

AN APPRAISAL OF LEGAL STRUCTURE OF ELECTRONIC BANKING IN NIGERIA

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ABSTRACT

Business on any large scale could not be transacted without banks playing a great role in that respect. Banks have commonly been in the forefront of harnessing technology to improve their products and services because of the diversity of their customers, and to provide customer service; as well as the sophisticated nature of financial instruments. They have been using electronic and telecommunication networks to deliver a wide range of value added products and services. The range of services and products offered by different banks vary widely both in their contents and sophistication. E-banking provides immense benefits to consumers in terms of the ease and cost of transactions. Nonetheless, Nigerian legislators are not forthcoming in updating or enacting laws in the country that will be proactive to meet up with the ever developing information and communication technology (ICT) in general and e-banking in particular. This has led to the dearth of effective and efficient laws to regulate e-banking in the country; save for the guidelines released by the Central Bank of Nigeria (CBN) in 2003 and 2010 on e-banking and e-payment respectively. The paper appraises the legal structure of e-banking in Nigeria.

1. INTRODUCTION

The focal point of this paper is an appraisal of legal structure of electronic banking (e-banking) in Nigeria. The paper discussed history and nature of banking. It further discussed the scope as well as legal structure of e-banking in Nigeria.

Business on any large scale could not be transacted without banks playing a great role in that respect. If there were no banks, there would be no demand deposits, checks and available machinery for making loans needed to finance commercial enterprises.²

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² F. A. Whitney, *The Law of Modern Commercial Practices*, (Bakers, Voorhis and Co Inc, New York, 1958), p. 77.

The main business of banking has traditionally been deposit taking and lending. Recently, banks have become multifunctional institution engaged in array of business activities beyond the traditional main activities of deposit taking and lending. It is common that banks partake in activities as diverse as securities dealing, investment management and insurance. These separate activities are often carried out by different subsidiary companies within the same banking group. Banks are now capable of providing their customers with a wide range of financial services.³

Banks have commonly been in the forefront of harnessing technology to improve their products and services because of the diversity of their customers, and to provide customer service; as well as the sophisticated nature of financial instruments. They have been using electronic and telecommunication networks to deliver a wide range of value added products and services. The range of services and products offered by different banks vary widely both in their contents and sophistication. E-banking provides immense benefits to consumers in terms of the ease and cost of transactions. It is a service that allows customers to use electronic means to access account, specific information and possibly conduct transactions from a remote location – such as at home or at the workplace.⁴

The most efficient system architecture and advanced technologies are being used for e-banking to provide easy and cost efficient banking services to the financial sector. This enables banks to carry out services like online banking to their customers. E-banking has been around for some time in the form of automated teller machines (ATMs) and telephone transactions. It has now been transformed by the internet, a new delivery channel for banking services that benefits both

³ L. S. Sealy and R. J. A. Hooley, *Commercial Law Text, Cases and Materials*, 3rd Ed (Oxford University Press Inc, New York, 2005), pp.566-567.

⁴ O. Sunday and P. E. Arnold, *Accessing E-Banking Based on Resilient Transaction*, <[http://www.bth.se/fou/cuppsats.nsf/all/775e02c759f2cad8c12573f4006e3486/\\$file/Master_Thesis_E-banking_updated.pdf](http://www.bth.se/fou/cuppsats.nsf/all/775e02c759f2cad8c12573f4006e3486/$file/Master_Thesis_E-banking_updated.pdf)> (03 April 2012), p.8.

customer and bank. Access is fast, convenient, and available round the clock, regardless of the customer's location.⁵

Nonetheless, Nigerian legislators are not forthcoming in updating or enacting laws in the country that will be proactive to meet up with the ever developing information and communication technology (ICT) in general and e-banking in particular. This has led to the dearth of effective and efficient laws to regulate e-banking in the country; save for the guidelines released by the Central Bank of Nigeria (CBN) in 2003 and 2010 on e-banking and e-payment respectively.

