

**THE EXTENT OF THE POWERS OF THE GOVERNMENT TO BAILOUT
COMMERCIAL BANKS UNDER THE NIGERIAN FINANCIAL LEGAL REGIME
AND RULE OF LAW: AN ANALYSIS**

BY

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ABSTRACT

Commercial banks bailout is novel to the Nigerian financial legal framework that comprises the Constitution and other relevant statutes. However, the government of Nigeria has been using public funds, through certain statutorily established bodies, that include the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation, and Assets Management Corporation of Nigeria to bailout several commercial banks amidst criticisms, dissents, oppositions, out cries and controversies mostly rooted in a perceived absence of legal basis for same. Using doctrinal legal methodology, this article appraises and investigates the Nigerian financial legal framework to determine the extent to which the bailout is allowed in the country and related issues. It has thus been found that the regime has expressly and impliedly authorized the government agencies to bailout the banks without any limitation; and vested the officials responsible for the bailout with unlimited and unfettered administrative discretions, regarded to be a recipe for abuse of power with all its attendant consequences, such as arbitrariness that leads to embezzlement of public funds and corruption, which are antithetical to rule of law. The article accordingly recommends that the existing legal regime be reformed by subjecting such activity to legislative oversight and curtailling excessive administrative discretions and possibilities of conflict of interests from the part of the officials.

Keyword: Bailout, Commercial Banks, Nigeria, Rule of Law

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1.0 INTRODUCTION

Banks bailout within the context of this article means rescuing financially distressed private commercial bank or banks, as the case may be, by a government, using public fund to keep same functioning, because their failure or collapse may cause negative effects on the financial system stability of the concerned country. It is noteworthy that, having a stable financial system can be regarded as a public good which every responsible government is expected to provide its citizens with. Bailout is an international financial concept that arguably evolved from the United States of America's banking practices since the early period of the formation of the country, notably when the government responded to a financial panic in 1792 as a remedy thereto, championed and implemented by Alexander Hamilton, the first Treasury Secretary of the United States. It then spread to other countries, sequel to which several countries rescued their commercial banks at various times to prevent their failure. Nigeria also employed the same technique and accordingly bailed out many commercial banks since 2008-9 due to the imminent threat to the country's banking system, majorly as a result of a global financial crisis that has also been traced to a problem in the American banking system which spread to other countries. Nigeria was also severely hit by the crisis due to contagion, aided by the interconnectedness of the banking systems occasioned by many developments such as globalization which is fast happening due to advancements in information technology among other causes. Bailout is ideally being implemented pursuant to a legal framework providing the blueprint on how the aim of the policy will be successfully achieved and the accountability of the funds guaranteed. However, in this respect, countries vary, while some countries such as the United States of America promulgates law for a particular bailout to be implemented such as the Emergency Economic Stabilization Act of 2008 or have a legal regime meant for many financial provisions including the rescue of banks, such as what is obtainable in Nigeria. In this regard, the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Central Bank of Nigeria Act 2007, the Banks and Other Financial Institutions Act 2020, the Nigerian Deposit Insurance Corporation Act 2023, the Assets Management Corporation Act 2021, the Companies and Allied Matters Act 2020 among other laws and regulations serve as the legal regime governing the bailout. The laws pointed above have established institutions that regulate and supervise banking activities in the country among other things that include the bailouts. On this note, the regime established and governs the Central Bank of Nigeria, (CBN) the Nigerian

Deposit Insurance Corporation (NDIC), the Assets Management Corporation of Nigeria (AMCON) through which banks bailout in many forms are being implemented.

2.0 STATEMENT OF PROBLEM

Commercial banks bailout is novel to the Nigerian financial legal framework, which made the activity quite controversial due to, among other reasons, perceived absence of legal basis for same from different quarters. First, there has been constitutional arguments surrounding the legal basis of the bailouts being implemented by the federal government mostly through the Central Bank of Nigeria as a constitutional agent and statutorily independent body under the executive arm of the federal government of Nigeria in the light of the constitutional oversight legislative powers of the National Assembly. The bone of contention here is whether the Central Bank of Nigeria shall seek and obtain the approval of the National Assembly, by way of appropriation pursuant to section 80 of the Constitution of the Federal Republic of Nigeria (as amended) or same is not needed considering the statutory independence of the Central Bank of Nigeria guaranteed under section 1 (3) of the Central Bank Act 2007.

Second, there were in existence a financial legal framework in Nigeria when the bailout was introduced and implemented in the country in 2008-9 and beyond. Interestingly, the regime seems to be silent about bailout in a manner that was done due to the ostensible emergency nature of the situation to primarily tackle the negative consequences of the global financial crisis that affected the stability of the Nigerian banking industry. However, the Banks and Other Financial Institutions Act and the Companies and Allied Matters Act have been reviewed and accordingly amended in 2020 to keep pace with time and perhaps address certain inadequacies therein, including the issue of bailout. Yet the term bailout has not been mentioned in the Laws.

2.1 RESEARCH OBJECTIVES

The aim of this article work is to examine the extent to which the legal regime governing the Nigerian financial services sector allows bailout of commercial banks. Hence the objectives of the research are as follows:

- a) Appraising the Nigerian financial legal regime governing banking with a view to determining the validity and extent of the powers of the government to bailout commercial banks.

- b) Highlighting the provisions of the law pertaining to administrative discretions on the issue and its consequences from the perspective of Rule of Law.

3.0 METHODOLOGY

This research was conducted by employing doctrinal research methodology. This methodology refers to a systematic analysis of statutory provisions and of legal principles involved therein, or derived therefrom.¹ It also involves logical and rational ordering of the legal propositions and principles.² In essence, it aims at studying case law and statutory provisions with a view to finding the law.³ This entails the use of information and library materials and existing literatures to explain the content and position of law.⁴ The reasons that informed the choice of this methodology are: firstly, it provides quick answers to the problem as the researcher is continuously engaged in the exposition and analysis of legislations and case law and the integration of statutory provisions and judicial pronouncements into a coherent and workable body of doctrine.⁵ Secondly, a scholar of law indulged in doctrinal legal research, in a systematic way and with a convincing reasoning, exhibits inbuilt loopholes, gaps, ambiguities or inconsistencies in the substantive law inquired into, as well as in some principles or doctrines embodied therein. He thereby invites the legislature to plug them through amendments or to repeal it or substitute it by another piece of legislation, if it is with defects or a proved failure, so that the law can be more purposive and effective. Such a legislative move, either leading to amending the law or replacing it by another one results in the development or improvement of the law.

