has no doubt a profound impact on health, welfare and productivity of the individual"*[1].

The United Nations also gave it a global recognition when in 1988, Resolutions Nos 11 and 12 were passed on the 12th of April, 1988 in which the year 2000[2] was set as target for the accomplishment of housing for all.

It is against this backdrop that the Federal Mortgage bank of Nigeria was established by the Federal Government of Nigeria in 1977[3] as a successor to the Nigerian Building Society(NBS). The initial capital base of the bank was N20 million and by 1980 it was enlarged to N120 million. In 1993, the Federal Government of Nigeria took a deliberate decision to commercialize the activities of the bank for the realization of the government policy of providing shelter for all Nigerians.

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[1] Nigeria:- Third national Development Plan page 307.
[2] United Nations: Resolutions Nos 11/12 of 12 April, 1988.
[3] Nigeria: Decree No 7, 1977 as amended by Decree No 82, 1993, Federal government Press.

The Federal Government went ahead with the launching of the National Housing Policy which in effect made the functions of the Federal Mortgage bank of Nigeria to become trifocal that is, a retail lending institution, the apex lending agency in the country and a regulatory authority in the housing finance sector [4] .

Given the above responsibilities, the federal Government decided to deconsolidate the activities of the bank into two autonomous business units to ensure operating efficiency and profitability. The Bank is now split into two autonomous institutions namely,

(I) Federal Mortgage Bank of Nigeria (FMBN) and

(ii) Federal Mortgage Finance Limited[5].

The Federal Mortgage Bank of Nigeria has responsibility to ensure the rational evolution of housing, finance institutions and the development of appropriate market instruments for resources mobilization and also ensuring that the objectives of the National housing Policy are realized .

The retail mortgage operations of the former mortgage bank of Nigeria is excised and all the business hitherto carried on by the mortgage Bank and all the assets, funds, resources and other movable and immovable properties became vested in the Federal Mortgage Finance Limited[7] .

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[4] Nwaham. I: Understanding Mortgage. The Nigerian Accountant Journal Vol xxvi No 3. September. 1994 Page 19.

[5] Section 21 (3) Decree No 82 of 19993.

[7] Ibid Section 21 (3)

The Decree[8] also specifies the main functions of the federal Mortgage Finance Limited as follows:

- To ensure equitable spread of mortgage lending activities all over the country

- To operate as an efficient and effective mortgage institution which will be a role model for the private mortgage institutions and also dictate the level and pace of growth in the industry,

- To minimize avoidable and fraudulent investment losses; and ensure a timely and adequate loan recovery performance in order to create opportunities for structured expansion in the provision of housing finances.

2.2 STRUCTURE AND ORGANIZATION.

At dissolution, the Nigerian building Society operated from five offices namely, Ibadan, Lagos, Enugu, Kaduna and Benin. The Nigerian Building Society was jointly sponsored by the then Federal government and the Eastern Nigerian Government as small savings and loans organization[9].

The federal Mortgage Bank has its head office in Abuja, regional offices in Enugu, Ibadan, Kaduna and Jos. Now the bank has branch offices in nearly all the state headquarters in the country.

The Bank has a Board of Directors comprising the following;[10]

(a) A chairman who shall be appointed by the President, commander- in -chief of the Armed Forces[11].

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[8] Ibid Section 5 (1)

(b) One person to represent the Federal Ministry of Works and Housing.

(c) Two persons to represent the Central Bank of Nigeria.

(d) One person to represent the general interest.

(e) The managing Director of the Federal Mortgagee Bank, and

(f) The three Executive Directors of the Federal Mortgage Bank.

The day to day running of the Bank is vested in the Managing Director who is the chief executive. He shall be appointed by the president Commander- in- chief of the Armed Forces. The Board also comprises a maximum of two Executive Directors appointed by the President, commander- in- chief of the Armed Forces[12]. The Managing Director and the Executive Directors shall hold office for a period of five years and may be reappointed for a further period of five years[13] . Other terms and conditions of their offices shall be contained in their respective letters of appointment[14]. The Board of Directors of the bank also has power to appoint a Secretary to the Bank and such number of officers and other persons as employees of the Bank as may appear expedient and necessary to the board for the proper and efficient conduct of the business and functions of the Bank. The remuneration,

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[10] Section 2 (1) Federal Mortgage Bank of Nigeria Decree, No 82, 1993.
[11] Section 9 (1) (a) Ibid.
[12] Section 9 (1) (b) Ibid.
[13] Section 9 (3) Ibid.
[14] Section 9 (4) Ibid.

allowances and pension benefits of the Secretary to the Bank and other employees of the Bank shall be determined by the Board of Directors[15] .

The capital of the Federal Mortgage Bank of Nigeria shall consist of equity and loan capital. The authorized share capital of the Bank shall be one hundred million Naira which shall be divided into N100.00= each and be subscribed and paid up at par by the Federal Government [16]. The loan capital of the Bank shall be provided by the Federal Government of Nigeria, in such amount and on such terms as may be determined by the Minister[17]. The Bank can also raise money by way of borrowing from any source provided such a debt does not exceed its share capital except with the approval of the Minister[18]. This is a salutary provision since it goes a long way in providing protection to the creditors of the Bank. This is largely so because undercapitalization has been the bane of corporate stability in Nigeria. This section[19] therefore encourages the bank to borrow within the limits of its authorized paid up capital to enable it cope with its financial obligations.

However, there is a proviso[20] that if the Minister for Works and Housing permits, the Bank can borrow beyond its authorized paid up capital. It is not in doubt that the bank is a corporate body with perpetual succession and a common seal. Following the decision in SALOMON V. SALOMON AND CO.[21], it is a different person from its members, in the instant case, the Federal Government of Nigeria. The law is silent on the yardstick that the Minister shall use in determining

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[15] Section 10 (3) Ibid.
[16] Section 11 (2) Ibid.
[17] Section 11 (3) Ibid.
[18] Section 13 (3) Ibid.
[19] Ibid.
[20] Section 13 (1) Ibid.
[21] (1897) AC 22.

whether the bank should borrow beyond its paid up capital. In case of Bank failure in the circumstances, the Federal Government should be answerable to the creditors on the basis of undercapitalization. This is because if the Minister is empowered to authorize the Bank to borrow beyond the share capital, then, it is desirable that in the event of Bank failure the government should be responsible for such debt.

The shares of the Bank have been given a par value of N100.00=. Historically, par value was designed to provide a convenient measure of member's liability so that a holder of 100 shares of Federal Mortgage Bank of Nigeria of N100= each[22] would know that he owes the Bank N10,000.00= no more no less .

Secondly, par values were also supposed to protect creditors at a time when it was thought that par values would be of a very large nominal value out of which a large amount would be left uncalled to provide a fund from which creditors would obtain payment in the event of insolvancy[23] .

The argument here is that even at the beginning of the Bank's life (and any other company at all) par values may be arbitrary and that once the company goes into full operations, par values completely loose touch with the real worth of the shares. If for instance, the Bank makes looses, then its net worth goes down. This means that each share becomes worthless than its par value. On the other hand if it had trade

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[22] Companies And Allied matters Act 1990 Laws of The Federation of Nigeria Sections 21, 27 and 49.

[23] Farrar, Furey and Hannigan - Farrar's Company Law (1988) Butterworths, London, 2nd edition Pp 1-20.

profits and reinvested them[24] , the shares would be worth much more than their par value.

In practice, the real market value of a share hardly ever corresponds with its par value. This makes par values totally artificial because they obscure the fact that a share represents an aliquot part of the net undertaking of the bank. It has no real connection with its arbitrary value as stated in the statement of the share capital[25] . In the final analysis, the arbitrary monitoring symbol attached to a share does not represent the real worth of the share and consequently its market quotation. This is apt to mislead unsophisticated creditors.

2.2.1. NATIONAL HOUSING FUND.

The Bank also relies on funds provided through the National Housing Fund. The National Housing fund is to be managed and administered by the Federal Mortgage bank of Nigeria. For the purpose of tackling the housing problems of Nigeria, the National Housing Policy introduced a financial system to ensure continuos flow of long term funds for housing development at affordable cost. Consequently, the National Housing Fund was established[26] with the primary objectives[27] of addressing the thorny problem of raising cheap long term funds for financing mortgage. The money generated by this Fund is to be lent to primary mortgage institutions who in turn lend same to individuals.

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[24] Ibid.
[25] Ibid.
[26] Section 1 Decree No 3. 1992.
[27] Section 2 (9) - 8 Ibid.

The Federal Mortgage Bank of Nigeria is supposed to lend money from this Fund to primary mortgage institutions at 5% interest while the primary mortgage institutions lend to individuals at 9% interest[31].

2.4. REGISTRATION

All potential contributors to the Fund are to be registered by the Federal Mortgage Bank of Nigeria. A registration form would be issued by the Federal Mortgage Bank of Nigeria to an employee through his/her employer. This should be completed and returned as indicated on the form. Each employee is to be similarly registered to facilitate the deduction and remittance of contributions.

A participation number is usually allocated to such a registered person and would remain the same even when one changes his/ her place of employment.

If one is self employed, he/she is expected to register. He/she is expected to collect from any branch of Federal Mortgage of Nigeria, a registration form.

Following registration, the employer is expected to deduct 2.5% from ones salary monthly and remit same to the Federal Mortgage Bank of Nigeria. Where one is self employed, he/she may pay directly to any office of the Federal Mortgage Bank of Nigeria. A passbook shall be issued to such a person to record his monthly contributions. This passbook must be securely kept as it will be required for every transaction.

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[31] Ogunseye :The Impact of PMI's in Reducing the Demand and Supply Gap in the Nigerian Housing Delivery System. The Nigerian accountant Journal Vol. xxvii No 3 September, 1994 at page 2.

Employers must deduct the appropriate amount of contribution from the salary of every worker registered with the Fund and remit same to he Federal Mortgage Bank of Nigeria. A yearly statement of ones contributions shall be sent to him.

To borrow from the Fund, one must be a contributor. If one wants to buy, build or improve ones land and intends to borrow from the Bank all he has to do is to apply to any mortgage institution. As at now the interest is 9%.

Ones contribution together with the accrued interest will be refunded to the contributor when he is sixty years of age or retired or can no longer continue in employment due to ill- health.

One will be able to repay the loan after a period of 25 years. Whether or not one borrows from the Fund, contributions shall attract interest.

2.5. REGULATION OF THE BANK

As at today in Nigeria, the financial services sector of the economy is regulated mainly by two recent legislations namely: The Central Bank of Nigeria, Decree[32] and the Banks and other Financial Institutions Decree[33]. Both Decrees seek to set up a comprehensive legal and supervision framework for the Banking and financial services industry in the country to remedy for the inadequacies of the several

[32] Decree No 24, 1991 as amended by Decree No 3, 1997.
[33] Decree No 25, 1991.

pieces of legislations hitherto in place providing for the regulation of the banking and financial services sector of the economy.

The Primary mortgage institutions are under the direct supervision of the Federal Mortgage Bank of Nigeria. As a way of sanitizing the primary mortgage institutions, the Federal Mortgage Bank announced a list of 116 primary mortgage institutions which were certified healthy to receive the certificate of standard leaving a frightening figure of 136 primary mortgage institutions which did not qualify to be described as healthy[34] .

The Federal Mortgage Bank is a creation of statute with set out objectives. Initially, the mechanics for its regulation were not the same as those of the Banks and other Financial Institutions. For example, the Bank was exempted from the provisions of the Banks and other Financial Institutions Decree[35].The Bank was also exempted from payment of income tax and the provision of any enactment relating to taxation of companies.

However, in 1997, the law in this area drastically changed. By the provisions of the Banks and other Financial institutions (amendment) Decree[36], the Federal Mortgage Bank of Nigeria is subject to the same regulatory mechanics like other banks. In essence, the exemption clause has been deleted by the new law[37] . It therefore logically follows that the Bank is now under a duty to maintain cash reserves with the Central Bank of Nigeria as may be directed from time to time[38] . The Federal

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[34] Ogunseye T.O. Opcit page 12.
[35] Section 51, Banks and Other Financial institutions Decree No 25, 1991.
[36] Section 22 Banks and Other Financial Institutions (Amendment) Decree No 4, 1997.
[37] Ibid.
[38] Section 15, Decree No 25, 1991.

absent and two other Board members are present. In otherwords, the Chairman and two other members can form a quorum[43].

The law[44] requires that notices shall be given of those meetings and the proceedings thereat. The consequence of failure to give notice is that the meeting is treated as invalid. In ONWUKA V. TAYMANI[45] the plaintiff who was a shareholder in a paper conversion company limited paid for shares he was allotted. He was however, not sent a notice of the general meeting of the company which was convened and held. It was held that since the plaintiff was not notified, the meeting was invalid and any decisions taken thereat were void.

A member of the Board and a person holding office of a committee of the Board who has personal interest in a contract or an agreement entered into or proposed to be considered by the Board or the Committee shall forthwith disclose his interest to the Board or committee and shall not vote on any question relating to that contract or arrangement[46]. This position is analogous to the common law position. In PEEL V. LONDON AND NORTH WESTERN RAILWAY COMPANY LIMITED[47] It was held that as part of the Directors duty to ensure that the members are fully aware of what is to be discussed at the meeting, the notice must disclose any benefit the directors will obtain as a result of the passing of any resolution.

The law[48] also requires that minutes are to be kept. The law is however silent on the type of minute books that are to be kept by the

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[43] Ist schedule paragraph 3 Ibid.
[44] Ibid, first schedule paragrah (b)
[45] (1965)LLR62.
[46] Ist shedule Paragraph 10 Decree No 82, 1993
[47] (1907) 1. CHD 5.
[48] Ist Schedule paragraph 1 (9).