2. LEGAL HISTORY OF BANKING

Modern banking system began in Nigeria in 1892 when Nigeria's first bank – the African Banking Corporation based in South Africa opened a branch in Lagos. The bank was acquired by the Elder Dempster in 1893 and reorganised as the Bank of British West Africa. It was subsequently renamed Standard Bank of Nigeria and further renamed First Bank of Nigeria.⁶ There was no banking legislation in existence until 1952, when Nigeria had three foreign banks – Bank of British West Africa; Barclays Bank and British and French Bank, and two indigenous banks – National Bank of Nigeria and African Continental Bank.⁷

British colonial officials established the West African Currency Board in 1912 to assist finance export trade of foreign firms in West Africa and to provide West African currency. However, colonial policies barred local investment of reserves, discouraged deposit expansion, precluded

⁵ *ibid.*

⁶ K. I. Igweike, *Law of Banking and Negotiable Instruments*, (Africana First Publishers Ltd, Onitsha, 2005), p.1.

⁷ *Nigeria Banking, Finance, and other Services*,

<http://www.photius.com/countries/nigeria/economy/nigeria_economy_banking_finance_an~10016.html> (18 May 2012); I. J. Goldface-Irokalibe, *Law of Banking in Nigeria*, (Malthouse Press Limited, Lagos, 2007), pp.3-28; O. A. Ajayi, *Banking: Law and Ethics*, (Bash-Moses Printing and Publishing Co, Ibadan, 2007), pp.7-8.

discretion for monetary management, and refrained from training Africans in developing indigenous financial institutions.⁸

In 1948, an inquiry under the leadership of G.D Paton was established by the colonial administration to investigate banking practices in Nigeria. The G.D Paton report, an offshoot of the inquiry became the cornerstone of the first banking legislation in the country – the Banking Ordinance of 1952. The Ordinance was designed to prevent non viable banks from mushrooming, and to ensure orderly commercial banking. The Banking Ordinance triggered a rapid growth in the industry.⁹

In 1952, several Nigerian members of the Federal House of Assembly called for the establishment of a central bank to facilitate economic development. Though the motion did not succeed, the colonial administration appointed a Bank of England official to study the issue. The official advised against establishment of a central bank on the basis that it cannot be effective in an undeveloped capital market.¹⁰

The colonial office sponsored another study in 1957; and in 1958, a bill for the establishment of Central Bank of Nigeria was presented to the House of Representatives of Nigeria that resulted in the establishment of a Nigerian Central Bank and the introduction of a Nigerian currency – the Nigerian pound. Prior to this period, a West African currency was in use.¹¹

The Central Bank of Nigeria (CBN) began operations on July 1, 1959 and was statutorily independent of the Federal Government until 1968. In 1968, a Military Decree granted authority

⁸ *ibid.*

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*

over banking and monetary policy to the Federal Executive Council. The role of the Central Bank, similar to that of central banks in North America and Western Europe, was to establish the Nigerian currency, control and regulate the banking system, serve as banker to other banks in Nigeria, and carry out Government's economic monetary policy. The Central Bank Act, 1958 (as amended) and the Banking Decree 1969 (as amended) constituted the legal framework within which the CBN operated and regulated banks.¹²

The three foreign commercial banks (which were the largest) held about one-third of total bank deposits. The Federal Government acquired a 40-percent equity ownership of the three foreign banks in 1973. Subsequently, the Federal Government under the second Nigerian Enterprises Promotion Decree requiring 60-percent indigenous holding, acquired an additional 20-percent holding in the three foreign banks and 60-percent ownership in the other foreign banks in 1976. Yet indigenisation did not change the management, control, and lending orientation toward international trade, particularly of foreign companies and their Nigerian subsidiaries of foreign banks.¹³

The wide range of economic liberalisation and deregulation measures following the adoption, in 1986, of a Structural Adjustment Programme (SAP) resulted in the emergence of more banks and other financial intermediaries. At the end of 1988, the banking system consisted of the Central Bank of Nigeria, forty-two commercial banks and twenty-four merchant banks.¹⁴