4.0 RESEARCH OUTLINE

This article is broadly divided into three parts: the first part entitled Introduction comprises of the brief background to the study, the statement of the research problem, research objectives and methodology. The second part entitled main body appraises the provisions of law, other expositions on the subject matter and analysis thereto in order to achieve the objectives of writing

¹Vibhute, K. (et al) 'Legal Research Methods' a Publication of the Ethiopian Justice and Legal System Research Institute, Addis Ababa, (2009) Pg. 72

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

the article. The third part entitled conclusions reveals the findings, observations and workable recommendations thereto.

5.0 MAIN BODY

5.1 The Concept of Commercial Banks Bailout

This means rescuing financially distressed private commercial bank by a government, using public funds to keep it functioning, because its failure or collapse may cause negative effects on the financial system stability of a country. However, it is interesting to note that, the term bailout is not being mentioned in the extant laws regulating such an activity in several countries that bailed out their commercial banks at different times. Instead, several words and phrases are being used to contemplate same. Accordingly, words and phrases such as rescue,⁶ assistance,⁷ economic stabilization,⁸ intervention,⁹ support measure or recapitalization¹⁰ are being used in the various legal enactments, pursuant to which several governments bailed out commercial banks. This article conceives and contextualizes bailout to banks from this wider and broader perspective.

5.2 Techniques of Executing Commercial Bank's Bailout

As a policy, governments mostly bailout commercial banks through Central Banks, similar organizations or other related institutions. These organizations execute the policy by employing several techniques, prominent among which are outlined below:

(a) Direct Cash Transfer on Loan

The researcher observed that this strategy entails emergency transfers of liquid capital into the concern bank with a view to increasing its liquidity thereby keeping it afloat. This mode is employed by several countries during emergency situations to expeditiously respond to problem

⁶ Section 34 of the Nigerian Banks and Other Financial Institutions Act 2020 is dedicated to failing banks and termed as rescue tools; accordingly, the provision empowers the Central Bank of Nigeria to employ several measures in bailing out financially distressed banks.

⁷ Section 2(1) b of the Nigeria Deposit Insurance Corporation Act 2006 provides that the Corporation has the responsibility of giving assistance to insured institutions, by analogy including banks, in the interest of depositors in case of imminent or actual financial difficulties, particularly where suspension of payments is threatened to avoid damage to public confidence in the banking sector. This is also a form of bailout.

⁸ This term is used to refer to the United States bailout of 2008 as provided by the U.S Emergency Economic Stabilization Act of 2008.

⁹ Section 2 of the Nigerian Deposit Insurance Corporation Act 2006

¹⁰ These words were used in the United Kingdom in an effort to prevent the collapse of the country's financial sector in 2008 by the Treasury of the United Kingdom through the bank of England through employing several measures to bailed out their banks pursuant to the provisions of the Banking (Special Provisions) Act of 2008

associated with illiquidity. Nigeria had through its Central bank employed this technique and bailed out several banks during the 2007-8 global financial crisis.

(b) Acquisition of Stocks or Shares of a Distressed Bank(s)

This process is employed by governments to increase the liquidity and cash flow of a financially distressed bank by buying a substantial shares in the bank at a good value, hold them for sometimes and dispose them in future to recover the fund used in purchasing same, mostly after the bank has demonstrated recovery from the problem and public confidence is restored. The future sale of the shares may sometimes attract profits to the government, or at worst, loss may be incurred.¹¹ In the autumn of 2008, the government of the United Kingdom bailed out the Royal Bank of Scotland by acquiring 84% of its shares. It still retains around 60% of same. It also acquired 43% of the shares of the Lloyds Banking Group, the whole of the shares of which is now being sold.¹²

(c) Nationalization of a Financially Troubled Bank(s)

Governments seldom take over distressed bank by taking over its total control usually by buying bank' stocks, recapitalize it, retain it as a government bank or sell it later when situations improve. The government of the United Kingdom in this respect took 100% ownership of Northern Rock in 2008, recapitalized it and later sold to Virgin Money in 2012.¹³ Similarly, Bradford & Bingley received the same treatment from the government and eventually renamed Santander UK.¹⁴

(d) Lender of Last Resort Policy

By this doctrine, Central Banks or similar organizations lends money to illiquid or financially distressed banks in order to save them from bankruptcy and imminent liquidation. This policy is generally regarded as one of the inherent functions of Central banks. It is one of the pillars upon which modern central banking is built as championed by Walter Bagehot.¹⁵ This mode is popularly and frequently employed to save illiquid banks. This technique attracts less or no public interest

¹¹ This mode has been employed by the governments of the United States and the United Kingdom at various times to bailout banks. For example, the UK government under Chancellor Alistair Darling and prime minister Gordon Brown bailed out the financial system using among other techniques acquiring stocks or shares in the troubled banks through a program called Special Liquidity Scheme

¹² The Economic Times, English Edition, 21st May, 2023 Pg.19 available at <https://m.economictimes.com> accessed on the 6th of August, 2024, around 6:08 pm

¹³ The Economic Times, English Edition, 21st May, 2023 Pg.19 available at <https://m.economictimes.com> accessed on the 6th of August, 2024, around 6:08 pm

¹⁴ Ibid

¹⁵ Hayes, A., Lender of Last Resort, Functions and Examples, available at <https://investopedia.com> accessed on the 5th of August, 2024, around 3:00 pm pg.1

compared to others, perhaps due to its long usage and public impression that public funds used in the process can be easily recovered.

(e) Bonds

A bond is generally a written promise to pay money or do some acts if certain circumstance occur or a certain time elapses.¹⁶In finance, however, a bond is a type of security under which the issuer (debtor) owes the holder (creditor) a debt and is obliged- depending on the terms- to provide cash flow to the creditor (e.g. repay the principal (i.e. amount borrowed) of the bond at the maturity date as well as interest (called the coupon) over a specified amount of time.¹⁷ In order to be free from liquidity crisis, a bank may issue bonds which governments, through Central Banks may purchase and thereby increase its liquidity.¹⁸

(f) Guarantee of Third-Party Private Loans to the Rescued Entity

Governments, usually through their central banks may serve as a guarantor for a financially distressed bank to a third-party private loan that may be utilized to prevent the collapse of the former.¹⁹

(g) Increasing Cash flow among Citizens and Corporations

A Government may decide through this technique to increase the cash flow of the consumer citizens to have more funds to buy goods, save money and stimulate the general economy, thereby keeping companies afloat, including banks. A good example of this approach is by extensive financial assistance to unemployed citizens, providing grants and loans with a view to enable them create jobs.²⁰

5.3 Rationale behind Commercial Bank's Bailout

Although there are many reasons behind commercial banks bailout, the major ones are provided hereunder.

