



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Thursday, 3rd February, 2005

1. The Senate met at 10.20 a.m. The Senate President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Wednesday, 2nd February, 2005 and approved same.

By unanimous consent, the Votes and Proceedings were adopted.

3. **Communication from the Chinese Ambassador to Nigeria:**



中 华 人 民 共 和 国 大 使 馆

AMB/L/2005/009

January 31, 2005

H. E. Rt. Hon. Sen. Adolphus Wabara
President of the Senate
Federal Republic of Nigeria
Abuja

Your Excellency,

Recalling with pleasure our discussion at the end of last year during which I proposed to host a retreat/buffet for all the distinguished Chairmen of the Senate Committees and their spouses at the Chinese Embassy to further enhance mutual understanding and strengthen cooperation between the Embassy and the Senate. With your kind consent and encouragement to the proposal, I am writing to inform Your Excellency that the Embassy has made adequate preparations for a retreat on one of the dates from February 21 to 24 at the convenience of the Senate.

I would greatly appreciate it if Your Excellency could indicate to a date that is most suitable to the Senate. If the proposed time window is not convenient to you, please feel free to indicate another date of your choice to me. I would also be greatly honoured if Your Excellency could inform all the invitees of this activity and appoint officials of the National Assembly to coordinate this event with my Embassy.

Please accept, Your Excellency, the assurances of my highest consideration.

Sincerely yours,

(Signed)
Wang Yongqiu
Chinese Ambassador to Nigeria

4. Committee on Privatization:

Report of the Study Tour of Ports Reforms to USA and Mexico:

Motion made and Question Proposed: That the Senate do receive the Report of the Committee on Privatization on the study tour of Ports Reform to USA and Mexico (*Senator Isaiah C. Balat*).

Question put and agreed to.

Report Laid.

5. Committee on Sports and Social Development:

Conference Report on National Lottery Bill 2005 (SB. 125):

Motion made and Question Proposed: That the Senate do receive the Report of the Conference Committee on Sports and Social Development on National Lottery Bill 2005 (SB. 125) and approve the recommendations (*Senator Kanti Bello*).

Question put and agreed to.

Report presented and Laid.

Debate:

Question, That the Conference Report be adopted resolved in the Affirmative.

6. Report of the Committee on Banking, Insurance and Financial Institution:

Banks and Other Financial Institutions Act (Amendment) Bill (SB. 114):

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to resume consideration of the Report of the Committee on Banking, Insurance and Financial Institutions on Banks and Other Financial Institutions Act (Amendment) Bill 2005 (*Adjourned debate, Wednesday 2nd February, 2005*) (*Senate Majority Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

A BILL FOR AN ACT TO AMEND THE BANKS AND OTHER FINANCIAL INSTITUTIONS DECREE NO. 25 OF 1991 AND FOR CONNECTED PURPOSES

Clause 37: (1) Where the licence of a bank has been revoked pursuant to section 36 of this Act, the Corporation shall apply to the Federal High Court for a winding up order of the affairs of the bank -

Committee's Recommendation:

Immediately after the word "Corporation" insert the words "or any other person appointed as a liquidator" (*Senator Sunday Zik Ambuno*) — *Agreed to.*

(2) Notwithstanding anything to the contrary contained in any law or enactment, no suit shall be instituted against a bank whose control has been assumed by the Corporation.

(3) If any such proceeding is instituted in any court or tribunal against the bank, it shall abate cease or be discontinued without further assurance other than this

Committee's Recommendation

Immediately after the word "court" in line 1, leave out the words "or tribunal" (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (4) The Corporation shall, while acting as the liquidator of a licensed bank, forward to the Bank copies of any returns which it is required to make from time to time, by the Bank (*Senator Sunday Zik Ambuno*) — *Agreed to.*

Question that Clause 37 as amended stand part of the Bill put and agreed to.

GENERAL AND SUPPLEMENTAL:

- Clause 38:**
- (1) Except with the written consent of the Governor-
- (a) no bank shall, as from the commencement of this Act, be registered or incorporated with a name which includes the words "Central", "Federal", "Federation," "National", "Reserve", "State", "Christian", Islamic", "Moslem", "Quaranic", or "Biblical";
- (b) no person other than a bank licensed under this Act shall use or continue to use the word "bank" or any of its derivatives, either in English or in any other language in the description or title under which the person is carrying on business in Nigeria.
- (2) Every bank shall use as part of its description or title the word "bank" or any one or more of its derivatives, either in English or in some other language.
- (3) Subsection (1) of this section shall not apply to any registered association of banks, bankers or bank employees formed for the protection of their mutual interest or in furtherance or promotion of education and training of personnel for financial institutions in Nigeria.
- (4) any person who acts in contravention of this section is guilty of an offence and liable on conviction to a fine not exceeding ₦50,000 for each day during which the act continues.