The CBN Act was further promulgated in 1991 as Decree No. 24. The enactment of this law and Banks and Other Financial Institutions Act (BOFIA) 1991 which largely regulated the banking

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

sub-sector of the financial services industry was considered a landmark development as they conferred on the Central Bank of Nigeria a measure of instrument autonomy for the effective discharge of its core mandate.¹⁵

But the law and its subsequent amendments could not meet the challenges thrown up by the rapid reform programmes of Government. For instance, the financial system continues to witness several important developments which call to question the Bank's legal framework in its 1991 formulation. These developments included the transfer of supervision of specialised banks; {Primary Mortgage Institutions, Community Banks and Development Financial Institutions} and other non-bank Financial Institutions to the Bank.¹⁶

This expanded the regulatory and supervisory responsibility of the Bank beyond the scope envisaged by the then existing legislation; the global war on economic crime and the increasing wave of money laundering in particular, which underscores the need for a proactive and effective anti money laundering regime; a refocusing of the CBN itself and the strengthening of regulatory capacity for effective service delivery; the adoption of universal banking in Nigeria; unprecedented bank failures associated with weak internal controls and corporate governance in banks; and reform of the banking industry and indeed, the entire economy.¹⁷

The Banks and Other Financial Institutions (BOFI) Decrees 24 and 25 of 1991 repealed the Banking Decree 1969 and all its amendments. They were therefore enacted to strengthen and extend the powers of CBN to cover the new institutions in order to enhance the effectiveness of monetary policy, regulation and supervision of banks as well as non-banking financial

¹⁵ <<http://www.cenbank.org/AboutCBN/history.asp>> (08 June 2012).

¹⁶ *ibid.*

¹⁷ *ibid.*

institutions. Unfortunately in 1997, the Federal Government of Nigeria enacted the CBN [Amendment Decree No. 3 and BOFI (Amended)] Decree No. 4 in 1997 to remove completely the limited autonomy which the Bank enjoyed since 1991.¹⁸

The 1997 amendments brought the CBN back under the supervision of the Ministry of Finance. The Decree made CBN directly responsible to the Minister of Finance with respect to the supervision and control of bank and other financial institutions, while extending the supervisory role of the Bank to other specialised banks and financial institutions. The amendment placed enormous powers on the Ministry of Finance while leaving the CBN with a subjugated role in the monitoring of the financial institutions with little room for the Bank to exercise discretionary powers.¹⁹

The CBN (Amendment) Decree No. 37 of 1998 repealed the CBN (Amended) Decree No. 3 of 1997. The Decree provided a measure of operational autonomy for the CBN to carry out its traditional functions and enhanced its versatility. The current legal framework within which the CBN operates is the CBN Act, Cap 50, Laws of the Federal Republic of Nigeria (LFRN), 2010 which repealed the CBN Act of 1991 and all its amendments. On the other hand, Bank and Other Financial Institutions Act, Cap 32, LFRN, 2010 is the current legal framework, amongst others, regulating banking in Nigeria.

Consequently, banking industry continues to experience different changes and transformation at each developmental stage in Nigeria till date. In line with this, the study proceeds to examine nature of banking.

¹⁸ *ibid.*

¹⁹ *ibid.*

3. NATURE OF BANKING

It is arguable whether banking is a trade or a profession. It may be seen as a trade because the word 'customer' is used for the end user of the products and services as opposed to the word 'client' used for the end user of the services by other professionals. Likewise, it may be viewed as a profession because it has its own skill and knowledge distinct from other human activities. It also has code of conduct set for its practitioners. It was opined by Afolabi that:

