AN EVALUATION OF THE IMPACT OF ELECTRONIC BANKING ON BANKER AND CUSTOMER RELATIONSHIP IN NIGERIA

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Abstract

The relationship between banker and customer under traditional banking has long been established as primarily that of creditor and debtor. The advent of FinTech has made access to banking services possible without physically visiting banking halls, that is, banking services can now be accessed digitally. This process is what is known as electronic banking. The banker and customer relationship had been established long before the emergence of electronic banking. The question thus arises: Has electronic banking altered the traditional banker and customer relationship in Nigeria? The aim of the study is to determine whether electronic banking has altered the banker and customer relationship in Nigeria. To achieve this aim, an analysis of traditional banker and customer relationship and banking business in Nigeria is undertaken. The legal framework for electronic banking in Nigeria is also explored. The doctrinal research methodology was adopted. Primary and secondary sources of laws were examined. This study finds that electronic banking services are similar to traditional banking services and thus, the relationship between banker and customer as well as the attendant rights, duties and liabilities under traditional banking remains the same under electronic banking. The paper however recommends that a single comprehensive law on electronic banking be developed to accommodate the uniqueness of digital banks.

Keywords: Banks, Customer, Digital Banks, Electronic Banking, FinTech

1.0 Introduction

The emergence of the digital age has prompted industries and businesses across the globe to digitalize their services and operations to secure their continued existence and relevance. The banking industry has since embraced Information and Technology (ICT) in its operations, thus birthing electronic banking and digital banks. Electronic banking entails banks using electronic platforms to render electronic banking services. Banks now utilize platforms like Automated Teller Machines (ATMs), Electronic Funds Transfer (EFT), mobile banking, smart cards and online banking to render their banking services. ICT advancements has made possible the existence of Digital bank which primarily delivers banking services through the internet or other forms of electronic channels without the presence of physical branches.[1]Electronic banking allows for ease in rendering and accessing banking services. For customers, they can conveniently access banking services at any time of the day and from any location. For banks, it saves costs for them and allows them generate more revenue.

The history of electronic banking in Nigeria is traceable to the 1980s when SAP was introduced. The emergence of the SAP engendered some financial reforms which according to CBN brought about enhanced service delivery through the use of modern technology. [2]Nigerian banks in a bid to boost their competitive advantage and relevance began deploying technology to

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[1] PWC, 'Digital Banks Get Real in Singapore: Crafting the Winning Strategy', <https://www.pwc.com/sg/en/publications/assets/digital-banking-get-real-in-sg.pdf>accessed 29 January, 2024.

[2]CBN, 'Monetary Policy Reforms' <https://www.cbn.gov.ng/monetaryPolicy/Reforms.asp> accessed 11 March, 2024

enhance the delivery of their services. Banks began deploying ATMs across the country and popularized the use of credit and debit card.[3] Electronic banking has since grown to become a service offered by both traditional banks (brick-and-mortar banks) and purely digital banks in Nigeria and entails a wide range of electronic platforms through which banks render electronic banking services.

The nature of a banker customer relationship had long been established before the emergence of electronic banking. Under traditional banking from which electronic banking evolved, the banker and customer relationship had long been established as primarily that of a debtor and creditor relationship.[4]It also takes the shapes of principal/agent, bailor/bailee, trustee/beneficiary, lessor/lessee, pledgor and pledgee and mortgagor/mortgagee. These relationships were decipherable from services offered by banks. Electronic banking has disrupted the traditional ways banking and has brought with it, unique concerns like data protection, cyber-attacks and money laundering. The development of electronic banking has warranted the question: Has electronic banking altered the traditional banker and customer relationship in Nigeria? This paper attempts to answer this question.

2.0 Definition of Key Terms

A. FinTech

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[3] ibid.

[4]*Foley v Hill* [1848] 2 HLC 28, 9 ER, 1002; *Yesufu v African Continental Bank Ltd* [1976] 4 SC 1.

