

A LEGAL APPRAISAL OF THE NIGERIAN BANKING SECTOR RESOLUTION COST FUND,  
RESOLUTION FUND AND RESOLUTION TOOLS\*

**Abstract**

*The 2020 Banks and Other Financial Institutions Act (BOFIA) incorporated the Banking Sector Resolution Fund. The provision was elaborate as it covers almost a quarter of the entire Statute, 27 out of the 129 Sections of the Statute were devoted to the fund. Prior to this development, the amended Act of the Assets Management Corporation of Nigeria (AMCON) had, in 2015, created the banking Sector Resolution Cost Fund. This paper examines the origin and purpose of the laws and juxtaposed them with developments in other Countries. The study examines the main provisions and the possible impact the laws would have on the banking industry and the banking community in general. The paper further observes that the cost implication of the Funds and its attendant effect on the cost of running banks, which ultimately are borne by the consumers of banking services, constitute additional burden on the banks and its customers. The Paper further observes that the Central Bank may be over-burdening the licensed banks with too many expensive responsibilities, expected to be met out of profit and eventually may dissuade investors from further investments in banking institutions; particularly when viewed from other investment opportunities available in the Country. The paper concludes that an urgent legislative reform is required to merge the two Funds and create a tenure for it in line with best practices in other parts of the world and in order to ease the burden of the banks and the bank services consuming public.*

**Keywords:** Banking, Statute, Resolution Cost Fund, Resolution Fund, Central Bank of Nigeria

**1. Introduction**

Banking business and culture in Nigeria came about towards the end of the 19<sup>th</sup> Century when the then British Bank of West Africa (BBWA) was established<sup>1</sup>. Prior to the advent of BBWA was the West African Currency Board<sup>2</sup> responsible for the production and distribution of currency in the old Gold Coast (Ghana), Nigeria, Sierra Leone and Gambia. For over seven decades after the advent of banking business in Nigeria there was no legislation or Agency of Nigerian government regulating the activities of banking operators. So it was a lawless regime that occasioned free entry and free exit in the industry as well as unmitigated losses to bank customers and investors alike<sup>3</sup>. The first legislation meant to regulate banking industry in Nigeria was the 1952 Banking Ordinance. The law introduced a number of safe nets meant to safeguard both the banking operators and their customers. These include the introduction of banking license, minimum paid-up share capital, reservation of banking business to registered companies, creation of statutory reserve funds, establishment of bank examinations, and provision of assistance to indigenous banks and restriction of lending to directors<sup>4</sup>. The law was in operation for six years when another Ordinance<sup>5</sup> was enacted which radically changed the face of banking regulation. The 1958 Ordinance repealed the earlier one and established the Central Bank of Nigeria (CBN). The Ordinance also increased the minimum paid-up share capital and the Statutory Reserve Fund amongst other regulatory reforms.

Subsequent legislations<sup>6</sup> increased Minimum paid-up share capital and introduced further measures to guide banking operators and protect bank customers. Subsidiary legislations in the form of circulars and occasional papers issued by the CBN and the Nigerian Deposit Insurance Corporation also complemented the main statutes in regulating the industry.

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<sup>1</sup> The First Bank of Nigeria was established in 1893 by Elder Dempster Company. It was first named Bank of British West Africa (BBWA) later renamed Bank of West Africa (BWA) and later Standard Bank of Nigeria Limited (SBNL) before its present name - First Bank of Nigeria Plc.

<sup>2</sup> The West African Currency board was established in October 1912. The Board was dissolved in 1965 and its assets and liabilities handed over to the Crown Agents in British Colonies in West Africa. The National Archives <https://discovery.nationalarchives.gov.uk/details/r/C5173> viewed on 12-04-2022

<sup>3</sup> Many banks were established between 1893 and 1959 with a few surviving for a while, while some collapsed as soon as they were established. The activities of the banks were largely uncontrolled beyond the granting of charter by the colonial government. See Asabia S.O., *Essays in Money and Banking*, (Ibadan: Fountain Publications, 1992), p. 4.

