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The Nigerian Financial Services Industry: An Overview

THE NIGERIAN FINANCIAL SERVICES INDUSTRY: AN OVERVIEW

There are separate regulators for various aspects of Nigeria's large and fast-growing financial services sector.

The regulators have not all always been given or pursued coherent mandates, their mandates have varied over time, and they appear to have been influenced by political considerations at least occasionally. By and large, however, they have performed creditably although they need to act more consistently and there is clearly still plenty of work to be done. Each of them is in law largely free from political interference, but the position in practice varies from time to time.

The **Central Bank of Nigeria ("CBN")** regulates banks (which are authorized to take deposits from the public). The CBN is widely seen as having been interpreting the foreign exchange regulations more stringently when the Naira is under pressure than it does at other times, which is inconsistent and unfortunate. Since 1991, it has been regulating other professional lenders and providers of financing and foreign currency as principals (known as "other financial institutions"). It is still unclear to what extent the States (as distinct from the CBN at the Federal level) can regulate professional lenders who operate within the boundaries of only one state and not across States lines.

More recently, the CBN has also been regulating electronic payments services providers. The CBN has now clearly won what was once seen as a power struggle with the telecommunications sector regulator for the control of the monumental potential of that sub-sector. Holders of telecommunications sector licences now organize payment services subsidiaries which are regulated by the CBN.

As with banks, there are various licences and minimum capital requirements for the various classes of other financial institutions and payment services providers. The CBN has managed well two separate periods (1993-95; 2009-2011) of widespread bank failures, but there are many who still see it as overzealous in defending the currency against inflation internally and devaluation externally.

The **Securities and Exchange Commission ("SEC")** regulates the capital markets and capital markets operators such as stockbrokers and issuing houses. Pension fund managers and custodians are regulated by the National Pension Commission ("**PenCom**"). The National Insurance Commission regulates insurance underwriters and brokers.

SEC, established in 1988, has been commendably forward-looking in its capital markets work, but it has been the least coherent of the regulators. It has at different times been the nation's *de facto* competition law regulator, it was once set to become the pension funds regulator, and it is still the commodities trading regulator. It needs to concentrate on regulating the capital markets and capital markets operators and no one else.

NAICOM has flip-flopped over the years on major issues. Among these are the extent to which (a) foreign underwriters should be allowed to underwrite risks in practice (on the face of the law, Nigerian insurers have a right of first refusal on all Nigerian risks); (b) new underwriting licences will be issued (new foreign entrants have nearly always been constrained to buy existing companies rather than start up new ones); (c) life and casualty risks and licences can be held in a single entity (rather than in separate entities); and (d) regulatory capital should be risk-based (rather than fixed in absolute amounts). NAICOM has been taking increasingly liberal positions on these subjects. This is welcome.

PenCom is the youngest, and the most successful and coherent, of the regulators. Following extensive reforming legislation for the sector in 2004, sector assets under management have grown exponentially from negative approximately USD500million then to nearly USD30bn today with no significant collapses of major players in the sub-sector. There has been some controversy as to whether annuities are to be regulated by NAICOM or by PENCUM. At some risk of oversimplification, the current position is that the two regulators have concurrent jurisdiction over annuities.

The question arises whether having so many regulators in the sector makes sense. To address this issue, the then Minister of Finance acting under statutory powers granted in 2010 founded the Council of the Nigeria Financial System Regulators (“the Council”) to promote consistency among the sector regulators. The Council has been headed by the Central Bank Governor. It has not been active or effective.

Redrawing the regulatory landscape of the Financial Industry to allow for a single, super, consolidated regulator does have its temptations. It would be simple and offer the regulated a “one-stop” shop. But there are so many dimensions to the regulation of the financial services sector that it is unlikely that a single regulator can do well all of the work that needs to be done. What is perhaps necessary and should be sufficient on this point is to re-energize the Council.

In a nutshell, the regulators have not all always been given or pursued clear missions, their mandates have changed over time, and their work appears to have been driven by political considerations at least sometimes, but by and large they have done well. There is still plenty of room for improvement. The regulators need to act more consistently and develop a better culture of cooperation and synergy among themselves. Each of them is in law largely free from political interference in carrying out their functions, but the position in practice is arguably another matter.

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This publication does not constitute legal advice and does not create a client-attorney relationship. For assistance with any legal issues in this practice area, please contact us at gelias@gelias.com; or corporate@gelias.com.

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