CBN REGULATORY OVERSIGHT; APPOINTMENT AND REMOVAL OF DIRECTORS OF FINANCIAL INSTITUTIONS UNDER NIGERIAN LAW

Introduction

On April 29, 2021, the Central Bank of Nigeria (CBN), as the apex regulator of all banks and other financial institutions in Nigeria, announced the removal of all the directors of First Bank Limited, a licensed commercial bank and financial services company, and FBN Holdings PLC, its holding company. The CBN also went a step further to appoint a new board of directors for the two companies.

In this article, we analyse the regulatory powers of the CBN to make decisions in relation to the constitution of the board of directors of financial institutions in Nigeria.

Provisions of the Companies and Allied Matters Act 2020[1]

The affairs of companies, including financial institutions, are generally guided by the provisions of the Companies and Allied Matters Act 2020 ("CAMA 2020") which also provides for the general procedure for the appointment and removal of directors of a company.

Appointment - The first directors of a company are appointed by the subscribers during incorporation[2] and subsequent directors are appointed at the annual general meeting by the shareholders.[3] Where a vacancy is created by death, removal, retirement or resignation, a replacement director may be appointed by the board of directors to fill the vacancy until the next annual general meeting.[4]

Removal – For a director to be removed under the CAMA 2020, a meeting of the shareholders must be convened and a decision to remove the shareholder passed at the meeting.[5] Prior to the meeting, the shareholder proposing the removal of the director is required to send a special notice to the company. The company will, in turn, send the special notice to the director proposed to be removed who will, if he wishes, make his representation in writing. The Company shall send the representation of the director alongside the notice of the meeting to all shareholders.[6]

Provisions of the Bank and Other Financial Institution Act 2020

In addition to the CAMA 2020, banks and other financial services companies are also regulated by the Central Bank of Nigeria Act 2007 (CBN Act), Bank and Other Financial Institution Act 2020 ("BOFIA") and the CBN's various codes of corporate governance.

Under the BOFIA, before a company can carry on the business of banking, it must be licensed by the CBN.[7] The CBN which was created under the CBN Act with the task of promoting a sound financial system in Nigeria[8] was also granted regulatory powers under the BOFIA over all Nigerian banks. Sequel to its regulatory powers, banks are not to enter into any arrangement that will change the control (which includes appointment and removal of directors) or significant shareholding of the bank without seeking the prior written consent of the CBN.[9]

Powers of the CBN to appoint and remove Directors

The powers of the CBN to remove and appoint a director can be deduced from the combined reading of sections 33 and 34(1)(2) of the BOFIA. Essentially, the CBN, under section 33, has the power to investigate the affairs of a bank where:

i. a director, shareholder, creditor or depositor applies to the CBN;
ii. the bank is carrying on business in a way that is detrimental to the interest of the depositors or creditors;
iii. the bank does not have sufficient assets to cover its liabilities to the public;
iv. the bank has contravened any provision of the BOFIA or a relevant law; or
v. where it is in the interest of the public to do so.

Based on the investigations conducted under section 33, if the CBN is satisfied that the bank is liable in respect of the issue it was investigated for[10], the CBN may exercise the powers conferred on it under section 34(2) which includes the power to (notwithstanding any law or the memorandum and articles of the bank) remove a director and appoint any person in his stead and stipulate the amount to be paid to that director as remuneration.[11]

Powers of the CBN to appoint and remove Directors

Under the BOFIA, "other financial institution" refer to individuals, groups or companies that engage in the business of discount houses, bureau de change, finance company, money brokerage, foreign exchange purchase, international money transfer services, mortgage refinance or guarantee company, finance holding company or payment service providers, factoring, project financing, debt administration, equipment leasing, fund and investment management, private ledger services, and local purchases order financing.[12]

Under the BOFIA, where the CBN is satisfied that a company classified as an "other financial institution" is in "*a grave situation*", the CBN may exercise the powers granted to it under section 34, including the power to remove and appoint a director.[13]

Conclusion

The powers of the CBN to appoint and remove directors in a financial services company have been tested at the Court of Appeal[14] where it was held that the power of the CBN to remove and appoint directors was legal in line with sections 33 and 34 of BOFIA.[15] Financial institutions must note that, notwithstanding their powers to remove and appoint directors at their discretion, its decision is subject to the regulatory oversight of the CBN.

1. See our article on "NIGERIAN COMPANIES AND ALLIED MATTERS ACT 2020 -DOES THE REMOVAL OF A DIRECTOR RESULT IN HIS OR HER DISQUALIFICATION AS A DIRECTOR OF OTHER COMPANIES?"
2. Section 272 CAMA 2020
3. Section 273 (1) CAMA 2020
4. Section 274(1) CAMA 2020
5. Section 288(1) CAMA 2020
6. Sections 288(2)(3) CAMA 2020
7. Section 2(1) BOFIA
8. Sections 1 and 2 CBN Act.
9. Section 7 BOFIA. CBN's Revised Assessment Criteria For Approved Persons' Regime For Financial Institutions
10. Section 34(1)(d) BOFIA
11. Section 34(2)(f) BOFIA
12. Section 131 BOFIA
13. Section 62 (1) BOFIA
14. Danson Izedonmwen & Anor v. Union Bank PLC & Anor (2011) LCN/4919 (CA); appeal no: CA/L/1205/10 delivered by John Inyang Okoro, J.C.A on the 21st day of November, 2011
15. Then 33 and 35 of the BOFIA 1990.