50,000.[51] The annual financial reports of the bank indicated a ratio of 2:1[52] in loan disbursement between whole sale and retail borrowers. The implication of this is that the bank has too many individuals as against corporate clients to run after in its loan recovery efforts.

The Federal Government's statutory Allocation to the National Housing Fund commenced with the release of N250 million in 1991. The funds generated from the sources earlier listed are to be made available at a cost of 4% interest while the Federal Mortgage Bank of Nigeria releases the fund to primary mortgage institutions at the rate of 5% interest. Each primary mortgage institution is expected to charge a maximum of 4% interest when lending to the final consumer of the fund.

While the forgoing looks a bold attempt to address the acute shortage of housing stock, not a single kobo has been disbursed as at 1994.[53] The research could also not find any record where there is such disbursement from 1995 till date.

The Federal Government has announced its intention to relaunch the National Housing Programme by building 121,000 housing units all over the federation to be funded from the National Housing Fund.[54]

To qualify for application for any of those houses an applicant is expected to be a contributor of the National Housing Fund for at least three months running. The role of the primary mortgage institutions in this transaction will be the processing of loans for the balance of 80% of

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[51] Ibid
[52] Ibid
[53] Ogunseye T.O. opcit page 2
[54] Ibid

the price of those houses after the initial deposit of 20% had been paid and monitoring of the loans.[55]

The contribution of the Federal Mortgage Finance Limited towards the Finance and provision of housing in Nigeria since 1977 is divided into two target groups.

(i) Individual owner - occupiers

(ii) Institutional housing/estate developers.

The Federal Mortgage Finance Limited is located in all the state headquarters including Abuja the Federal Capital Territory with many savings centres in Urban/commercial locations.

The decentralization of mortgage loan approvals which started in 1981 witnessed a rapid increase in the mainstream operations of the Bank. Loan applications grew from 44 million in 1984 to 60.75 million in 1992.[56]

Given the fund constraints, stringent credit rating/loan eligibility criteria were adopted in the mid-eighties to ensure the affordability of each individual application. An applicant may be asked to scale down the proposed development to reduce the scope of components or increase the value of construction on site before a loan is granted.

For these reasons, the value of loan approvals which stood at N8 million in 1984 rose to N65 million in 1992. In 1984 Disbursements were a total of N13 million while the figure rose to N35 million in 1992

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[55] Ibid
[56] Ibid

despite the lack of funds due to repayment defaults and the down turn in the economy.[57] There is dearth of data for the years 1993 till date.

2.7. PROBLEMS

The Federal Mortgage Bank of Nigeria has been engaged in a cold war with the primary mortgage institutions over their names. Particularly offending is the acronym "mortgage bankers" to which all of them subscribe. The apex Mortgage Bank had on several occasions publicly denounced the use of "mortgage Bankers" describing the institutions as mere non-banking financial intermediaries.

The implication of this on the mortgage institutions is grave, particularly nowadays when an average saver is skeptical dealing even with commercial banks and therefore sees any relationship with Finance or Associated companies as heresy. It is hoped that the Federal Mortgage Bank of Nigeria will relax sending shivers down the spines of potential savers and depositors with primary mortgage institutions. A mortgage has been defined as:

> *an Instrument recognized by law by which property is given up as security without the necessity of giving up possession of it for the payment of a debt or obligation.*[58]

When a mortgage is created a loan is obtained that is used to finance the purchase or construction, completion or improvement (that is renovation) of a house. The house is in turn held as a security or collateral for the loan.

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[57] Ibid

[58] Nigeria: Housing Hand book, 1991, Federal Government Press

The mortgage loans are operated in a market dominated by sources of funds which have relatively shorter maturity thereby making it difficult for the Bank to service all its loan applications and commitments because of this mis-match in maturities vis-à-vis savings and loans term of years.

The application of variable rate approach is not feasible under the present regime of interest rate regulation policy of the Government. Moreover the harmonization of interest rates deposits and lending rates by the Central Bank of Nigeria has ended any competitive edge which the bank can offer by way of higher price incentive on deposit.

The state of the economy with the steep decline in employment level has adversely affected the repayment culture and has therefore prevented the loans being turned around optimally.

It is the position of the law that family land is not subject to mortgage by a member of the family without the consent of the head and other members of the family. In AMODU TIJANI V. SECRETARY SOUTHERN NIGERIA[61] it was held that the notion of individual ownership of land is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual.

The average poor Nigerian who resides on family land finds it impracticable to provide a collateral security to secure a loan in the circumstances.

The Federal Mortgage Bank runs only a savings Account. People run savings accounts in Nigeria in such a way that they see nothing

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[61] (1921) AC 399 at 404

wrong in coming many times in a month, occasionally for six months and fairly for one year. Mobilization of savings to overcome the current shortage of long term funds therefore is the central issue of financing mortgage.

2.8. PROCEDURE FOR WINDING UP

Winding up is the process whereby a company duly incorporated may be terminated. The Federal Mortgage Bank Decree[62] is silent on the issue of winding up. In the light of this lacuna, the provisions of the Banks and other Financial Institutions Decree[63] shall apply without prejudice to the provisions of the companies And Allied matters Act.[64]

First and foremost the Federal Government of Nigeria being the only shareholder of the Bank can voluntarily wind up the Bank by a direct Government policy through an instrument spelling out what should be done in the circumstances.

On the other hand, if the Governor of the Central Bank is of the view that the paid up capital of the Bank is lost or unrepresented by available assets, he may with approval of the President of the Federal Republic of Nigeria make an order revoking the bank's license and requiring its business to be wound up. It may be recalled that initially the Federal Mortgage Bank was not bound by the provisions of the Banks And Other Financial Institutions Decree.[65] The Bank therefore commenced business without obtaining any licence. Now that the law

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[62] Decree No. 82, 1993
[63] Section 53, Banks And Other Financial Institutions Decree No. 25, 1991.
[64] Section 401, Companies And Allied Matters Act, 1990
[65] Section 51 Banks And Financial Institutions Decree No. 25, 1991.

has been amended and the exemption clause deleted, the bank is subject to the regulatory regime of the Central Bank of Nigeria as if it were a licensed bank *ab initio.*

Where the Governor makes an order revoking the licecse of a Bank and requiring the business of that bank to be wound up, the bank shall within 14 days of the date of the order, apply to the Federal High Court for an order of winding up the affairs of the bank. The application is to be given speedy hearing.[66]

If the bank does not comply with the order, the Governor of the Central Bank may apply to the Federal High Court for the winding up of the Bank.

The Federal Mortgage Bank operates savings accounts for its willing customers. The Nigerian Deposit Insurance Act[67] makes it mandatory that each customer who operates a savings Account with it should be insured. In the circumstances the Bank becomes an insured Bank. If for any reason, the Bank is under capitalized, the Nigerian deposit Insurance Corporation shall take over the management of the Bank. Where the Bank is critically under capitalized and that it cannot be rehabilitated or such undercapitalisation is as a result of fraud and forgeries or other financial malpractice, the corporation may recommend to the Central Bank of Nigeria that the bank be wound up. Where no response is received within 30 days the corporation may apply to the Head of State, commander-in-chief of the Armed Forces for consent for

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[66] Section 38 (1) Bank And Financial Institutions Decree No. 25, 1991.
[67] Section 20, cap 301 laws of the Federation 1990

the liquidation of the insured institution and thereafter apply to the Federal High Court for winding up order.[68]

2.9. CONCLUSION

The evolution of a virile mortgage banking system in a country is usually accompanied by the readily available mortgage loans and it is also heralded by the establishment of a central mortgage Agency as well as the development of an efficient market for mortgages. The establishment of a central mortgage Agency is essentially to regulate, control, monitor, motivate and co-ordinate the activities of the various primary mortgage institutions and to liaise with different agencies like the Central Bank, the Securities and Exchange Commission and the Nigeria Stock Exchange. Although the Federal Mortgage Bank has gone a considerable extent in being transformed into a central mortgage Agency for the nation a lot still remains to be done. In addition to the Federal Mortgage Bank's present role of regulating and monitoring the activities of the primary mortgage institutions, it should also see itself as the principal motivator and co-ordinator of all mortgage banking operations throughout the country. It must establish an effective machinery for achieving this. By their nature, request for mortgage loans come in relatively large amounts. Repaying them from traditional income sources or from rent on the property takes time too. So to finance mortgage satisfactorily, what is needed is a steady supply of long-term funds, and if the loans have to be affordable by the average income earner, such long term funds have to be cheap. It is in that

[68] Section 23 (2) Nigerian Deposit Insurance (Amendment) Decree No. 5, 1997.

direction that the objectives of the Federal Mortgage Bank of Nigeria will be realized.

CHAPTER THREE

3.0. NIGERIAN AGRICULTURAL AND CO-OPERATIVE BANK LIMITED

3.1. INTRODUCTION

Since Nigeria's attainment of independence in 1960, it was understood that lack of a national credit institution to finance the agricultural projects constituted a bottleneck for an accelerated development and modernization of the Agricultural sector of the Nigerian Economy. In a bold step to tackle this problem the Federal Government of Nigeria established the Nigerian Agricultural Bank Limited. The Bank was incorporated on the 24th day of March, 1972 as a Limited Liability Company with a paid up share capital of 500,000 pounds made up of 500,000 shares of 1 pound each. It started operations on 6th day of march, 1973.[1]

In order to highlight the role it can play in financing co-operative projects, the name of the bank was changed to Nigerian Agricultural and Co-operative Bank Limited.[2] As a result of this change and the widening of the Bank operations, the Bank needed a broader capital base to meet the increasing Agricultural financing needs of small scale farmers, co-operative societies, state Governments Agencies and agro-based industries in Nigeria. Consequently the share capital of the Bank was increased in 1979 by the Federal Government of Nigeria to N150 million[3] and simultaneously the ownership structure of the Bank

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[1] Usman. B. M Nigerian Agricultural and Co-operative Bank Limited (1992) NACB Publication page 6
[2] Ibid page 2
[3] Ibid page 3

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changed. The Federal Ministry of Finance took N90 million or 60% of the capital while the Central Bank of Nigeria took the remaining N60 million or 40%. As at the time of writing the share capital of the company is N150 million.[4]

The mandate of the bank encompasses the provision of credit facilities to Federal and State government Agencies, Limited liability companies, corporate organizations, and individual farmers for all aspects of Agricultural production including marketing and agro-processing. The activities of the Bank are mainly geared towards supporting the Government in its bid to improve the incomes and welfare of the Nigerian farmers generally while promoting rural development and increasing the Nations' production of food and fiber to meet the needs of Nigeria's rapidly expanding population.[5]

3.2. STRUCTURE AND ORGANIZATION

The Bank has its head office in Kaduna and local branches in all the states of the Federation. In 1973 the Bank commenced operations with only three departments namely operations, Finance and service. On the 3rd day of march, 1978, a management structure consisting of six departments became operational. These were operations department, projects and consultancy, Investment Department, Accounts Department, Legal Department, Administration Department and Co-operative Department which was created in December, 1978.[6]

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[4] Section 99 Memorandum of Association of Nigerian Agricultural And Co-operative Bank Limited.
[5] Ibid section 3
[6] Usman B.M. Op cit page 30

At inception and up to 1982, the Bank's chief Executive was referred to as General Manager. The other heads of Departments were known as Assistant General Managers.

Presently, the overall responsibility for policy formation of the bank rests on a board of directors whose members are appointed by the President and the Board is headed by a chairman. However, the day to day running of the Bank rests on the managing Director who is assisted by other Executive Directors. The managing Director and other Executive Directors are also members of the Board of Directors.

The Bank reaches its beneficiaries either through direct or on-lending methods. Only primary co-operative societies that can provide collateral securities that can benefit from the bank's direct lending. Individual members may also be eligible for loans if they can furnish collateral security.

Co-operative organizations have benefited more from the bank through the on-lending scheme.[7] In this case, a central co-operative organization to which primary societies are affiliated will obtain a loan from the Bank to be on-lent to its members. In most cases, these apex societies have enough developed properties to offer as security to the Bank. Where the co-operative society fails to offer any property as collateral security, the Bank insists on the relevant state Government guaranteeing the loan.

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[7] Ibid page 8

3.2.1. RURAL LENDING

Under the on-lending scheme, credit is channeled through co-operative societies, state and Federal Government on-lending agencies and the River Basin Development Authorities. The object of this scheme is for the on-lending agencies to endeavour to reach as many rural farmers as possible since the Bank lacks the infrastructure, personnel and facilities to penetrate the rural areas sufficiently.[8]

However, an appraisal of the on-lending strategy revealed that many rural farmers could not be reached through the existing machinery.[9] In order to remedy the situation, the bank introduced the small holder direct loan scheme in march, 1981 on a pilot scale.[10] Under this scheme, each farmer could get credit up to a maximum of N5,000.00 without resource to the provision of either collaterals or title to land.

By 1984, it was clear that the pilot scheme was a success in terms of both fund utilization by farmers for farming and loan recovery. As a result of the economic hardship in which the country found itself in 1984, and which led to large scale retrenchments in both the public and private sectors of the economy, the bank widened the scope of its direct small holder scheme to take care of retrenched workers who wanted to take up farming as an occupation. Further to this the widening of the scope also took care of those still in employment in both the public and private sectors but who are interested in farming.[11]

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[8] Ibid page 83
[9] Ibid page 7
[10] Ibid page 83
[11] Ibid page 9

The scheme practically operates in the following manner: After completing the relevant application forms, a fresh applicant is entitled to a loan of N5,000.00 at the first instance and then N10,000.00 after the first loan has been repaid. All a farmer needs to do here is to establish that he is resident in his locality or village and that he is a full-time farmer or substantially a full-time farmer.