<sup>4</sup> Banking and Finance <http://countrystudies.us/nigeria/66.htm#>

<sup>5</sup> Banking Ordinance, 22<sup>nd</sup> May, 1958

<sup>6</sup> Banking Ordinance – Amendment Act 1961; Banking Ordinance – Amendment Act 1962; National Deposit Insurance Corporation Act 1988; The Central Bank 1991; The Banks and Other Financial Institutions Act 1991 and their Amendments thereafter

It is noteworthy that since the establishment of Central Bank, a number of statutes had been introduced to strengthen the banking industry. These include Central Bank of Nigeria (CBN) Act<sup>7</sup>, The CBN (Currency Conversion) Act<sup>8</sup>, Finance Act<sup>9</sup>, The Banks and Other Financial Institutions Act (BOFIA)<sup>10</sup>, the Nigerian Deposit Insurance Corporation (NDIC) Act<sup>11</sup>, the Failed Banks (Recovery of Debts) and Financial Malpractices Act<sup>12</sup>, the Assets Management Corporation (AMCON) Act<sup>13</sup>, and the Companies and Allied Matters (CAMA) Act<sup>14</sup>. Most of these laws make provisions for fees for the services rendered by government agencies, penalties for infractions and taxes. For example the BOFIA<sup>15</sup> makes provision for payment of a prescribe application fee to be paid by applicants prospecting new licenses to run commercial banks in the Country. In the creation of a Special Tribunal for the enforcement and recovery of delinquent loans, the latest version of BOFIA also makes provision for case fees to be paid by banks that approach the Tribunal to help it to recover eligible loans<sup>16</sup>. The law additionally empowers the CBN to charge other fees as may be necessary or expedient to do so at will<sup>17</sup>.

The laws regulating banking in Nigeria are inundated with plethora of penalties here and there for various infractions as are envisaged by the regulatory authorities<sup>18</sup>. These are more pronounced in the BOFIA, in which the latest version provides penalties for carrying on business of banking without a valid license<sup>19</sup>, for establishing a relationship with a foreign bank without the approval of the CBN<sup>20</sup>, for opening or closing a branch without the permission of the CBN<sup>21</sup> and for failure to comply with any condition upon which a license was granted to a bank to operate in Nigeria<sup>22</sup>. There are many other penalties prescribed by the law for many other envisaged infractions all aimed at whipping the licensed banks to fall in line of control and supervision<sup>23</sup>. The NDIC Act has similar provisions for penalties for various infractions. For example a whole Part<sup>24</sup> is dedicated to Criminal Prosecution and Offences apart from sundry provisions for failure to comply with the provisions of the Act<sup>25</sup>. The minimum paid-up share capital for licensed banks is neither a fee nor levy. For a new bank, it is a requirement for approval of license, to be deposited in an interest yielding account<sup>26</sup>. On approval it is usually returned to the bank to boost its liquidity and serve as working capital. For existing bank, it is determined by CBN in relation to assets and liabilities of the bank to ensure sustainable growth and development of the bank.

The issue of financial contribution by licensed banks was first introduced by the Nigerian Deposit Insurance Corporation<sup>27</sup>, when it required every license bank as an insured institution<sup>28</sup>, to pay an annual premium to the Corporation which was statutorily fixed at 15/16 of 1% of the total deposit liabilities of the Bank as at 31<sup>st</sup> December of the preceding year. The purpose was to assist the Corporation to settle the deposit liabilities of the customers of depressed banks in the industry that eventually went into liquidation. It appears all banks were made to be their brother's helper as it is customary to do in the insurance sector. The 2006 version of the NDIC Act, which repealed the 1988 Act, expanded the funding base of the Corporation by including other Financial Institutions in the contribution net. The annual premium payable by other Financial Institutions was made 8/16 of 1% (i.e. half of 1 per cent) of their total deposit liabilities as at 31<sup>st</sup> December of the preceding year<sup>29</sup>.

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<sup>7</sup> The CBN Act 1958

<sup>8</sup> The CBN (Currency Conversion Act) 1967

<sup>9</sup> Finance Act 1969

<sup>10</sup> The Banks and Other Financial Institutions Act 1990

<sup>11</sup> The NDIC Act 1988

<sup>12</sup> The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994

<sup>13</sup> The AMCON Act 2010

<sup>14</sup> The Companies and Allied Matters Act 1990

<sup>15</sup> The BOFIA 2020, S.3(e)

<sup>16</sup> The BOFIA 2020, Sections 102 and 118

<sup>17</sup> The BOFIA 2020, S. 101

<sup>18</sup> CBN, AMCON, NDIC, CAMA.