Banking business is no doubt a trade not only because they employ the word 'customer' but also because of the buying and selling involved in banking which is central to all trading activities whether the objects of trade be goods, services or combination of them. However, as an occupation, banking is a profession because it has its own distinct body of knowledge which distinguishes it from other aspects of human endeavour. For example, most people will appreciate that any skill acquired in the area of deposit keeping, lending and foreign exchange transactions are in the arena of banking. This body of knowledge has been developed over time and will continue to adapt itself to modifications as may be necessary based on the changing circumstances and realities of different periods. The assimilation and mastery of this knowledge require time and dedication and any person who has acquired the requisite standard, judged by success in relevant examination and experience or any other approved method of assessment will be issued with a certificate which authenticates the holder as a professional in banking and also imposes on him, a set of professional codes and ethical standards. However, like all others, the banking profession requires due appreciation of supportive discipline like Accountancy, Law, Economics and quantitative techniques.

In effect, the business of banking is a trade involving mainly the buying and selling of services and the main input of which is the professionalism of its human resources. Banking is therefore both a trade and a profession.²⁰

Judging from the opinion of Afolabi above, banking is both a trade and a profession. The fact that it is a trade or profession does not preclude it from being the other. Trade and profession are not alternatives in this respect. When banking is viewed from the perspectives of the kind of businesses conducted, it will certainly be referred to as a trade. On the other hand, if it is viewed

²⁰ L. Afolabi, *Law and Practice of Banking*, (Heinemann Educational Books Nig Plc, Ibadan, 1999), p.5.

from the perspectives of the skill and training of its practitioners, it will certainly be referred to as a profession. In essence, banking is both a trade and a profession.

3.1 Meaning of “Banker”

The words “banker” and “bank” are frequently used interchangeably. Therefore, a definition of one suffices the other. Thus in *Akwule and Others v. Reginam*,²¹ the Supreme Court held that:

The word ‘banker’ does not, in our view, include a person who is a mere employee of a bank. The relationship between a banker and a customer is that of debtor and creditor in respect of the money deposited with the banker by the customer. This position becomes clearer when a customer asks for his money. If the amount is not paid, the customer can sue the bank. The action will lie against the bank, not the bank manager. It is, therefore, not possible to agree with the view that the first appellant in this case was a banker. If the bank defaults, the first appellant, as manager of the bank, will not be sued; the bank will be sued. The cheques were drawn on the Bank of West Africa Limited and the customer’s account is with the Bank of West Africa. The first appellant is not more than an official of the bank carrying out the bank’s instruction as to the method its business should be carried out.

There is no statutory legislation elaborately defining a banker/bank. Nevertheless, BOFIA defines it as thus: “Bank means a bank licensed under this Act”²² Bill of Exchange Act equally defines it as including a body of persons whether incorporated or not who carry on the business of banking.²³ Chartered Institute of Bankers of Nigeria (CIBN) Act also defines it as meaning a bank licensed in Nigeria under BOFIA 1991 (as amended).²⁴

Evidence Act states as thus:

Bank and banker means any person, persons, partnership or company carrying on the business of bankers and also include any savings bank established under the Federal Savings Bank Act, and also any banking company incorporated under any

²¹ (1963) All NLR 193.

²² Section 66, Banks and Other Financial Institutions Act, Cap 32, Laws of the Federal Republic of Nigeria (LFRN), 2010.

²³ Section 2, Bill of Exchange Act, Cap 37, LFRN, 2010.

²⁴ Section 22, CIBN Act, Cap 55, LFRN, 2010.

charter heretofore or hereafter granted, or under any Act heretofore or hereafter passed relating to such incorporation.²⁵

None of the statutory definitions above has elaborately defined the term 'banker'. It is a considered view that the use of the phrase 'whether incorporated or not' in the Bill of Exchange Act; as well as the use of the word 'person' (in singular form) in the Evidence Act render the definitions in the Acts superfluous respectively in view of the requirement that banking institutions must be incorporated.²⁶

From the above statutory provisions and requirement, banker may be defined as an incorporated body carrying on the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customer, provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business.