The word "FinTech" is of recent origin. It is a fusion of two words: "Financial" and "Technology". Arner *et a*l defined FinTech as "the use of technology to deliver financial solutions."[5] According to Gomber *et a*l, FinTech is a neologism coming from the words, "financial" and "technology" and which refers to the connection between modern internet technologies and established business activities of the banking sector.[6]Schueffel on the other hand defined FinTech as an industry and not just mere deployment of technology in rendering financial services. He defined it as "a new financial industry that applies technology to improve financial activities."[7]

In essence, FinTech, a contraction of the terms "financial" and "technology, refer to the use of technology to render financial services on the one hand, and financial institutions that utilize technology to render its services on the other hand.

B. Banks

There is no universal meaning of the word "bank".[8] The Judicial Committee of the Privy Council in the *Bank of Chettinad Ltd of Colombo v Commissioner of Income Tax*[9] has rightly pointed out that the words

[5] D.W. Arner, J. Barberis and R.P. Buckley, 'The Evolution of FinTech: A New Post-Crisis Paradigm?' (2015) University of Hong Kong Faculty of Law Research Paper No. 2015/047, UNSW Law Research Paper No. 2016-62, 3 <https://ssrn.com/abstract=2676553> accessed 1 May, 2024.

[6] P. Gomber, J.A. Koch, & M. Siering, 'Digital Finance and FinTech: Current Research and Future Research Directions' (2017) 87(5) *Journal of Business Economics* 537–580. doi:10.1007/s11573-017-0852-x. In Nofie Iman, 'The Rise and Rise of Financial Technology: The Good, the Bad, and the Verdict' (2020), 7(1) *Cogent Business & Management* 5.

[7] Patrick Schueffel 'Taming the Beast: A Scientific Definition of Fintech' (2016) 4(4) *Journal of Innovation Management* 45.

[8] Banks are also referred to as bankers.

[9][1948] AC 378.

"banker" and "banking" may have different meanings at different points in time and in different locations. The following definitions however capture the concept of the word "bank" in Nigeria. According to section 131 of the Banks and other Financial Institutions Act, 2020 (BOFIA 2020), a bank is an establishment duly licensed under the Act to act as one. Ojukwu-Ogba also defined a bank as "any entity duly incorporated under the Companies and Allied Matters Act and also licensed by the CBN to carry on the business of banking."[10] Oshio is of the view that a bank is "a corporate body licensed or otherwise authorised by the State to operate as a bank and transact business as defined by its enabling statute or regulations."[11]A bank in Nigeria is thus a corporate body duly licensed or authorised by the Nigerian government to operate a banking business.

C. Customer

As with the term "bank", there is no widely accepted definition of a bank customer. The following attempts have however been made to define or describe a bank customer. Igweike defines a customer as "a person who maintains an account in the bank."[12]Oshio defines a bank customer as, "any person, whether incorporated or not, who has some sort of account with a bank."[13]Igweike further opined that a bank customer is also a person who has agreed with a bank to open an account with the bank.[14] Furthermore, the Court in the case of *Union Bank Nigeria Plc v Integrated Timber & Plywood Product Ltd* defined a customer as "someone who has an account

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[10] Nelson E. Ojukwu-Ogba, 'Banking Sector Reforms in Nigeria: Legal Implications for the Banker-Customer Relationship', (December,2009) <https://doi.org/10.1080/03050710903387790> accessed 29 January, 2024.

[11] Ehi Oshio, *Modern Law and Practice of Banking in Nigeria*, (Lulupath Publications, Benin City 1995) 3.

[12] K.I. Igweike, *Law of Banking and Negotiable Instruments*, (2nd Ed. Onitsha, Africana First Publishers Limited, 2004/2005), 70.

[13] Oshio (n 11) 41.

[14] Ibid, 43.

with a bank or without having an account the relationship of banker and customer exists."[15]

A bank customer is therefore one who has either opened an account with a bank or has shown intention to enter into a banker customer relationship to which the bank agrees even in the absence a bank account.

D. Electronic Banking

The words "Electronic Banking", "E-Banking" "Digital Banking" all have the same meaning. In the definitions below, these terms were used interchangeably by the authors. Sharma and Dubey defined electronic banking as follows:

> Digital Banking also known as E-banking or online banking or internet banking is a system which enables banking transactions like payments, deposits, withdrawals of cash virtually with the help of internet rather than physically visiting the bank branches. Digital banking is a term which is synonym to the frequently used term e-banking.[16]

Kievani *et al* defined electronic banking as "an umbrella term for the process by which a customer may perform banking transactions electronically without visiting a brick-and-mortar institution."[17] Muhammad defined electronic banking as, "the business of banking conducted through electronic devices."[18]

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[15] [2000]12 NWLR (Pt 680) 99 at 110.