Committee's Recommendation

Leave out the figure "₦50,000" and insert the figure "₦250,000" (*Senator Sunday Zik Ambuno*) — *Agreed to.*

Question that Clause 38 as amended stand part of the Bill put and agreed to.

- Clause 39:**
- (1) No person other than a bank or any other person authorized to take deposits shall issue any advertisement inviting the public to deposit money with it.
- (2) Any person who issues an advertisement in contravention of the provisions of subsection (1) of this section is guilty of an offence and liable on conviction to a fine of ₦100,000 or to imprisonment for a term of 10 years or to both such fine and imprisonment.

Committee's Recommendation:

Leave out the figure "₦100,000" in line 3 and insert the figure "₦1,000,000" (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (3) Where any bank proposes to issue any advertisement, the bank shall deliver to the Bank the text of the proposed advertisement together with the bank's latest published accounts, and shall thereafter comply with such directives and conditions as the Bank may prescribe and

such text shall be regarded as confidential information.

Committee's Recommendation:

Leave out all the provision in subclause 39(3) and *insert* a new subclause 39(3) as follows:

“39(3)Any Bank proposing to issue an advertisement shall comply with the guidelines which may be issued by the Bank from time to time (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (4) Any bank which fails to comply with the provisions of subsection (3) of this section is guilty of an offence and liable to a fine of ~~₦~~50,000 and the bank shall in addition pay a fine of ~~₦~~1,000 for every day during which an advertisement issued in contravention of subsection (3) of this section continues.

Committee's Recommendation:

- (i) Before the word “subsection” in line 1, *insert* the words “any guideline that may be issued under” (*Senator Sunday Zik Ambuno*) — *Agreed to.*
- (ii) Immediately after the word “liable” in line 2, *insert* the words “on conviction” (*Senator Sunday Zik Ambuno*) — *Agreed to.*
- (iii) Immediately after the word “fine in line 2, *insert* the words “not less than” (*Senator Sunday Zik Ambuno*) — *Agreed to.*
- (iv) *Leave out* the figures “~~₦~~50,000” and “~~₦~~1,000” and *insert* the figures “~~₦~~1,000,000” and “~~₦~~100,000” respectively instead thereof (*Senator Sunday Zik Ambuno*) — *Agreed to.*
- (5) In this Act "advertisement" includes any form of advertising whether in publication or by the display of notice or by means of circular or other documents or by any exhibition of photographs or cinematograph or by way or sound broadcasting or television or loudspeakers other public address systems and references to the issuing of an advertisement shall be construed accordingly; and for the purposes of this Act, an advertisement issued by any person by way of display or exhibition in a public place shall be created as issued by him on every day on which he causes or permits it to be so displayed or exhibited.
- (6) An advertisement which contains information calculated to lead directly or indirectly to the deposit of money by the public shall be treated as an advertisement inviting the public to deposit money.
- (7) An advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person and for the purpose of any proceedings under this Decree, an advertisement inviting the public to deposit money with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the person (*Senator Sunday Zik Ambuno*).

Question that Clause 39 as amended stand part of the Bill put and agreed to.

Clause 40:

- (1) If the President is satisfied that any trade union, the members of which are employed in a bank, has been engaged in acts calculated to disrupt the economy of Nigeria, he may order, published in the Gazette, proscribe that union (hereafter in this section referred to as "a proscribed union") which shall, as from the date of the order, cease to exist.

- (2) A proscribed union shall not later than 14 days from the date of the order under subsection (1) of this section, surrender its certificate of registration to the Registrar who shall take such steps in relation to the distribution of the assets of the union as he deems necessary or in accordance with the registered rules of the union.
- (3) No person who immediately before the date of an order under this section was an officer of a proscribed union shall at any time after that date be an officer of any trade union any of the members of which are employed by a bank.

- (4) If the certificate of registration of a proscribed union is not delivered to the Registrar as required under subsection (2) of this section, every person who immediately before the proscription of the union was an officer thereof is guilty of an offence and liable on conviction to a fine of ₦5,000 or to imprisonment for 6 months or to both such fine and imprisonment.
- (5) Any person who contravenes subsection (3) of this section is guilty of an offence and liable on conviction to imprisonment for a term of 5 years without an option of a fine.
- (6) In this section:
"officer" in relation to a union, means any person holding official position in that trade union and, accordingly, includes in particular, any president, secretary or treasurer thereof and every member of the committee of management however described.

"Registrar" means the Registrar of Trade Unions appointed under section 45 of the Trade Unions Act.

Committee's Recommendation

Leave out Clause 40 and renumber existing clauses accordingly (Senator Sunday Zik Ambuno) — Agreed to.

Clause 40:

- (1) No bank shall incur any liability to any of its customers by reason only of failure on the part of the bank to open for business during a strike.
- (2) If as a result of a strike, a bank fails to open for business, the bank shall, within 24 hours of the beginning of the closure, obtain the approval of the Bank for any continued closure of the bank.