3.2 Meaning of "Customer"

The word "customer" ordinarily refers to any person who enters into a contract of sale for the purchase of goods or services. A "customer" is defined as someone who buys goods or services from a shop/store or business, or who uses a bank.²⁷ There is no specific statutory definition of a customer of bank. However, Igweike defined a customer of a bank as a person who maintains an account in the bank.²⁸

²⁵ Section 2, Evidence Act, Cap E129, LFRN, 2010.

²⁶ Section 66, BOFIA.

²⁷ A. S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, (Oxford University Press, Oxford, 2000), p.288.

²⁸ K. I. Igweike, *op cit*, p.70.

It is however deducible from the provision of BOFIA that a customer is a person who engages in the business of paying deposits on current account, savings account or other similar account, draws or pays in cheques, receives finance from bank or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business.

3.3 Statutory Definition of Banking Business

There is rarely a statutory enactment in Nigeria precisely defining banking business save Bank and Other Financial Institutions Act, 2010. The Act defines banking business thus:

The business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customer, provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business.²⁹

The Act appears to catalogue the core financial functions modern bank performs for its customers plus any other potential financial function. This is so because the Act gives a leeway for any other business the CBN Governor may authorise banks to perform at any given time. This gives an indication that the definition in the Act is not exhaustive and that the word banking is open to any development in the modern society. As such, banking business is any or all of the activities described in the provision of the Law as cited above. Furthermore, any other activity not listed in the provision of the Law above could be designated as banking business by the CBN Governor at any time by an order published in the Federal Gazette. As a result, such additional activity plus those listed in the provision of the Law would constitute banking business.

²⁹ Section 66, BOFIA.

3.4 Case Law Definition of Banking Business

The Supreme Court of Nigeria, while considering what constitutes banking business, in the case of *Societe Bancaire (Nig) Ltd v. De Lluch*³⁰, made reference to a dictionary definition and held that:

The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations.

The holding of the Supreme Court above seems to capture the main financial businesses of bank. However, definition given in the case is not exhaustive. Therefore, it cannot be said to be all encompassing considering the array of businesses modern banks undertake.

It is accordingly the humble view of this paper that the statutory definition above is more comprehensive since it is not closed; rather, it gives room to any kind of business that may be included as banking business by the Governor of the CBN from time to time. Likewise, it is deducible that a body must not necessarily engage in all the businesses enumerated as banking business before it is referred to as a banker. It suffices if the body engages in some of the businesses and leaves out others.

All banks in Nigeria have to varying degrees currently automated their banking products and services by adopting the latest technologies to facilitate the delivery of their products and services to customers efficiently and effectively. Furthermore, some banks are constantly

³⁰ (2005) All FWLR (Pt 242) 419 SC.

upgrading their technologies, thereby, equally upgrading their products and services delivery. This leads to the term 'e-banking'.

4. NATURE OF E-BANKING

E-Banking is a generic term encompassing other specific terms such as internet-banking, personal computer banking (PC-banking), online-banking, mobile-banking, telephone-banking, short message service (SMS)-banking, e-payment, e-cards, e-cash, e-money, digital-cash, e-cheque, etc.

Modern e-banking was at its inception basically about funds transfer and enquiries. It has now however grown into the deployment of some or all operations of banking services electronically. Thus, e-banking is the increasing dematerialisation of banking quickened by rapid developments in ICT. E-banking now comprises in a wide range of products and services offered by an equally broad variety of operators such as merchandise retailers, courier companies and manufacturers among others.³¹

4.1 Meaning of E-Banking

E-banking may be viewed as an automated delivery of new and traditional banking products and services directly to customers through electronic interactive communication channels.³²

In other words, e-banking may mean a method of transacting modern banking business through the use of automated processes and electronic devices such as computers, telex and fax machines, the internet, card payments, automated teller machines, telephone and other media.³³

³¹ R. Umoren, *The Nigeria Banking Services User's Handbook*, (Global Money Nigeria Limited, Lagos, 2006), p.314.