[16] B. Sharma & A. Dubey, 'Digital Banking: A need in Time' (2022) 9 (3) *International Journal of Advanced and Applied Research* 504.

[17] F.Sameni Keivani, M. Jouzbarkand, M. Khodadadi and Z. Khalili Sourkouh ,'A General View on the E-banking' (2012) 43 *International Proceedings of Economics Development & Research* 62.

[18] Kabiru Garba Muhammad, 'An Appraisal of the Relationship between Banker and Customer in Nigeria' (2015) 7(4) *European Journal of Business and Management* 232.

3.0 Brief History of Electronic Banking in Nigeria

The opening of a branch of African Banking Corporation in Nigeria marked the beginning of modern banking in Nigeria.[19]It was however not until 1952 that the first major legislation on banking, Banking Ordinance, 1952. The Nigerian government's quest to regulate the banking industry further resulted into the enactment of the Central Bank Act in 1958.The Act created the Central Bank of Nigeria (CBN), to regulate Nigeria's banking industry. The Act since given way for the CBN Act enacted in 2007. The Banking Decree emerged in 1969 and has since evolved to become the Banks and Other Financial Institution Act, 2020. The law is the foremost legislation regulating banks and other financial institutions. With time, many more laws and regulators of the banking industry have emerged in Nigeria.

The history of electronic banking is however traceable to the Structural Adjustment Programme (SAP) of 1986.The programme fostered the commercialization and privatization of government-owned enterprises, using the private sector as a propellant of economic growth. In essence, the Nigerian banking industry has evolved over the years shifting from traditional banking to electronic banking, thanks to FinTech. Reforms in the Nigerian banking sector especially during the tenures of Professor Charles Soludo and Sanusi Lamido Sanusi like the Payment Systems Vision further contributed to the proliferation of electronic banking in Nigeria.[20]The global financial crisis of 2007/2008[21]and the COVID-19

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[19]Igweike (n 12), 1.

[20]C.P. Nwosu, I. Oji-Okoro & O.D. Anih, 'FinTech Evolution & Development in Nigeria: Lessons From Other Jurisdictions' Occasional Paper No. 76, vi & 2 3 <https://www.cbn.gov.ng/Out/2023/RSD/OCCASIONAL%20PAPER%20NO%2076%20-%20Fintech%20Evolution%20and%20Development%20in%20Nigeria.pdf.> accessed 11 March, 2024.The Payments Service Vision was geared towards converting Nigeria's cash-dominated economy to a cashless one by 2020.

[21]Sofia Anyfantaki, 'The Evolution of Financial Technology (FinTech), (2016) (44) *Bank of Greece Economic Bulletin* 47.

pandemic are factors that also boosted the rise of FinTech which electronic banking is a component of.[22] Electronic banking has over the year become firmly rooted in Nigeria and is now a service rendered by traditional banks and digital banks.

4.0 Prospects of Electronic Banking in Nigeria

Electronic banking reduces costs for both banks.[23] Automation of bank services and processes as well as paperless transactions are some features of electronic banking that reduces cost for banks. Also, customers no longer have to deal with costs arising from physically visiting banks to access banking services.

Electronic banking is renowned for making access to banking services convenient.[24] Bank customers need not physically visit banks to access banking services thus making electronic banking. Electronic banking allows bank customers access banking services from any location and at any time.

Electronic banking offers a pathway to economic viability and growth of the banking industry in Nigeria.[25] Electronic banking boosts the delivery of financial services, thus boosting the profits and reach of banks in Nigeria
Electronic banking engenders reduced risks and security of funds.[26] Electronic banking reduces the risk associated with physically moving funds around and also ensures safety of funds through security measures like encryption and two-factor authentication.