The applicant must also prove to the satisfaction of the bank that land on which he is farming belongs to him or belongs to his family or that he has been permitted to use it by the owner and that he is ordinarily resident within the locality where his farmland in question is situate. Lastly, there would be two guarantors of good standing in the applicant's village or locality who would guarantee his good behaviour and the loan to be made to him.

3.2.2. LOAN RECOVERY

The bank has since 1988 increased security cover for all loans above N10,000.00. For example, loans over N250,000.00 but less than N1.0 million attract a security cover of 80% outside the project land, provided the development on the project land is not more than 20% of loan value plus a legal charge on the project land and all developments thereon, whether by the bank funds or by client's contribution. For loans above N1.0 million or for tractor hire or marketing, security cover is 100%[12]

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[12] Ibid page 12

Similarly, the bank has put, as a top priority, loan recovery drives. Branch managers have instructions to be more aggressive in loan recovery drives. They are also informed that their loan recovery results will form a substantial part of the points of judgment in their performance evaluation.[19] Actions being pursued by the bank as regards defaulting clients include vigorous policing of clients for loan repayment, sale of mortgaged properties, seeking court orders to enforce loan securities and personal actions against defaulting clients. Presently the bank charges very low interest rates in the market because of its developmental role that is, 15% to small scale farmers.[20]

3.3. REGULATION OF THE BANK

Initially the bank was exempted from the provisions of the Banks And Other Financial Institutions Decree.[21] However, even then the Governor of the Central Bank was empowered in the interest of the economy of Nigeria by order in writing to appoint examiners to carry out special examinations into the books and affairs of the bank and issue directives to the bank and failure to comply was an offense punishable with a fine of N50,000.00.[22] The Governor in the same vein had powers to amend by such addition or deletion as may be deemed necessary by the Governor by order published in the Gazette.

This was the position of the law in this area until the exemption was deleted by the provisions of the Banks And Other Financial

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[19] Ibid page 12
[20] Ibid page 14
[21] Section 51 Banks And Other Financial Institutions Decree No. 25, 1991.
[22] Ibid section 51 provisio

Institutions (Amendment) Decree.[23] It therefore follows that the Bank is subject to the same regime of regulation like any other bank.

By the provisions of the Articles of Association of the Bank it is a private company.[24] Formerly it was by its Articles of Association regulated mainly by the provisions of the Companies And Allied Matters Act.[25] Now the Bank is subject to dual external regulations that is, the Corporate Affairs Commission, and the Central Bank of Nigeria.[26]

Before examining the new position, the Central Bank was not totally prevented from overseeing the affairs of the bank. However the enabling powers were by way of provisio and not mandatory.[27] In the course of this research, efforts were made to cite instances (if any) where the Governor empirically utilized such powers. No such instance was seen and on the part of the bank, it preferred to treat such information as "confidential".

To qualify as a private company, the bank has imposed restrictions on the transfer of its shares in its Articles of Association.[28] In the circumstances its membership shall not exceed 50 and it is not empowered to solicit for funds or investment from the public.[29]

From the accounting records maintained, the directors usually prepare and lay before the annual general meetings financial statements in respect of each year of the bank. The financial statements usually

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[23] Banks And Other Financial Institutions (Amendment) Decree No. 4. 1997
[24] Section 1, *Articles of Association of Nigerian Agricultural And Co-operative* Bank Limited.
[25] By virtue of its incorporation dated 1st day of November, 1972 as contained in its Memorandum of Association
[26] Section 53 Decree No. 25, 1991 and section 25 Decree No. 4, 1997
[27] Section 51 Banks And Other Financial Institution Decree No 25 1991
[28] Section 1 (a) Articles of Association of Nigerian Agricultural And Co-operative Bank Limited

comply with the requirements of schedule two to the Act[30] with respect to their form and content. Secondly they are prepared in accordance with the accounting standards, issued from time to time by the Nigerian Accounting Standards Board in so far as they are not in conflict with schedule two. The financial statements do not include statement of its accounting policies, the statement of source and application of funds, the statement of value added and five years financial summary.[31]

The balance sheet and the profit and loss account are the key components of the annual financial statements. The financial statements are prepared in order to give a true and fair view of the state of affairs and the profit or loss of the bank for the year.[32] This requirement for true and fair view may override any item required under schedule two to any other requirement of the Acts relating to accounts.[33] If the requirement cannot be met without additional information, such additional information has to be given.[34] Conversely if strict compliance with schedule two would impair a true and fair view the directors are required to depart therefrom in order to attain the standard.[35]

However, it seems that this overriding concern of giving a "true and fair view" is merely fanciful. In the first place the concept itself is a vague one. As professor Bimaje Akpa[36] rightly observed:

> *"The conceptualization was evidently based on the faulty notion that accounting practice does follow well-defined, unambiguous rules aimed*

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[29] Ibid section 1(a) and (b)
[30] Section 335 (1) Companies And Allied Matters Act. 1990
[31] Section 22 Ibid
[32] Section 335(2) Ibid
[33] Section 335(6) Ibid
[34] Section 335(7) Ibid
[35] Section 335(8) Ibid
[36] Akpa. B: Corporate Financial Statement Disclosure in Nigeria: A Critical Review of the Companies Decree 1968 being a Seminar paper presented

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[31] Section 22 Ibid
[32] Section 335(2) Ibid
[33] Section 335(6) Ibid
[34] Section 335(7) Ibid
[35] Section 335(8) Ibid
[36] Akpa. B: Corporate Financial Statement Disclosure in Nigeria: A Critical Review of the Companies Decree 1968 being a Seminar paper presented

> *at a true statement of affairs. But today we know better ..... this concept has been found in the accounting literature to be neither here nor there in so far as it is akin to the concept of beauty that only the beholder can adequately judge. That is to say what is a true and fair view depends largely on the choice of accounting policies which have numerous alternatives supported by their excuses called theories ....."*

In the circumstances, using this accepted method, it is possible to arrive at over a million different "true and fair" views on the same set of accounts.[37]

The accounts of the bank are usually audited by a firm of independent auditors. The auditor's report is always attached to the annual financial statements. This report is vital as a confirmation that the accounts may be relied upon as true and fair.

The auditor's report usually conforms with matters set out in schedule 6 to the 1990 Act.[38] The first is whether they have obtained all the information and explanations which to the best of their knowledge and belief, were necessary for the purpose of their audit. The second is whether in their opinion, proper books of account have been kept by the company, so far as it appears from their examination of the books. With respect to branches of the bank not visited by them, they are to state if proper returns were received which were adequate for the purpose of their audit. Thirdly and most importantly, the audit reports state whether the balance sheet and profit and loss account are in agreement with the books of accounts and the returns. Finally, the

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at the Annual Conference of the Nigeria Accounting Teachers Association held at University of Lagos, Lagos. 1986

[37] Farrar; opcit page 44

[38] Companies And Allied Matters Act, 1990

report certifies that the financial statements audited give the information required by the Act[39] and in the manner required.

The first problem with the law relating to audit is the fact that the audit itself is not required to be conducted in accordance with the applicable professional auditing standards or guidelines. Secondly, the audit report is still restricted to matters which bear directly on the mathematical accuracy of the accounts. This leaves the important matters such as the valuation of assets and the total emoluments of Directors.

The codification of the common law duties of an auditor with respect to the standard of care required of him in checking errors, fraud and the discrepancies has created a problem in that their report may not help in dictating fraud in a bank. In scrutinizing the accounts, an auditor must exercise all such care diligence and skill as is reasonably necessary in each particular circumstances[40]. This appears to adopt the formulation of the common law courts as to the auditors duties which were classically expressed in the judgment of Lopes, L. J. in RE KINGSTON COTTON MILLS (NO.2)[41] as follows:

> *"It is the duty of the auditor to bring to bear on the work he has to perform that skill, care, and caution which a reasonably competent, careful and cautious auditor would use. what is reasonable skill, care and caution would depend on the particular circumstances of each case. An auditor is not bound to be a detective, or as was said to approach his work with suspicion or with foregone conclusion that there is something wrong. He is a watch dog but not a blood-hound ..... If there is anything calculated to excite*

[39] Ibid
[40] Ibid section 368 (1)
[41] (1896) 2 cit. 279 at 288

have a right of intervention in management matters by view of resolutions in general meetings while the majority view opined that the shareholders could not by ordinary resolution dictate to or overrule the directors in respect of matters entrusted to them by the Articles.

The Articles of the bank have rejected the majority view and adopted the minority view. The shareholders of the bank have absolute control in the regulation of the bank.

3.4. ACHIEVEMENTS

The social and economic impacts of the bank's programme on the national economy are quite enormous. A study conducted by a consultancy company - Manu International Limited on the activities of the bank between 1973 to 1985 showed that the output from the bank's assisted projects in its twelve years of existence was for example 266,535 tons of rice, 154,220 tons of maize and 140, 639 tons of yams. In addition, the output included 2, 198, 950 tons of sugarcane, 24.4 million dozen eggs, 1,528, 590 spent layers, 573,463 broilers and 59,909 heads of cattle.[44]

The study further showed that by 1985 the bank funded projects, provided employment opportunities for about 606 management positions, 3,029 technical positions and some 99,592 openings filled by other categories of staff. In value terms, the total estimated value of output from all projects funded by the bank as at 1985 was put at N1.847 billion. Furthermore, these projects have led to the construction

[44] Usman B.M. opcit page 19-20 (Available data in the bank's headquarters did not exceed the year 1985).

of roads, canals, dams, wells and boreholes and the provision of additional employment opportunities to Nigerians. During the same period (1973 to 1985) about 86.59% of farmers interviewed in a nationwide survey regarded the bank as the most credible source of Agricultural credit in Nigeria.[45]

In addition, the bank is the first creditable institution to assert the importance of the small scale farmers on the Nigerian agricultural scene through the successful implementation of its small-holder loan scheme introduced in 1981. This scheme came as succor to the Nigerian small scale farmers because of its liberal lending conditions. Presently, with the number of its small-holder beneficiaries standing at over 850,000,[46] the bank stands tall as the bank that attracts the highest number of small-holder beneficiaries nation-wide. Between 1981 to 1992 a total of N544 million was approved and N465 million disbursed under the small holder loan scheme.[47]

Another remarkable achievement by the bank is that it is the first credit institution to introduce credit schemes that cut across all aspects of the Nigerian agricultural industry. These schemes include on-lending, Direct lending, small holder scheme, special small-holder loan scheme, workers' scheme, marketing loans scheme and Agro-industrial service. Through these schemes, the bank has successfully financed many agro-based projects such as arable and tree crops, horticultural poultry, piggery, cattle, rabbitry and fishery.[48]

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[45] Ibid page 85
[46] Ibid
[47] Ibid (Available data in the bank's headquarters did not exceed the year 1992).
[48] Ibid

Through its unique and innovative credit programmes the bank is also the first institution to involve both government and non-government institutions in channeling credit facilities to farmers. Similarly it has also successfully led other finance institutions in loan sydications for the purpose of mobilizing funds for agricultural production and agro-processing.

It is also important to note that the bank has an extensive effect on the nations' agricultural scene not only in terms of its institutional framework and operational efficiency but also in geographical coverage and expanded operational base. The bank operates through zonal offices, branch offices and representative offices at the local government levels across the nation. In this way the services of the bank are brought to the doorsteps of millions of Nigerian farmers. Thus, the bank emerges as the apex lending agricultural finance institution in the country.

Remarkable achievements have also been recorded by the bank in its organizational structure, personnel and staff welfare as well as in the establishment of subsidiaries. For insentience, the bank has established the following companies: The Nigerian Agricultural and Co-operative Bank consultancy and Finance Company Limited, National Poultry Production Company Limited.[49]

The bank also has shares in the following companies: Federal Savings Bank Limited, Nigerian National Shipping Company, Nigerian starch mill, Okomu Oil Palm Limited, Rison Palm Limited, Savannah Sugar Company, Adapalm Limited, Nigerian Beverage Company, Akwa

[49] Ibid

Palm Limited and Madara Company Limited.[50] These companies are contributing in building the economy in various ways.

3.5. PROBLEMS

Inspite of its very impressive performance over the years, several constraints are responsible for a number of set-banks being experienced by the bank.

Some farmers still see the bank as an organization where loans are granted through bureaucratic and cumbersome procedures. This is mainly due to the bank's requirement of the supervised credit system. This is because over 80% of the bank's clients are illiterate peasants who are neither used to, nor possess ability to comprehend office routines and procedures.