³² <http://www.bankersonline.com/technology/gurus_tech081803d.html> (24 August 2012).

³³ I. J. Goldface-Irokalibe, op cit, p.203.

E-banking involves computer based systems which are used to perform financial transactions electronically. It allows bank customers to pay money from one account to another, pay bills and transfer funds using recognised electronic channels, among others. It represents a variety of financial services performed through electronic devices. It is an online real-time technology which gives individual bank ‘a one-branch status’, since customers can operate their bank accounts in any branch of the bank irrespective of where the account was opened and domiciled.³⁴

E-banking has adequately been described as ‘the wonders of modern computer technology.... that have customer interact with an e-banking facility rather than a human being.’³⁵

From the foregoing, e-banking may simply be defined as the business of banking conducted through electronic devices.

4.2 Evolution of E-Banking

Judging from the meaning of e-banking as proffered above, e-banking is an old and long existing term which is now modernised with the advent of ICT. E-banking has been in existence right from when land-line telephone, telex and fax machines among other electronic devices were used to facilitate banking business. It passed through stages of development up to the present day modern e-banking.

The evolution of modern e-banking in Nigeria is said to have started in the 1980s and was popularised by the advent of banks that were christened ‘new generation’ banks. The founding of

³⁴ A. Agbada, “Electronic Banking in Nigeria: Problems and Prospects from Consumers Perspective” *CBN Bullion*, Vol.32, No.4, October/December 2008, <http://www.cenbank.org/OUT/2010/BULLION/BULLION%20MAG%20-%20OCTOBER-DECEMBER%202008%20ORIGINAL.PDF>, p.19.

³⁵ F. Mishkin and G. Eakins, *Financial Markets and Institutions*, (Pearson Addison, Wesley, 2006), p.457.

Diamond Bank Plc with online real-time interconnectivity facility popularised e-payment nationwide. This awakened new dimensions to competition among banks; and consequently, banks embraced e-payment options to stem up competition. Likewise, the innovations brought by e-banking enabled banks to display their products on their websites.³⁶

In 1986, Societe General Bank of Nigeria introduced online real-time banking in its five branches in Lagos. Many other banks followed this lead. It introduced integrated banking applications delivered through a wide area network (WAN) in a real-time online mode.³⁷

By early 1990s, CBN made it mandatory for all banks to computerise their operations. Towards the end of the 20th century, e-banking was given a boost with the coming together of a consortium of nineteen (19) of the strongest banks in Nigeria to implement a smartcard e-purse scheme to be known as 'valucard'. Unlike similar schemes elsewhere, a sales outlet would require only point of sale (POS) equipment to accept cards from all the banks.³⁸

In 1991, First Bank of Nigeria took a stake into the future with its entry into the market for e-card products. It launched its 'First Cash', the brand name for its ATM, in some of its branches.³⁹

The modern e-banking has gained acceptance in Nigeria on a rather rapid rate. The adoption of e-payment processes actually started with the introduction of magnetic ink recognition character (MICR) cheques. This was followed by the introduction of ATMs for cash dispensing, account balance inquiry and payment of utilities in the early 1990s. The use of payment cards (smart

³⁶ A. Agbada, op cit, p.20.

³⁷ E. Woherem and R. Alamutu, "The Networked Bank: LANs, WANs, the Internet, Intranet and GroupWare Systems", in E. E. Woherem, (ed), *Information Technology in the Nigerian Banking Industry*, (Spectrum Books Limited, Ibadan, 2000), pp.79-84.

³⁸ D. Adeyeri and E. Woherem, "The Telephone and Computer in Banking: Constraints and Challenges in Nigeria", in E. E. Woherem, (ed), op cit, pp.94-97.