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[22] (n 20) 3.
[23]Duru G. Chukwudi & Edwinah Amah, 'Development of E-Banking, Its Benefits and Challenges in the Nigerian Banking Industry' (2018) 7(2) *ASPL International Journal of Management Sciences* 4.
[24] A.O. Agbada, 'Electronic Banking in Nigeria: Problems and Prospects From The Consumer's Perspective' (2008) 32 (4) *CBN Bullion* 22.
[25] ibid.
[26] ibid.

5.0 Challenges of Electronic Banking in Nigeria

i. Lack of basic infrastructures like steady power supply and an effective telecommunications system are hindrances to the effective delivery of electronic banking services in Nigeria.[27] The unsteady power supply and poor telecommunication system in Nigeria are hindrances to the delivery and accessing of electronic banking services.

ii. Human limitations also pose a challenge to accessing electronic banking services. Accessing banking services can be a challenge for persons who are not technology savvy.[28] Furthermore, persons with visual and hearing impairments may have trouble accessing these services.[29]

iii. Cyberattacks are a major challenge to electronic banking in Nigeria. The rise of cybercrimes in Nigeria poses a threat to the ability of banks to effectively secure data and accounts of customers.[30]

iv. Another challenge is the malfunction of electronic banking delivery channels like ATMs.[31] There are also times when bank applications fail to work. These malfunctions limit customers' access to electronic banking services.

6.0 Legal Framework for the Regulation of Electronic Banking in Nigeria

There are numerous statutes and institutions that regulate electronic banking in Nigeria. Some key statutes, regulations and institutions are discussed in this section

[27] ibid, 21-22.
[28] ibid., 20-21.
[29] ibid.
[30] ibid., 20.
[31] ibid., 20.

6.1 Statutory Framework for the Regulation of Electronic Banking in Nigeria

The following are some key statutes regulating electronic banking in Nigeria:

a) **The Banks and Other Financial Institutions Act, 2020**

The Act empowers CBN to supervise and regulate banks and other financial institutions in Nigeria.[32]The Act provides that no person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under the Act.[33] The Act validates electronic banking in Nigeria by recognizing that business conducted electronically.[34]

b) Central Bank of Nigeria Act, 2007

The Act established CBN which is the primary regulator of banking in Nigeria.[35] CBN thus regulates both traditional banking and electronic banking in Nigeria. To operate a operate a bank in Nigeria, a banking licence must first be obtained from CBN. Pursuant to its powers under the Act, the CBN has gone ahead to make regulations and issue guidelines on electronic banking like: CBN Guidelines on Operations of Electronic Payment Channels in Nigeria, 2020, CBN Guidelines on Mobile Money Services in Nigeria, 2015 and Guidelines on Electronic Banking in Nigeria, 2003.

c) Nigeria Deposit Insurance Corporation Act, 2023

The Act established the Nigeria Deposit Insurance Corporation (NDIC) which is charged with insuring all deposit liabilities of banks and other

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[32]BOFIA,2020, s 1.
[33]ibid. BOFIA,2020, s 2(1).
[34]ibid.BOFIA,2020, s 131.
[35] CBN Act,2007, s 1.

financial institutions operating in Nigeria and managing banks for the purpose of reducing potential risk of failure and check unsound banking practices.

d) Companies and Allied Matters Act, 2020

The Companies and Allied Matters Act (CAMA) 2020 regulates the incorporation of companies, trustees of certain communities, bodies and associations and registration of business names. The Act also regulates the conduct of business in Nigeria. The Act established CAC to implement the provisions of the Act. Banks are mandatorily required to be duly incorporated under the Companies and Allied Matters Act and then licensed by the CBN to be eligible to carry on the business of banking.

e) Investment and Securities Act, 2007

The Act regulates Nigeria's capital market so as to protect investors, maintain a fair, efficient and transparent market as well as to reduce systemic risk and other ancillary matters. The Act established SEC which is responsible for regulating Nigeria's Capital Market.

Other laws regulating electronic banking in Nigeria include the Cyber Crimes (Prohibition, Prevention, Etc) Act, 2015, Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995, National Information Technology Development Agency Act 2007, National Office for Technology Acquisition and Promotion Act, 1992 Evidence Act 2011 and Nigeria Data Protection Act, 2023.