¹⁶ Garner, B.A., (ed) Blackstone's Law Dictionary, 9th Edition California, USA, Pg.200

¹⁷ Chorafas, D.N., 'The Management of Bond Investments and Trading of Debts', pg.55 available at <https://books.google.com> accessed on the 30th of August, 2024 around 9:55 am

¹⁸ Hayes, A Lender of Last Resort, Functions and Examples, pg.1 available at <https://investopedia.com> accessed on the 5th of August, 2024, around 3:00 pm

¹⁹ Ibid

²⁰ Harry, D.M., Wadume, W., 'State Intervention Bailout and Economic Stabilization in Nigeria: Some Lessons from the United States' Mediterranean Journal of Social Sciences, May 2018. Vol.9 No. Pg.65

- (1) Avoidance of contagion in the banking sector: the bailout is to ensure continual survival of the bank being rescued under liquidity shortage with a view to avoiding the spread of the problem to other banks that may cause financial panic and systemic collapse.²¹
- (2) Job protection: this is often a central justification for banks bailout, based on the argument that a banking system collapse would lead to widespread credit shocks, corporate bankruptcies and mass unemployment. However, this rationale is highly debated, with significant counter arguments pointing to the ethical and long-term economic costs of using public money to save poorly managed financial institutions.²²
- (3) Credit crunch: a credit crunch can lead to a bank bailout when the financial system becomes so unstable that a government deems intervention necessary to prevent widespread economic collapse. A bailout occurs because the credit crunch transforms from a problem of restricted lending into a systemic crisis that threatens the viability of otherwise sound financial institutions.²³
- (4) Maintenance of financial stability: this is a primary justification for bank bailouts, as the collapse of a major financial institution can cause a devastating domino effect throughout the economy. While bailouts are controversial and carry significant costs, government intervention is often deemed necessary to prevent a widespread crisis that would be far more damaging to the economy and society.²⁴
- (5) Protecting depositors: this is another primary justification for the bailouts, because it prevents a loss of public confidence that can trigger a wider systemic collapse. When a bank fails, deposit insurance mechanisms typically cover deposits up to a specific limit. However, bailouts are often implemented to protect all or a greater portion of deposits when a bank's failure poses systemic risk to the entire financial system.²⁵
- (6) Retention of economic growth: this is one of the core justification for banks bailout because a stable banking system is essential for a functioning economy. The argument is that the

²¹ Blazseck, V., 'Banking Bailout Laws: A Comparative Study of the United States, United Kingdom and the European Union' Routledge,(2021) Pg. 19

²² Nicolaisen, J. Should Banks Be Bailed Out? An article of the Bank for International Settlements available at <http://www.bis.org> accessed on the 4th of October, 2025 around 12:22 pm

²³ Ganti, A., 'What is a Credit Crunch? Definition, Causes, Examples and Effects' available at <https://investopedia.com> accessed on the 4th of October, 2025 around 12:30 pm

²⁴ Nicolaisen, J. Should Banks Be Bailed Out? Supra Pg.87

²⁵ Garrick, F.A., 'An Overview of the Protection of Depositor's Fund in the Nigerian Banking System' Pg.43 available at <https://fagarrickco.com> accessed on the 4th of October, 2025 around 12:45 pm

systemic collapse of major banks would trigger a severe and widespread recession, and government intervention is necessary to prevent this outcome and stabilize economic conditions.²⁶

- (7) Ensuring market confidence: restoring and maintaining market confidence are a primary objectives of bank bailouts, because loss of confidence can trigger wider financial instability. Without market-wide trust, a failing bank can cause contagion, leading to a system-wide crisis, credit freezes and severe economic recession.²⁷
- (8) Systemic risk or a threat of widespread financial collapse serves as a primary justification for banks bailouts, as government intervene to prevent contagion and protect public confidence in the entire financial system. By providing direct capital liquidity, or guarantees, governments can stabilize distressed institutions and halt the cascading failures that could otherwise trigger a broader economic crisis like moral hazard, they are seen as a necessary, albeit costly, tool to manage and mitigate systemic risk when it threatens the overall financial stability.²⁸

5.4 Nigerian Legal Financial Legal Regime on Banks Bailout

The term 'Nigerian financial legal regime' refers to the laws and institutions governing, among other things, commercial banking activities in Nigeria. This comprises the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Banks and other Financial Institutions Act 2020; Central Bank Act 2007; Nigerian Deposit Insurance Corporation Act 2023, Companies and Allied Matters Act 2020, Assets Management Corporation Act 2019 and Fiscal Responsibility Act 2007. All relevant regulatory institutions in the sector are created by these laws. These institutions consist the Central Bank of Nigeria, Nigerian Deposit Insurance Corporation, Corporate Affairs Commission, the Assets Management Corporation of Nigeria and Fiscal Responsibility Commission. This chapter discusses the said framework and investigates the extent to which it allows government to bailout commercial banks using public funds.

²⁶ Amali, E., (et.al) 'Impact of Financial Stability on Economic Growth: Evidence from Nigeria' pg.16 available at <https://researchgate.com> accessed on the 4th of October, 2025 around 1: 43 pm

²⁷ Igan, D., 'How to Deal with Failed Banks' available at <https://imf.org/en/blog> accessed on the 4th of October, 2025 around 1: 56 pm

²⁸ Igan, D., 'How to Deal with Failed Banks' available at <https://imf.org/en/blog> accessed on the 4th of October, 2025 around 1: 56 pm

5.4.1 Constitution of the Federal Republic of Nigeria ²⁹

The Constitution has made the control and promotion of the national economy one of the fundamental objectives of the government.³⁰ This objective tends to be more successfully achieved if the government participates in some forms, in running the economy. However, a robust economy is dependent upon a stable financial system with commercial banks in the forefront. This reason, among others, made the government to regulate and supervise the financial institutions that include the commercial banks. Hence, the Constitution established the National Economic Council with a mandate to advise the President concerning the economic affairs of the Federation, and in particular, on measures necessary for ensuring the success of the country's economic programs.³¹ The National Economic Council comprises the Vice- President, who shall be the Chairman, the Governors of each state of the Federation and the Governor of the Central Bank of Nigeria. Closely related to the role of the Nigerian government in economic affairs is the concern about spending of public money with respect to which section 80 of the Constitution made elaborate provisions pertaining to its custody, appropriation, accounting and expenditure. On this, sections 2 (e) and 39 of the Central Bank Act 2007 made the Central bank of Nigeria the banker and economic adviser of the Federal and State Governments. This makes it the custodian of most funds of the Federation. It also serves as banker to the banks.