Administering the direct small-holder loan is expensive and is often accomplished at a loss to the bank. The reason is obvious. Small-holder credit anywhere in the world is expensive to administer because the returns are never enough to cover the cost of credit administration.[51]

One of the problems that has had a devastating effect on the bank over the years is the problem of either shortage, increasing cost, inadequacy of or late supply of agricultural inputs such as improved seeds, agro-chemicals and feeds. For instance, the bank had to suspend some poultry projects in the past because of the dearth of feeds.[52]

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[50] Ibid
[51] N.A.C.B. at 20-A Souvenir Brochre of the 20th Anniversary Celebration of NACB Limited 1993 - 1993 page 31.
[52] Usman B.M. opcit page 94

This ugly situation informed the bank's decision to participate in the production of these inputs either through joint ventures or outright provision of funds to interested clients.[53]

At inception, the Federal Government granted soft loans to the bank for its operation. This was complimented by loans from the Central Bank mainly as short-falls from the Agricultural credit guarantee scheme. Later the Government stopped granting soft loans to the Bank. The immediate fall-out is that the Bank has resorted to borrowing its loanable funds from the international capital market despite the obvious burden of Naria slide and exchange rate fluctuations. Sources of fund for the Bank in the international market include:[54]

International Bank for Reconstruction and Development And African Development Bank. The African Development Bank has been a major source of fund to the Bank since 1988.[55] Also the multiplier effect of the depreciation of the nation's currency is taking its toll on the Bank's operational costs. All the same, the Bank is expected to charge lower interest rate than the Central Bank's minimum rediscount rate (MRR).

Furthermore, the problem of loan default has been with the bank since inception. Experience has shown that some of the farmers who got loans regard the bank as a Government parastatal established to approve and disburse loans to farmers as part of the "national cake". What has contributed to the above impression is the granting of loans at very low interest rates. The effect of this is that even where the beneficiaries have

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[53] Ibid
[54] Ibid
[55] Ibid

the means to repay the bank's loans when due, they lack the will to do so. The result is low repayment rate and decrease in the bank's liquidity resulting in reduced loanable funds.

Some farmers are so poor that they do not have collateral to use as security for loans. In some instances, in their desperate bid to secure loans by all means they end up obtaining a certificate of occupancy over family land. This usually creates recovery problems for the bank. For instance, in AATSAV JAGUSA & ORS V. NIGERIAN AGRICULTURAL AND CO-OPERATIVE BANK LIMITED[56] the son of the 1st plaintiff sometime in 1981 obtained a loan of N138,000.00 from the defendant vide loan reference number 81047. He secured the loan with a parcel of land measuring 29.73 hectres covered by a Benue State certificate of occupancy Number BN 1521 dated the 2nd day of February, 1978 and registered as No.309/1 in the Lands Registry Makurdi. The said parcel of land is family land and the consent of other members of the family was not obtained. The 1st plaintiff's son defaulted and the bank advertised to sell the collateral security by public auction on Sunday the 29th day of September, 1996. Unknown to the defendant, a relation of the plaintiff had already successfully quashed the certificate of occupancy in question before the High Court of Justice of Benue State of Nigeria holden at Katsina-Ala in JOSEPH AATSAV V. NATHANIEL UGENYI & 2ORS[57]

In the circumstances, the bank was rendered helpless. Before this case was heard on its merit the plaintiffs obtained an interim injunction

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[56] GHC/139/96
[57] KHC/29/1988

and later an interlocutory injunction restraining the defendant from carrying out the slated auction sale.

Similarly in GYUSE FARMS LIMITED AND 2ORS V. NIGERIAN AGRICULTURAL AND CO-OPERATIVE BANK LIMITED[58], the plaintiffs/applicants took out a writ of summons against the defendant. Simultaneously with the application for a writ, the applicants filed a motion *exparte* for interim injunction pending the determination of the motion on notice and another application for an interlocutory injunction became necessary because the 1st applicant's farm was to be auctioned by the defendant on the 19th day of November, 1987 since the applicants defaulted repaying a loan they took from the defendant.

After listening to the arguments, the court granted the injunction restraining the defendant from carrying out the auction sale.

3.6. PROCEDURE FOR WINDING UP

The Articles of Association of the Bank provide for winding up. The winding up is to be done by way of Extraordinary resolution. The Articles specify that the winding up shall be voluntary or official.[59] In both cases, a liquidator is to be appointed. There is no elaborate provision relating to winding up other than this and therefore recourse shall be had to the Companies and Allied Matters Act, 1990. Voluntary liquidation is the normal and commonest mode of winding up contemplated by law. The procedure depends on whether it is a

[58] (1983-1988) BNLR 226 @ 228
[59] Section 99 (4) Articles of Association of Nigerian Agricultural and Co-operative Bank Limited.

member's winding up when the Bank is solvent or a creditor's winding up when the Bank is insolvent. This in itself is determined by the fact that the Bank's directors make a declaration of solvency within five weeks of the winding up resolution.

Where a winding up of the bank is to be effected by the court it is referred to as official liquidation. The Jurisdiction of winding up in the circumstance is vested exclusively in the Federal High Court.[60] The Bank may be wound up compulsorily by court when there is a special resolution to that effect by the members or when there is default in delivering the statutory report or in holding the statutory meeting. This requirement anticipates that the bank would be privatised and commercialised in future. Similarly the bank may be wound up by court if the number of its members is reduced below the statutory minimum of two.

The two most important grounds of compulsory winding up are inability to pay debts and the just and equitable ground. The former is very significant for creditors while the latter is an important shareholder protection device.

Inability to pay debts may arise in any one of the following three situations. First, if a creditor, by assignment or otherwise to whom the bank is indebted in a sum exceeding N2,000 which is presently due has served notice on the company to pay and it neglects to do so after three weeks of the notice. The notice is properly served by leaving a demand under the creditor's hand at the registered or head office of the bank. The petition would only be

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[60] Section 407 (1) Federal High Court Amendment Decree No. 61, 1991.

granted where the bank has not paid up the sums or secured or compounded it to the reasonable satisfaction of the creditor. However, in RE LONDON & PARIS BANKING CORPORATION[61] it was held that a debt which is *bonafide* disputed would be unsustainable.

Secondly, if execution or other process issued on a judgment, decree or order of any court in favour of a creditor is returned unsatisfied either partly or wholly, a winding up petition may be brought on grounds of inability to pay debts.

Thirdly, the court may after taking into account the bank's contingent or prospective liabilities form the view that the bank is unable to pay its debts. A leading illustration on this point is the case of RE MEDIDPHARM PUBLICATION (NIG) LTD.[62] In that case the company had only a nominal capital of 100 pounds which was exhausted. It had no assets and it could not pay ordinary expenses. It had only £2:11^{s} :8^{d} in the bank's account. A cheque for 100 pounds it issued was dishonoured. In the circumstances the petition to wind up the company was granted.

The question of whether or not it is just and equitable to wind up is one of fact. In RE GERMAN DATE COFFEE COMPANY[63] it was held that if a company's substratum or principal object fails it could be wound up.

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[61] (1874) CL 19 Ex 444.
[62] (1971) UILR 421

[63] (1882) 20 CHD 169.

3.7. CONCLUSION

Going by the outstanding achievements of the Bank one is not left in any doubts as to its solid foundations for the future.

By the Bank's performance in areas of agricultural financing and rural development through institutions, groups and individuals, it can be said with some degree of conviction that the future of Nigerian Agricultural And Development Bank is bright. Inspite of the short-coming of off-shore credit to the Bank largely due to the substantial slide of the local currency, the Naria in exchange value, it must be admitted that the discovery of this source of fund is a giant leap forward. Now and in the foreseeable future, the Bank will continue to have loanable funds to meet its varied operations. It is also hoped that the Bank will play a significant role in assisting farmers in the exportation of their produce as well as the importation of inputs that are difficult to source locally.

Under its subsidiary, the Food Development Corporation Limited, the Bank hopes to venture into agricultural commodity exchange market. When fully operational, the Bank will increase food output by stabilising and harmonizing agricultural commodity prices.

To secure the future of the Bank the Federal Government of Nigeria has to come to the assistance of the Bank in some areas, if it must remain a development bank in the prevailing economic circumstances. For instance, it is now imperative in order to strengthen its borrowing capability in the capital market to increase the share capital of the Bank. Secondly, the Government should be providing annual loanable funds to the Bank at concessionary rates in order to

assist the Bank in meeting the ever increasing demands for credit facilities by the Nigerian farmers. In addition the Government should underwrite on an annual basis, losses incurred in administering loans to small scale farmers and also provide grants and subventions from time to time for infrastructural development and institutional building. These would go a long way in enhancing the role being played by the Bank in the Nation's agricultural sector.

CHAPTER FOUR

4.0. NIGERIAN INDUSTRIAL DEVELOPMENT BANK LIMITED.

4.1. INTRODUCTION

The Nigerian Industrial Development Bank Limited was established on January, 22nd, 1964[1] through the reconstruction of the then largely foreign owned Investment Company of Nigeria (ICON) which had been incorporated on the 17th day of October, 1959 as an industrial development financial company. The Bank was established then with a share capital of N8.5 million[2] . At the inception of the Bank, only 26% of its paid-up share were owned by local stock/shareholders including Central Bank of Nigeria while the remaining 74% were owned by foreign shareholders.[3] However, in 1976 the Federal Government of Nigeria bought out all the foreign shareholders and it became the Banks largest single shareholder through the holding of the Central Bank of Nigeria and Ministry of Finance Incorporated. In essence, the Federal Government of Nigeria through the holding of Central Bank of Nigeria and Ministry of Finance owns 99%[4] of the bank's shares while the remaining 10% is shared by Corporations, Companies and private Nigerian Investors.

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[1] NIDB Special Brodure (1964 - 1989) General Policies. NIDB Publication, page 1.
[2] NIDB General Policies. NIDB Publication, page 1.
[3] NIDB Special Brodure (1964 - 1989) General Policies. NIDB Publication, page 2.
[4] Ibid

The Bank is a Development Finance Company which provides medium and long term finance and sometimes makes equity investments. Financial assistance is available only to limited liability companies registered in Nigeria. The Bank prefers to provide funds for Companies which are either wholly-owned by Nigerians or with substantial equity investments by Nigerians. Furthermore, the Bank provides financial assistance to small/medium and large scale enterprises which by their size can make significant contribution to the Nigerian economy. The Bank finances projects located in any parts of the country and encourages dispersal of industries away from the more industrialized centres.

The scope of investment is presently limited to manufacturing, non-petroleum mining and tourism which includes hotels of international standards. Service industries are generally excluded except where there is the prospect of manufacturing in the short term.[5] Project proposals could be for the establishment of new ones or for the expansion of existing projects.

The project should be economically desirable *ie* it should be capable of raising living standards, providing employment or conserving foreign exchange. It should also be technically feasible *ie* the technical processes involved should be capable of being carried out under existing conditions of availability of raw materials, modern machinery and equipment, essential services, technical and managerial personnel and labour. The project should be commercially viable *i.e.* capable of making satisfactory profit taking into account the cost of production

[5] NIDB General Policies. NIDB Publication. page 2

and sales proceeds, the surplus being sufficient to repay loans, to build up reserve and to pay reasonable dividends.

The Bank's minimum loan investment in any project is N50,000.00 (fifty thousand Naria only).[6] On the outer hand, the Bank's maximum exposure in loan and equity in any single enterprise will not be more than 75% of the project's total capital cost or 15% of the Bank's paid up share-capital and free reserves, whichever is lower. Both the minimum and the maximum investment exposure depend on a number of criteria including total project cost and debt equity ratio. Whenever the Bank makes an equity investment, the minimum is 11% while the maximum is 26% of the client's company's paid-up share capital.

4.2. STRUCTURE AND ORGANIZATION

The Bank has its Head Office in Lagos and Area offices in Kaduna, Aba, Bauchi and Akure. Promoters of projects normally contact the bank directly either in writing or by personal visits to the Head Office, area Headquarters or liaison offices. Initial contact with preliminary data is preferred at an early stage of project development when the bank can offer useful advice through its promotion and Development Department. A detailed project feasibility study should be undertaken by the promoter and a report submitted to enable the Bank commence the appraisal processes. In limited cases, the Bank's Promotion and Development Department can undertake the project feasibility study on behalf of promoters for a nominal fee. A satisfactory

[6] Ibid

feasibility report should contain a market report establishing the demand for the proposed products and the competitive prices and brief notes on the history of the client company, the composition of its board of directors and senior management team. Copies of the Certificate of incorporation, memorandum and Articles of Association should be attached.

The Promotion and Development Department provides assistance to promoters for the development of projects which though seemingly attractive, are insufficiently prepared for meaningful appraisal or implementation. It also provides opportunity for the Bank to increase the volume of its lending activities by stimulating new projects through active promotion of projects that fall in line with investment policy of the Bank. In some cases, the Department prepares project feasibility reports and identifies suitable financial and management partners for prospective clients.

The appraisal process is undertaken by the Appraisal Department and starts after the submission of the above detailed information and involves visits to sites and verification of the information submitted. The time interval between the submission of detailed data and the approval of the investment by the Bank's Board can be up to two months.[7]

The Bank's appraisal team comprises an industrial engineer, an investment executive and an economist. The team studies all aspects of the project and takes into account various established internal guidelines before reaching a conclusion. The investment committee reviews the proposal and if considered satisfactory a recommendation is presented

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[7] Ibid page 7

to the Board of Directors which normally meets bi-anually.[8] When sanctioned by the Board, a letter of offer is sent to the promoter. No commitment can be made prior to sanction by the Board.

The Bank does not support procurement of second hand or reconditioned machinery and equipment.

After accepting the letter of offer, the promoter enters into discussion with the Legal Department on the preparation of the loan and mortgage agreement, the Finance Department on the procedure for disbursing the funds and the Investment Supervision Department on the fulfillment of the terms and conditions of the offer. In smaller projects, the relevant Area Administrations could be contacted for these discussions. Loans are usually disbursed directly to the suppliers of goods and services according to an agreed disbursement schedule. The bank does not disburse directly to a client company's account except in the case of refinancing of an earlier approved investment or reimbursement of costs incurred by the promoter on approved items of fixed assets that fall within the Bank's financial commitment in the project.