6.2 Institutional Framework for the Regulation of Electronic Banking in Nigeria

The following are key regulators of electronic banking in Nigeria:

i. Central Bank of Nigeria

The CBN is the chief regulator of banking in Nigeria. The objectives of the bank include ensuring monetary and price stability, issuing legal tender currency in Nigeria, maintaining external reserves to safeguard the international value of the legal tender currency, promoting a sound financial system in Nigeria and acting as a banker to the Federal Government.[36] It issues banking licence to banks to enable them operate in Nigeria's CBN regulates both traditional and electronic banking in Nigeria.

ii. Nigeria Deposit Insurance Corporation

NDIC is responsible for insuring all deposit liabilities of licensed banks in Nigeria. Its functions as stipulated in section 3 of the NDIC Act are as follows:

> a) guaranteeing under the provisions of this Act, deposit liabilities of financial institutions licensed or authorised to accept deposits from the public in accordance with the provisions of the Banks and Other Financial Institutions Act;
> (b) with the concurrence of the Central Bank of Nigeria, supervising insured institutions to mitigate the risk of failure;
> (c) with the concurrence of the Central Bank of Nigeria, resolution of failing insured institutions; and
> (d) prompt, efficient and orderly liquidation of failed insured institutions.[37]

iii. Corporate Affairs Commission

CAC manages the formation and management of companies, businesses and trustees of trustees of certain communities, bodies and associations in

[36] CBN Act 2007, s 2.
[37] NDIC Act,2023, s 3.

Nigeria.[38]It is therefore responsible for the incorporation of banks in Nigeria. Its other functions include; [39]

I. Establishing and maintaining a company's registry and office in each State of the Federation suitably and adequately equipped to perform its functions under the Act or any other law;
II. Arranging and conducting an investigation into the affairs of any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands;
III. Ensuring compliance by companies, business names and incorporated trustees with the provisions of the Act and such other regulations as maybe made by the Commission.

iv. Securities and Exchange Commission

The Securities and Exchange Commission (SEC) is responsible for implementing the provisions of the Investments and Securities Act, 2007. It is particularly responsible for regulating Nigeria's capital market. Some of its functions as outlined in the Act are to:

a. regulate investments and securities business in Nigeria as defined in this Act;
b. register and regulate securities exchanges, capital trade points, futures, options and derivatives exchanges, commodity exchanges and any other recognized investment exchange;
c. regulate all offers of securities by public companies and entities;
d. register securities of public companies;[40]

[38] CAMA,2020, s 8.
[39] ibid.
[40] Investment and Securities Act, 2007, s 13.

Other regulators of electronic banking include the National Office for Technology Acquisition and Promotion which regulates the inflow of foreign technology in Nigeria and the National Communication Commission which regulates telecommunications in Nigeria and National Information Technology Development Agency which manages the development of ICT in Nigeria.

7.0 Drawbacks of the Extant Legal Framework for Electronic Banking in Nigeria

The extant legal framework for electronic banking in Nigeria comprises numerous laws and regulators. This has unfortunately given room for overlapping of provisions of applicable laws as well as jurisdictions of regulators over some electronic banking matters. This creates confusion as to which law would apply over such matters or the appropriate regulator that would oversee such matters, thus posing a challenge to the effective regulation of electronic banking in Nigeria.

Furthermore, having multiple laws and regulators leaves banks rendering electronic banking services grappling with numerous compliance requirements which can incur high costs for such banks.

As a result, none of the laws extensively address electronic banking.
These drawbacks are pointers to the ineffectiveness of the extant legal framework for Electronic Banking in Nigeria to adequately cater to electronic banking in Nigeria.

8.0 Banker and Customer Relationship

The relationship between bankers and their customers is contractual in nature and attracts attendant rights and duties for both parties

8.1 Classifications of Banker and Customer Relationship

The banker and customer relationship has been likened to various relationships namely:

i. Debtor/Creditor;
ii. Principal/Agent;
iii. Bailor/Bailee;
iv. Pledger/Pledgee
v. Trustee/Beneficiary;
vi. Mortgagor/Mortgagee, and
vii. Lessor/Lessee

i. Debtor/Creditor Relationship

The debtor/creditor relationship is deemed the primary relationship between banks and their customers. Oshio opined that, "…the overriding legal relationship of a banker and its customers who pays money into the bank is that of debtor and creditor with super-added obligations arising out of the custom of bankers."[41] Muhammed supported this view when he opined that the relationship subsisting between banker and customer is basically contractual and fundamentally that of debtor and creditor.[42] The debtor/creditor relationship is created when a customer pays money into his/her bank account which the bank shall pay to customer upon the customer's demand for it. Upon the money being credited to the customer's account, the customer becomes a creditor while the bank becomes a debtor.