Committee's Recommendation

That the provision in Clause 40 be retained (Senator Sunday Zik Ambuno) — Agreed to.

Question that Clause 40 stand part of the Bill put and agreed to.

Clause 41:

- (1) Any director, manager, officer or employee of a bank or any other person receiving remuneration from the bank, who asks for, receives, consents or agrees to receive any gift, commission, employment, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relations, from any person:-

- (a) for procuring or endeavoring to procure for any person any advances, loans or credit facility from the bank: or

- (b) for the purpose or discount of any draft, note, cheque bill of exchange or other obligation by that bank:

Committee's Recommendation:

Immediately after the word "purpose" in line 1, *insert* the words "of

the purchase” (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (c) for permitting any person to overdraw any account with that bank without proper authority or compliance with rules and guidelines for the purposes; is guilty of an offence and liable on conviction to pay to the Bank a fine of ₦50,000 or imprisonment for a term of 5 years or to both such fine and imprisonment and in addition any such gift or other commission shall be forfeited to the Federal Government.

Committee’s Recommendation:

Leave out the figure “₦50,000” and insert the figure “₦500,000” instead thereof (Senator Sunday Zik Ambuno) — Agreed to.

- (2) The provisions of subsection (1) of this section shall not in any manner derogate from, and shall be without prejudice to any other written law relating to corruption or illegal gratification.

Question that Clause 41 as amended stand part of the Bill put and agreed to.

Clause 42:

- (1) Every bank shall, before appointing any director or chief executive, seek and obtain the Bank's written approval for the proposed appointment.
- (2) No person shall be appointed or shall remain a director, secretary or an officer of a bank who:-
- (a) is of unsound mind or as a result of ill health is incapable of carrying out this duties; or
- (b) is declared bankrupt or suspends payments or compounds with his creditors including his bankers; or
- (c) is convicted of any offence involving dishonesty or fraud; or
- (d) is guilty of serious misconduct in relation to his duties; or
- (e) in the case of a person possessed of professional qualification, is disqualified or suspended (otherwise than of his own request) from practicing his profession in Nigeria by the order of any competent authority made in respect of him personally.
- (3) No person who has been a director or directly concerned in the management of a bank which has been wound up by the Federal High Court shall, without the express authority of the Governor, act or continue to act as a director of, or be directly Concerned in the management of any other bank.
- (4) Any person whose appointment with a bank has been terminated or who has been dismissed for reasons of fraud, dishonestly or conviction for an offence involving dishonesty or fraud shall not be employed by any bank in Nigeria.

Committee’s Recommendation:

Leave out subclause (4) (Senator Sunday Zik Ambuno) — Agreed to.

- (5) Any bank which knowingly acts in contravention of subsection (1), (2), (3) or (4) of this section is guilty of an offence and liable on conviction to a fine of ₦100,000.

Committee’s Recommendation:

Leave out the figure “₦100,000” and insert the figure “₦1,000,000” instead thereof (Senator Sunday Zik Ambuno) — Agreed to.

- (6) Where an offence committed by a bank under subsection (4) of this section is proved to have been committed with the knowledge or connivance of any director, manager or any other officer of the bank, he, as well as the bank is guilty of an offence and the director, manager or any other officer of the bank shall on conviction be liable to imprisonment for a term of not less than 5 years or to a fine ₦50,000 or to both such imprisonment and fine.

Committee's Recommendation:

- (i) *Leave out* the phrase "as well as the Bank" (Senator Sunday Zik Ambuno).

Amendment Proposed:

Retain the phrase "as well as the Bank" in the original Act (Senator Victor K. Oyifo) — *Agreed to.*

Question that the amendment be made put and agreed to.

- (ii) *Leave out* the figure "3" in line 5 and *insert* the figure "5" (Senator Sunday Zik Ambuno) — *Agreed to.*
- (iii) *Leave out* the figure "₦50,000" and *insert* the figure "₦500,000" (Senator Sunday Zik Ambuno) — *Agreed to.*
- (7) It shall not be a defence for any director, manager or officer of a bank to claim that he is not aware of the provisions of subsection of such a person from the secretary of the Bank's Committee who maintains a register of terminated, dismissed or convicted staff of banks on the ground of fraud or dishonesty.

Question that Clause 42 as amended stand part of the Bill put and agreed to.

MISCELLANEOUS MATTERS

Clause 43:

- (1) Where any offence against any provision of this Act has been committed by a body corporate or firm, any person who was a director, manager, secretary or other similar officer of the body corporate or firm purporting to act in such capacity shall, in addition to the body corporate or firm, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Committee's Recommendation:

Leave out the provision in subclause (1) and renumber the existing subclauses accordingly (Senator Sunday Zik Ambuno) — *Agreed to.*

- (2) Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of the clerk or servant of such agent:

Provided that such act, omission, neglect or default was committed by the clerk or servant in the course of his employment or by the agent when acting in the course of his employment in such circumstances that had the act, omission, neglect or default been committed by the agent, his principal would have been liable under this section.