The Investment Supervision Department maintains contact with clients until loans are fully repaid or the equity investment sold.

Management Services Department of the Bank provides consultancy services to the Bank's customers and to the general public. The range of such services include production, planning and control, preventive maintenance, market research, marketing and sales organization. The Department also undertakes financial control and

[8] Ibid

accounting services, business appraisals, executive selection, management secondments, management development training and personnel and industrial relation.

The bank owns 90% shares in ICON Stock Brokers Limited. On the other hand, Leasing Company of Nigeria Limited and NIDB Trustees Limited are wholly owned subsidiaries of the Bank.

4.2.1. REPAYMENT PERIOD

In general, a moratorium on repayment of twelve months is granted beginning from the date of commissioning of the project. The minimum amortisation term is five years while the maximum period of amortisation is fifteen years which gives total term of between five and fifteen years. A legal mortgage is usually created on the fixed assets of the project and a second charge on the floating assets. In order to obtain overdrafts from commercial Banks for working capital, the Bank allows, a second charge on the fixed assets and a first charge on the floating assets to be created by them.

Other collateral securities such as personal parent company or reputable bank guarantee/government securities and stock Exchange and personal real properly can be accepted. The values of the security offered should be at least one and a half times the proposed investment. The client has option to repay outstanding principal installments subject to a graduated prepayment premium.

4.3. REGULATION OF THE BANK

The Nigerian Industrial Development Bank Limited is a private company limited by shares[9] . The Bank is managed by a Board of Directors who are appointed by the Federal Government of Nigeria. The Board of Directors is headed by the Managing Director who is the chief executive of the Bank.

The Bank is basically regulated by its memorandum and Articles of Association. The Bank being a registered Company, it is regulated by the provisions of the Companies And Allied matters Act.[10]

Initially, the Bank was exempted from the provisions of the Banks And Other Financial Institutions Decree.[11] However, following the enactment of the Banks And Other Financial Institutions (Amendment) Decree[11(a)] the Bank is subject to the same regulation like other Banks. In the circumstances, the Bank is also subject to the provisions of Central Bank Decree.[12] The Bank is therefore under a duty to maintain cash reserves with the Central Bank of Nigerian as may be directed from time to time. It is equally subject to special examinations and report thereon from officials of the Central Bank of Nigerian[13]. Similarly, the Bank is now subject to special examination by the Central Bank of Nigerian if it is in the public interest so to do or any other reason specified by law permitting the Central Bank of Nigeria to do so.[14] The Bank being a private company is enjoined by law[15] not to

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[9] Section 29(5) Companies And Allied Matters Act. 1990 (as amended).
[10] Cap 59 Laws of The Federation 1990
[11] Section 51 (1)(c) Banks And Other Financial Institutions Decree No 25. 1999 as amended by Decree No 4. 1997.
[11(a)] Section 25 Decree 4. 1997.
[12] Banks And Other Financial Institutions Decree No 25. 1991 as amended by Decree No 4. 1997
[13] Ibid. section 15
[14] Ibid

invite the public to subscribe for any shares or debentures of the Bank or deposit money for fixed periods or payable on call whether or not bearing interest. The membership of the bank shall not exceed fifty members.[16]

The directors of the Bank usually prepare and lay before the annual general meetings financial statements in respect of each year of the bank. It has been observed that the financial statements do not include a statement of its accounting policies, the statement of source and application of funds, the statement of value added and the five year financial policy. This is in line with the protection given to the Bank in this direction by the Companies And Allied matters of Act[17] in its capacity as a private Company. The accounts of the Bank are usually audited by a firm of independent auditors. The accounting records are kept in the same form and contents as that of the Nigerian Agricultural And Co-operative Bank Limited.[18]

The key records of accounts kept by the Bank are the balance sheet and the profit and loss account. They are principally prepared to give a true and fair view of the state of affairs and the profit or loss of the Bank for each year. As earlier stated this position is not satisfactory.[19]

The audit report which is usually attached to the Annual Financial Statement prepared by the Board of Directors does not in anyway reveal the emolument of directors and valuation of assets of the Bank. A

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[15] Companies And Allied Matters Act op cit Section 25
[16] Ibid
[17] Ibid section 334 (3)
[18] This is adequately discussed in paragraph 3.3, chapter 3
[19] Ibid

thorough scrutiny of the Bank's accounting records reveals, that the audit report is restricted only to matters which bear directly on the mathematical accuracy of the accounts. The audit is prepared in line with the watch-dog formulation by Lopes .J. if in RE KINSTON COTTON MILLS (NO2) Supra,as earlier pointed out.[20]

The Bank generates its reserves partly by borrowing internally, and externally. Where the loan is from an external body, The Borrowing By Public Bodies Act[21] requires that the Bank shall seek and obtain the consent of the Minister of Finance before applying for such loans. The same Act[22] permits the Minister of Finance to guarantee the repayment of the loan and any interest thereon. However this guarantee is limited. The Nigeria Industrial Development Bank (Guarantee) Act[23] stipulates that the National Council of Ministers may guarantee the repayment of a loan and interest thereon and other charges, if such a loan is equal to an amount equivalent to six million dollars[24] or ten million dollars[25] proposed to be made by the International Bank For Reconstruction and Development. On that note, the Federal Government of Nigeria is authorized to guarantee loans obtained by the Bank though the conditions for such a guarantee are made more specific in respect of loans from the International Bank For Reconstruction And Development. It therefore follows that for loans exceeding 10 million dollars and for loans below 6 million dollars, the Borrowing By Public Bodies Act[26] shall apply in respect of guarantee by the Federal

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[20] Ibid
[21] Section 2(1) chapter 37, Laws of The Federal Republic of Nigeri. 1990
[22] Ibid section 3(1)
[23] Section 1(1) chapter 308 Laws of The Federal Republic of Nigeria 1990.
[24] *Ibid*
[25] Ibid section 2(1)
[26] Section 3(1) Cap 37 op cit

Government of Nigeria. Equally in respect of all local loans, no specific upper limit has been fixed in respect of the authority of the Federal Government of Nigeria to guarantee. It is not clear why the Nigerian Industrial Development Bank (Guarantee) Act[27] has been specifically enacted to regulate loans from the International Bank for Reconstruction And Development. It could have been better appreciated if the Act[28] applied to all external loans.

Furthermore, the Bank usually reserves the right to have a minimum of one seat on the Board of Directors of a client company as a means of fostering the efficient management of the client company. This position has lost sight of the very fact that in large public companies the Board of Directors have lost their managerial powers.

Broadly speaking, the Board of Directors is expected to act as trustees in managing their companies assets in the long term interest of the shareholders, determine enterprise objectives, secure long range business stability and growth, approve decisions, dispose company's assets when the need arises and appoint certain executive officers for example the secretary[29] .

In practical economic reality, the business of the company is managed by higher executives. Major policies in production, marketing, finance and personnel are formulated by the executives and not even confirmed by the Board of Directors. In other main matters such as adding of new products, preparation of the operation budget, negotiation of collective bargaining agreements etc. the Board of Director's role is

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[27] Cap 308. Laws of The Federal Republic of Nigeria
[28] Ibid
[29] Yagba T. A. T. etal: Elements of Commercial Laws (1994) Temza Publishing Company Limited Zaria. page 244.

often reduced to receipt and consideration of expost fact reports.[30] In summary therefore the approving function of the Board of Directors is more important in practice than its initiating function. Even in respect of the approval, some Boards are often passive leaving the final approval to officers below Board level.

On the other hand, most complex data are not made available to non-executive directors before Board meetings. Invariably, Board members rely on management to supply and analyse the information.[31] Thus, management control becomes co-terminous with the power of administration and decision making.

Furthermore, empirical findings show that most Boards meet between 2 to 6 times a year and total deliberation time is hardly more than 36 hours a day.[32] On this basis it is practically impossible for the Board of Public Companies to manage their respective companies no matter what the law says.

It is in this direction that the Bank is not fully protected in ensuring that it secures a seat on the Board of a client company. However, it is desirable that such a representative of the Bank should be knowledgeable in the specific business carried out by the client company. In that wise he would be able to afford minimal protection for the Bank in the direction of understanding the complex data presented by management and analysing such data vis-a-vis the interest of the Bank.

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[30] Ibid
[31] Ibid
[32] Mukubua: Apportionment of Company Powers Between Management And General Meeting: An Analysis of The Debate Cases (1985) Unpublished A. B. U Faculty of Law Seminar

4.4. ACHIEVEMENTS

The Bank was set up for the purpose of speeding up the industrial development of the Nigeria economy. From its inception in January, 1964 to December, 1988, the bank approved a total of N1,285.0 million N70.9 million in equity and N1,214.1 million in loan to 776 industrial projects whose total estimated investment and employment amounted to N4857.0 million and over 150,000 Nigerians respectively.[33] Moreover, the Bank is actively committed to the indigenization of industrial ownership and control. Since 1973, over 90% of its investment has been going to fully Nigerian owned and Nigerian controlled projects.[34]

Though the Bank's financial assistance has hitherto given priority to medium and large scale industrial projects which have a huge potential for industrial growth, small scale projects have also featured prominently in the Bank's Investment Portfolio. Small and Medium Scale Projects are rigorously promoted and financed by the Bank's Area Administration offices located in Kaduna, Aba, Bauchi, Akure and Lagos and its on-lending activities to state development finance institutions. Such development finance institutions that have benefited from its financing activities include investment corporations or companies like the Northern Investment Limited, the Central Investment Company Limited, and Trans Investment Company Limited.[35]

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[33] Address By The Managing Director of Nigeriaan Industrial Development Bank Limited. Alhaji Abubakar, on The Occasion of "NIDB Day" 23rd February, 1989 At The 11th Kaduna International Trade Fair 18th - 25th February, 1989 page 2.

[34] Ibid

[35] Ibid page 3

The Bank has also been making impact in the development of the North West Area Administration. Between January, 1964 and 1998, the Bank Sanctioned Investments totalling N282.3 million (N21 million in equity and N261.3 million in loan) to 178 companies and disbursed N149.6 million (N17.4 million in equity and N132.2 million in loan to states covered by the North-West Administration.[36]

Up-to-date data in respect of disbursed loans have not been made available for the purpose of this research despite repeated efforts. Available records however show that up to the year 1992, a total of N2.6 billion has been approved by the Bank for over 900 industrial projects nationwide with a total estimated capital investment of about N7.7 billion and this generated over 150,000 jobs.[37]

4.5. PROBLEMS

One major problem that the Bank encounters with Nigerian Investors over the years is their ingrained desire to own and run industrial projects all alone. This desire is further complicated by lack of mutual confidence which facilitates the pooling of resources. Consequently, the meager resources of many sole proprietors are not enough for the establishment of the minimum economic plant size required for efficient operation. This problem is associated with both private and public companies. The minimum member of persons that can incorporate a company in Nigeria is "two".[38] In practice, one person is

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[36] Ibid

[37] Alhaji Kasimu S. Y. The Role of Banks In The Survival of Industries being a paper presenter at the National Economic Recovery Seminar Organised by Jobak Konsult at Bagauda Lake Hotel, Kano between 14th - 16th July, 1992. page 9

[38] Companies And Allied Matters Act op cit section 18

capable of owning a company in Nigeria. This is usually done by one person subscribing to the memorandum of Association and the rest taking up shares as his nominees. In some cases, such projects have collapsed with the death of the promoters.[39]

There are also other cases where the Bank has participated in the equity investment in cases of well structured ownership. The relationship among shareholders, even in such cases has not been as cordial as it should be for the success and progress of their Ventures. Besides, the shareholders of some projects have the tendency to distance themselves from the Bank once their projects are in place. Dividends are scarcely decleared by profitable ones and when declared rarely paid in good time.[40] It is in the interest of shareholders and their projects to move close to the Bank as partners in progress. They need the Bank as much as the Bank needs them.[41]

Generally, industrialization in Nigeria is faced with physical and institutional constraints. The physical factors include industrial infrastructural facilities and industrial estates.

Chronic deficiencies in industrial infrastructures such as electric power, water and communications constitute a major set back to industrial expansion and balanced industrial establishment in Nigeria. Almost every industrial establishment undertakes substantial compensating investments to offset the inadequacies.[42] Such investments swell overheard costs and render local industrial products un-competitive price-wise with imports. The more serious nature of the

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[39] Abubakar. A. op cit page 5
[40] Ibid page 6
[41] Ibid
[42] Ibid page 4

inadequacy of these basic facilities outside the major cities is a great impediment to industrial dispersal and rural development.

The institutional factors include legal documentation on land and detailed statistical information on local industrial resources. Many viable projects have been impaired by delayed implementation engendered by delays in securing certificate of occupancy and the consent to mortgage. Delays in implementation invariably occasion time and cost overruns which plague the few projects that survive them for life.[43]

There is no comprehensive resource inventory survey in Nigeria giving information to prospective industrialists and development Banks.[44] This is a social service which any private investor or institution finds too expensive to undertake. Since investors (both local and foreign) have competing locations to choose from, the availability of such basic information would be a great impetus especially to foreign investment.

Experience has also shown that some client companies even refuse to pay back both the principal and interest of loans extended to them on the belief that such loans are their own share of the national cake.[45] Thus, funds which could have enhanced the ability of the Bank to extend credit to other projects are unnecesscerily tied up.