<sup>19</sup> The BOFIA, S.2(2) N50m penalty or 5 years imprisonment or both

<sup>20</sup> The BOFIA, S.3(6) N20m penalty and N500,000 daily for continuous infraction

<sup>21</sup> The BOFIA, S.6(4) N5m penalty and N100,000 daily for continuous infraction

<sup>22</sup> The BOFIA 2020, S.5(3) N20m penalty and N500,000 daily for continuous infraction

<sup>23</sup> The BOFIA 2020, Sections 5(4), 7(7), 8(6), 14(5), 15(2), 16(2), 17(2), 19(11), 22(2), 24(6), 50, 57, 58, 95 & 99

<sup>24</sup> Part X Sections 45, 46 & 47

<sup>25</sup> NDIC Act 2006 Sections 27(2) & (4), 30 (4) & (6) 36 (3) etc.

<sup>26</sup> The BOFIA 2020, Sections 3(2), 4(1) & 9

<sup>27</sup> NDIC Act 1988, Sections 8 & 20

<sup>28</sup> Which entitle its customers to benefit from the funds of the Corporation in case of liquidation.

<sup>29</sup> NDIC 2006, S. 39

## **2. Resolution Cost Fund**

The Banking Sector Resolution Cost Fund was first introduced into the Nigerian banking vocabulary with the amendment to the enabling Act of the Assets Management Corporation of Nigeria<sup>30</sup>. The CBN was statutorily required to contribute annually to the Fund which was domiciled in it, The Act provides that:

the CBN shall appropriate the said sum of N50,000,000,000:00 (Fifty billion Naira) or such higher sum determined by the relevant Committee of the National Assembly from the general reserve or other funds of the Bank and cause the sum so appropriated to be paid into the Resolution Cost Fund.

The 2015 amendments to the Act<sup>31</sup> also provided for contributions to be made by licensed banks, referred to as 'eligible financial institutions' and provided for very strict measures to ensure prompt remittance to the Fund. The Amended Act also included the timing of the contribution to be made by the CBN which was statutorily fixed at 'not later than the first business day in each year'<sup>32</sup>. The Act further provided that eligible financial institutions shall contribute to the Fund:

an amount equivalent to fifty (50) basis points (or such higher basis points as may from time to time be determined by the CBN) of their total assets as at the date of its audited financial statements for the immediately preceding financial year published under the BOFIA and which shall be payable on or before the 30<sup>th</sup> day of April in each calendar year.

The stricter provision as to prompt remittance of each eligible bank's contribution provided for a grace of maximum of ten days<sup>33</sup> delay, failing which a defaulting bank would have its account automatically debited by the CBN after an assessment carried out by the Fund's Board of Trustees<sup>34</sup>. An eligible financial institution that fails to remit its contribution to the Fund is also 'prohibited from paying dividends or other like distribution to its shareholders, and from paying any bonuses however to its directors or employees, while such default continues'<sup>35</sup>.

The Amendment succinctly highlights the purposes for which the Fund shall be utilised as follow:<sup>36</sup>

- (a) Meeting the obligations of the Corporation arising from debt securities issued by the Corporation under the Act, if the Corporation is unable to meet its obligations as and when due from its resources including the proceeds of sale and management of eligible Bank Assets it acquires from eligible financial institutions;
- (b) Meeting expenses specifically incurred in respect of, or incidental to, the purposes specified in paragraph (a) of this subsection
- (c) Meeting expenses and costs specifically and incurred for the administration and management of the Resolution Cost Fund up to an annual limit of an amount equivalent to 0.5 per cent of the total amount paid into the Resolution Cost Fund for the calendar year in which the expense or cost is incurred.

The Act made ample provision for Management of the Fund by establishing a Board of Trustees<sup>37</sup>, Custody of moneys, appointment of Fund Custodians<sup>38</sup> and Investment of moneys standing to the credit of the Resolution Cost Fund which are not immediately required to be utilised for the purposes for which the Fund was created<sup>39</sup>. Other provisions of the Amended Act include appointment of Fund Managers and their qualifications<sup>40</sup> as well as the procedure to be adopted in dissolution of the Resolution Cost Fund<sup>41</sup> at the end of the tenure of the Asset Management Corporation (AMCON). The tenure of the Resolution Cost Fund is tied to the life span of the AMCON<sup>42</sup>, which the Act originally set at 10 years before it was extended by 5 years. Haven been established in 2010, AMCON is expected to wind down its activities in year 2025, except its tenure is extended by the National Assembly.