5.4.2 Banks and Other Financial Institutions Act 2020

Banks and other Financial Institutions Act of 2020 is an Act of the national assembly that principally regulates and supervises the business and activities of banks and other financial institutions in Nigeria. The Act is an upgrade of the Banks and other Financial Institutions Decree 1990, which served the purpose for more than three decades; became obsolete due to changes occasioned by time and globalization, hence the amendment in 2020. The Act has made provisions about rescuing failing banks and accordingly introduced several innovations that appear to be safeguards against commercial banks' failures; particularly on account of illiquidity. Accordingly, Part IV of the Act is clearly dedicated to failing banks and rescue tools.³² In this respect, the Act empowers the Central Bank to rescue failing banks by employing several techniques such as:

²⁹ The Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁰ Ibid Section 16

³¹ Section 18 of the Third Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

³² Sections 33-44 of the Banks and other Financial Institutions Act 2020

1. Prohibiting a failing bank from extending any further credit facility:-
2. Ordering suspension of payments or delivery obligations pursuant to any contract to which the failing bank is a party where the delivery or payment is inimical to the liquidity of the bank:-³³
3. Requiring a third-party service provider to the bank to continue to provide services to the bank for such period as may be set out in the order. ³⁴
4. Requiring a financially distressed or illiquid bank to take any step or any action or to do or not to do any act or thing, in relation to the bank or any of its business, its directors or officers which the Central Bank may consider necessary. ³⁵
5. Removing any manager or officer of the bank by an order in writing, notwithstanding anything in any written law or any limitation contained in the Memorandum and Articles of Association of the bank. ³⁶
6. Removing any Director of the bank or appointing another if such is necessary for rescuing the bank. ³⁷
7. Appointing any person or persons as director or directors of the bank if such is regarded as necessary to rescuing the bank and provide remuneration for them.
8. Appointing any person to advise the bank in relation to the proper conduct of its business and provide for remuneration therefor.
9. Transferring the bank wholly or in part to a third-party purchaser: and
10. Employing any other intervention tool.

The Central bank of Nigeria has also been empowered to acquire the shares of any failing bank up to a level that guarantees its control of the bank and provides that the Central Bank shall dispose of such equity investment in the bank at the earliest suitable time.³⁸ The Act further empowers the Central Bank to seek the co-operation of other agencies to grant such waivers or forbearance which in the opinion of the Governor of the Central Bank are necessary or expedient to resolve a banking crisis occasioned whenever two or more of the following conditions occur:

³³ Sections 33-44 of the Banks and other Financial Institutions Act 2020

³⁴ Ibid Section 34(2) c

³⁵ Ibid Section 34(2) d

³⁶ Ibid Section 34 (2) e

³⁷ Ibid Section.34(2) f

³⁸ S.34(3) Banks and Other Financial Institutions Act 2020

- (1) banks that are critically distressed control 12.5% or more of the total assets in the industry;
- (2) 12.5% or more of total industry deposits are threatened;
- (3) 12.5% or more of the banking system's total loans are non-performing; or
- (4) 25% or more of banks have applied for liquidity support in excess of 50% of the aggregate takings from the Bank's window or total interbank funds in the market or have been suspended by their settlement banks for failure to meet clearing obligations:

However, the Governor may vary the conditions set out in (a)-(d) above or prescribe such other conditions as he deems fit.

The relevant organizations and agencies that could be part of the arrangements include the Federal Ministry of Finance, the Nigeria Deposit Insurance Corporation; the Corporate Affairs Commission, the Federal Inland Revenue Services, and any Ministry, Department or agency as may be determined by the Governor.³⁹ The Central Bank has also been empowered to take additional measures as it deems necessary in respect of a failing bank, specialized banks or other Financial Institutions notwithstanding anything to the contrary in any Law or contract. Furthermore, the Act provides that the Central bank, for the purpose of rescuing a failing bank, may make determination that any eligible instrument issued by a failing bank, or to which the concerned bank is a party or is subject, is cancelled, modified, converted or changed in form, or has effect as if a right of modification, conversion or change of its or their form had been exercised.⁴⁰ The Central Bank may require a failing bank to take any steps or any action or to do or not to do any act or thing in relation to the bank, its business, directors or officers which the central bank may consider necessary to rescue the bank from failing.⁴¹ It may also remove, for reasons to be recorded any manager or officer of the bank in the interest of the bank.⁴² The Central Bank has also been empowered to transfer a failing bank, wholly or in part to third party private purchaser.⁴³ If after taking all the above measures, the state of affairs of the failing bank does not improve, the Central Bank may invoke its power to revoke the license of the bank and may accordingly apply to the Federal High Court for a winding up of the affairs of the concerned bank.⁴⁴

³⁹ Ibid Section 34

⁴⁰ Section 34 of the Banks and other Financial Institutions Act 2020

⁴¹ Ibid Section 34(2)

⁴² Ibid Section 34(2) e

⁴³ Ibid Section 34

⁴⁴ Ibid Section 34(3)

It is good to note that, some of the powers of the Central Bank mentioned above were also present in the repealed Act and the validity of their exercise has been judicially affirmed. For example, the powers of the Governor under sections 33, 35 and 55 of the Act to remove a manager, director or any officer of a bank where same appeared to be in the best interest of a failing bank has been affirmed by the Court of Appeal in *Omoyeni V. CBN*⁴⁵ where it stated that:

By the combined effect of the provisions of sections 33, 35 and 55 of BOFIA, the CBN Governor is empowered to intervene in the operation of a bank by removing and replacing the directors/officers of a bank found to be in a grave situation as the 5th respondent found itself.