Moreover some client companies engage in double dealing with the collateral security they have already furnished to the Bank for loan already disbursed to them. For instance in NIGERIAN INDUSTRIAL DEVELOPMENT BANK LIMITED V. UNISTEEL WORKS

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[43] Ibid page 5
[44] Ibid
[45] Ibid

LIMITED[46], Bazamari P.V.C. Tiles Limited had mortgaged the following properties namely:- two "Tolledo" weighing scales/machines and one "Still" forklift to the appellant for a loan of N 8 million between 1983-1988 for factory building and purchase of items of plant and machinery and vehicles for the production of wall and floor tiles. The factory is located at Bauchi State within the industrial layout of the state.

The respondent herein, Unisteel Works Limited obtained judgment against Bazanari P. V. C. Tiles Ltd and levied execution against the moveable properties of Bazanari P. V. C. Ltd at Bauchi to wit: the said properties already listed above. The judgment debtor brought a motion for stay of execution of the attached properties. Subsequently in the course of hearing the said application, counsel to the claimant (the appellant) who was also counsel to the judgment debtor filed an interpleader summons claiming *inter alia* that the properties attached by the sheriff of the honourable Court be released accordingly to the claimant who by virtue of the aforesaid loan and mortgage agreements had legal and equitable rights over the properties attached.

In the course of hearing the interpleader summons, counsel to the claimant sought to tender two documents in respect of the two attached properties. This was objected to by counsel to the respondent on the ground that the appellant did not comply with the notice served on it under order 32 Rule 14 of the High Court of Bauchi State civil procedure Rules to make the document available to the respondent. The objection was upheld by the trial court. On appeal, it was held that that

[46] (1995) 3 NWLR (Pt 386) 686 691 - 692

was a technical error which could be waived in the general interest of justice.

In essence a lot of money and time was expended in saving the collaterals by the Bank by way of counsel's charges. In respect of time, the ruling of the High Court of Bauchi State was delivered on 7th may, 1991 by Ozoh J and the appeal in the court of appeal was determined on 1st may, 1995.

4.6. PROCEDURE FOR WINDING UP

There is no distinct procedure provided in any enactment for winding up the Bank. In the circumstances, the provisions of the Banks And Other Financial institutions Decree[47] shall apply without prejudice to the provision of the Companies And Allied Matters Act.[48] The Bank can therefore be wound up voluntarily or at the instance of the court.[49] For avoidance of repetition, the Bank can be wound up in the same manner and circumstances as discussed in respect of the Federal Mortgage Bank of Nigeria.[50]

4.7. CONCLUSION

Since the commencement of the structural adjustment programme, the Bank has intensified its efforts in the pursuit of two cardinal objectives, *to wit* economic relevance and financial survival. The

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[47] Section 53 Banks And Other Institution. Decree No. 25. 1991
[48] Section 401. Companies And Allied Matters Act. 1990
[49] Ibid
[50] See paragraph 2.8. chapter 2.

economic environment has changed and the Bank has accordingly reviewed its activities in order to meet the industrialization challengers of the Sructural Adjustment Programme, and thereby remain in the forefront of the National effort at the restructuring of the Nigerian economy. Though the investments required have longer gestation period they often have bright future prospects and could aslso meet the industrial aspiration of the Nation.

The Bank is not only totally committed to the needs of the national economy, but it has also embarked upon the diversification of its activities in order to remain viable and make good returns on the investment of the shareholders. In the same vein, the Bank has invested in such areas as merchant banking, stockbroking and consultancy services.

Furthermore, the Bank provides medium and long-term loans, equity finance and non-financial assistance. Its operations are not governed primarily by the profit motive.

CHAPTER FIVE

5.0. NIGERIA BANK FOR COMMERCE AND INDUSTRY.

5.1. INTRODUCTION

The Nigerian Bank For Commerce And Industry was established by Decree in 1973[1] and commenced operation on the 15th day of October,.1973 as a Federal Government owned Development Bank. In 1990 the 1973 Decree was repealed and in its place a new Act[2] was enacted regulating the Bank.

As spelt out in the enabling Act[3] , the functions of the Bank range from the provision of equity and loan funds to indigenous persons, institutions, and organizations for medium and long term investment in industry and commerce to the performance of all aspects of commercial and merchant banking business. It also provides other range of financial services such as loan syndication, guarantees, letters of credit and bills for collection business, feasibility studies, management consultancy, equipment leasing and Foreign Exchange related operation. The Bank is also a member of the Nigerian Stock Exchange.

From inception, the Bank's equity capital was provided by the Federal Government and the Central Bank of Nigeria in the ratio of 60% to 40% respectively. The initial equity capital of N50 million[4] was made

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[1] Nigerian Bank For Commerce And Industry Decree No 22 1973.
[2] Nigerian Bank For Commerce And Industry Act Cap 296.
Laws Of The Federal Republic of Nigeria, 1990.
[3] Ibid Section 2.
[4] Ibid Section 5(2)

up of 500,000 shares of N100 each and it was fully subscribed by the Federal Government of Nigeria.

In order to reposition the Bank to meet challenges of the 21st century, its operations were recently restructured and the authorized share capital increased to N1.0 billion with an immediate call up of N400 million.[5] The Bank also accesses funds from the capital market and other multilateral sources for its operations.

Although the funds of the Bank have been provided mainly by its shareholders by way of contribution to its share capital, the Federal Government of Nigeria has also provided loans under concessionary terms for the Bank's lending operations. However the Bank is free to raise funds from sources within and outside Nigeria. In this regard the Bank has been able to procure loans from Morgan Grenfell & Co Limited of the United Kingdom, the World Bank and the African Development Bank[6] . The Bank has also enjoyed machinery credits from Hungarian authorities in respect of projects promoted by the Bank in some parts of the country.[7]

Under the Central Bank of Nigeria's credit guidelines, a minimum proportion of loans granted to industries by commercial/merchant banks must be given to small-scale industrial units. Where actual loans given at the end of the year fall short of the prescribed minimum, the Central Bank of Nigeria is expected to compute the short fall and pass

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[5] The Nigerian Bank For Commerce And Industry "IN BRIEF" (1998) NBCI Publication 1998 page 2.

[6] Information Booklet: Incorporating NBCI'S Basic Financing Terms And Conditions (1998) NBCI Publication. page 8

[7] Ibid

equivalent funds to the Bank as loan for on-lending to Small-Scale Industries.[8]

5.2 STRUCTURE AND ORGANIZATION

The Bank has its corporate Headquarters in Abuja, the Federal Capital. There are also four zonal offices situate in Enugu, Ibadan, Jos, Kano and Lagos.[9] These offices take charge of the Bank's activities at the state and local government levels.

The Bank normally supports only business ventures owned at least 60% by Nigerians. Corporate bodies are preferred to non-corporate bodies.[10]

5.2.1 PROCEDURE FOR GRANTING LOANS

Where there is an application for a loan from the Bank, the bank must first be satisfied that the project is a good business proposal. For this purpose, the Bank's executives in its Appraisal Department will require to obtain and analyse such information as will enable the Bank to judge satisfactorily the economic and financial merits of the business proposal. Feasibility studies per se are not necessarily required by the Bank for this purpose. However to guide those who may be dealing with the Bank for the first time, the Executives have designed a questionnaire to be completed by prospective clients.

The period that is needed by the Executives for a satisfactory analysis of the information gathered from completed questionaires

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[8] Ibid
[9] The Nigerian Bank For Commerce And Industry "IN BRIEF" (1998) NBCI Publication page 2
[10] Information Booklet: Incorporating NBCI'S Basic Financing

depends very much on the quality of the data provided by the potential clients. This may vary from a few days to several months.[11]

In order to avoid delays and the attendant frustration such delays generate, it is most important that the information needed by the Bank is fully supplied and properly presented. The completed questionnaire is invariably followed by field work by the executives who are expected to hold discussions with the potential clients and to carry out independent investigations to clarify issues on which there may be some doubts.

The whole process leads eventually to the completion by the executive of a project memorandum quite separate from any feasibility study and completed questionnaire that may have already been supplied to the Bank. It is this memorandum that forms the basis for the Bank's decision whether or not to assist. The final decision may be taken by the Bank's full Board or by management as authorized by the Board of directors.

5.2.2 LETTER OF INTENT

After approval of the business proposals, the Bank issues a letter of offer of the approved assistance and lists the terms and conditions on which the actual investment would be consummated. These terms and conditions are generally classified into preconditions and other conditions.[12] The preconditions relate to the conditions which must be fulfilled before the Bank agrees to sign an agreement to assist. It must be stressed that the Bank's letter of intent is not a commitment on the

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Terms And Conditions (1998) NBCI Publication page 8.

[11] Ibid page 11

[12] Ibid page 12

Bank's side to give the assistance needed but a mere indication that the Bank would be willing to do so subject to an agreement, usually under deed, being executed and to satisfactory fulfillment of the Bank's preconditions. The other conditions are generally the proposed main provisions in the subsequent agreement.

Generally, the Bank requires its clients to have some financial stake in the business as a precondition for its investment. This stake is expected to be at least 10% of the total estimated investment in the project excluding its working capital.[13] Where the total capital cost of the project is over N1 million, the clients' contribution is expected to be at least 15%.[14] These are minimum contribution requirements. The Bank may require much higher contributions if this is considered desirable for a healthy capital structure of the business. A rate of contribution of at least 20% is however often required as this will ensure satisfactory compliance with the requirements of the Bank's International credit donors such as the World Bank and the African Development Bank.[15]

It is the policy of the Bank not to make liquid funds available directly to its clients. The Bank prefers to make direct payments to suppliers of goods and services to the project on proof of actual performance by the suppliers or on reliable legal commitment to perform on their part. Request for disbursement may be made by clients anytime after signing an agreement with the Bank. The request is expected to be

[13] Ibid page 13
[14] Ibid
[15] Ibid

made by completing a Disbursement Requisition Form which is furnished by the Bank's Supervision Department.[16]

Where the Bank is committed to make investment in equity shares of a client company, it may consider advancing the "equity finance" as a temporary but secured loan, at a stated rate of interest before all the requisite pre-conditions are fulfilled. Such advance would be subsequently converted into shares in exchange for Share Certificates after all the pre-conditions have been fulfilled.

5.2.3. SECURITY FOR LOANS

The Bank would accept any asset of lawful commercial value as security for its loan.[17] By and large, the Bank must be satisfied with the mortgage to it of the assets to be acquired with the combined sums contributed by the project sponsors and by the Bank. However, the Bank expects the value of these assets to be more than the loan it is giving. For assets that are of a wasting or fast deteriorating nature, additional security might be asked for. Existing or old assets not purchased with the Bank's funds are normally professionally valued at the Bank's instance and at the expenses of the potential clients. Director-controlled companies as clients are required to have the Bank's loan guaranteed personally (jointly or severally) by their major sponsors or shareholders in addition to any security they have to offer to the Bank.[18] This condition is salutory more particularly in respect of the Bank's interest. This is moreso where many companies suffer undercapitalisation and in the event of corporate collapse, the liabilities

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[16] Ibid
[17] Ibid page 12
[18] Ibid

are usually more than the assets. This condition therefore pierces the veil of incorporation by agreement between the parties right from the inception of the loan agreement.

5.2.4. PROJECT MONITORING ACTIVITIES

The Bank has a separate Supervision Department which follows up the activities of projects financed by it. The Department's activities commence from the actual receipt of the Bank's funds for the project. The main responsibility of this Department is to monitor the execution of projects. This is done by the periodic visits to the project sites to assess the progress or lack of progress of its implementation. The Bank's clients are generally under obligation to send periodic reports on their projects to the Bank and to provide any data the Bank may need about their operations from time to time.[19]

The Bank does not normally wish to be involved in the day-to-day management of its client's businesses. However, it does keep a very close watch on their operations through its Investment Supervision Department and Area and Branch Offices. The Bank's agreements with the clients do provide that the Bank must be satisfied with the arrangements made to manage the business. Under the agreement, the Bank may for example engage professional accountants to draw up, at their client's expense, good accounting system for adoption by the client.[20] It is also the policy of the Bank to reserve the right to nominate at least one member on the Board of each client company. The Bank's agreement with its clients provide for this right.[21] As earlier pointed out

[19] Ibid page 14
[20] Ibid page 16
[21] Ibid

this seeming protection has lost its efficacy in the managerial revolution. The Board of directors of particularly large public companies have lost their powers of management to managerial technocrats.[22]

As a last resort action, the Bank may appoint a Receiver or Receiver/Manager to manage the Business with a view to redeeming the client's financial obligations to the Bank.

5.2.5. LETTER OF CREDIT BUSINESS

The Bank has correspondence relationship with a number of banking institutions in the major financial centres of the world. The Bank opens letters of credit for those who approach it with such request. The services are given to both the Bank's already established clients and to new enquirers. The conditions for doing this are by and large, the same as those of other banks except that the bank is more venturesome in considering securities and cash deposits offered by those who approach it.[23] The Bank's letters of credit business is carried out through the Merchant Banking Operations Department.

5.2.6. INVESTMENT PORTFOLIO

It is the objective of the Bank to ensure even geographical spread of its investments all over the Federal Republic of Nigeria. The Bank therefore watches very closely the spread of locations of the projects it finances and may rate the importance of proposals brought to it for support according to the location of the project. As regards sectoral distribution of the Bank's investments, the objective is similar to that of

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[22] See chapter 4 paragraph 4.3
[23] Information Booklet: Incorporating NBCI'S Basic Financing

geographical distribution. In addition, higher priority is accorded to the smaller and medium-scale projects with potential for high local value-added.[24] What is small-scale and medium-scale in this regard very much depends on the type of project. However, the bank has adopted working definitions of investments in plant, machinery and equipment not exceeding N1 million for small-scale and N5 milliom for medium scale enterprises.[25] In those states where the Bank's investments are considered below national average, deliberate efforts are made by the Bank to promote projects in partnership with the Governments of those states or with serious - minded businessmen ordinarily resident in those states.[26] The Research And Promotions Department of the Bank deals with the promotion of viable projects in such areas.