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<sup>30</sup> The AMCON Act 2010 did not make any provision for such Fund, it was introduced by the AMCON Amendment Act 2015, S.60

<sup>31</sup> AMCON Amendment Act 2015

<sup>32</sup> AMCON Amendment Act 2015, S.60B

<sup>33</sup> AMCON Amendment Act 2015, S.60C(3)

<sup>34</sup> AMCON Amendment Act 2015, S.60C(6)

<sup>35</sup> AMCON Amendment Act 2015, S.60H

<sup>36</sup> AMCON Amendment Act 2015, S.60E(1)

<sup>37</sup> AMCON Amendment Act 2015, S.60(I)

<sup>38</sup> AMCON Amendment Act 2015, S.60(O)

<sup>39</sup> AMCON Amendment Act 2015, S.60P

<sup>40</sup> AMCON Amendment Act 2015, S.60Q

<sup>41</sup> AMCON Amendment Act 2015, S.60R

<sup>42</sup> Amendment to S.61 (definitions) of the Principal Act, AMCON Act 2010

### 3. Banking Sector Resolution Fund

The Banks and Other Financial Institutions Act (BOFIA) introduced another version of Resolution Fund<sup>43</sup> in year 2020, five years after the debut of Resolution Cost Fund propounded by AMCON Act. The enabling Statute provides that<sup>44</sup>: ‘Without prejudice to the provisions of the Asset Management Corporation of Nigeria Act, there is established the Banking Sector Resolution Fund which shall be domiciled with the Bank (CBN), and into which shall be paid all contributions and levies imposed under this Part’. The Statute mandates the CBN Governor, in consultation with the Board of the Bank, to determine the commencement date of the Fund. Contributors to the Fund were listed to include the CBN itself which shall make annual contribution of N10,000,000,000 (Ten billion Naira) on the commencement date and on the first business day of each year<sup>45</sup>. Additionally, the Nigeria Deposit Insurance Corporation is statutorily compelled to contribute N4, 000,000,000 (Four billion Naira) on the commencement date and on the first business day in each subsequent year. The statutory dragnet captures other banks, specialised banks and other financial institutions operating in Nigeria to pay an annual levy, ‘in an amount equivalent to 10 basis points (or such basis points as may, from time to time, be determined by the Bank) of its assets as at the date of its audited financial statements for the year’, payable on the commencement date of the Fund and on or before the 30<sup>th</sup> day of April in each subsequent calendar year<sup>46</sup>. Except a bank, specialised bank or other financial institution has paid this levy; it is precluded from paying dividends or similar distribution to its shareholders, and from paying any bonus to its directors or employees<sup>47</sup>. The purposes for which the Fund was to be utilised exclusively<sup>48</sup> are:

- (a) To pay the operating costs of a bridge bank;
- (b) To pay the costs of transferring the whole or any part of the business at the bank, specialised bank or other financial institution pursuant to a resolution measure;
- (c) To provide a loan, advance, overdraft or other credit facility to a bank, specialised bank or other financial institution, under resolution or a bridge bank;
- (d) To pay any other cost reasonably incurred in the resolution measure, such as legal cost, cost of any advisory services, and the cost of an independent valuation of the bank, specialised bank or other financial institution under resolution;
- (e) For such other purposes in support of resolution measure as may be prescribed by the Governor; and
- (f) To pay expenses and costs specifically incurred for the administration and management of the Resolution Fund, up to an annual limit of an amount equivalent to 0.5% of the total amount paid into the Resolution Fund for the calendar year in which the expenses or costs are incurred.