Question that Clause 43 as amended stand part of the Bill put and agreed to.

- Clause 44:**
- (1) Any person, being a director or manager of a bank, who fails to: -
 - (a) take all reasonable steps to secure compliance by the bank with the requirements of this Act; or
 - (b) take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act is guilty of an offence and liable on conviction to a fine not exceeding ₦50,000 or imprisonment for a term of 3 years or to such fine and imprisonment.

Committee's Recommendation:

Leave out the provision in Clause 44(1)(a) and (b) and insert the following:
"Any person, being a director, officer or manager of a bank who fails to take all reasonable steps to secure the correctness of any provisions of this Act is guilty of an offence and liable on conviction to a fine not less than ₦500,000 or imprisonment for a term of 3 years or such fine and imprisonment"
(Senator Sunday Zik Ambuno).

Amendment Proposed:

That the original Clause 44 be retained (Senator Udoma Udo Udoma).

Question that the amendment be made put and agreed to.

Another Amendment Proposed:

Leave out the figure "₦50,000" and insert the figure "₦500,000" (Senator Jonathan S. Zwingina).

Question that the amendment be made put and agreed to.

- (2) Any bank which contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder for which an offence or penalty is not expressly provided is guilty of an offence and liable on conviction to a fine not exceeding ₦50,000.

Committee's Recommendation:

Leave out the provision in subclause 44(2) (Senator Sunday Zik Ambuno).

Amendment Proposed:

- (i) That the provision of subclause 44(2) as in the original Act be retained (Senator Umaru Dahiru).

Question that the amendment be made put and agreed to.

- (ii) Leave out the figure "₦50,000" and insert the figure "₦500,000" (Senator Umaru Dahiru).

Question that the amendment be made put and agreed to.

Question that Clause 44 as amended stand part of the Bill put and agreed to.

- Clause 45:**
- Notwithstanding the provisions of this Act or of any law, the Federal High Court or tribunal constituted under any enactment shall have jurisdiction to try any offence under this Decree and to impose the full penalty prescribed thereof.

Committee's Recommendation:

Immediately after the word "court" in line 1, leave out the words "or tribunal constituted under any enactment" (Senator Sunday Zik Ambuno) — Agreed to.

Question that Clause 45 as amended stand part of the Bill put and agreed to.

- Clause 46:**
- (1) Neither the Federal Government nor the Bank nor any officer of that Government or Bank, shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank or such officer, by this Act.
 - (2) For the purpose of this section, the Minister or any officer duly acting on his behalf shall be deemed to be an officer of the Federal Government and the Governor, any Deputy Governor of the Bank or other employee thereof or any person holding any office therein or appointed by the Bank under subsection (2) of section 32 of this Act shall be deemed to be an officer of the Bank.

Committee's Recommendation

That the provision in Clause 46 be retained (*Senator Sunday Zik Ambuno*) — *Agreed to.*

Question that Clause 46 stand part of the Bill put and agreed to.

- Clause 47:**
- (1) Where a bank is unable to meet its obligations or suspends payment; the assets of the bank in the Federation shall be available to meet all the deposit liabilities

No. 55

Thursday, 3rd February, 2005

615

of the bank and such deposit liabilities shall have priority over all other liabilities of the bank.

Committee's Recommendation

- (i) Immediately after the word "payment" in line 1, *insert* the words "or where its management and control has been taken over or where its licence has been revoked pursuant to the provisions of this Act" (*Senator Sunday Zik Ambuno*) — *Agreed to.*
- (ii) Immediately after the word "Bank" in line 2, leave out the words "in the Federation" (*Senator Sunday Zik Ambuno*) — *Agreed to.*
- (2) The Governor may exempt community banks or profit and loss sharing banks from the provisions of this Act.

Committee's Recommendation

That the provision in Clause 47(2) be transferred to Miscellaneous and Supplementary provision under part III and renumbered Clause 53(i) of this Act (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (3) The provisions of this Act shall apply without prejudice to the provisions of the Companies and Allied Matters Act 1990 in so far as they relate to banks and to winding up by the Federal High Court.

Committee's Recommendation

That the provision in Clause 47(3) be transferred to Miscellaneous and Supplementary provision under part III and renumbered Clause 53(ii) of this Act (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (4) Where any of the provisions of the Companies and Allied Matters Act 1990 are inconsistent with the provisions of this Act, the provisions of this Act shall prevail.
- (5) The provisions of this Act shall apply without prejudice to the provisions of the Nigeria Deposit Insurance Corporation Act 1988 and where any of the provisions of this Act are inconsistent with any provisions of that Act, the provisions of this Act shall prevail.

Committee's Recommendation

That the provision in Clause 47(5) be transferred to Miscellaneous and Supplementary provision under part III and renumbered Clause 53(iii) of this Act (*Senator Sunday Zik Ambuno*) — *Agreed to*.