The department, as part of its promotional activities, prepares project profiles for eventual recommendation to interested persons in such geographical areas or states.

5.2.7. LIMITS TO INVESTMENT FUNCTIONS

The Bank has power under its enabling Act[27] to perform any banking functions, while its board has power to prescribe limits to its investment functions just as it has power to prescribe and periodically revise the Bank's terms and conditions for investment. The principal limits operating may be summarized as hereunder:

Terms and Conditions (1998) NBCI Publication page 14

[24] Ibid page 15

[25] Ibid page16

[26] Ibid page16

[27] See foot notes No 2

The Bank may not finance pure residential accommodation or such real estate business which is not part of a bankable business venture, infrastructure for general public use such as roads, schools and other public utilities, mining as distinguished from quarrying business, pure agricultural plantation not intended to support a specific manufacturing or processing business and scientific and other educational viable bankable business.[28]

The bank's priorities are, food production processing, storage and preservation, clothing, health, building materials, purchasing and industrial raw materials.[29]

5.2.8. RATE OF INTEREST ON THE BANK'S LOANS

The Bank generally charges slightly less than commercial rates of interest on loans to its clients. The, actual rate is determined and revised from time to time by the Bank's Board. In fixing the rate, the Board has regard to the prevailing commercial rate of interest and to the effective cost to it of its own funds. The bank imposes penalty for delayed interest payment and charges interest on arrears remaining unpaid untill the next due date. Generally, the rate of interest is flexible as it is related to the Central Bank of Nigeria Rediscount rate.[30]

5.2.9. TRAINING SCHOOL

The Bank runs a training school which was established for manpower development. The courses in the training school include

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[28] Information Booklet. Op cit page 9
[29] Ibid
[30] Ibid page 13

induction courses for new employees, Seminars and Lectures of short-term duration.

5.3. REGULATION OF THE BANK

The Financial Services sector in Nigeria is regulated by two principal legislations namely: The Banks And Other Financial Institutions Decree[31] and the Central Bank of Nigeria Decree.[32] Before 1997 the Nigerian Bank for Commerce and Industry was exempted from the provisions of these two Decrees.[33] Though a corporate body it was not incorporated under the Companies And Allied Matters Act.[34] The Bank was therefore run like a public Corporation taking directives from its Board of Directors subject to approval by the Minister of Finance and Economic Planning. For instance the bank's borrowing powers were subject to the Minister's approval and no more.[35] The Bank's power to receive grants, loans and advances and other monies on deposits or otherwise from the Government, the Central Bank and any other Commercial Bank and the public in general solely depended on the approval of the Minister.[36] Equally the powers of the Board of directors of the Bank to make regulations as may be necessary for giving effect to the provisions of the enabling Act[37] were subject to approval by the Minister of Finance and Economic Planning. The powers of the minister were so extensive that section 13(1) of the enabling Act[38] provides.

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[31] Decree No. 25. 1991 as Amended by Decree No. 4. 1997
[32] Decree No. 24. 1991 as Amended by Decree No. 3. 1997
[33] Section 51 Banks And other Financial Institutions
[34] Cap 59 Laws of the Fedeal Republic of Nigeria 1990
[35] Section 7 (1) Nigerian Bank For Commerce And Industry Act, Cap. 296 1990 Laws of the Federal Republic of Nigeria.
[36] Section 7 (2) Ibid
[37] Section 12 Cap 296 Laws of The Federal Republic of Nigeria 1990.
[38] Cap s96 Laws of The Federal Republic of Nigeria 1990

"Unless a contrary intention appears, anything required to be prescribed under this Act shall be prescribed by the Board with the approval of the minister."

The Board's power to make bye-laws was equally subject to the approval of the minister.[39] The preparation of proper record of accounts in respect of each financial year was to be done in such form as the minister directed though such form was to conform with the best commercial standards.

By the provisions of the Banks and Other Financial Institutions (Amendment) Decree,[40] the Bank is subject to the same regulatory mechanics like other Banks.

Now that the exemption clause has been deleted, the Bank is under a duty to maintain cash reserves with the Central Bank of Nigeria as may be directed from time to time.[41] The Bank is also subject to the routine examination and report thereon from officials of the Central Bank.[42] Equally the Bank is now subject to special examination by the Central Bank of Nigeria if it is in the public interest so to do or any other reason specified by law permitting the Central Bank of Nigeria to do so.[43]

Under the new regime, the Bank shall not only keep proper books of account as approved by the minister but such books shall explain all the transactions of the Bank and give a true and fair view of the state of affairs of the Bank and in compliance with the accounting standard as may be prescribed for Banks.[44]

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[39] Section 10 Ibid
[40] Section 25. BOFID. Decree No 4. 1997
[41] Section 15. BOFID. Decree No. 25, 1991
[42] Section 31 Ibid
[43] Section 31 Ibid
[44] Section 24 (1) Ibid

The books of account shall be kept at the principal administrative office of the Bank and at the Branches of the Bank in English Language or any other language approved by the Federal Government.[45]

Empirically, the books of account of the Bank have been kept since the inception of the Bank in English Language.

Similarly, subject to the prior approval of the Central Bank in writing, the Bank may grant to any person any advance, loan or credit facility or give any financial guarantee or incur any other liability on behalf of any person if such amount is more than 50% of its shareholder's fund unimpaired by losses.[46]

The Bank is solely owned by the Government and is equally entirely controlled by the Government. The Board of Directors of the Bank is still subordinate to the Minister of Finance and Economic Planning. The powers of the minister are still exentsive except where such powers are contrary to the provisions of the Banks and other Financial Institutions Decree, then the provisions of the Decree shall prevail.

The chief executive of the Bank is the managing director who is responsible for the day-to-day running of the Bank.[47] He is appointed by the Board subject to the approval of the minister.[48] The managing director shall not while he is the holder of that office be the holder of the

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[45] Section 24 (3) Ibid
[46] Section 20 (1) Ibid
[47] Section 4 (1) Nigerian Bank For Commerce And Industry Act, Cap 296 Laws of The Federal Republic of Nigeria 1990.
[48] Section 4 (2) Ibid

office of a director in any other bank, corporation, company or any other concern except with the approval of the minister.[49]

5.3.1. MEETINGS

Every meeting of the Board is usually presided over by the chairman or if the chairman is unable to attend any particular meeting, by another member appointed by the members present at the meeting to act as chairman for that particular meeting.[50] The quorum of members at a meeting of the Board is the chairman (or in appropriate case the person appointed to act as chairman) and six other members.[51]

Notices of meetings and proceedings thereat are usually given to all the Board members. As held in the case of ONWUKA V. TAYMANI, *supra*, any meeting convened without notice is invalid and all resolutions taken in such a meeting are inconsequential in law.

5.3.2. AUDIT

The accounts of the Bank are usually audited by a firm of independent auditors. The auditor's report is usually attached to the annual financial statements. This report is significant as a confirmation that the accounts may be relied upon as true and fair.

In scrutinizing the accounts, an auditor is expected to exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.[52] This appears to adopt the formulation of the common law courts as to the auditor's duties which was classically

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[49] Section 4 (3) Ibid
[50] Paragraph 2 of the Schedule Ibid.
[51] Paragraph 3 of The Schedule Ibid
[52] Section 368 (1) CAMA 1990.

expressed in the judgment of Lopes LJ in RE KINGSTON COTTON MILLS (NO 2), *supra.* This is referred to as the watchdog formulation.

It is submitted with the greatest respect that the watchdog formulation leaves much to be desired in determining accurate and meaningful financial information in the Bank within the context of the new disclosure regime. It is in this direction that Lord Denning's dictum in FOMENTO (STERLING AREA) LTD V. SELDON FOUNTAIN PEN COMPANY LIMITED, *supra,* is preferrable.[53]

5.4. ACHIEVEMENTS

The role of a development Banking Institution such as the Nigerian Bank for Commerce And Industry is aptly depicted in its motto which summarizes its functions as that of "Catalyst for Growth and Development".[54] In fulfillment of its corporate mission, the Bank over the years has encouraged and supported agro-based industries, particularly those related to food processing, preservation and storage and processing of industrial raw materials for both local market and for export.

To boost its resource base, the Bank successfully negotiated local concessionary loans totalling N120 million from its shareholders between 1978-1993.[55] It also contracted foreign currency loans of us $20 million from Morgan Grenfell and Company, UK in 1981, US $41 million from the World Bank in 1984, US $14.5 million machinery

[53] See chapter 3 paragraph 3.3
[54] The catalyst. House Journal of The Nigerian Bank For Commernce And Industry September. 1995 volume II No. 2. page 2
[55] Ibid page 6

credit from Elgep Food and Mounting Corporation of Hungary in 1987 and also US $50 million from African Development Bank in 1987.[56]

As at December, 1994, the Bank sanctioned investment in 809 projects totaling about N1.1 billion while disbursement correspondingly amounted to N924.5 million to 491 projects located in various parts of the country.[57] In 1996, it was reported that the Bank sanctioned 810 projects amounting to N1.116 billion Naria from inception and disbursed N924.5 million to projects in different parts of the country.[58]

The Bank also sponsored 411 projects spread across the seven states of Ibadan zone namely Edo, Ekiti, Kwara, Ogun, Ondo, Osun and Oyo. The projects include aluminum projects, palm kernel oil, soap making, fashion design, printing and publishing, bakery, domestic gas bottling, footwear and pharmaceutical industries.[59] It is noteworthy that the granting of the above facilities by the Bank is no doubt an eloquent testimony and evidence of its growing acceptability and profile as a reputable development finance institution for small and medium scale industries in Nigeria.

One area where both the earlier development corporations and the more recent institutions appear to have totally neglected is the matter of entrepreneurship development and in general arrangements for providing needed supporting back-up services.[60]

The greatest challenges therefore facing any nation in combating unemployment through the promotion of small and medium scale

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[56] Ibid page 8
[57] Ibid
[58] The catalyst. House Journal of The Nigerian Bank For Commernce And Industry June, 1996, volume 12 No. 1, page 3
[59] The catalyst Ibid March 1998 volume 14 No. 1 pages 1-2

enterprises is the ability to identify select, develop, train and nature these potential entrepreneurs who will become successful in their business ventures.

To overcome this lack of entrepreneurship training, the Federal Ministry of Industries and the Nigerian Bank For Commerce And Industry Sponsored the execution of the adapted working-for-yourself (WFYP) programme from Durham UK and Entrepreneurship Development Programme (EDP) of India.[61] The experiences gathered in the implementation of these two programmes have been of tremendous assistance in evolving a Nigerian Model of Entrepreneurship Development.

A comprehensive review of the Bank's portfolio has been carried out to monitor the performance of the Bank's sponsored projects. It is in this direction that a project Rehabilitation Department has been created to take care of sick projects, while priority is given to the recovery of the outstanding overdues.[62]

The Bank is a member of the World Association of small and Medium Enterprises (WASME), and Association of African Development Finance Institutions (AADEFI). Its interaction with these renowned organizations has made it possible for it to share experiences and knowledge regarding the development of Small and Medium Scale Industries.

Similarly, the operations of the Bank are being computerized under a two-phased programme. Phase one involves the installion of

[60] The catalyst Ibid September, 1995 volume 11 No. 2 page 7
[61] Ibid
[62] Ibid page 3.

facilities for payroll and personnel system, staff Accounting and General ledger while phase two covers the extension of computer facilities to individual operational departments.[63]

5.5. PROBLEMS

The Bank has been constrained in the performance of its role by several factors. One of the major problems constraining the lending operations of the Bank is inadequate funding. The traditional cheap source of funds to the Bank is Government loans and grants. Loans and grants from the Government have not been forthcoming due to budgetary and financial limitations.

External sources of funds for the operation of the Bank have become equally difficult to source because of the high level of developing countries' external debts. Attempt by the Bank to raise funds through local market are also frustrated by the prevailing high interest rate which makes the cost of funds too high for on-lending to the small and medium scale entrepreneur projects. The liquidity position of the Bank has been grossly threatened by foreign exchange rates, trade policies and high inflation rates which have increased investment costs and affected adversely the viability of projects and the capability of the borrowers to pay the loans.

Poor mechanism for loan recovery has aggravated the financial plight of the Bank as a result of huge portion of its resources being locked up in bad debts owed by project promoters who regard repayment of bank loans not as an obligation to be discharged but as

[63]Ibid page 6.

their own share of the "national cake". [64] The legal process for loan recovery is also tortuous and debtors take advantage of it to wreak havoc on the Bank. In some instances the Bank has wasted time and money pursuing appeals based on technical rulings before the sunstantive matter is eventually heard. This includes cases where the Bank's action is dismissed in limine. In NIGERIAN BANK FOR COMMERCE & INDUSTRY V. MARINE & GENERAL INS. CO. LTD.,[65] The appellant Bank had sued the respondent at the High Court of Lagos State to claim a debt which the respondent had guaranteed to another person. On the date on which the case was set down for trial, the appellant was absent although its counsel was present. Upon the case being called, the appellant's counsel told the court that his client was inevitably absent and he sought for an adjournment. The counsel to the respondent however urged the court to dismiss the appellant's suit for lack of delligent prosecution which the trial court did. Allowing the appeal the Court of Appeal held inter alia that in the circumstances of the instant case, the refusal by the learned trial judge to consider the application for adjournment was clearly wrong being on an injudicious exercise of his discretion.