The Act established a Board of Trustees which shall have the responsibility to supervise, administer and manage the Fund<sup>49</sup>. The Board is composed of eight members made up by two representatives of the CBN nominated by the Governor, one of whom shall be a Deputy Governor to serve as the Chairman of the Board, four representatives of the banks appointed by the CBN from among the banks officers not below the rank of directors, a representative of NDIC and one representative of other financial institutions also appointed by the CBN. The Act also makes provisions for the tenure and operation modalities of the Board of Trustees, investment of the Resolution Fund, Books of Account, Audit, Annual Report, and dissolution of the Fund<sup>50</sup>. It is observed that while the tenure of the Resolution Cost Fund established by the AMCON Act is determined by the tenure of AMCON and the National Assembly, the tenure of the Resolution Fund under the BOFIA is to be determined by the Governor of CBN<sup>51</sup>.

### 4. Contribution by Basis Points

The levy imposed on banks and financial institutions by the AMCON Act and BOFIA are determined by basis points of each bank’s total assets. While the total asset of a bank equals the sum total of liabilities and shareholders’ funds of the bank, basis point<sup>52</sup> is a term used in finance to refer to changes in values or interest rates. The 50 basis points minimum contribution prescribed by the AMCON Act amounts to 0.5% of each bank’s total assets, while the 10 basis points prescribed by the BOFIA amounts to 0.1% of the assets. The basis points as a means of determining a bank’s contribution to the two resolution funds therefore means that the bigger banks will contribute more to the funds than the smaller ones irrespective of their activities in the crisis

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<sup>43</sup> The BOFIA 2020, Chapter D, Part IX, Sections 74 - 101

<sup>44</sup> The BOFIA 2020, S. 74

<sup>45</sup> The BOFIA 2020, S. 75

<sup>46</sup> The BOFIA 2020, S. 77

<sup>47</sup> The BOFIA 2020, S. 80

<sup>48</sup> The BOFIA 2020, S. 78

<sup>49</sup> The BOFIA 2020, S. 81

<sup>50</sup> The BOFIA 2020, Sections 82 - 101

<sup>51</sup> The BOFIA, S. 88

<sup>52</sup> <https://www.investopedia.com> visited on 15-10-2022

lane of the banking industry. For example, while the total assets of Heritage Bank as at December 31<sup>st</sup> 2021 was N483.42 billion, Diamond Bank has N1.619 trillion, Ecobank N9.43 trillion, Access Bank N9.03 trillion, First bank N7.84 trillion, UBA N7.89 trillion and First City Monument Bank (FCMB) has N2.42 trillion worth of total assets respectively. The total assets of all commercial and merchant banks operating in Nigeria stood at 59.24 trillion naira as at 31<sup>st</sup> December 2021<sup>53</sup>. The minimum contribution by all the banks to the Resolution Cost Fund in compliance with the AMCON Amendment Act must be 0.5% of 59.24 trillion naira, which amounted to N296.2 billion; while that of the Banking Resolution Fund created by the latest BOFIA amounts to N59.24 billion calculated at 10 basis points (0.1%). It should be noted that annual contribution under the Banking Resolution Fund continues year-in year-out, *ad infinitum*, until it pleases the Governor of CBN to determine its tenure, whereas the AMCON propelled Resolution Cost Fund has a statutory tenure of 15 years except it is extended by the National Assembly.

### **5. Comparative analysis:**

After the financial banking crises of 2008, the United Kingdom established a framework for resolution (known as resolution regime) via the Banking Act of 2009<sup>54</sup>. In fact, the principal purpose of the Act was to introduce a special resolution regime to English banks and building societies. The law however did not introduce any mandatory contribution or levy to be made by any financial institution. Three other laws<sup>55</sup> enacted to reform the banking industry thereafter did not introduce any resolution levy on banking and financial institutions. However, the Countries that make up the European Union established a Single Resolution Fund (SRF) as emergency fund that can be utilised in times of crisis in the banking Industry. By the directive of the Bank Recovery and Resolution (BRRD)<sup>56</sup>, a framework for the recovery and resolution of credit institutions and investment firms was established. By these directives, all Financial Institutions within the Banking Union of the 21 Countries shall contribute a minimum of 1% and a maximum of 5% of all covered deposits as at 31<sup>st</sup> December every year into the Fund. The SRF is to be built up over a period of 8 years (2016 – 2023) and it is targeted at reaching at least 1% of the amount of covered deposits of all financial and credit institutions in all the Countries. The SRF stands at about 52 billion Euros as at end of July 2021<sup>57</sup>. The Single Resolution Fund is meant for the following purposes:

- To guarantee the assets or the liabilities of the institution under resolution;
- To make loans to or to purchase assets of the institution under resolution;
- To make contributions to a bridge institution and an asset management vehicle;
- To make a contribution to the institution under resolution instead of the write-down or conversion of liabilities of certain creditors under specific conditions;
- To pay compensation to shareholders or creditors who incurred greater losses than under normal insolvency proceedings.