ii. Principal/Agent Relationship

There are instances where a bank acts as an agent to a customer. The principal/agent relationship comes into play when banks render services

[41] Oshio (n 11), 44.
[42] Kabiru (n 18), 233.

like 'buying and selling of shares or the collection of cheques.'[43]In the case of *Afribank Nig. Plc v Anuebunwa,*[44]the court held thus:

> The relationship between a banker and a customer is equally that of principal and agent so that a cheque drawn on the banker by the customer represents the order of the principal to his agent to pay to the principal, money in his hands, the amount stated on the cheque to the payee endorsed on the cheque.

At the instance of the customer, banks execute bill payments, fund transfers, and other financial transactions, this making the customer a principal and the bank, an agent.

iii. Bailor/Bailee Relationship

This relationship arises when a bank is entrusted with a customer's personal property for safekeeping. The customer still owns the property but only temporarily relinquishes possession to the bank. The bank thus becomes a bailee while the customer becomes a bailor. The bank is expected to exercise reasonable care in safeguarding the property. An instance of the bailor/bailee relationship is when banks keep customer's money or valuables in safe deposit or safe custody.[45]

iv. Trustee/Beneficiary Relationship

The trusteeship or executorship relationship arises for instance when a bank administers a trust property on behalf of beneficiaries. Banks can manage assets, business, real estate, and securities subject to a trust. In this instance,

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[43] Paul Raby**,** *Law Relating to Banking Services,* (2nd Ed. Great Britain: Pitman Publishing, 1992).

[44] [2012] 4 NWLR (Pt 1291) 560 at 563.

[45] Ibid.

the bank acts as a trustee while customers become beneficiaries if listed as one under the trust.

v. Pledger/Pledgee Relationship

This relationship is exemplified by customers pledging their property as security for loans thus making the customer a pledger and the bank, a pledge. The pledgor is entitled to reclaim the property upon repayment of the loan and the accruing interests if any. If the customer fails to repay the loan, the bank can dispose of the pledged property to recover the outstanding amount it is owed.

vi Mortgagor/Mortgagee Relationship

This relationship is created when a customer borrows money from the bank and secures the loan with immovable property. It is common place for banks to demand collateral from customers who are desirous of obtaining credit facilities from the banks. Most customers deposit title deeds of their properties as security for such loans. The surrendering of such property to a bank creates an equitable mortgage over the property. [46]The customer becomes a mortgagor while the bank becomes a mortgagee. The bank thus holds a legal interest in the property pending the repayment of the loan and the accruing interests if any.

vii Lessor/Lessee Relationship

The lessor/lessee relationship is created when a bank avails the customer usage of its property for the purpose of safeguarding the customer's valuable. Once a customer deposits valuables in a bank's safe deposit lockers, the customer becomes the lessee while the bank becomes. The bank thus leases its safe deposit lockers to its customers.

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[46]*P.I.P. Ltd v. Trade Bank (Nig) Plc* [2009] 13 NWLR (Pt 1159) 577 at 584.

8.1 Duties and Rights of Banks and Customers

The following are some of the rights and duties of banks and their customers:

8.2 Duties of Banks

i. Banks are to establish the identity of their customers and also enquire about their integrity and reputation before opening accounts for customers.[47]

ii. Banks to maintain secrecy and confidentiality of customer's accounts. [48]

iii. Banks are to protect the privacy of customer's data.[49]

iv. Banks should clearly notify the customers of the time frame and the circumstances in which any stop-payment instructions could be accepted.[50]

v. ATMs located outside the bank premises must be located in a manner to assure the safety of the customer using the ATM and ATMs must generally be situated in such a manner that passersby cannot see the key entry of the individual at the ATM.[51]

