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Examination of the Powers and the Governance Structure of Bank Resolution Authorities in Nigeria and the United States of America

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Abstract
The financial system in Nigeria, much like those in advanced economies, has long grappled with the dual challenges of unstable liquidity flows and the need for prudent fund management mechanisms. The Nigerian banking sector evolved from an unregulated, colonial-era framework that often led to frequent distress and bank failures due to weak legislative oversight. This paper examined the legal frameworks, governance structures, and enforcement powers of bank resolution authorities in Nigeria and the United States. The papers adopted the doctrinal method of legal research. In Nigeria, resolution functions are primarily distributed among the Central Bank of Nigeria (CBN), the Nigeria Deposit Insurance Corporation (NDIC), and the Assets Management Corporation of Nigeria (AMCON), with the CBN acting as the principal regulator and supervisory authority. Conversely, the United States employs a multi-agency framework involving the Federal Reserve System as the central bank, the Office of the Comptroller of the Currency (OCC) for federally chartered national banks, and the Federal Deposit Insurance Corporation (FDIC) serving as both insurer and orderly resolution authority. A critical evaluation of these regimes revealed differing institutional approaches: while Nigeria concentrates both supervisory and resolution powers within its central bank, the United States separates these functions across specialized agencies. Furthermore, judicial interpretations in the U.S. have occasionally supported regulatory flexibility for large financial institutions, drawing academic scrutiny regarding systemic risks. To improve the Nigerian banking sector, the paper recommended the enhancement of the operational independence of resolution authorities by transferring resolution functions away from the CBN to avoid conflicts of interest, alongside expanding early intervention powers to prevent bank failures. The Paper concluded that while in some jurisdiction, the resolution powers and the supervisory powers are vested in one Agency; other resolution regimes confer resolution and supervisory powers on separate Agencies.

Keywords: Bank Resolution, Resolution Authorities, Governance Structure, Bank Resolution Powers.

1. Introduction

The Financial Stability Board[1] developed international standards in a Key Attributes of Effective Resolution Regimes for Financial Institutions, and many jurisdictions have substantially strengthened existing or developed new framework for managing bank failure. In light of the forgoing, this Paper seeks to locate the entity vested with the resolution functions in the Nigeria and the United State of Americans' institutional arrangement for bank resolution.

2. Bank Resolution Authorities in Nigeria

The Nigerian legal regime confers bank resolution powers on the Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation, and Assets Management.

[1] Financial Stability Board is a body established by the European Banking Union in response to the Global financial crisis of 2009 to develop a resolution regime that will ensure the safe exit of distressed large financial institutions from the global financial markets.

2.1. The Central Bank of Nigeria

The CBN is required to maintain a sound and stable financial system in the country.[2] One of the objectives of establishing the Central Bank is the prevention of bank failures in Nigeria. The Act provides that 'in order to the facilitate the achievement of its mandate under this Act, and the BOFIA, and in line with the objective of promoting stability and continuity in the economic management, the Bank shall be an independent body in the discharge of its functions.'[3] The appointment of the Governor and four Deputy Governors of the Bank by the President shall be made subject to confirmation by the Senate to guarantee its independence. The Act established the CBN Board of Directors comprising of 12 members including; the CBN Governor as the Chairman, Four Deputy Governors of the Bank, the Permanent Secretary of the Federal Ministry of Finance, the Accountant General of the Federation, and five other Directors appointed by the President subject to confirmation by the senate.

The Act established the Monetary Policy Committee (MPC)[4] to facilitate the attainment of the objective of price stability and to support the economic policy of the federal government. The MPC consists of the Governor and all the four Deputy Governors of the Bank, two other members of the Bank's board, and five other members to be appointed from outside of the bank, three of whom shall be appointed by the President and the remaining two to be appointed by the Governor of CBN. For the purpose of coordinating the supervision of financial institutions, the Act established the Financial Services Regulation Coordinating Committee.[5] The Committee's Membership include; Governor of the CBN who shall be the Chairman, the Managing Director of NDIC, the Director General of Securities and Exchange Commission, the Commissioner of Insurance, the Registrar General of the Corporate Affairs Commission, and a representative of the Federal Ministry of Finance not below the rank of a Director.