Albania is a small Country of less than one million people in Southeastern Europe. The Banking regulatory Authority on the 10<sup>th</sup> of January 2018 established a Resolution Fund for ten years (2017 – 2027) pursuant to Law No. 133/2016 ‘On the recovery and resolution in banks, in the Republic of Albania’. The bank resolution fund pools together regular (annual) contributions from banks, whose level is set by the Bank of Albania so that the target level of 0.5% of the all banks’ liabilities might be reached by 11 July 2027. It is expected that by the target date, the contribution would have reached ALL7.12 billion. The Bank of Albania calculates annually the contribution to be paid by the banking sector for gradual build-up of the Resolution Fund, based on the formula set out in the Regulation of the Fund, No. 56/2017 on the Resolution Fund and the procedures for its management.<sup>58</sup> In South Africa, an advisory document titled ‘strengthening South Africa’s Resolution Framework for Financial Institutions published by the Treasury in 2015<sup>59</sup> did recommend a levy on banks to fund Deposit Guarantee Scheme (DGS). At page 37, it states:

The intended approach for South Africa is to adopt a hybrid approach to the funding of the DGS. A levy should be charged on all banks to pre-fund a DGS to the targeted level. However,

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<sup>53</sup> According to a statement credited to a Deputy Governor of CBN, Kingsley Obiora, Banks’ total assets rose by N8.25tn in 2021 – CBN report - Punch Newspapers (punchng.com) Punch Newspaper 17<sup>th</sup> March 2022

<sup>54</sup> Banking Act 2009, (Special Resolution Regime) Part 1, Sections 1 – 83 Banking Act 2009 (legislation.gov.uk) visited on 15-10-2022

<sup>55</sup> The Financial Services Act 2012; The Financial Services (Banking Reform) Act 2013; and The Bank of England & Financial Services Act 2016

<sup>56</sup> DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 and the Amendment to the Council Directive No.82/891/EEC and Directive 2001/24/EC

<sup>57</sup> The Single Resolution Fund | Single Resolution Board (europa.eu) viewed on 15-10-2022

<sup>58</sup> Articles 7 and 8 of the Regulation set out the complex formula to determine the contribution of each bank

<sup>59</sup> Strengthening South Africa’s Resolution Framework for Financial Institutions.pdf (treasury.gov.za) visited on 10-10-2022

in the event of a shortfall during the build-up period as well as thereafter, formal arrangements should be put in legislation for government to fund such a shortfall. This funding should be recovered afterwards through a combination of liquidation proceeds and levies on surviving banks.

It appears South Africa is yet to legislate on mandatory contribution by banks to solve the crisis of banking distress. In a recent publication<sup>60</sup> published in January 2022, it was stated that:

South Africa will soon implement a new bank resolution and recovery framework. Previously, banks in financial distress might have become subject to curatorship under the Banks Act, 1990. However, on 7 September 2021 the National Assembly passed a new bill, namely, the Financial Sector Laws Amendment Bill [B15-2020] (FSLAB) which will repeal the old curatorship regime. The FSLAB has now been referred to the National Council of Provinces for concurrence. On 2 December 2021 the Select Committee on Finance adopted FSLAB and sent a report to the National Council of Provinces (NCOP) recommending that the NCOP endorses the bill. We are awaiting confirmation of the date on which NCOP will vote on the bill.

There is no record of establishment of banking Sector Resolution Fund in Ghana, Egypt, Ethiopia and Kenya. In the United States of America, resolution of banking crisis is statutorily the responsibility of the Federal Deposit Insurance Corporation (FDIC). The resolution fund of the FDIC<sup>61</sup> is contributed by the insurance premiums paid by the insured banks. The Fund guarantees depositors would not lose any money if a bank fails.