- Clause 48:**
- (1) The Governor may make regulations, published in the Gazette, to give full effect to the objects and objectives of this Act.
 - (2) Without prejudice to the provisions of subsection (1) of this section, the Governor may make rules and regulations for the operation and control of all institutions under the supervision of the Bank.

Committee's Recommendation

That the provision in Clause 48 be retained (*Senator Sunday Zik Ambuno*) — *Agreed to*.

Question that Clause 48 stand part of the Bill put and agreed to.

PART II — OTHER FINANCIAL INSTITUTIONS

- Clause 49:**
- (1) Without prejudice to the provisions of Part I of this Act, no person shall carry on other financial business in Nigeria other than insurance and stock broking except it is a company duly incorporated in Nigeria and holds a valid licence granted under section 57 of this Act.

616

Thursday, 3rd February, 2005

No. 55

Committee's Recommendation:

Leave out the provision in subclause 49(1) and *insert* a new subclause 49(1) as follows:

- “(1) Without prejudice to the provisions of part 1 of this Act, no person shall carry on specialized banking or other financial business in Nigeria other than Insurance and Capital Market business as defined respectively in the Insurance Act 1997 and the Investment and Securities Act 1999 except it is a company duly incorporated in Nigeria and holds a valid licence granted under the provisions of this Act” (*Senator Sunday Zik Ambuno*) — *Agreed to*.
- (2) Any person or institution which, before the commencement of this Act was carrying on such other financial business as are referred to under subsection (1) of this section shall apply in writing to the Bank for a licence within six months from the date of commencement of this Act.

Committee's Recommendation

Leave out the provision in sub-clause 49(2) and *insert* a new subclause 49(2) as follows:

- “49(2) Any person or institution which before the coming into force of this Act was a specialized bank or carrying on business as other financial institutions shall apply in writing to the Bank for a licence with six months from the date of commencement of this Act” (*Senator Sunday Zik Ambuno*) — *Agreed to*.
- (3) Any person or institution which fails to apply as provided in subsection (2) of this section shall cease to carry on such financial business.

Question that Clause 49 as amended stand part of the Bill put and agreed to.

- Clause 50:**
- (1) Any person wishing to carry on other financial business other than insurance and stock broking in Nigeria shall apply in writing to the Bank for the grant of licence and shall accompany the application with the following :-

Committee's Recommendation

- (i) Immediately after the words “carry on” in line 1, *leave out* the words

“other financial business” and *insert* the words “business as specialized bank or other financial institution” (*Senator Sunday Zik Ambuno*) — *Agreed to*.

- (ii) Immediately after the word “and” in line 2, leave out the words “stock broking” and insert the words “capital market business” (*Senator Sunday Zik Ambuno*) — *Agreed to*.
- (a) a draft copy of the memorandum and articles of association of the proposed financial business;

Committee’s Recommendation

Leave out the provision in subclause 50(1)(a) and *insert* a new subclause 50(1)(a) as follows:

“50(1)(a) Memorandum and Articles of Association in the case of a company registered or proposed to be registered under the Companies and Allied Matters Act and in the case of an institution established by an Act of the National Assembly, a gazetted copy of the Act establishing the Institution” (*Senator Sunday Zik Ambuno*) — *Agreed to*.

- (b) such other information, documents and reports as the Bank may, from time to time, specify; and
- (c) the prescribed application fee.

- (2) After the applicant has provided all such information, documents and reports as the Bank may require under subsection (1) of this section, the Bank may grant the licence with or without conditions or refuse to grant the licence.
- (3) Where an application for licence is granted, the Bank shall give written notice of that fact the applicant and the licence fee shall be paid.
- (4) The Bank may vary or revoke any conditions subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.
- (5) Where the Bank proposes to vary, revoke or impose fresh or additional conditions, the Bank shall before exercising such power, give notice of its intention to the person or institution concerned and give such a person or institution an opportunity to make representation to the Bank thereon.
- (6) Any person who transacts a business without a valid licence under section 56 of this Decree or sub-section (2) of this section whether in the case of an individual or in the case of a body corporate is guilty of an offence and liable -
 - (a) in the case of a body corporate, to a fine of ₦1,000,000; and

Committee’s Recommendation:

Leave out the figure “₦1,000,000” and *insert* the figure “₦10,000,000” (*Senator Sunday Zik Ambuno*) — *Agreed to*.

- (b) in any other case, to a fine not exceeding ₦1,000 or imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

Committee’s Recommendation:

Leave out the figures “~~₦~~1,000” and “5” in lines 1 and 2, and insert the figures “~~₦~~2,000,000” and “10” respectively (Senator Sunday Zik Ambuno) — Agreed to.

Question that Clause 50 as amended stand part of the Bill put and agreed to.