Specifically the CBN Governor is empowered to not only constitute the Board of Trustees of the resolution cost fund but also determine the managers, custodians, investors, and liquidators of the fund.[6] For instance, the AMCON Amendment Act 2015[7] provides that all monies standing to the credit of the banking sector resolution cost fund shall be held by the CBN or at the instance of the CBN by custodians appointed by the Board of Trustees for that purpose. The BOFIA also empowers the CBN to make rules and regulation for the management and operations of the resolution fund.[8] The Nigerian Supreme court has reinstated the regulatory powers of the CBN over commercial banks in Adedeji & Ors v CBN & Anor.[9] A similar position was taken in CBN v Ochife[10] where the Supreme Court considered the status of the CBN as the principal Banking Regulator in Nigeria. The powers of the CBN as the principal resolution authority in the management of failing bank was expounded in Akingbola v Intercontinental Bank Plc[11], where the Respondent/plaintiff challenged the power of the CBN Governor to revoke its licence during financial crisis. The Supreme Court held that CBN is protected under section 53 of BOFIA 1991[12] against any personal action, and that the Governor is empowered to intervene in resolving failing banks under sections 33, 35 and 2 of the 1991 BOFIAct. However, in the case of A G Kaduna & Ors v A G Fed. & Ors,[13] the Supreme Court while acknowledging the powers of the CBN to issue currency thereby protecting financial stability under section 20 of the CBN ACT, held that such powers can only be exercised when public interests

[2] CBN Act 2007 s 2.
[3] ibid
[4] s 12, CBN Act 2007
[5] Ibid s 43
[6] AMCON Amendment Act 2015 ss 60 I, 60 K,
[7] Ibid s 60 O
[8] BOFIAct 2020 s 94
[9] CBN v Adedeji (2022) 13 NWLR PT 1847 361 SC
[10] CBN V Ochife (2025) 12 NWLR (PT 2000) 1 SC
[11] Akingbola v Intercontinental Bank Plc (2025) NWLR (PT 1984) 343 SC
[12] BOFIAct 1991
[13] A G Kaduna State & Ors v CBN & Anor (2023) 16 WRN 49 SC

permit. The above decisions put together revealed that while the Supreme Court recognised the regulatory and supervisory roles of the CBN in the management of distressed banks, such must be exercised with some restraints especially where public interests are involved.

2.2. The Nigeria Deposit Insurance Corporation

Another Bank Resolution Authority in Nigeria is the Nigeria Deposit Insurance Corporation. The NDIC is vested with the authorities to manage all failing insured institutions including deposit money banks. The NDIC may on the application of a distressed bank or at the instance of the CBN take several remedial measures to recapitalise or revive a failing financial institution.

And when the distressed financial institutions become unmanageable, the NDIC is empowered to assume ownership and control of the failing bank or transfer its interest or assets to a bridge financial institution.[14] The NDIC can also sell the non-performing debts of the distressed bank to AMCON.

The Act mandates the Corporation to revive distressed institutions if any of the following circumstances exist:

When the insured institution has difficulty meeting its obligations to its depositors and other creditors.

When the insured institution persistently suffers liquidity deficiency.

When the insured institution has accumulated losses which have nearly or completely eroded the shareholders' fund.

When such assistance is required to prevent the insured institution from failing.[15]

The Act further empowers the Corporation to take one or a combination of any of the following actions to provide liquidity support to assist an insured institution:

Accept an accommodation bill with interest for a period not more than 90 days maturity exclusive of days of grace and subject to renewal not more than seven times.

Purchase or invite eligible investors to purchase the equity and or such assets and or assume any such liabilities of the insured institution.