5.4.3 Central Bank Act 2007⁴⁶

This is the Act that established the Central Bank of Nigeria, and provides for its objectives, independence, management, operation, powers, both regulatory and supervisory, the head office and branches of the bank; capital, operating surplus, general reserve fund, establishment of the Board; appointment, qualification and remuneration of the Governor and the Deputy Governors. It also provides for the establishment of Monetary Policy Committee, meeting of the Board, appointment of the Secretary to the Board and other employees. It also provides for issues that related to the currency of Nigeria, determination of exchange rate of Naira; sole rights of issuing notes and coins, power to print notes and mint coins, denomination and forms of currency notes and coins; bank currency notes and coins to be a legal tender, tampering with or trading in note and coins, lost and damaged notes and coins, exemption from stamp duty, composition of external reserve; maintenance of external reserve, power to buy and sell Nigeria currency, banking operation of the Bank, treasury operations, credits operation, liquidity management, developmental functions, incidental powers, power to acquire or share information, prohibited activities, publication of monetary policy rate etc.

Pertaining to maintaining financial stability of the country, however, particularly on rescuing failing banks, section 42 of the Act provides that the Central Bank may grant loans and other facilities at such rate of interest and on such terms as the Bank may determine to any bank which may be having liquidity problem. This provision, technically referred to as the power to act as a

⁴⁵ (2015) LPEPR-257891 (CA)

⁴⁶ The Central Bank Act 2007, Federal Republic of Nigeria Official Gazette vol. 94 No. 55

Lender of last Resort to banks is one of the most crucial functions of Central banks, not only in Nigeria, but virtually in most countries. Along this line, section 30 of the Act empowers the Central Bank to carry out open market operations for the purpose of maintaining monetary stability in the economy of the country. Accordingly, the Bank may issue, place, sell, repurchase, amortize or redeem securities which shall be issued at such rate of interest and under such conditions of maturity, amortization, negotiability and redemption as the Central Bank may deem appropriate.

5.4.4 Companies and Allied Matters Act 2020

This is a long piece of legislation made up of 870 sections, meant to repeal the Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2004 and to provide for the Incorporation of Companies, Partnerships, Limited Partnerships, and Registration of Business Names together with the incorporation of certain bodies, communities and associations. Among other things, the old CAMA 1990 had provisions on failing companies, including banks. Part XVI of the old law made provisions on Arrangements and Compromise. The Act provides for the power of the companies, to make arrangements and compromise with creditors and members with a view to providing solutions to a liquidity problem. The expression ‘Arrangement’ in the Act meant any change in the rights or liability of members, debenture holders or creditors of a company or any class of them.⁴⁷ Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its member or any class of them, the Federal High Court may on the application, in a summary way, of the company or any of its creditors or member or, in the case of company being wound up, by the liquidator, order a meeting of the creditors or class of creditors as the case may be, to be summoned in such a manner as the court directs.⁴⁸ If a majority representing not less than a three-quarter in value of share of members or class of members, or of the interest of the creditors or class of creditors, as the case may be, being present and voted either in person or by proxy at the meeting, agree to any compromise or arrangement, the activity may be referred by the court to the Securities and Exchange Commission which shall appoint one or more inspectors to investigate the fairness of the said compromise or arrangement and to make a written report thereon to the court within a time specified by the latter.⁴⁹

⁴⁷ Section 537 Companies and Allied Matter Act 1990,

⁴⁸ Section 537 Companies and Allied Matter Act 1990,

⁴⁹ S. 539(1) & (2) (3) of the CAMA 2020

If the court is satisfied about the fairness of the compromise or arrangement, it shall sanction the activity and make same binding on the parties.⁵⁰ It is noteworthy also that, apart from the arrangement and compromise, the Companies and Allied Matters Act 1990 provided other options that include Receivership and Liquidation. While receivership is geared towards the recovery of debt through secured asset, liquidation primarily aims at the dissolution of a company. Nevertheless, in most cases, the result of receivership is the dissolution of the insolvent company. These provisions of the Companies and Allied Matters Act 1990 have been regarded and submitted as outdated and inadequate.⁵¹ Also, the procedure for the arrangements and compromise in the Act has been lampooned as susceptible to abuse, slow and dysfunctional.⁵² This reason, among others, led to the review and amendment of the law. Accordingly, the new Companies and Allied Matters Act was signed into law in 2020. The new Act has brought changes in the area under discussion by introducing Business Rescue Provisions for insolvent companies. In that respect, the 2020 Act introduces a framework for rescuing a company in distress and to keep it alive as against allowing such entity to become insolvent or wound up. Therefore, now, if a company is in a distress condition, the directors of the company may take a proposal to its creditors for a compromise in satisfaction of its debts or scheme of arrangement of its affairs, which arrangement is termed as voluntary arrangement.⁵³ This technique may be regarded as a form of bail in.

5.4.5 Nigerian Deposit Insurance Corporation Act 2023⁵⁴

In a bid to tackle the consequences of banks' failure occasioned by several factors in Nigeria, notably after the structural adjustment programme of 1986, a need was felt to establish a deposit insurance corporation in 1987 by a Decree that was later converted to an Act. This is an Act that, among other things, established a Corporation known as the Nigerian Deposit Insurance Corporation with the responsibility of insuring all deposits liabilities of licensed banks and such other deposit taking financial institutions operating in Nigeria in order to engender confidence in the Nigerian banking system, and importantly, too, to give assistance to insured institutions in the interest of depositors in case of imminent or actual suspension of payment.⁵⁵ The assistance is

⁵⁰ Ibid

⁵¹ Omoregie, O K., Supra Pg. 89

⁵² Omoregie, O K., Supra Pg. 89

⁵³ Section 434 of the Companies and Allied Matter Act 2020

⁵⁴ Nigerian Deposit Insurance Corporation Act 2006 Federal Republic of Nigeria Official Gazette No. 73,