8.3 Rights of Banks

i. Right to be insured against unauthorized transfers from customers account's, through hacking, denial of services on account of technological failure, etc, in a bid to reduce their liability to the customers.[52]

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[47] CBN Guidelines on Electronic Banking in Nigeria, 2003, s 3.0 (a).
[48] ibid, s 3.0 (c).
[49] ibid, s 3.0 (d).
[50] ibid, s 3.0 (e).
[51] ibid, s 1.4.2 (g) & (h).
[52] ibid, s 3.0 (f).

ii. Right to refuse payments arising electronic payment orders not properly drawn;[53]
iii. Right to charge reasonable commission for services rendered and reasonable interest on credit facilities granted to the customer.[54]
iv. Right to close a customer's account after giving reasonable notice to the customer;[55]
v. Right to obtain certain information from clients on Know Your Customer basis.[56]

8.3.1 Duties of Customers

i. Duty to repay credit facilities and pay for mutually agreed interest on loans and charges for services rendered by their banks.[57]
ii. Duty to keep cheque book, ATM cards and all information relating to your account like Personal Identification Number (PIN), passwords and codes safe.[58]
iii. Duty to provide correct information needed by bank to facilitate banking services.[59]
iv. Duty to promptly notify bank of fraudulent activities on account.[60]

8.3.2 Rights of Customers

i. Right to disclosure of complete, relevant and truthful information from bank on products and services they offer.[61]

[53] Kabiru (n 18), 234-235.
[54] ibid, 234.
[55] ibid.
[56] ibid, 235.
[57] CBN, 'Bank Customer's Bill of Rights', 9<https://www.cbn.gov.ng/Out/2022/CCD/BANK%20CUSTOMERS%20BILL%20OF%20RIGHTS.pdf> accessed 9 June, 2024.
[58] ibid, 10.
[59] ibid, 10-11.
[60] ibid, 11.
[61] ibid, 2.

ii. Right to quality banking services, that is, satisfaction from services rendered.[62]
iii. Right to free monthly statement of account[63]and free debit alerts.
iv. Right to privacy and confidentiality of account details and information supplied to bank.[64]
v. Right to be notified of suspicious activities on a Customer's Account.[65]

8.4 Electronic Banking Agreements

Electronic Banking Agreements are key to electronic banking. These agreements spell out the terms and conditions of electronic banking pact between the bank rendering electronic banking services and customers accessing such services. These agreements highlight the rights and duties of banks and customers with regards electronic banking.[66] The agreement usually addresses matters like the agreement's scope and aim, authorization and consent of a bank customer, customer data protection, dispute resolution, liability of parties, amendment of the agreement, termination of the agreement etc. A breach of this agreement attracts liability to the erring party.

8.4.1 Banking Business

Banking business connotes services rendered by banks. It is from these services that relationship between banks and their customers evolved. On the difficulty of defining banking business, the court in the case of *Banbury v Montreal* stated thus:

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[62] ibid, 6.
[63] ibid, 7.
[64] ibid, 4-5.
[65] Kabiru (n 18), 235.
[66](n 47) s 3.0 (g).

> The limits of a banker's business cannot be laid down as a matter of law, the nature of such a business is a question of fact on which the jury are entitled to have regard to their own knowledge of business and to the evidence in the particular case…It cannot be treated as if it were a matter of pure law.[67]

Furthermore, the court in the case of *Woods v Martin Bank Ltd*[68] shared the same view when it stated that a banker's business cannot be laid down as a matter of law and that the nature of a banking business must in each case be treated as a matter of fact and not as a pure case of law.

However, attempts have been made to describe what banking business entails. The main elements of banking business were identified in the case of *United Dominions Trust v Kirkwood* as:

> There are therefore, two characteristics usually found in banks today: (i) They accept money from, and collect cheques for, their customers and place them to their credit; (ii)They honour cheques or orders drawn on them by their customers when presented for payment and debit their customers accordingly. These two characteristics carry with them a third, namely (iii)They keep current accounts, or something of that nature, in their books in which the credits and debits are entered.[69]

In the Canadian case of *Re: Bergethaler Waisenamt*, the Canadian Court of Appeal identified the following as elements of banking business: [70]

i. Receiving money on deposit from its customers;