³⁹ C. Ndekwu, *First Bank of Nigeria: A Century of Banking*, (Spectrum Books Limited, Ibadan, 1994), p.245.

cards) was introduced by the CBN in 1993; and in August 2003, CBN issued guidelines on e-banking.⁴⁰

The CBN guidelines identified the recognised e-banking operators, agents, products and channels. Specifically, banks and other financial institutions were identified as operators; internet service providers, switch and electronic funds transfer (EFT) messages companies were identified as e-banking agents; while cards products, EFT, e-bill presentation and digital cash were identified as e-banking products; and mobile phones, ATMs website (internet) and POS devices were identified as e-banking channels. For effective inter-bank operations, the launching of inter-switch by a consortium of banks in 2004 was a delight to consumers. Thus, the Nigerian Inter-Bank Settlement System (NIBSS) introduced the NIBSS EFT (NEFT) in 2004 as a boost to e-banking operations.⁴¹

CBN Economic Report for the first half of 2008 expressed that the rise in the use of e-payment was sustained in the first half of 2008, reflecting the aggressive marketing strategy of the banks and increased public awareness.⁴²

Today however, e-banking is gaining more acceptances in Nigeria, particularly in commercial centres. With the introduction of cash-less economic policy by the CBN, e-banking is undoubtedly growing; and this is further strengthened by the fact that all the banks in Nigeria deliver e-banking products and services to customers in varying degrees. However, ATM is accounting for the highest transaction among all e-banking channels.⁴³ The CBN cash-less policy

⁴⁰ *ibid.*

⁴¹ R. Umoren, *op cit*, p.316.

⁴² A. Agbada, *op cit*, p.20.

⁴³ *ibid.*

is expected to boost e-transactions using POS and has equally accounted for a great development in e-banking.⁴⁴

5. SCOPE OF E-BANKING SERVICES

Banking online has attracted increasing attention from bankers and other financial service industry participants, the business press, regulators, and law makers globally. Some of the reasons for e-banking patronage are the notion that e-banking and e-payment will grow rapidly, more or less in tandem with proliferating e-commerce; industry projections that e-banking will reduce banking costs, increase banking revenue growth, and make banking more convenient for customers; and some vexing public policy issues. Despite this attention, there is a dearth of systematic information on the nature and scope of e-banking. Bankers and public policymakers alike have had to plan using largely anecdotal evidence and conjecture.⁴⁵

Banks offer e-banking services in two main ways – an existing bank with physical offices can establish a website and offer e-banking services to its customers as an addition to its traditional delivery channels; an alternative is to establish a “virtual,” “branchless,” or “internet-only” bank.⁴⁶ The computer server that lies at the heart of a virtual bank may be housed in an office that serves as the legal address of such a bank, or at some other location. Virtual banks may offer their customers the ability to make deposits and withdraw funds via ATMs or other remote delivery channels owned by other institutions.⁴⁷

⁴⁴ “Cashless Policy: Limited POS Deployment, Awareness threatens Adoption”, *The Saturday Punch*, (Lagos), 18 February 2012, p.48.

⁴⁵ K. Furst, et al, *Internet Banking: Developments and Prospects*, Office of the Comptroller of the Currency Economic and Policy Analysis Working Paper 2000-9, <<http://199.83.40.54/publications/publications-by-type/economics-working-papers/2008-2000/wp2000-9.pdf>> (04 February 2013), p.1.

⁴⁶ Virtual bank is though not operative in Nigeria owing to the fact that the CBN has prohibited banks from operating without physical structure. Thus, virtual or internet-only bank is not allowed for now in Nigeria.

⁴⁷ K. Furst, et al, op cit, p.1.

Hence, the scope of e-banking is not exhaustive; it keeps expanding as new electronic devices spring up daily. However, the scope could be said to cover any electronic means used to facilitate automated clearing system; automated payment systems and automated delivery channels in the banking industry.