⁵⁵ Section 2, Section 37 of the Nigerian Deposit Insurance Corporation Act 2006 Federal Republic of Nigeria Official Gazette, no.73, Vol.93

further elaborated to mean granting loans on such terms as may be agreed upon by the corporation and the failing bank or by guaranteeing loan taken by the bank from another lender or any failing insured institution.⁵⁶ The corporation also has been empowered to, in collaboration with the Central Bank of Nigeria and the Assets Management Corporation of Nigeria, establish bridge banks for taking over a failing bank.⁵⁷ A bridge bank is an institution created by a national regulator or central bank to operate a failed bank until a buyer can be found.⁵⁸ Typically, the task of a bridge bank is to ensure seamless continuity of banking operations by assuming the deposits and honoring the commitments of the failed bank, so that the service to retail clients is not disrupted, servicing existing secured loan to avoid their premature interruption or termination and assuming other existing assets, liabilities or functions of the defunct bank at the discretion of the regulator. These tasks are carried out on a temporary basis, usually for not more than two or three years to provide time to find a buyer for the bank as a going concern. If the bank cannot be sold as a going concern, its portfolio of assets is liquidated in an orderly fashion. Should the bridge bank fail to wind down its operations within the allotted time, the National Deposit Insurance Corporation is appointed as the receiver of the bridge bank assets.⁵⁹ Accordingly, on August 5, 2011, the Central bank of Nigeria revoked the operating licenses of three banks that include: Afribank, Spring Bank and Bank PHB which according to it, did not show enough capacity and ability for recapitalization.⁶⁰ In their places, the Central Bank through the NDIC established bridge banks and transferred the assets and liabilities of the three affected banks as follows:

1. Mainstreet Bank Limited (Afribank)
2. Keystone Bank Limited (Bank PHB)
3. Enterprise Bank Limited (Spring Bank).⁶¹

The Assets Management Corporation of Nigeria immediately acquired from the Nigerian Deposit Insurance Corporation the three bridge banks and injected the sum of N679 billion into them with

⁵⁶ Ibid Section 37

⁵⁷ Ibid Sections 38 and 39

⁵⁸ Fitch, T.P., 'Barron's Dictionary of Banking Terms' available at <https://study.com> accessed on the 6th day of August, 2023 around 6:00pm

⁵⁹ AMCON Acquires Bridge Banks and Injects N679 Billion: Reported by Vanguard Magazine, August 7 2011 available at <https://vanguard.news.com> accessed on the 6th day of August, 2023 around 6:54 pm

⁶⁰ AMCON Acquires Bridge Banks and Injects N679 Billion: Reported by Vanguard Magazine, August 7 2011 available at <https://vanguard.news.com> accessed on the 6th day of August, 2023 around 6:54 pm

⁶¹ Ibid

a view to enabling them to meet the minimum capital base of N25 billion and the minimum capital adequacy ratio of 15 percent.⁶²

5.4.6 Assets Management Corporation of Nigeria Act ⁶³

During the years leading up to the global financial crisis, Nigerian banks fueled a rapid credit expansion to the private sector. Most notably banks spearheaded a large expansion in the supply of margin loans and investment in the oil and gas sector.⁶⁴ The situation became unsustainable as the financial crisis spread around the globe. The crash of the domestic stock market in March 2008 and the rapid decline in oil and gas prices affected the balance sheets of many banks in Nigeria, resulting in a high level of non-performing loans in the sector. In response, the Nigerian authorities decided to establish an agency to address the growing non-performing loans problems, as well as perform further capital injections instead of following the established route and wind up failed banks through the NDIC.⁶⁵ The decision stemmed from the lack of a rapidly available mechanism to inject public funds beyond the CBN package and legal challenges regarding the NDIC's ability to wind up failed banks. The Assets Management Corporation of Nigeria Act was signed into Law in July 2010 by President Goodluck Jonathan, officially establishing AMCON as Nigeria's public Assets Management Company mandated with the purchase of non-performing and systematically important loans and the injection of capital.⁶⁶ This Act established a corporation called the Asset Management Corporation of Nigeria (AMCON) in July 2010 to purchase non-performing loans for Nigerian banks and inject capital into insolvent banks.⁶⁷ The Act consists 62 sections, divided into 8 parts with a schedule. Part 1 that comprises sections 1 to 8 established the Corporation, provided for its authorized capital, Head Office and objects of the Corporation, Functions and Powers of the Corporation, appointment of Assets Managers and powers of the Central Bank of Nigeria to issue guidelines and directions. Part 2 provided for administration and management of the corporation. Part 3 provided for funds, finances, accounts, audits, books of account. Annual

⁶² Ibid

⁶³ The Assets Management Corporation Act of Nigeria No 4, 2010

⁶⁴ Ungersboeck, P. Assets Management Corporation of Nigeria (AMCON) Resolution of Non-Performing Loans in Nigeria, 2019 Pg.2 available at <https://elischolar.library.yale.edu> accessed on the 17th of August, 2024 around 4:00 pm

⁶⁵ Ungersboeck, P., 'Assets Management Corporation of Nigeria (AMCON) Resolution of Non-Performing Loans in Nigeria' 2019 Pg.2 available at <https://elischolar.library.yale.edu> accessed on the 17th of August, 2024 around 4:00 pm

⁶⁶ Ibid

⁶⁷ Ibid

report, report to Central Bank of Nigeria and audited accounts. Part 4 provided for Eligible Bank Assets, acquisition, merger etc. It accordingly provided designation of eligible bank assets, purchase of the assets by the corporation, consideration for purchase of eligible bank assets, guarantee of corporation's bonds by the federal government of Nigeria, valuation and purchase price of eligible bank assets, procedure to be followed by eligible financial institution, corporation not to be bound to purchase eligible bank assets, delivery of books, records to the corporation, purchase agreement, indemnity and notice to debtors of acquisition of eligible bank assets, corporation to have rights of creditors after acquisition of eligible bank assets, tainted eligible bank assets etc. Part 5 provided for the special powers of the corporation to act as or appoint a receiver for a debtor company. Part 6 provided for Special Debt Recovery Procedure. Part 7 provided for offences and penalties. Lastly, Part 8 was for miscellaneous.

The Act was amended in 2019 to give the Corporation additional functions and increase the members of the Board among other matters. Accordingly, sections 6,10,19,31,33, 34,35,39,43,45,47,48,49,50,51,52,53,55,60 and 61 were amended. New sections "33A" "50A"- "50B" were inserted. The Act was further amended in 2021 to extend the tenor of the resolution cost fund, grant access to the Special Tribunal established by the Banks and Other Financial Institutions Act 2020 and to confer on the corporation the powers to take possession, manage, foreclose or sell, transfer, assign or otherwise deal with the assets or property used as a security for eligible bank assets. In this regard, sections 4, 34, 45 and 61 were amended. A new section "53A" was inserted.