Issue bonds, certificates, debentures, debt instruments and other securities to purchase or assume such assets, equity or liabilities of the insured institution.

Take or carry out any other measure to provide financial assistance to the insured institution.

The Corporation, with the concurrence of or at the request of the Central Bank of Nigeria, may:

Assume control of a failing insured institution and take over its management.

Appoint new management for the insured institution.

Remove, replace or change principal officers of the insured institution.

Replace the principal officers of the insured institution with officials of the Corporation"[16] In AfriBank (Nig) Plc v NDIC[17], the Supreme Court while considering the issue of derivative or representative action against the exercise of the management power of NDIC over distressed banks, affirmed the status of NDIC as a bank resolution authority in Nigeria. The court further held that the NDIC is obligated to pay out insured depositors of failing bank during financial crisis.

2.3. The Assets Management Corporation of Nigeria

Another bank resolution authority in Nigeria is the Assets Management Corporation of Nigeria. AMCON is established primarily to acquire non-performing or toxic loans of distressed financial institutions.[18] The objects as stated in the Act include:

Assisting eligible financial institutions to efficiently dispose of eligible bank assets in accordance with the provision of the Act; efficiently managing ad disposing of eligible bank assets acquired by the Corporation in accordance with provision of the Act; and obtaining the best achievable financial returns on eligible bank assets or other assets acquired by it in pursuance to the provisions of the Act.[19]

It is instructive to note that all licenced banks under the supervision of the CBN that are

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[14] NDIC Act 2023 s 50
[15] Ibid s 49
[16] Ibid s 50
[17] AfriBank Nig Plc v NDIC (2025) 12 NWLR (PT 2000) 453 SC
[18] AMCON ACT 2015 s 3
[19] ibid

covered by the operations of the NDIC are eligible financial institutions for the purpose of the Act.

The objective of buying those toxic assets is to re-inject fresh capital into the failing financial institution and restore public confidence in the banking sector. AMCON is empowered to participate in the reorganisation or restructuring of eligible institution.[20]

In G.S & L Ltd v AMCON[21], the Court of Appeal interpreted sections 34 and 61 of the AMCON Act on the powers of the Agency to recover debt from the debtors of distressed bank from which it acquired the toxic assets. A similar position was taken in Unity Bank Plc v Rhour and Lue Nig Ltd[22] where the Court emphasised the rights of Bank creditors to recover their debt as a matter of priority during financial crisis.

3. Bank Resolution Authorities in the United States of America

3.1. The Federal Reserve System

The Federal Reserve System is the Central Bank of the United States. It was founded by the Congress in 1913 to provide the nation with a safer, more flexible, and more stable monetary and financial system.

The Federal Reserve's duties fall into four general areas including:

> The Federal Reserve is tasked with influencing the nation's overall monetary and credit conditions. It does this in pursuit of three statutory economic objectives given by Congress such as maximizing sustainable employment, maintaining stable prices (inflation targeting), and moderating long-term interest rates.
>
> Supervising and regulating banking Institutions to guarantee the safety, soundness, and structural integrity of the nation's financial system. This duty includes regular institutional examinations and the aggressive enforcement of consumer credit protection laws.
>
> The Federal Reserve acts as the primary backstop for financial stability. It continuously monitors macroeconomic developments to contain, manage, and prevent systemic risks from destabilizing broader financial markets.
>
> The Federal Reserve provides critical payment and financial services to depository institutions, the United States government, and foreign official entities. It plays a foundational role in operating and securing the nation's high-volume check and electronic payment clearing systems.[23]