6. LEGAL STRUCTURE OF E-BANKING

The government of every country is the provider of legislation defining the country's financial institutions to be licensed; and constantly monitoring the activities of the financial institutions to maintain sound and efficient system in order to retain customer's trust and confidence. Currently, there is neither an Act of the National Assembly specifically entitled e-banking Act; nor a bill pending before the National Assembly entitled e-banking bill. The only regulations on e-banking are contained in the Central Bank of Nigeria guidelines on e-banking issued in August 2003; as well as standard and guidelines on ATM issued in 2010, which are widely criticised as being inadequate.

However, there are Acts of National Assembly as well as bills pending before the National Assembly that have direct impact on e-banking even though they are meant for different purposes. Hence, the legislations, regulations and guidelines relating to e-banking constitute the legal structure of e-banking. Likewise, draft bills pending before the National Assembly, relating to e-banking would constitute the legal structure of e-banking, if successfully passed into law.

The legal structure of e-banking is composed of Acts such as Banks and Other Financial Institutions Act, 2010; Central Bank of Nigeria Act, 2010 from which the CBN Governor derived his powers to issue out guidelines on e-banking in August 2003, as well as standard and guidelines on ATM in 2010; Nigeria Deposit Insurance Corporation Act, 2010; Foreign

Exchange Act, 2010; Evidence Act, 2011; Consumer Protection Council Act, 2010; and National Information and Technology Development Agency Act 2010. These Acts, though are not purposely enacted or passed on e-banking, but they indirectly impact on e-banking in one way or the other.

Other prospective constituents of the legal structure of e-banking may include some bills pending before the National Assembly, although not yet passed into law, there is bright prospect of their being passed into law in no distant future. These include Centre for Information Technology Research and Training Bill, 2004; Electronic Messages, Information and Commerce Bill, 2004; Computer Systems and Networks Security and Protection of Critical Information Infrastructure Bill, 2005; Digital Storage Centres, Electronic Communications and Transactions Bill, 2006; Cyber Security and Information Protection Agency Bill, 2008; Prohibition of Electronic Fraud Bill, 2008; Personal Data Protection Bill, 2010; Facilitating electronic Transactions Bill, 2011; Lawful Interception of Information Transmitted Using Telecommunications Facilities Bill, 2011; Legal Recognition of Electronic Messages in Commercial Transactions Bill, 2011; Regulation of Transfer of Money by Electronic Terminal Bill, 2011; Regulation of Telecommunication Facilities to Support Investigations Bill, 2012 and Use of Information in Electronic Form Bill, 2013.⁴⁸ All the bills listed above have no direct relationship or impact on e-banking, save for that entitled 'Regulation of Transfer of Money by Electronic Terminal Bill, 2011' which is clearly on e-payment.

7. SUGGESTIONS

Considering the status of banking in the country's economic and financial sector, and the fact that e-banking constitutes the larger part of the activities of modern banking business, it is very

⁴⁸ <website.informer.com/visit?domain=nassnig.org> (10 December 2012).

germane that the law makers are proactive in enacting laws on e-banking taking cue from other jurisdictions. This is so because of the dynamic nature of ICT which is the driving force for e-banking.

In the same vein, the CBN should be constantly updating its guidelines on e-banking. A situation where guidelines were last released in 2003 without update is not too healthy for the system. This is so because from 2003 to date, banks have experienced tremendous technological achievements and developments in their delivery of e-banking products and services. Likewise, the guidelines should not only be limited to technological standards required for e-banking products and services, but should also go a step further in spelling out rights and liabilities of e-bankers and their customers respectively.

8. CONCLUSION

The paper appraised the legal structure of e-banking in Nigeria. It traced the history of banking legislation in Nigeria to 1952 when the very first Banking Ordinance was enacted. It discussed the nature of banking, under which definitions were given for terms such as banker and banking business. It further discussed nature of e-banking, scope of e-banking services as well as legal structure of e-banking. The paper then proffered suggestions as to enacting laws and updating regulations on e-banking in order to meet up with the ever developing and dynamic nature of ICT which is the bedrock for e-banking. It also suggested that the CBN regulations on e-banking should spell out rights and liabilities of e-bankers and their customers respectively.