

# ABUDU, DALLEY & CO.

## NIGERIA:

### THE CENTRAL BANK ACT 2007 – SIGNIFICANT CHANGES.

The new Central Bank of Nigeria Act 2007 came into effect on the 25<sup>th</sup> of May 2007. Pursuant to the preamble of the Act the previous 1991 Act has been repealed and has now been replaced by the new 2007 Act, with added related matters.

This article provides an overview of the new Act and highlights the significant changes provided for under the new Act.

#### THE NEW ACT:

Some key areas which the new Act covers are as follows:

**Establishment of the Central Bank of Nigeria:** As opposed to the previous Act which upon establishment referred to the Central Bank as a continuation of the previous, the new Act refers to the Central bank as a new entity and states<sup>1</sup> "There is the establishment for Nigeria a body known as the Central Bank of Nigeria...".The standard rights of a corporation are reserved i.e perpetual succession, common seal, and the right to sue and be sued. However a new sub-section<sup>2</sup> has been introduced for the purpose of guaranteeing the independence of the Bank in the discharge of its duties.

**The objects of the Bank:** The new Act in the first subparagraph under this section<sup>3</sup> introduces a new principle object as being to "ensure monetary and price stability".

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<sup>1</sup> Section 1(1) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>2</sup> Section 1(3) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>3</sup> Section 2(a) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

This is in reaction to the failed or perhaps lack of monetary and price policy which led to the intense devaluation of the Naira and high rates of inflation during the 90's. However it is interesting to note that in subparagraph c of the old Act the Bank was required to "promote monetary stability and a sound financial system in Nigeria".

**The Capital of the Bank:** The authorized share capital of the Bank has been increased from three hundred million to one hundred billion, Naira. This is a reflection of the recent wave of capitalization imposed by the Central Bank on all Banks and other Financial Institutions in the country.

Clearly the Central Bank in its capacity as regulator must be capitalised far beyond its regulatees.

**Operating surplus and general reserve:** Under the new Act there shall be provision for contribution towards the staff pensions fund in accordance with the 2004 Pension Reform Act, as opposed to contributions made previously to a staff superannuation fund. This introduction is simply in compliance with the introductory sections of Pension Reforms Act<sup>4</sup>.

As was the case under the old Act the Bank is entitled to set up a general reserve fund, however it is now the case that one quarter as opposed to the previous one sixth of the operating surplus is to be placed in the fund.

**The Board of Directors:** In addition to the usual constitution of the Board being the Governor of the Bank, Four deputy Directors, The Permanent Secretary of the Ministry of Finance, and Five other Directors, it is now a requirement that the Accountant-General of the Federation must also be a member of the Board<sup>5</sup>.

The required responsibility of the board of Directors of the Bank has generally remained the same. These include the following:

- Consideration and approval of the annual budget of the Bank

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<sup>4</sup> Section 1, Section 2 Pension Reforms Act 2004 CAP. P4. L.F.N.

<sup>5</sup> Section 6(2)(e) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

- The approval of the audited and management accounts and the consideration of the management letter from the external auditors
- The formulation and implementation of the exchange rate policy
- Making recommendations to the President for the appointment of auditors
- The establishment and closure of branches and currency centre's
- Carrying out such activities as are necessary for achieving the objectives of the Bank

It is however noted that sections 6(3) (c) and 6(3) (d) of the previous Act which state "formulation of monetary and credit policy in Nigeria" and "devising suitable mechanism to determine rates of exchange at which the Bank shall buy and sell foreign currency" has been deleted and replaced with the phrase **"formulation and implementation of the exchange rate policy"**.

**Management of the Bank:** There are no changes under this provision the Governor as usual, or a nominated deputy, is responsible for the day to day running of the Bank.

**Appointment, Qualification and Remuneration of the Governor and his deputies and other Directors:** The key changes are that the persons to be appointed must have financial experience and such appointments by the President are subject to confirmation by the Senate<sup>6</sup>.

This alteration is in accordance with the greater demands placed on the role of Governor of the Central Bank. In the last few years the Banking sector has, based on recent reforms, grown at an incredible pace, therefore there is the need to engage a Governor and Deputies able to surmount very rigid requirements.

The Act has not only retained the Governors role of having to advise the President on the affairs of the Bank<sup>7</sup> but now requires the Governor to attend semi-annual report hearings before the National Assembly<sup>8</sup>.

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<sup>6</sup> Section 8(1), 10(1) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>7</sup> Section 8(5) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>8</sup> Section 8(4) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

**Disqualification and Cessation of Appointment:** The key difference under the new Act is that the President of the Federal Republic of Nigeria may, subject to the support of two thirds majority of the Senate, remove the Governor<sup>9</sup>.

**The Monetary Policy Committee:** This is a fresh addition aimed at enhancing Federal Governments objectives for price stability and generally the support of the monetary policy.

The committee shall comprise of the following:

- The Governor of the Central Bank
- All deputy Governors
- Two of the Banks Board members
- Three others to be appointed by the President
- Two other members to be appointed by the Governor

**Appointment of Secretary of the Board and other employees:**

The new Act merges sections 13 (relating provisions on the general appointment of employees) and 46 (relating to the appointment of the Secretary to the Board) of the previous Act into section 14 of the new Act. The Act in addition <sup>10</sup> requires that the Secretary to the Board must be a lawyer with at least 10 years cognate experience.