- Clause 51:** (1) Any person who fails to comply with any of the conditions of its licence is guilty of an offence and liable on conviction to a fine not exceeding ~~₦~~5,000 for each day during which the condition is not complied with.

Committee’s Recommendation:

- (i) *Leave out the figure “~~₦~~5,000” and insert the figure “~~₦~~50,000” (Senator Sunday Zik Ambuno) — Agreed to.*
- (ii) *Immediately after the figure “~~₦~~50,000” leave out the words “for each day during” (Senator Sunday Zik Ambuno) — Agreed to.*
- (2) Every person or institution carrying on such financial business as are referred to in section 56 of this Act shall :-
- (a) comply with the Monetary Policy Guidelines and other directives as the Bank may, from time to time, specify;
- (b) furnish within the stipulated time any statistical and other return as the Bank may, from time to time, require.
- (3) Any person who fails to comply with paragraph (a) or (b) of subsection (2) of this section is guilty of an offence and liable on conviction to imprisonment for a term not less than two years and not exceeding three years or to a fine of ~~₦~~5,000 for each day during which such failure occurs.

Committee’s Recommendation:

- (i) *Leave out the words “not less than two years and” in line 3 (Senator Sunday Zik Ambuno) — Agreed to.*
- (ii) *Leave out the figure “~~₦~~5,000” and insert the words and figure “not less than ~~₦~~50,000” instead thereof (Senator Sunday Zik Ambuno) — Agreed to.*
- (4) Persistent failure to comply with the guidelines or other directives of the Bank or persistent refusal to supply returns in the prescribed form may be a ground for the revocation of a licence.

Question that Clause 51 as amended stand part of the Bill put and agreed to.

- Clause 52:** (1) The Bank shall have power to:-
- (a) supervise and regulate the activities of other financial institutions and specialized banks;
- (b) prescribe the minimum paid-up capital requirement of other financial institutions and specialized banks.
- (2) The Bank may appoint examiners and any other person to carry out regular or routine examination of the books and affairs of other financial institutions.

Committee’s Recommendation:

Immediately after the words “affairs of” in line 2 insert the words “specialized banks and” (Senator Sunday Zik Ambuno) — Agreed to.

- (3) Where the Governor is satisfied that it is in the public interest so to do he may, in addition to the routine or regular examination, order as special examination or investigation of the books and affairs of any specialized bank or other financial institution and for that purpose, the Governor shall have power to appoint one or more qualified persons other than the officers of the Bank to conduct special examination or investigation, under conditions of confidentiality, of the books and affairs of such other financial Institution or specialized bank.
- (4) If after taking such of the steps stipulated in section 33 of this Act such other measures as in the opinion of the Bank may be appropriate in the circumstance, the state of affairs of the other financial institution concerned does not improve, the Bank may turn over the control and management of such other financial institution to an appointed person on such terms and conditions as the Bank may stipulate, from time to time.
- (5) If after taking such steps as specified in subsection (4) of this section as in the opinion of the Governor may be appropriate in each circumstance, the state of affairs of the other financial institution concerned does not improve the Bank shall have power to revoke the licence of such other financial institution.

Committee's Recommendation:

Leave out the provisions in subclause 52(5) and *insert* the following:

“For the purpose of implementation of this section, other financial institution and specialized banks shall be treated in the same manner as banks with respect to the requirements of section 24 of this Act” (*Senator Sunday Zik Ambuno*) — *Agreed to.*

- (6) Any other financial institution whose licence is revoked pursuant to subsection (2) of this section shall be wound up by a person appointed by the Bank.
- (7) The cost and expenses of the Bank or the remuneration of the person so appointed pursuant to subsection (1) of this section shall be payable from the fund and property of the financial institution.

- (8) The provisions of section 33 of this Act apply with such necessary modification to other financial institutions.

Committee's Recommendation:

Insert new subclauses 52(9) and (10) to the existing Clause as follows:

- “52(9) Without prejudice to the foregoing provisions of this part of the Act, the provisions of Part1 of this Act including all its offences, penalties and the powers of the Bank shall apply with such necessary modification to specialized banks and other financial institution and no other person or authority shall as from the coming into force of this section, exercise any regulatory or supervisory authority over specialized banks and other financial institutions”

- “52(10) The Governor may, with the approval of the Board of Directors of the Bank by notice published in the Print and Electronic Media or the Gazette revoke any licence granted under this Act if a specialized bank or other financial institutions:

- (a) cease to carry on in Nigeria the type of business for which the licence was issued for any continuous period of six months or any period aggregating 6 months during a continuous period of 12 months;
- (b) goes into liquidation or is wound up or otherwise dissolved;
- (c) fails to fulfill or comply with any conditions subject to which the

licence was granted;

- (d) has insufficient assets to meet its liabilities;
- (e) fails to comply with any obligations imposed upon it by or under this Act or the Central Bank of Nigeria Act (*Senator Sunday Zik Ambuno*) — *Agreed to*.