Similarly in NIGERIAN BANK FOR COMMERCE AND INDUSTRY LIMITED (SIC) V. EUROPA TRADERS LIMITED.[66] It was held that the Bank is a limited liability company but it was granted an exemption from the addition of the word "Limited" to its name. The court further held that the High Court was right when it struck out in limine the above captioned suit because the word 'limited' was added to

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[64] The catalyst Ibid December, 1996 volume 12 No. 3 page 4
[65] (1990) 2 NWLR (pt 221) 71
[66] (1990) 6 NWLR (pt 154) 36

the name of the Bank. In other words this is a proper case of misdescription.

Another serious problem facing the Bank is financial instability exacerbated by huge losses arising from the fact that the Bank is seriously engaged in funding projects that are very risky in nature and most of the projects are largely located in rural areas in response to government's policy of even development.[67] In fact, the Bank bears a lot of costs which Commercial and Merchant Banks shy away from. Sometimes, the Bank obtains funds at concessionary rates from Government and is obliged to lend them at rates below those charged by commercial and merchant banks, but the cost of administration of the loan is borne by the Bank.

In the recent past, there has been a proliferation of development finance institutions resulting in the establishment of Family Economic Advancement Programme (FEAP) whose main objective is to harness all the potentials in local areas with a view to establishing viable cottage industries and other projects that will ensure the much deserved economic exmpowerment of the Local populace. The creation of Family Economic Advancement Programme has given rise to unnecessary duplication of functions as well as waste of efforts and financial resources. The budgetary allocation of N4.3 billion[68] to FEAP should have been channeled to the Nigerian Bank For Commerce And Industry that has not been able to give out loans since 1992 as a result of liquidity squeeze.

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[67] The catalyst op cit December, 1996 volume 12 No. 3 page 2
[68] The catalyst op cit March 1997 volume 13 No. 1 pages 1-2

The creation of National Economic Reconstruction Fund (NERFUND) in may 1989 opened a flood gate for the influx of commercial and merchant Banks into small and medium enterprises development financing.[69] These are institutions that lack in the strictest sense of the word the capability and know-how of sound project packaging appraisal and development. In fact, before the establishment of National Economic Reconstruction Fund, Commercial and Merchant Banks shunned small and medium enterprises financing. With the arrival of NERFUND, these banks called "participating banks" saw what looked to them as a vehicle for shoring up their operations. Today a large number of the participating banks operating alongside the Nigerian Bank For Commerce And Industry have gone distressed creating problems for the National Economy.[70]

5.6. PROCEDURE FOR WINDING UP

The Nigerian Bank For Commerce And Industry Act[71] which is the enabling law establishing the Bank is silent on the issue of winding up. In the light of this hiatus, the provisions of the Banks And other Financial Institutions Decree[72] shall apply.

In the first place, the Federal Government of Nigeria and the Central Bank of Nigeria being the only shareholders of the Bank can voluntarily wind up the Bank by a direct Government action through on instrument spelling out the terms of the winding up of the bank.

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[69] The catalyst op cit. December. 1996 volume 12 No. 3 page 3
[70] Ibid pages 3-4
[71] Cap 296, Laws of the Federal Republic of Nigeria 1990
[72] Decree No. 24, 1991

Secondly, if the Governor of the Central Bank is of the view that the paid-up capital of the Bank is lost or unrepresented by available assets, he may with approval of the Federal Government of Nigeria make an order directing that the Bank be wound up.

The Bank is expected to provide "Chequing facilities" for its customers.[73] This invariably means that it is expected to run current accounts. From the research, that is yet to be done. When that is eventually done, each customer shall be insured with the Nigerian Deposit Insurance Corporation.

Where the Bank in the circumstances is undercapitalized, the Nigerian Deposit Insurance Corporation shall take over the management of the Bank.[74] However, where the undercapitalisation is critical or is as a result of forgeries or other financial malpractice, the corporation may recommend to the Central Bank of Nigeria that the Bank be wound up. If within 30 days no response is received, the corporation may apply to the Head of State for consent to liquidate the Bank as an insured institution. Thereafter, it can apply to the Federal High Court for a winding up order.[75]

5.7. CONCLUSION

The Nigerian Bank For Commerce And Industry was established with laudable objectives. It is however bedeviled with so many problems. It is therefore yet to fully meet its targeted objectives.

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[73] Section 2 (8) NBCI Act cap 296 Laws of The Federal Republic of Nigeri 1990.
[74] Section 23 (a) (1) Nigerian Deposit Insurance Corporation (Amendment) Decree No. 5. 1997.
[75] Section 23 (c) (2) and (3) Ibid.

Financial constraint is the major problem of the bank. The Federal Government of Nigeria should assist the Bank off-load losses from non-performing loans while retaining viable loans. This would go a long way in improving its capacity to mobilize resources and rebuild private sector confidence in order to attract the much needed resources and begin lending on sound financial principles. Furthermore, to improve the availability of finance and increase the supply of long term funds, equity capital and working capital to the industrial sector, there is the need for government to improve the institutional capacity for implementing the various policies and programmes for mobilization of domestic savings. The financing of small and medium enterprises is a right step in the right direction of encouraging the growth of industries in the rural areas. This being the focus of the Bank it should be given all the encouragement it deserves both from the government and the citizenry.

CHAPTER SIX

6.0. SUMMARY AND RECOMMENDATIONS

6.1. SUMMARY

This dissertation has basically focused on the role of development Banks or scheduled Banks in the economic development of Nigeria. Four of the scheduled Banks have been specifically studied to wit:- The Federal Mortgage Bank of Nigeria, The Nigerian Agricultural And Co-operative Bank Limited, The Nigerian Industrial Development Bank Limited and the Nigerian Bank For Commerce And Industry. All the stated Banks have been studied respectively from the following perspectives:- Historical evolution by way of introduction, structure and organization, Regulation, Achievements, Problems and Procedure for winding up.

The major scheduled Banks in Nigeria are specialized in various economic sectors. The Nigerian Industrial Development Bank Limited and the Nigerian Bank For Commerce And Industry operate in the Industrial Sector while the Nigerian Agricultural And Co-operative Bank Limited and The Federal Mortgage bank of Nigeria operate in the agricultural and housing sectors respectively. The Nigerian Industrial Development Bank Limited was specifically set up to finance medium and large-scale industrial projects while the Nigerian Bank For Commerce And Industry focuses attention on small scale enterprises. Nevertheless, the Nigerian Industrial Development Bank has never closed its doors to potential investors in the small-scale Industrial Sector.

The fact that scheduled Banks are geared principally towards economic development rather than profit earning explains why their ownership, funding and management are government-determined. The goals set for the scheduled Banks in most cases, are not meant to compete with conventional Banks as most of their activities are developmental in nature and outside the traditional banking activities. Broady speaking, their functions include channelisation of investment funds to industrial, commercial and agricultural activities in accordance with government priorities in those sectors; acquisition and domestication of foreign technology through joint venture agreement and mobilization of funds for on-lending operations. Others are, acquisition and dissemination of salient information on investment opportunities for the benefit of potential entrepreneurs; Identification and training of potential entrepreneurs and provision of technical and management support to assisted projects to ensure survival.

Scheduled Banks interprete economic viability beyond mere profitability. They engage in development projects that meet laid down policy objectives such as creation of jobs, utilization of local raw materials, even development and geographical spread of industries, transfer of technology, export stimulation, import substitution and creation of entrepreneurship awareness and improvement in entrepreneurial skills. The interest rate on loan by the conventional Banks is higher than that of the scheduled Banks.

To the conventional Banks economic viability is equated with profitability which dictates the cautionary attitude of conventional banks to project finance. The scheduled Banks invest in both short-term and

long-term project and demand for security only where it is absolutely necessary.[1]

The Scheduled Banks are regulated by the Banks And other Financial Institutions Decree[2] And the Central Bank Decree[3] . The Banks are therefore subject to the same regime of regulation like other conventional Banks. Apart from the Federal Mortgage Bank which runs a saving account for its customers, the other Banks have no relationship with the Nigerian Deposit insurance corporation. This is because those other banks do not have insured customers.

All the discussed Banks have recorded achievements in line with their respective objectives. Each bank has its own problems preventing it from fully realizing its objectives. However certain problems are common to all the Banks that have been studied. These include lack of adequate financial resources, poor mechanism for loan recovery aggravated by the greed of the clients who regard loans from the Banks as part of their "national cake", financial instability and proliferation of Finance Development Institutions.

Only the Nigerian Agricultural and Co-operative Bank has provided for winding up in its Articles.[4] The rest of the instruments setting up the other Banks are silent on winding up. The mechanism for winding up the banks in the circumstances has been fully discussed.

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[1] The catalyst. House Journal of Nigerian Bank For Commerce And Industry. volume 11 No. 2 September. 1995 page 6
[2] Decree No. 25. 1991 as Amended by Decree No. 4. 1997
[3] Decree No. 24. 1991 as Amended by Decree No. 3. 1997
[4] Section 9 (4) Articles of Association of Nigerian Agricultural

Though all the discussed banks are juristic persons since they all have corporate personality distinct from their respective shareholders, only the Nigerian Bank For Commerce And Industry and the Federal Mortgage Bank of Nigeria have not added the word "Limited" to their names. In substance, all the banks are still subject to some measure of supervision from their parent ministries. However this supervision is subject to the provisions of the Banks And other Financial Insitutions Decree[5] and the Central Bank Decree[6] .

The regulatory authorities have prescribed minimun lending limits for conventional banks to the preferred or productive sector of the economy and imposed financial sanctions for non-compliance. However in pursuance of their economic objectives of profit making, conventional banks have invariably elected to suffer the prescribed penalties rather than have their shareholders' and investors' funds applied to uncertain and risk-ridden investment area of small and medium scale project finance. It is against this backdrop that the scheduled Banks have been established to fill up that gap in the Nigerian economy.

6.2. RECOMMENDATIONS

One of the most acute problems facing the scheduled Banks is lack of adequate financial resources. There is therefore the need for amendment of the various instruments establishing the scheduled Banks to enable them operate as universal or multipurpose banks which will allow them to provide both Commercial and Investment banking

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And Co-operative Bank Limited.

[5] See footnote 2

[6] See footnote 3

services especially for their project clients. This system, now working well in parts of Asia and Europe[7] will promote closer interaction between the scheduled banks and their clients and so reduce the cost of lending.

Similarly, a guarantee scheme should be established to cover at least part of the bonafide loss the banks incure in any loan made to the industrial sector especially the small and medium scale enterprises. The idea of a National Risk Fund sould be revisited.[8]

The law should be reviewed restricting contractual saving and Institutional investors such as life insurance companies and pension schemes from investing in corporate bonds and equities. These companies have long-term and generally predictable liabilities. They are potentially good outlets for funds and the scheduled banks could channel them to industries and agriculture.

A special support funding scheme for the scheduled banks for funding the working capital needs of the small medium scale enterises should be established since the conventional banks shy away from this role.

In order to forestall the risk element inherent in obtaining foreign loans by the scheduled banks, an arrangement should be made whereby the liability is fixed and stated in naira. In order to ensure sustained liquidity, the scheduled banks need to modify their *modus operandi* to make loan contracts more easily enforceable. To this end, meaningful bankruptcy legislation, should be put in place to take

[7] The catalyst. House Journal of the Nigerian Bank For Commerce And Industry. volume 12 No. 3. December, 1996 page 1.
[8] See footnote 1 at page 8.

care of debtors that have genuinely gone bankrupt. Likewise, appropriate legal instrunments should be instituted to punish those who, while claiming inability to service their loan obligations due to National economic depressions, are seen indulging in unproductive and ostentatious living.[9] *"The Failed Banks Decree"* is hereby appreciated and it is recommended that it should be sustained.

Another possible means of improving the financial stability of the scheduled banks is to convert at Federal and State levels government loans to equity while the balance of funds required to maintain the net worth of each scheduled bank will be seen as subscribed capital to be paid in accordance with a pre-arranged schedule.

In the light of efforts by government to sanitize the financial sector, there is need to decide between strengthening the existing scheduled banks and creating new ones. No doubt scheduled banks suffer from financial constraints and putting money into the creation of new ones has to be decided on the basis of cost/benefit analysis.

There should be improvement and expension of physical infrastructures such as electricity and water supplies and roads network so as to reduce the high social cost of setting up industries.

State governments should also step up the provision of industrial estates to alleviate the problem of industrialists in securing appropriate land. The provision of industrial estates should go beyond merely setting an area aside for the purpose. It should include the provision of adequete buildings and basic facilities. This will serve as a great incentive to industrial investment.

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[9] Section 29. failed Banks (Recovery of debts) and Financial Malpractices in Banks Decree, 1994.

State governments should also urgently address legal documentation on land and detailed satisfical information on local industrial resources. Certificates of Occupancy should be issued within a period of three months from date of application. All applications for consent to mortgage should be given speedy attention by the state governments. Many projects have been impaired by implementation engendered by delays in securing these instruments i.e. Certificate of Occupancy amd consent to Mortgage.

Training and retraining of existing staff should be intensified as well as the introduction of modern technology to enable them package and market new banking products that would be sustainable to their clientele.

6.3. CONCLUSION

The relevance of scheduled banks in the rapid transformation of the Nigerian economy is not in doubt. The pitfalls which have militated against their effectiveness have been identified. The scheduled banks must therefore toe the line of the fast changing world economic order to enable them to be self-sustaining and effective in meeting the new challenges of the sectors they are set up to serve.

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