**Currency, Exchange rate, printing of notes and coins, denomination and form of currency notes, legal tender, tampering with coins, lost and damages notes and coins, Stamp Duty<sup>11</sup>:** The new Act retains in the main all the provisions contained within the above sections. However with regards the issue of the Banks currency and notes being legal tender the Act has now gone further by outlining explicitly the punishment for (a) falsifying, making or counterfeiting any currency (b) the refusal of the Naira as a legal tender (c) Tampering with the Naira (d) Spraying, dancing on or "matching" (local vernacular for treading on) the Naira.

As usual the Bank shall not be responsible for payment of stamp duty on issued notes.

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<sup>9</sup> Section 11(2)(f) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>10</sup> Section 14(3) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>11</sup> Sections 15-22 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

**External Reserves:** Under the new Act as is the case with the old Act the Bank is required to maintain an external reserve consisting of the following:

- Gold coin or bullion
- Balance at any bank outside Nigeria
- Treasury bills
- Securities of, or guarantees by a government of another country
- Securities of, or guarantees by international financial instruments
- Nigeria's gold tranche in the International Monetary Fund
- Allocation of Special Drawing rights courtesy of the International Monetary Fund

In addition the 2007 Act has extended the scope of external reserves to include Investments such as loans or debentures in an investment Bank.

The Bank is expected to maintain the foreign reserves at levels appropriate for the economy and the monetary system<sup>12</sup>. This requirement is also contained within the old Act (without the word economy).

The Bank is also permitted to trade in the Naira against other currencies<sup>13</sup>.

**Banking Operations (General)<sup>14</sup>:** As contained within previous legislation the Bank may (a) issue demand drafts and other kinds of remittance (b) Open accounts and accept deposits from Federal, State and Local Governments their institutions and corporations, Banks and other credit or financial institutions (c) maintain accounts with Central Banks and Other Banks of Foreign Countries (d) act as a corresponding Bank, banker or agent for other Central Banks or monetary agencies (e) accept securities and other items of value (f) Undertake on behalf of customers and correspondents the purchase, sale, collection and payment of securities currencies and credit instruments in Nigeria and abroad.

**Banking Operations (Treasury)<sup>15</sup>:** Under this category the Bank is entitled to (a) purchase and sell gold coins and

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<sup>12</sup> Section 25 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>13</sup> Sections 26 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>14</sup> Sections 27 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>15</sup> Sections 28 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

bullion (b) generally purchase, sell, discount and re-discount inland bills of exchange, promissory notes, treasury bills, bills of exchange, treasury certificates, project tied bonds, Federal Government securities, and foreign currency.

**Banking Operations (Credit)<sup>16</sup>:** As was the case under the former Act the Bank is permitted to grant credit against treasury bills, gold or bullion, Government securities, bills of exchange and promissory notes, warehouse warrants, treasury certificates issued by Government.

In addition the Central Bank as usual is permitted to grant temporary advances to Banks within the ambit described by the Banks and other Financial Institutions Act. The Bank is now authorized to grant advances to any authority on the proviso that the Federal Government provides a written guarantee<sup>17</sup>.

**Liquidity Management:** The Bank is empowered to carry out market activities including but not limited to issuing, placing, selling, repurchasing, amortising and redeeming securities, for the purpose of maintaining monetary stability. This is not new, however under what is newly referred to as a **developmental function**<sup>18</sup> the Bank may subscribe to or hold and sell shares and debentures, for the purpose of promoting and developing not only the capital markets but also encouraging financial/economic growth and development.

**Incidental Powers:** The Banks power to require certain information and prohibited activities are in the main the same

**Monetary Policy:** Under the new Act<sup>19</sup> the Bank is now required to publish a monetary policy rate as opposed to the previous requirement of having to publish a minimum discount rate.

**Relationship with the Federal Government and Other Banks:** The Central Bank as always is entrusted with the task of co-coordinating the Federal Governments banking (including

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<sup>16</sup> Sections 29 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>17</sup> Sections 29(d) Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>18</sup> Sections 31 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>19</sup> Sections 35 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

but not limited to the grant of advances, loan issuance and management) and Foreign exchange transactions and in the exercise of this role it may utilize any of the local banks as agents. This role is also extended where required to States and Local Governments as well as funds, institutions or corporations established by Federal, State and Local Government<sup>20</sup>.

Yet again as stipulated under the previous Act the Central Bank shall act as Banker to other Banks and may provide services to non-Nigerian Banks<sup>21</sup>.

**The Financial Services Regulation Coordinating Committee:**

The committee was established by previous legislation and has now been re-established by under section 43 the new Act for the purpose of encouraging not only uniformity amongst financial institutions but also creating solutions that promote a safe, sound and efficient practice by financial institutions.

Essentially this committee pursues the strict regulatory functions of the Central Bank as a whole.

**Appointment of other Banks as Agents, Payment and settlement systems:** The Bank has retained its usual function of being able to appoint other banks as agents and acting as a clearing house of cheques and credit instruments.

**Financial year, Audit, Publication of Annual Accounts and reports, Exemption from Tax, Exclusion of the Companies and Allied Matters Act, Liquidation:** All provisions on this subject have been maintained.

**Power to License and regulate credit bureau:** This is a provision that has been newly introduced under the Act which permits credit bureau's, once licensed, to collect information on the customers of Banks and other institutions in a manner to be approved by the Central Bank. This is undoubtedly a welcomed development as it paves way for a viable credit system in Nigeria.

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<sup>20</sup> Sections 39 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN

<sup>21</sup> Sections 41 and 42 Central Bank of Nigeria Act. 2007 CAP A66. No. 7 LFN