The corporation is owned jointly by the Central bank of Nigeria and the Ministry of Finance. Its mandate was to acquire the non-performing loans from Nigerian banks and annex the underlying collateral, as well as fill the remaining capital deficiency and receive equity or preferred shares in the affected banks as consideration.⁶⁸ The corporation intervened in eight financial institutions, injecting a total of N2.3 trillion. Five injections were made into failing banks that arranged an acquisition by a third-party investor.⁶⁹

⁶⁸Ungersboeck, P., 'Assets Management Corporation of Nigeria (AMCON) Resolution of Non-Performing Loans in Nigeria' 2019 Pg.3 available at <https://elischolar.library.yale.edu> accessed on the 17th of August, 2024 around 4:00 pm

⁶⁹ Ungersboeck, P., 'Assets Management Corporation of Nigeria (AMCON) Resolution of Non-Performing Loans in Nigeria' 2019 Pg.2 available at <https://elischolar.library.yale.edu> accessed on the 17th of August, 2024 around 4:00 pm

a. Critique of Commercial Bank's Bailout under the Nigerian Legal Regime

From the discussion thus far, it can be deduced that the Nigerian legal regime has made provisions on rescuing failing banks that, among other things, face liquidity problem by principally authorizing the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation and the AMCON to bail them out both expressly and impliedly.

5.5.1 Express Authority

This is the power given to the aforesaid government agencies to bailout banks through any of the techniques highlighted below:-

- (a) Granting loan or credit facility to a failing bank.⁷⁰
- (b) Taking control of a failing bank through acquisition of shares or stocks with a view to increasing the liquidity of the troubled bank as a form of bailout.⁷¹
- (c) Transferring, in whole or part only, the banking business of a distressed bank, to a third party purchaser.⁷² This process is also being funded by the Central Bank using the capital fund.
- (d) By the mechanism of bridge banks.
- (e) Taking over the management of a failing bank until its financial position has substantially improved.⁷³

5.5.2 Implied Authority

This is an authority given to the statutory agencies to bailout financially troubled banks by the provisions of their enabling laws and other enactments or other rules pursuant thereto. In this respect, section 2 of the Central Bank Act provides that the promotion of sound financial system is one of the objectives of the Bank. Incidentally, a crucial factor in achieving this task is ensuring the existence of a sound, virile and reliable banking system and prevention of its failure that invariably comprises rescuing failing banks through bailout whenever there is a need to that effect. In the same vein, section 4 of the Nigerian Deposit Insurance Corporation Act 2023 has made ensuring public confidence in the system among the objectives of the corporation, and bailing out banks is one of the most expeditious ways of achieving same.

⁷⁰ Sections 42 (2) of the Central Bank Act 2007, and Sections 2, 37 and 38 of the NDIC Act 2023

⁷¹ Section 34(3) of the Banks and other Financial Institutions Act 2020

⁷² Ibid Section 34(2)

⁷³ Section 38 of the Nigerian Deposit Insurance Corporation Act 2006

5.5.3 The Extent of Authorization to Undertake Bailout

From the provisions of the laws discussed hereinabove, it can be deduced that the legal regime has allowed or authorized the government agencies concerned with the issue of banking failure and related matters to bailout commercial banks using public funds without any limitation. This is hinged on the fact that no limitation is placed on what the agencies can do on the issue by the enabling laws discussed above. This can be connected with the statutory independence given to the agencies in order to enable them to be discharging their functions effectively and insulate them from political interference. Furthermore, a wide discretionary power to that effect is given to the Central Bank of Nigeria by section 37(2) (i) of the Banks and Other Financial Institutions Act 2020, which provides that the Central Bank may employ any other intervention tool as it deems fit to rescue a failing bank. Similarly, section 49(2) (d) of the Nigerian Deposit Insurance Corporation Act 2023 has empowered the corporation to take or carry out any other measure to provide financial assistance to the insured institutions.

5.6 Rule of Law and the Extent of the Authorization

Rule of law is an element of good governance. The concept of rule of law in jurisprudence and political philosophy has several dimensions. At its core is the classical liberal principle of non-discretionary governance that stands in contrast to the arbitrary or discretionary rule of those people currently in authority. According to Elegido,⁷⁴ a legal system is said to observe the rule of law when it possesses the following three essential characteristics:

- a. The officials obey the legal rules in their actions.
- b. The legal rules are such that they minimize the possession of unchecked discretion by the officials; and
- c. The legal rules are such that people are able to calculate in advance the legal consequences of their actions.

It has already been pointed out above that the Nigerian legal regime on bailout has vested government agencies responsible for bailing out banks with unfettered administrative discretion to exercise while rescuing failing banks.⁷⁵ Administrative discretion is essentially the discretion to

⁷⁴ Elegido, J.M., 'Jurisprudence' Spectrum Law Series Ibadan, Nigeria, 2010 Pg.186

⁷⁵ Sections 34-42 of the Banks and Other Financial Institutions Act & sections 37-39 and Section 2 of the Nigerian Deposit Insurance Corporation 2006

make certain judgment about situations in their job.⁷⁶ Administrative discretion is beneficial because it gives individuals with authority and opportunity to make quick decisions in situations where they are necessary, and it also gives power to those who have the wisdom and experience to make important decisions.⁷⁷ In this light, the discretion in the Nigerian legal regime must have been vested in the agencies with a view to dealing with situations that are either unforeseen or of emergency nature such as confronting a financial crisis of a high magnitude that needs to be expeditiously dealt with, such as the global financial crisis of 2008-2009. Accordingly, the discretion has been exercised in many respects by the agencies, sequel to which a serious financial catastrophe was averted as pointed out. This situation is not peculiar to Nigeria. It is also obtainable in many countries. It has been observed that central bankers today are discretionary rulers over the economy's monetary and financial institutions.⁷⁸ However, on the other hand, administrative discretion puts decision making power in the hands of few people who may act impulsively or simply make incorrect decisions.⁷⁹ Administrative discretion also opens the door to abuse.⁸⁰ This abuse may of course lead to engaging in corrupt practices, and corruption is antithetical to good governance.⁸¹ In economic and moral terms, corruption is very costly. It undermines confidence in the government, whose moral authority is diminished. Economically, misallocation of resources is worsened by corruption, and government officials will not press for change in the regulations from which they enrich themselves. In fact, officials may press for more of such regulations. Along this line, the discretionary powers embedded in the regime under study is also susceptible to abuse and arbitrariness which often lead to many problems, including corruption as earlier pointed out. This is dangerous in a country that has been rated in 2023 as the 145 least corrupt nation out of 180 countries in the world.⁸² Therefore, the abuse of discretion can lead to under development, rise in poverty level among others that may worsen the life situation of the majority citizens of Nigeria. This development goes contrary to the established principle of utilitarianism of the