The Federal Reserve System is placed under the management of the Board of Governors. The Board is charged with the responsibility for implementing the Federal Reserve Act and other laws relating to a wide range of banking and financial activities. The Board implements these laws through its regulations.[24] The Board consists of seven governors appointed by the President and confirmed by the senate, out of which one serves as Chairman and another serves as the Vice Chairman. Governors serve 14-year staggered terms to ensure stability and continuity over time. A network of twelve (12) Federal Reserve Banks and 25 branches carry out a variety of functions, including operating a nationwide payments system and distributing the nation's currency. Each of the 12 Reserve Banks, responsible for a particular area or district of the United States, is headed by a President/Chief Executive appointed for a term of 5 years. Apart from performing functions such as administering nationwide banking and credit policies, each Reserve Bank acts as a depository for the banks within its district and fulfil other district responsibilities. Though the Bank is an independent government agency, the Federal Reserve Banks are set up like private corporations[25] in which member banks hold stock and earn dividends. Stocks in Federal Reserve Banks are not available for purchase by individuals or entities other than member banks.[26]

The Federal Reserve Banks exercises supervisory authorities over Bank holding companies

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[20] Ibid s 6

[21] G.S. & L Ltd v AMCON (2025) 15 NWLR (PT 1907) 245 CA

[22] Unity Bank Plc v Rhour & Lue Nig Ltd (2025) 9 N WLR (PT 1994) 1 SC

[23] www.federalreserve.gov accessed 05 June 2026, 12;30 a.m.

[24] The regulations are codified in title 12, chapter 11, of the code of Federal Regulations 12 CFR 201 et seq.

[25] The Federal Reserve System <www.federalreserve.gov>accessed 5 June 2026 12: 30 a. m.

[26] ibid

formed under the Gramm-leach-Bliley Act[27] and foreign banks operating in the U S. The Federal Reserve also supervises other financial institutions including state-chartered banks that are members of the Federal Reserve System; foreign branches of member banks; and Edge and agreement corporations through which U S banking organisations may conduct international banking activities.[28] The US commercial banks may be established by the Federal or State government, and their operation depends on the instrument of charter and whether or not they are members of the Federal Reserve System. Commercial banks can be created in three ways; those chartered by the Federal Government (through the office of the Comptroller of the Currency in the Department of Treasury) are termed National Banks because they are members of the Federal Reserve System, the other chartered by the States are divided into those that members of the Federal Reserve System (state member banks) and those that are not (state non-member banks). State banks are not required to join the Federal Reserve System, but they may choose to become members if they meet the standards set by the Board of Governors of the Federal Reserve System.[29]

The US Congress has initiated a number of legislative mechanisms to enhance transparency and accountability for the Federal Reserve emergency lending as authorised under its enabling law.[30] These include the periodic audit by the Government Accountability Office, which report must be laid before the parliament; the requirement that any emergency lending authorised under the law must be reported to Congress within 7 days, and within one year after termination of a credit facility, the Board must provide detailed transaction-level information to the public including the names of borrower, the amounts borrowed, the interest rate charged and information on the types and amounts of collateral pledged.[31]

The Federal Open Market Committee (FOMC)[32] is the committee within the Federal Reserve System responsible for directing open market operations and adjusting national interest rates. The committee is similar to the Monetary Policy Committee of the Bank of England and the Nigerian CBN. The committee comprises of 12 voting members including all the 7 sitting members of the central Board of Governors, the President of the Federal Reserve Bank of New York (who holds a permanent voting seat), and 4 of the remaining 11 regional Reserve Bank Presidents, who serve on the committee on a rotational one-year basis. The remaining seven Reserve Bank Presidents who do not have voting rights during a given year are entitled to attend the FOMC meetings and participate in the Committee's deliberations.