Question that Clause 52 as amended stand part of the Bill put and agreed to.

- Clause 53:**
- (1) Notwithstanding any of the provisions of this Act, the Governor may impose a penalty not exceeding ₦2,000,000 or suspension of any licence issued on a bank or any other financial institution for the bank's or other financial institution's failure to comply with any rules, regulations, guidelines or administrative directives made, given or issued by the Bank under this Act.
 - (2) The Governor may suspend any licence issued or given to any bank or any other financial institutions which fails to comply with any rules, regulations, guidelines or administrative directives made, given or issued to it by the Bank under this Act.

Committee's Recommendation

Leave out the provision in Clause 53 and renumber the existing clauses accordingly (Senator Sunday Zik Ambuno) — Agreed to.

- Clause 53:**
- (1) The Governor of the Bank may compound any offence punishable under this Decree by accepting such sums of money as he thinks fit, not exceeding the amount of maximum fine to which that person would have been liable if he had been convicted of the offence.
 - (2) Any money's paid to the Governor pursuant to subsection (1) of this section, shall be paid into the bank's account which shall be established for the purposes.
 - (3) No prosecution in respect of any offence under this Decree shall be instituted without the consent in writing of the Attorney-General of the Federation.

Committee's Recommendation

Insert new subclauses 53(4), (5), (6), (7), and (8) as follows:

- “(4) The Governor may exempt Community Bank or profit and loss sharing banks from the provisions of this Act”.

620

Thursday, 3rd February, 2005

No. 55

1

- “(5) The provisions of this Act shall apply without prejudice to the provisions of the Companies and Allied Matters Act 1990 in so far as they relate to banks and to winding up by the Federal High Court”
- “(6) Where any of the provisions of the Companies and Allied Matters Act 1990 are inconsistent with the provisions of this Act, the provisions of this Act shall prevail”
- “(7) The provisions of this Act shall apply without prejudice to the provisions of the Nigerian Deposit Insurance Corporation Act 1988 and where any of the provision of this Act are inconsistent with any provision of that Act, the provisions of this Act shall prevail”
- “(8) The Governor with the approval of the Board may exempt any other financial institution or specialized banks from any of the provisions of this Act” (*Senator Sunday Zik Ambuno*) — *Agreed to*.

Question that Clause 53 as amended stand part of the Bill put and agreed to.

Clause 54: In this Act, unless the context otherwise requires

"associate" means a company in which another company owns not less than twenty per cent of the shares;

Question, That the word "associate" be as defined in the Interpretation to this Act, put and agreed to.

"bank" means the licenced under this Act.

Question, That the word "bank" be as defined in the Interpretation to this Act, put and agreed to.

"bank" means the Central Bank of Nigeria;

Question, That the word "bank" be as defined in the Interpretation to this Act, put and agreed to.

"banking business" means the business of receiving deposits on current account, saving account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance or such other business as the Governor may, by other published in the Gazette, designate as banking business;

Question, That the words "banking business" be as defined in the Interpretation to this Act, put and agreed to.

"chief executive" in relation to a bank means a person, by whatever name called, who either individually or jointly with one or more other person, is responsible, subject to the authority of the board of directors, for the conduct of the business and administration of the bank;

Question, That the words "chief executive" be as defined in the Interpretation to this Act, put and agreed to.

"commercial bank" means any bank in Nigeria whose business includes the acceptance of deposits withdrawable by cheques;

Question, That the words "commercial bank" be as defined in the Interpretation to this Act, put and agreed to.

"community bank" means a bank whose business is restricted to a specified geographical area in Nigeria;

Question, That the words "community bank" be as defined in the Interpretation to this Act, put and agreed to.

"deposit" means money lodged with any person whether or not for the purpose of any interest or individual and whether or not such money is repayable upon demand upon a given period of notice or upon a fixed date;

Question, That the word "deposit" be as defined in the Interpretation to this Act, put and agreed to.

"Deputy Governor" means a Deputy Governor of the Central Bank of Nigeria.

Question, That the words "Deputy Governor" be as defined in the Interpretation to this Act, put and agreed to.

"director" includes any person by whatever name he may be referred to carrying out or empowered to carry out substantially the same functions of a director in relation to the affairs of a company incorporated under Companies and Allied Matters Act 1990;

Question, That the word "director" be as defined in the Interpretation to this Act, put and agreed to.

"factoring" means the business of acquiring debts due to any person;

Question, That the word "factoring" be as defined in the Interpretation to this Act, put and agreed to.

"Federation" means the Federal Republic of Nigeria;

Question, That the word "Federation" be as defined in the Interpretation to this Act, put and agreed to.

"Governor" means the Governor or any of the Deputy Governors of the Central Bank of Nigeria;

Question, That the word "Governor" be as defined in the Interpretation to this Act, put and agreed to.