⁷⁶ Rabin, J., 'Administrative Discretion' Encyclopedia of Public Administration and Public Policy, 2003 pg.453

⁷⁷ Ibid

⁷⁸ White, L.H., 'The Rule of Law or the Rule of Bankers?' CATO Journal, Vol.30. No.3 (2010) Pg.454 available at <https://www.researchgate> accessed on the 7th day of October, 2024, around 5:00 pm

⁷⁹ White, L.H., 'The Rule of Law or the Rule of Bankers?' CATO Journal, Vol.30. No.3 (2010) Pg.454 available at <https://www.researchgate> accessed on the 7th day of October, 2024, around 5:00 pm

⁸⁰ Ibid

⁸¹ Owolabi, E.A., 'Corruption and Financial Crimes in Nigeria: a Genesis Trend and Consequences', Document of the Internal Audit Department, Central Bank of Nigeria Pg. 2

⁸² Transparency International, 2023 available at <https://www.tradingeconomics> accessed on the 9th of September, 2024 around 6:00n pm

greatest happiness of the greatest majority. Similarly, corruption, nepotism and similar practices that are obtainable as a result of abuse of discretion in the course of bank bailout may directly affect the maximization of economic growth, development and values which Richard Posner regards as the very essence of existence of a financial legal regime. Accordingly, it has been concluded that, pertaining to abuse of discretion by the officials of the Central Bank of Nigeria during the 2008-2009 financial crises, the upshot of reckless and inflammatory utterances and actions by those who are vested with discretionary power and authority is that, they not only have the potential but can also constructively damage the economy within a short time if unchecked.⁸³ From the above, it can be concluded that the Nigerian legal regime on bailout has failed to pass the test of rule of law because it gives officials responsible for bank bailout wide administrative discretionary powers that can be abused to the detriment of the of the citizens of the country.

6.0 FINDINGS, CONCLUSION AND RECOMMENDATION

Based on the above investigation into the Nigeria's legal regime of commercial banks bailout and its critique in the light of the basic tenets of utilitarian theory of law and rule of law, the following major findings are made:

1. That the Nigerian legal framework on bailout has authorized the federal government, through its relevant agencies that principally comprises the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation and the Assets Management Corporation of Nigeria to bailout illiquid commercial banks with a view to preventing banking failure for ensuring financial system stability in the country.
2. That the authority aforementioned is given expressly and impliedly. The express authority is given pursuant to sections 41 and 42 of the Central Bank Act 2007 that authorizes the Central Bank to act as a banker to banks, which function, technically referred to as acting as a lender of last resort, incidentally involves granting loans to illiquid banks.

Similarly, section 34 (2) (h) and (i) of the Banks and Other Financial Institutions Act 2020 authorizes the Central Bank to rescue failing banks by transferring the bank wholly or in part to a third-party purchaser. The section further empowers the Central Bank to employ any other intervention tool as it deems fit to rescue a failing bank. This is an authority that can be utilized to

⁸³ White, L., 'The Rule of Law or the Rule of Bankers?' Cato Journal of Banking and Finance, Vol.30. No.3 2010 Pg.150

bailout illiquid banks in the country. In the same token, section 34 of the Act authorizes the Central Bank to acquire shares or any interest in a failing bank up to a level that guarantees the control of the failing bank by the Central Bank. This is also a bailout technique discussed above. Furthermore, section 62 of the Act expressly empowers the Central Bank to grant advances to a non-interest bank in a grave situation. Also, of essence, section 78 of the Act expressly provides that resolution fund created under the Act can be used to, among other things, provide loans, overdrafts or other credit facilities to a bank under a resolution or bridge bank. Moreover, section 4 (b) of the Nigerian Deposit Insurance Corporation Act 2023 has expressly authorized the Corporation to give financial assistance to an insured institution in the interest of depositors, or in case of an imminent or actual financial difficulty, particularly where suspension of payment is threatened, with a view to avoiding damage to public confidence in the banking system. Section 54 of the Act authorizes the Central Bank and the Corporation to form bridge banks if that is the best way of rescuing a failing bank.

3. That the implied authority is the authorization that can be deduced from the tenor of the provisions of the Central Bank Act, and the Nigerian Deposit Insurance Corporation Act. Accordingly, section 2 of the Central Bank Act has made the promotion of the sound financial system one of the objectives of the Central Bank of Nigeria. In the same vein, section 2 of the Nigerian Deposit Insurance Corporation Act 2023 has made ensuring public confidence in the system among the objectives of the Corporation, and bailing out banks is one of expeditious ways of ensuring same.

4. That the authority given to the government agencies to bailout commercial banks is without any limitation. The limitation in contemplation here is with respect to the amount of the public money that can be used for the bailouts and, indeed, in relation to the number of the commercial banks that can be bailed out. This can be seen from the provisions of the laws regulating bailout to commercial banks in Nigeria where no limitation is provided. Furthermore, section 34(2)(i) of the Banks and Other Financial Institutions Act 2020 has empowered the Central Bank of Nigeria to employ any other tool as it deems fit to rescue a failing bank. This wide authorization places no limit on what the Central Bank can do to rescue a failing bank.

5.1 That the manner by which the Nigerian legal regime governing bailouts of commercial banks vested the Central Bank of Nigeria with a wide unrestricted discretion to employ any measure that it deems fit to rescue a failing bank as contained in the various provisions of the Banks and Other

Financial Institutions Act 2020 is a recipe to abuse of power with all its attendant consequences, hence incompatible with the basic tenets of utilitarian theory of law and rule of law.

6.1 Recommendation

With a view to improving the Nigerian legal regime governing bailouts of commercial banks so as to make it in tandem with the principles of rule of law, the following recommendation is made:

1. That the wide administrative discretionary powers given to the Central Bank of Nigeria to execute bailout without any limitation should be curtailed. This can be achieved by subjecting the exercise to the oversight of the National Assembly for debate and necessary considerations.