3.2. The Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) has jurisdiction over national banks which are identified by the words National or National Association or the initials N.A in the title of the bank. Such banks are referred to as federally chartered commercial banks. The OCC is an independent bureau within the US Department of Treasury[33] established by the National Currency Act of 1863 and serves to charter, regulate and supervise all national banks, thrifts institutions, and the branches and agencies of foreign banks in the US. The main objectives of the OCC are to ensure the safety and the soundness of the national banking system; foster competition by allowing banks to offer new products and services; and to improve the efficiency and the effectiveness of OCC supervision especially to lessen the regulatory burden.[34] Other objectives of the OCC are to ensure fair and equal access to financial services to all Americans; enforce anti-money laundering and anti-

[27] Graham Leach Bliley Act 1999
[28] US Federal Reserve Act 1913
[29] ibid
[30] Ibid s 13 (3)
[31] Board of Governors of the FRS<www.federalreserve.gov>accessed 5 June 2026 9; 40 p. m
[32] Federal Open Market Committee<www.federalreserve.gov>accessed 5 June 2026 9: 45 p .m
[33] The US Department of Treasury is similar to the ministry of finance in other jurisdictions. The secretary of Treasury is a cabinet member in the US Federal Government.
[34] Office of the Comptroller of the Currency< www.federalreserve.gov > accessed 5 June 2026 9 : 45 p. m.

terrorism finance laws (that apply to national banks and federally licenced branches and agencies of foreign banks); and investigate financial misconduct committed by the operators of national banks.[35]

3.3. The Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation (FDIC) is an independent agency created by the Congress to maintain stability and public confidence in the nation's financial system by insuring all deposits up to a fixed rate in banks and thrift institutions. The NDIC was established in 1933 as a temporary financial stabilization authority by the Glass-Steagall Act.[36] The Banking Act of 1935 elevated the status of the FDIC to a full-pledged Agency. Subsequently the Federal Deposit Insurance Act[37] which revised and consolidated earlier legislations on FDIC into one Law embodied the basic authority for the operation of the FDIC. Similarly, the Federal Deposit Insurance Corporation Improvement Act of 1991 greatly increased the powers and authority of the FDIC. Prominently, it makes provisions for recapitalisation of the Bank Insurance Fund and allows the FDIC to strengthen the fund by borrowing from the Treasury. The Act mandates a least-cost resolution method and prompt resolution approach to problems of failing banks, and orders the creation of risk-based deposit insurance assessment scheme.[38] Brokered deposits and the solicitation for deposits were restricted, as were the non-bank activities of insured state banks. The Act creates new supervisory and regulatory standards and provides for new capital requirement for banks. It also expands prohibitions against insider activities, and creates New Truth and Savings provisions.[39]

The FDIC has jurisdiction over more than 4.000 banks including saving banks for operational safety and soundness.[40] The FDIC has a responsibility of identifying, monitoring and addressing risks to deposit insurance funds, and to take steps to limit the effect on the economy and the financial system when a bank fails. It is observed that no depositor has lost a single cent of insured funds as a result of failure since it commenced operation on 1 January 1934.[41]

In performing its role as a bank resolution authority, the Corporation examines banks for compliance with consumer protection laws, including the Fair Credit billing Act, the Fair Credit Reporting Act, the Truth-In Lending Act and the Fair Debt Collection Practices Act which requires banks to help in meeting the credit needs of the community they were chartered to serve.[42]

The Federal Deposit Insurance Corporation is authorised to assume the role of an Orderly Resolution Authority when a Globally Systemic Important Bank is facing financial distress. The Article II of the Dodd Frank Act[43] appoints the FDIC as a receiver to borrow from the Orderly Resolution Fund to ensure the smooth exit of the failing bank without disrupting the U S financial system. The FDIC exercises bank failure resolution powers in collaboration with the Financial Stability Oversight Council of the US Treasury Department.

Banks in the United States of America could either be chartered by the state government or the federal government. National Banks are chartered by the federal government and placed under the management of the Office of the Comptroller of Currency during crisis.[44] Large Holding National Banks are placed under the control of the Federal Reserve during financial crisis, whereas regional banks chartered by the state government that are not members of the Federal Reserve System are placed under the management of FDIC during resolution.[45]

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[35] ibid

[36] Also known as the Banking Act of 1933

[37] FDIC Act 1950

[38] FDICIA 1991

[39] ibid

[40] B. Ayorinde, Banking Reforms in Nigeria; The Law, The Prospects and The Challenges(John Achers Publishers Ltd: 2018) 198

[41] Who is the FDIC? FDIC<www.fdic.gov>accessed 5 June 2026 9: 15 p. m.