[67] [1918] AC 626, 652.
[68] [1959] 1 QB 55 at 70.
[69] [1966] 2 QB 431 at 447.
[70] [1949] 1 DLR 769.

ii. Paying a customer's cheques or drafts on it to the amount on deposit by such customers, and holding Dominion government and bank notes and coin for such purpose;
iii. Paying interest by agreement on deposits;
iv. Discounting commercial paper for its customers;
v. Dealing in exchange and in gold and silver coin and bullion;
vi. Collecting notes and drafts deposited;
vii. Arranging credits for itself with banks in other towns, cities and countries;
viii. Selling its drafts or cheques on other banks and banking correspondents;
ix. Issuing letters of credit; and
x. Lending money to its customers
   a. on the customers' notes;
   b. by way of overdraft; and
   c. on bonds, shares and other securities.

8.5 Banking Business in Nigeria

There have been attempts to describe or define what banking business connotes in Nigeria. In the case of *G.E.B. Plc v Odukwu,* the court described banking business as follows: [71]

i. Receiving deposits.
ii. Paying or collecting cheques drawn by or paid in by customers.
iii. Provision of finance or such other business as the Governor may designate as a banking business.

The court in the case of *S.T.B. Ltd v Anumnu* identified the chief elements of business as "the receipt of monies on current or deposit account and the payment of cheques drawn, as well as the collection of cheques paid, by a customer. [72]

[71] [2009] 14 NWLR (Pt 1160) 43 at 51.
[72] [2008] 14 NWLR (Pt 1106) 125 at 150, paras. F-G.

BOFIA 2020 is the primary legislation on banking in Nigeria. The Act provides that no person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under the Act.[73]The Act further provides that no person shall carry on specialized banking or business of other financial institutions in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence granted under the Act.[74]
It defined banking business as follows:

> the business of receiving deposits on current account, savings deposit account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such businesses are conducted digitally, virtually or electronically only or such other business as the Governor may, by order published in the Gazette, designate as banking business.[75]

Banking business in Nigeria thus entails:

i. Acceptance and payment of deposits into a bank account;
ii. Collection and paying cheques;
iii. Provision of credit facilities;
iv. Provision of finance-based consultancy and advisory services; and
v. Initiating and managing investments on behalf of customers.

[73]BOFIA,2020, s 2(1).
[74]BOFIA,2020, s 57.
[75]BOFIA 2020, s 131.

A debtor/creditor relationship is thus established upon Nigerian banks accepting and paying deposits into a bank account. A principal/agent relationship is created upon banks collecting and paying cheques. A mortgagor/mortgagee relationship as well as a pledger/pledgee relationship is created upon banks providing credit facilities and requiring collateral for such credit facilities. Bank's provision of finance-based consultancy and advisory services as well as investment services also creates a principal/agent relationship. Although the custodian services of banks were not expressly stated in BOFIA 2020, it is nonetheless a service rendered by banks in Nigeria. These services create both a bailor/bailee relationship and a lessor/lessee relationship.

It is noteworthy that BOFIA validates the conduct of banking services digitally.[76] Hence, the banking services outlined in BOFIA 2020 applies both to traditional banks and digital banks.

9.0 Conclusion

Owing to the definition of banking business in BOFIA, 2020, traditional banking and electronic banking encompass the same services in Nigeria. Section 131 of BOFIA defined what banking business connotes in Nigeria by listing out banking services and acknowledging that these services can be rendered electronically or manually. Since a banker and customer relationship has its root in banking services, it therefore follows that in Nigeria, the traditional banker and customer relationship remains the same under electronic banking due to both traditional banking and electronic banking involving the same banking business.

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[76]ibid. This innovation was absent in the repealed BOFIA.

10 Recommendations

It is laudable that electronic banking has gotten legislative banking in Nigeria in recent years. This was absent in old banking laws due to the non-existence of electronic banking at the time the laws emerged. Chief amongst the recent legislative backing for electronic banking is the BOFIA Act, 2020. It is hereby recommended that the definition of banking business in the Act be expended extensively to reflect banking business as seen in the case of *Re: Bergethaler Waisenamt*,[77] as against the generalization of banking business as was done in the Act.

[77] *Re:Bergethaler Waisenamt* (n 70).