#### **6. Need for Establishment of Banking Sector Resolution Funds in Nigeria**

The crises of confidence in the banking industry which followed the failure of some banks in the early 1980s in Nigeria first led to the establishment of the Nigerian Deposit Insurance Corporation (NDIC)<sup>62</sup>; the not too successful banking consolidation exercise that was hurriedly packaged, particularly the failed banks syndrome that followed the forced banking consolidation in 2004/2005 created a number of challenges in the industry that led to the establishment of AMCON<sup>63</sup>. The operations of the AMCON and the funding challenges of the bridge banks necessitated the Resolution Cost Fund (RCF), which was the major purpose for which the AMCON Act was amended in 2015. Haven created the RCF successfully in 2015, the activities of NDIC and AMCON were given a boost and a number of banking resolutions had been carried out by these ‘Paul bearer and undertaker’ of failed banking institutions. The main trust of the AMCON is the acquisition of toxic assets (bad loans) from distressed banks at a discount and making provision of funds available to such banks to prevent failure. Since inception of the Corporation, available records showed that the total toxic assets acquired by the Corporation stood at N4.4 trillion. A recent report<sup>64</sup> indicated that AMCON has only recovered a little over N1 trillion in its over 10 years operation. The report went further to reveal that over 350 businessmen and firms still owe the Corporation N3.6 trillion, amounting to 81% of the total outstanding debts. In effect, AMCON has recovered less than 20% of the acquired toxic assets since inception. The not too satisfactory performance of AMCON should have suggested a preventive measure rather than curative. It is better to formulate policies that would prevent banks from distress rather dissipate energy and resources on recovery of toxic assets. Were the assets recoverable in the first instance, the banks wouldn’t have sold them at a huge discount to AMCON.

#### **7. The Burden of licensed banks:**

It has been stated that the regulatory agencies of government are statutorily empowered to charge fees for various services rendered to the licensed banks and other financial institutions. There are legions of penalties in the statute books which the Agencies are also empowered to invoke on these financial institutions. Then came the annual premium levied on all financial institutions for their depositors to be covered by the insurance policies of the Nigerian Deposit Insurance Corporation. These financial obligations on the licensed banks and other financial institutions require a deep purse to fulfill before the advent of the AMCON propelled Resolution Cost Fund and the Central Bank newly inducted Banking Sector Resolution Fund. These levies constitute heavy challenges on the institutions and appear to be having negative effects on the ease of doing banking business. It becomes a double jeopardy for banks to sell their toxic assets at a discount to AMCON and then be required to pay a compulsory levy annually to fund AMCON in its recovery efforts. It is more pathetic to banks that have no toxic asset to sell to the Corporation and yet have to annually contribute to the resolution fund. No wonder

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<sup>60</sup> Bank resolution – latest guidance on stays applicable to distressed banks | Financial Regulation Journal

<sup>61</sup> Failed Banks – A Look at the FDIC Resolution Process (monitorbankrates.com) visited on 11-10-2022

<sup>62</sup> The NDIC Act 1988

<sup>63</sup> The AMCON Act 2010

<sup>64</sup> www.vanguardngr.com/2021/07/amcon-and-the-lingering-challenge-of-bad-loans/ visited on 30-10-2022

the less than satisfactory performance of banks in the stock exchange<sup>65</sup> market that makes the banks take the back seats both in pricing of equities and rewards to shareholders by way of dividends.

### **8. Conclusion**

The Central Bank of Nigeria cannot be faulted in imposing penalties and sanctions for infractions committed by the banks in the course of their operations. Such penalties are required and necessary to whip the banks on line to prevent the misfortunes of the past. Similarly, the annual premiums required of banks to insure bank depositors with the NDIC constitute the best practices all over the world and experience had shown that the Corporation had played its role credibly well when the need arose to bail out depositors of failed banks, particularly the ready succor available to small savers and the very uninformed customers of banks. However, there seems not to be good justification for the establishment of two Resolution Funds within a space of five years in the industry, both exerting pressure on the banks by way of compulsory levies. It is hereby suggested that both Funds be merged and be tenured to end at a particular time in future. An urgent legislative reform is therefore desired to abrogate one of the Funds and limit the other for a period of ten or fifteen years with a definite target of the amount to accumulate, after which the contributory scheme should cease to exist while the targeted fund is continued to be managed by the Trustees for the purposes for which the Funds are presented established.

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<sup>65</sup> Nigerian (NSE) Banks Industry Analysis (simplywall.st) visited on 30-10-2022