[42] ibid

[43] Dodd Frank Wall Street Reform and Consumer Protection Act 2010 Article II

[44] US federal Reserve Act s 3

[45] Ibid

4. A Critique of the Enforcement Power of Bank Resolution Authorities

A scholar argued that bank resolution authorities in the U S including FDIC, Office of the Comptroller of Currency, the Federal Reserve are responsible for the proliferation of Globally Systemic Financial Institutions which failure has the potential of disrupting the entire US financial system.[46] To buttress his claim, the author further posited that in spite of the provision of the US law prohibiting National Banks from opening branches in the regions, multiple courts in the US upheld the powers of these regulatory agencies to issue licence to large group holding banks. For instance, in Clarke v Securities Industry Association[47], the Association brought an action to challenge the brokerage activities of National Bank. Earlier the two National Banks, namely; Union Planters National Bank of Memphis (Union Planters), and the petitioner, Security Pacific National Bank of Los Angeles (SPN), applied to the Comptroller of Currency for permission to open offices offering discount brokerage service to the Public. Both banks wanted to offer discount brokerage services at their branch offices and other locations inside and outside of their home states. Union Planters sought permission to acquire an existing discount brokerage operation, and SPN hoped to establish an affiliate named Discount Brokerage. Upon review of the application, the Office of the Comptroller of Currency approved the application. SPN's application to the OCC raised the issue of whether the operation of a discount brokerage violated the National Bank Act's branching provisions. The Comptroller approved SPN's application, concluding that "the non-chartered offices at which Discount Brokerage will offer its services will not constitute branches under the McFadden Act because none of the statutory functions will be performed there. Disagreeing with the Comptroller's action, the association argued that National Bank offices at which discount brokerage will offer its services were offices within the meaning of s 36(f), and were subject to the geographical restrictions imposed by s 36(c) of the Act and therefore constitute breaches under MCFADDEN Act[48]. The Supreme Court while delivering judgement in favour of the Respondents held that the Comptroller was right in approving the applications. First, the Court emphasized the great weight given to the Comptroller's interpretations. Second, the Court rejected the Association's argument that the Comptroller's interpretation of the National Bank Act contradicted the plain language of 12 U.S.C. s 81 when it broadly interpreted sec. 81 as delineating that "national banks may locate their business only at their headquarters or licensed branches within the same state. The Court reasoned that s 81 did not need to be read to encompass all the businesses in which the bank engages, but could be read to cover only those activities that were part of the bank's core banking functions. Therefore, the Court found that the Comptroller's position that "the amendment [to the National Bank Act] simply codified the accepted notion that the 'usual business' of a bank was the 'general banking business."[49] A similar position was affirmed by the Court in Securities Industry Association v Board of Governors of Federal Reserve[50], where the Federal Reserve allows a National Bank to sell and underwrite commercial paper in spite of the express provisions of the US Glass Stegall[51] prohibiting commercial banks from carrying investment business.

Similarly, In Bankers Trust III,[52] The Federal reserve approved the applications of Citicorp, J.P. Morgan & Co. Inc., Bankers Trust New York Corp., Chase Manhattan Corp., Chemical New York Corp., Manufacturers' Hanover Trust Corporation, and Security Pacific Corp., to engage in

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[46] Roberta S. Karmel, 'An Orderly Liquidation Authority is Not the Solution to Too-Big-To-Fail' (2011) 6 Brook J Corp Fin & Com L 1