"leasing" means the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business whatsoever and where the lessor is the owner of the property regardless of whether the letting is with or without an option to purchase the property;

Question, That the word "leasing" be as defined in the Interpretation to this Act, put and agreed to.

"licence" means a licence issued under this Act;

Question, That the word "licence" be as defined in the Interpretation to this Act, put and agreed to.

"merchant bank" means a bank whose business includes receiving deposits on deposit account, provision of finance, consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf any person;

Question, That the words "merchant bank" be as defined in the Interpretation to this Act, put and agreed to.

"other financial institution" means any individual, body, association or group of persons; whether corporate or unincorporated, other than the banks licensed under this Decree which carries on the business of a discount houses finance company and money brokerage and whose principal object include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension fund management and such other business as the Bank may, from time to time, designate; of the Federal Republic of Nigeria;

Question, That the words "other financial institution" be as defined in the Interpretation to this Act, put and agreed to.

"president" means the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria;

Question, That the word “president” be as defined in the Interpretation to this Act, put and agreed to.

"profit and loss sharing bank" means a bank which transact investment or commercial banking business and maintains profit and loss sharing accounts;

Question, That the words “profit and loss sharing bank” be as defined in the Interpretation to this Act, put and agreed to.

"relation of person" includes father, mother, child, brother, sister, uncle, aunt and cousins where applicable, and their spouses;

Question, That the words “relation of person” be as defined in the Interpretation to this Act, put and agreed to.

"shareholders funds" means the aggregate of paid-up share capital, statutory and all other reserves;

Question, That the word “shareholder funds” be as defined in the Interpretation to this Act, put and agreed to.

"specialized banks" include Nigerian Industrial Development Bank, Nigerian Agricultural and Cooperative Bank, Nigerian Export Import Bank, Nigerian Bank for Commerce and Industry, the Urban Development Bank, Federal Mortgage Bank of Nigeria and all Primary Mortgage Institution, Community Banks, Peoples Bank of Nigeria and such other banks as may be designed from time to time;

Question, That the words “specialized banks” be as defined in the Interpretation to this Act, put and agreed to.

"state" means any of the States of the Federation.

Question, That the word “state” be as defined in the Interpretation to this Act, put and agreed to.

Committee’s Recommendation

That the provision in Clause 54 be retained (*Senator Sunday Zik Ambuno*) — *Agreed to.*

Question that Clause 54 stand part of the Bill put and agreed to.

- Clause 55:**
- (1) This Act may be cited as the Banks and Other Financial Institutions (Amendment) Act 2005.
 - (2) The Banking Act 1969 is hereby repealed; and
 - (a) the Banking (Amendment) Act 1970;
 - (b) the Banking (Amendment) Act 1972;

No. 55

Thursday, 3rd February, 2005

623

(c) the Banking (Amendment) Act 1975;

(d) the Banking (Amendment) Act 1979

are consequently repealed.

Committee’s Recommendation

That the provision in Clause 55 be retained (*Senator Sunday Zik Ambuno*) — *Agreed to.*

Question that Clause 55 stand part of the Bill put and agreed to.

Chairman to report Bill.

The Senate President reported that in the Committee of the Whole, the Senate resumed consideration of the Report of the Committee on Banking, Insurance and Financial Institutions on the Banks and other Financial Institutions Act (Amendment) bill 2005 and approved as follows:

Clause 37	—	As Recommended
Clause 38	—	As Recommended
Clause 39	—	As Recommended
Clause 40	—	As Recommended
Clause 41	—	As Recommended
Clause 42	—	With Slight Amendment
Clause 43	—	As Recommended
Clause 44	—	With Slight Amendment
Clause 45	—	As Recommended
Clause 46	—	As Recommended
Clause 47	—	As Recommended
Clause 48	—	As Recommended
Clause 49	—	As Recommended
Clause 50	—	As Recommended
Clause 51	—	As Recommended
Clause 52	—	As Recommended
Clause 52A	—	As Recommended
Clause 52B	—	As Recommended
Clause 52C	—	As Recommended
Clause 53	—	As Recommended
Clause 54	—	As Recommended
Clause 55	—	As Recommended
Title	—	As Recommended

Motion made and Question Proposed: That the Senate do approve the Report of the Committee of the Whole (Clauses 37 - 54) on the Banks and Other Financial Institutions Act (Amendment) Bill 2005 (*Senate Majority Leader*).

Question put and agreed to.

Motion made and Question Proposed: That the Bill for an Act to amend the Banks and Other Financial Institutions Act and for Connected Purposes be read the Third Time (*Senate Majority Leader*).

Question put and agreed to.

Bill accordingly read Third Time and Passed.

11. Adjournment:

Motion made and Question Proposed: That the Senate do adjourn till Tuesday, 8th February, 2005 at 10.00 a.m. (*Senate Majority Leader*).

Adjourned accordingly at 1.00 p.m.

Adolf Wabara
President of the Senate