[47] Clarke v Securities Industry Association (1987) 479 US 388, 390-91

[48] Mc Fadden Act cap 191, 44 stat 1244 (1927) codified as U.S.C s 36 2006; see Roberta S. Karmel, 'An Orderly Liquidation Authority is Not the Solution to Too-Big-To-Fail' (2011) 6 Brook J Corp Fin & Com L 1

[49] Clarke v Securities Industry Association (1987) 479 US 388, 390-91

[50] Securities Industry Association v Board of Governors of the Federal Reserve System [Bankers Trust I] (1984) 468 US 137, 158

[51] The Glass Steagall Banking Act 1933

[52] Securities Industry Association v Board of Governors of the Federal Reserve System [Bankers Trust III] (1987) 839 F2d 47,42

limited securities activities through wholly-owned subsidiaries. In response, the Securities Industry Association petitioned for review, arguing that the approved activities violated sec. 20 of Glass-Steagall. The court acknowledged that it was required to uphold the Federal Reserve's interpretation of Glass-Steagall if it was reasonable but determined that the Federal Reserve decision was ambiguous. The court nevertheless concluded that sec. 20 did not proscribe activities by bank affiliates in bank eligible securities. First, the court examined the legislative history and determined that Congress, concerned primarily with bank affiliates' activities in bank ineligible securities, did not want to limit all securities activities. Second, the court examined prior judicial construction and determined that the Federal Reserve interpretation of sec. 20 was not precluded by the "subtle hazards" analysis because Congress did not believe that the risks were significant when banks engaged in activities relating to bank eligible securities as allowed under sec. 16. Therefore, the court concluded that the Federal Reserve construction of sec. 20, that "securities" did not encompass those securities which sec. 16 allowed banks themselves to underwrite, was reasonable.

While disagreeing with the powers of the Orderly Liquidation Authority, Thomas W. challenged the constitutionality of the Dodd Frank Act which empowers a judge to administratively (without notice to the public or interested parties) hear petition within 24 hours and appoint FDIC as a receiver of failing systemic banks raises due process issues under Article III of the US Constitution.[53]

According to Ari Mushel,[54] and Stephen J,[55] financial regulators in the US are colluding with the institution they regulate in extending their size and types of business thereby contributing to the proliferation of large systemic banks that are prone to financial crisis.

5. Conclusion

The Paper concludes that while in some jurisdiction, the resolution powers and the supervisory powers are vested in one Agency; other resolution regimes confer resolution and supervisory powers on separate Agencies. For instance, in the United States, while the resolution powers are vested in the FDIC which in certain circumstances is regarded as Orderly Resolution Authority, the Treasury Department, The Federal Reserve Bank and The US Congress exercise regulatory powers in banking resolution. In contrast, the Nigeria Bank Resolution Regime confers both resolution and supervisory powers on the Central Bank.

6. Recommendations

The paper recommends that the operational independence of the bank resolution authority in Nigeria should be enhanced. The bank resolution powers should be transferred from the CBN's resolution department to an independent financial regulator. This would prevent conflicts of interest where the same body (CBN) acts as both 'the Supervisor' (trying to keep a bank alive) and 'the Resolver' (deciding when a bank should be allowed to exit).

The paper recommends the expansion of early intervention powers of bank resolution authorities Legislation should be reviewed to allow for pre-resolution actions, such as mandatory recapitalization or the forced sale of business units, at a lower threshold of distress to prevent the total collapse of banks in resolution.

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[53] T. W. Merrill and M. L. Merrill, 'Dodd-Frank Orderly Liquidation Authority: Too Big for the Constitution' (2014) 163 U Pa L Rev 165; see also J. L. Hardee, 'The Orderly Liquidation Authority: The Creditor's Perspective' (2011) 15 NC Banking Inst 259.

[54] S. A. Mushell, 'The Orderly Liquidation Authority: Friend or Foe' (2014) 131 Banking LJ 3

[55] Stephen J. Lubben, 'Resolution, Orderly and Otherwise: B of A in OLA' (2012) 81 U Cin L Rev 485

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